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# Ukraine and Europe: Final Decision?

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## Introduction

For a state that has defined itself as European since obtaining independence, Ukraine has had an unusually frustrating relationship with the EU. At the root of this frustration lies a cognitive dissonance that has never been fully overcome. To the most principled Ukrainian proponents of EU integration, Europe (and hence the EU) is an ethno-cultural, Greco-Roman and Christian civilization – and Ukraine is organically a part of this, despite its Soviet past, its self-aggrandizing political class and its decidedly uncivic state. To the more opportunistic and ‘pragmatic’ part of the spectrum, the EU is a source of wealth and markets. To almost everyone, the EU is also a geopolitical project offering, for good or ill, an escape from the country’s historical dependency upon Russia. In this conversation, far less attention is paid to the way the EU actually perceives itself: as an increasingly multi-cultural entity defined by values, standards and the harmonization of institutions. The technocratic biases of EU elites and the dry nature of the integration process do not assist clarity in this regard. Nor do real divisions within the EU-28 about Ukraine’s significance and potential.

Despite these divisions, the Eastern Partnership, launched in May 2009, marked a watershed in EU thinking and practice with respect to the EU’s eastern neighbourhood. It provides a ‘specific eastern dimension’<sup>1</sup> to the dispiriting and much reviled European Neighbourhood Policy, which upon its establishment in 2004 unceremoniously lumped Ukraine and five other Eastern Partnership countries alongside a number of states that have no claim to EU membership under the Treaty of Rome.<sup>2</sup> More concretely, the Eastern Partnership offers the perspective of Association Agreements and free trade pacts that provide tangible mechanisms of integration with the EU.

For Ukraine, the forthcoming November 2013 Eastern Partnership summit in Vilnius is another watershed. It is then that the European Union will decide whether Ukraine has satisfied the conditions for signature of an EU–Ukraine Association Agreement and the establishment of a Deep and Comprehensive Free Trade Area (DCFTA). Officially, the EU’s commitment to sign the agreement (of which the DCFTA is an organic part) has no deadline and depends only on ‘determined action and tangible progress’ by Ukraine.<sup>3</sup> But

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<sup>1</sup> ‘The EU launches programme to forge closer ties with six countries in Eastern Europe and the Southern Caucasus’, [http://ec.europa.eu/news/external\\_relations/090508\\_en.htm](http://ec.europa.eu/news/external_relations/090508_en.htm).

<sup>2</sup> The ENP framework encompasses [Algeria](#), [Armenia](#), [Azerbaijan](#), [Belarus](#), [Egypt](#), [Georgia](#), [Israel](#), [Jordan](#), [Lebanon](#), [Libya](#), [Moldova](#), [Morocco](#), [Palestine](#), [Syria](#), [Tunisia](#) and [Ukraine](#). See [http://ec.europa.eu/world/enp/policy\\_en.htm](http://ec.europa.eu/world/enp/policy_en.htm).

<sup>3</sup> EU External Action Service, [http://eeas.europa.eu/ukraine/index\\_en.htm](http://eeas.europa.eu/ukraine/index_en.htm).

publicly and privately, a number of EU officials and representatives of member states are presenting the Vilnius summit not only as a defining moment but as a final one. In essence, the EU will decide whether Ukraine at long last has made the 'civilizational' choice that has confronted it since independence.

## Background

Such a dramatic and apparently draconian stance requires explanation. Since the launch of the Eastern Partnership in May 2009, the EU has articulated a vision with regard to Ukraine that belies many established Ukrainian stereotypes about its ethos and horizons. In the first place, as affirmed by the EU Commissioner for Enlargement and European Neighbourhood Policy, Stefan Füle, the EU–Ukraine Association Agreement and DCFTA are the 'most ambitious and complex agreements the European Union has ever negotiated with a third country'.<sup>4</sup> They provide neither a membership perspective nor a substitute for it. Instead, they offer tangible integration, consistent with the hope expressed by no less a figure than EU Commission President José Manuel Barroso that membership will one day follow. Second, the agreements have been hammered out in the teeth of unprecedented economic pressures to do nothing of the kind. The eurozone crisis has dilated vision as well as narrowed it, not only within the currency zone itself but across the EU as a whole. Third, negotiations have been reinforced by an intensity of diplomatic activity and high-level engagement that should cast no doubt on the EU's seriousness. Yet this combination of factors is most unlikely to endure, and it is this apprehension that underpins today's 'now or never' rhetoric.

Compelling as this reasoning might be, the EU is not operating in a vacuum. EU Association and the DCFTA are no longer the only viable integration projects on offer. In contrast to its ambitious but insubstantial predecessors, the Eurasian Customs Union of Russia, Belarus and Kazakhstan (ECU) has acquired institutional coherence and momentum. Since its launch in October 2007, it has steadily become a rules-based customs regime, with legal and executive mechanisms of enforcement and a 'proven commitment to implementation', given impetus by the entry into force of the Single Economic

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<sup>4</sup> Stefan Füle, 'Speech at the Meeting of the EU–Ukraine Parliamentary Cooperation Committee, June 2012', [http://europa.eu/rapid/press-release\\_SPEECH-12-448\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-12-448_en.htm).

Space in January 2012.<sup>5</sup> The ECU's incorporation of WTO provisions (as of November 2011) underscores its seriousness and also undermines the claim that it simply seeks to restore the trade patterns and linkages of the USSR.

Whereas Brussels has given prominence to issues of governance and conditionality in its negotiations with Ukraine, Moscow has chosen to emphasize the benefits of the ECU and argues that entry into the DCFTA would inflict substantial damage on Ukraine's economy. That case, by turns corroborated and disputed by Ukrainian experts,<sup>6</sup> is reinforced by clear threats to retaliate (by raising tariffs and imposing sanctions) if the DCFTA is adopted. Unlike EU Association, the ECU does not require Ukraine to improve its standards of governance, reform its system of justice, strengthen property rights or apply EU criteria of 'best practice' to the relationship between business, the consumer and the state. It is not a blueprint for either democratization or economic reform, and this gives it an elementary appeal to many who fear for their political power and economic dominance if the provisions of the DCFTA are applied. Yet for the same reason, entry into the ECU could be the death knell for those who for twenty years have worked to make Ukraine a 'full member of the European family of civilised nations'.<sup>7</sup>

Nevertheless, history will not end at the Vilnius summit. Its finality will swiftly prove illusory whether the Association Agreement is signed or not. In either case, the outcome will not just end one story, but start a new one, and few European commissioners or member governments have begun to think about its character, dynamics and consequences.

In this post-Vilnius environment, three long-standing factors are likely to interact in a more active and unpredictable manner than hitherto. The first is a predatory and de-professionalized Ukrainian state that has disenfranchised entrepreneurship and talent; a state, moreover, in which the liberal, EU-oriented opposition seems incapable of building domestic constituencies, acting without a Western patron or exercising power. The second is the purposefulness of a Russian state determined to rebuild its hegemony, entrench its civilizational model and keep Ukraine out of the West's embrace.

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<sup>5</sup> Rilka Dragneva and Kataryna Wolczuk, *Russia, the Eurasian Customs Union and the EU: Cooperation, Stagnation or Rivalry?* (Chatham House Briefing Paper BP 2012/01, August 2012), p 1, 3–8.

<sup>6</sup> For example, Oleksandr Shyrkov, 'Establishing Free Trade Economic Zones of Ukraine: Conditions and Consequences', speech at conference on 'Ukraine in Europe, Europe in Ukraine: 20 Years of Ukrainian-Norwegian Relations', co-sponsored by the Norwegian Ministry of Foreign Affairs and the Norwegian Institute for International Affairs, Taras Shevchenko University, Kyiv, 25 September 2012. For a thorough analysis of the possible impact of both systems, see Oxford Economics, *Economic Impact of a Deep and Comprehensive FTA Between the EU and Ukraine*, <http://www.oxfordeconomics.com/my-oxford/projects/128886>, 1 July 2012.

The third is a Euro-Atlantic community increasingly intimidated by the state of the world, incapable of thinking beyond 'engagement' with Russia and wearied by Ukraine's refusal to respond to any incentives or help itself. With or without an Association Agreement, Ukraine is likely to find itself in uncharted waters after November 2013.

### Sober optimism

In December 2012 the European Council made signature of the Association Agreement (concluded but not signed in December 2011) contingent upon Ukraine fulfilling three conditions: complying with international standards of electoral practice, ending selective justice and 'implementing the reforms defined in the jointly agreed Association Agenda'.<sup>8</sup> The EU is expecting a dramatic change not in Ukraine's condition but in its *direction*, and it is expected that this will also be true of national parliaments and the EU Parliament, upon which ratification of the agreement depends. Yet privately, even some of the strongest advocates of the agreement know that Ukraine's current authorities are interested at most in pro forma implementation of its measures and have no intention of implementing some of them at all. So why are they arguing for signature and ultimate ratification? Three positive arguments are put forward.

- In opting for Association, Ukraine is granting the EU unprecedented powers of scrutiny over the internal affairs of a non-EU state. By doing so, it has confirmed its European identity in unmistakably tangible form. Association is not membership, and it would be unjust to hold Ukraine to the standards and conditionalities applied to states engaged in membership negotiations (e.g. Turkey).
- The provisions of the Association Agreement will bring Ukraine into closer conformity to EU standards whether the authorities in Kyiv desire this or not. The DCFTA goes well beyond a standard free trade agreement in its regulatory intrusiveness and enforcement provisions. On offer is nothing less than 'a robust, legally binding framework for progressive integration'.<sup>9</sup>
- When the Association Agreement comes into force, Moscow will forfeit leverage, not to say control, over Ukraine's economic

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<sup>7</sup> Volodymyr Horbulin (former Secretary of the National Security and Defence Council), 'Ukraine's Place in Today's Europe', *Politics and the Times* (journal of the Foreign Ministry of Ukraine), October–December 1995, p. 15.

<sup>8</sup> 'Council Conclusions on Ukraine', Brussels, 10 December 2012.

development and integration prospects. EU Association will be the epitaph of a long and concerted effort to draw Ukraine into the Eurasian Customs Union and Single Economic Space. It will mean 'game over' for Russia.

Three negative arguments turn the optimists into pessimists when they contemplate the EU's failure to sign the agreement.

- The EU will forfeit the leverage that Ukraine has willingly conceded up to this point. The concerns and interests of Brussels regarding electoral malpractice, politicized justice and the criminalization of economic life will fall on deaf ears. Lacking any incentive to change, Ukraine's kleptocratic and reclusive authorities will do what they do best. Isolation will propel them into hard authoritarianism.
- Moscow will conclude that the EU has washed its hands of Ukraine. Pressure on Kyiv to submit to Moscow's Eurasian scheme of integration will prove irresistible, as will pressure to follow the Belarusian path and abandon its energy sovereignty. Russia will feel encouraged to seek fresh opportunities and exploit vacillation and weakness elsewhere (e.g. Moldova, Latvia and Georgia).
- The Eastern Partnership will atrophy, the enlargement impulse, already attenuated, will dissipate, and the EU will shift its focus to the non-European sources of illegal migrants and turn in upon itself. A new European frontier along the Prut, the Bug and the Narva will emerge, drawn by a combination of EU short-sightedness and Russian wilfulness.

Powerful as these arguments are, they are far from conclusive. The Association Agreement's leverage might prove to be as ephemeral as that so recently anticipated when Ukraine joined the WTO (a 'threshold' that has done very little to arrest the dysfunctionality and lawlessness of Ukraine's system of economic 'management'). External conditionality and benchmarks support changes that state and society are resolved to undertake. They do not eliminate the prerogatives of sovereignty. Twenty years of frustrated attempts to micro-manage recalcitrant regimes by such means should instil scepticism. The moral blackmail of Kyiv aside, Viktor Yanukovich's refusal to countenance integration with Russia was never founded upon 'perspectives' from the EU, but on hard-headed regime interest. The structures of power and corruption that block Ukraine's integration with Europe (and damage the

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<sup>9</sup> Dragneva and Wolczuk, , *Russia, the Eurasian Customs Union and the EU*, p. 9.

country) have also managed thus far to defend it against integrationist pressures from Moscow. Moscow's scheme of 'merger' between *Ukrnaftohaz* and *Gazprom* – 5 per cent and 95 per cent ownership respectively – is an indicator of what Ukraine's industry can expect to suffer in any wider package, and its custodians have every motivation to maintain their freedom of manoeuvre and independence.

Were past experience not enough, recent negotiations over observer status in the executive body of the ECU, the Eurasian Economic Commission, provide a fresh reminder of what kind of future Ukraine is likely to face in such a union. In its draft memorandum, Ukraine's Ministry of Foreign Affairs incorporated provisions and safeguards that it has long maintained in negotiations with Russia.

- Its text defined the purpose of observer status as 'support and [development of] cooperation'.
- It affirmed the principles of 'equality, mutual respect and advantage'.
- It specified Ukraine's right 'to attend all meetings of the Commission'.
- It envisaged 'by mutual agreement' the possibility of amending the memorandum, and set out a procedure whereby either side could withdraw from its provisions with thirty days' notice.
- It stated that the memorandum would come into force upon ratification.
- It envisaged two official texts, one in Russian and one in Ukrainian.<sup>10</sup>

All of these provisions were summarily rejected. References to cooperation in the Ukrainian draft were replaced with 'deepening interaction'. The 'right' to attend meetings was replaced with 'opportunity' to attend them 'by invitation'. The terms 'equality' and 'mutual advantage', and the possibility of subsequent amendment or withdrawal, were dropped. The memorandum comes into force directly upon signature, not ratification, of a single official text in the Russian language. The Commission's text also imposes obligations that well exceed the customary requirements of observer status:

*Ukraine declares its intention to adhere to [sobliudat'] the principles incorporated in the laws and treaties of the Customs Union and Single*

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<sup>10</sup> For a line-by-line comparison of texts in Russian, see *Zerkalo Nedeli* [Mirror of the Week], 1 June 2013, <http://zn.ua/ECONOMICS/kabmin-obnarodoval-tekst-memoranduma-s-tamozhennym-soyuzom-123301.html>.

*Economic Space and abstain from actions and declarations directed against [their] interests.<sup>11</sup>*

The outcome of Ukraine's unsuccessful efforts to negotiate satisfactory terms for observer status in the ECU should give the EU pause for thought. Not only did it sign the text imposed upon it by the Eurasian Commission, but it promptly informed Brussels that it would respect only those terms that conformed to its national interests. Why should Ukraine's response to the Association Agreement be any different?

That Ukraine's independence, economic and political, will come under renewed assault from Russia after a rebuff in Vilnius should not be doubted. Nor should one minimize the risk of worsening conditions inside Ukraine itself. These concerns are well founded. But they do not suggest that signature of the Association Agreement will put Ukraine on a trajectory to success. To the contrary, Association will confront Ukraine and the EU with different risks and dangers, and it is possible that they will prove to be even more difficult to manage than those that will ensue if the EU denies Ukraine the reward it seeks.

### **Sober pessimism**

That the granting of Association status would be more damaging for Ukraine than its denial is a less intuitive case to make than the one just outlined. But it is not difficult to understand. If Association is conferred in the present conditions, a number of consequences are likely.

- The EU's credibility in Kyiv will be forfeit, and its leverage will suffer accordingly. Since the conclusion of the Association Agreement in December 2011, the EU has used every channel to affirm that it expects real change on the part of Ukraine. Over the same period, President Yanukovich's inner circle of confidants have assured him that limited and cosmetic changes will suffice. Having won one war of attrition, his *modus operandi* will only harden, and the EU will be hard put to prove that *this* time, it means it.
- President Yanukovich will use Association as a political resource rather than a blueprint for change. He knows that full implementation would dismantle the patrimonial system he has constructed, and he will not allow this to happen. Instead, as with IMF conditionalities,

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<sup>11</sup> *Ibid.*



there will be implementation *à la carte*, more likely to damage than benefit the constituencies that the EU seeks to help. An anti-EU backlash in Ukraine (to the advantage of the Party of Regions, the Communists and *Svoboda*) is entirely possible, as well as a fresh round of exasperation with Ukraine in Europe.

- It cannot be excluded that Yanukovich will use Ukraine's energy sector as a resource to compensate Russia for what it certainly will consider a hostile step. Changes to the management of the Gas Transit System cannot be ruled out, and Western exploration and production companies, already struggling with Ukraine's regulatory environment, might find that their framework agreements are far from tamper-proof. The multi-vector approach is not merely a policy, but an instinct of Ukraine's policy elites, and Association with the EU might provide more of an incentive to re-establish than overcome it. Those in Brussels who assume that Association will smooth the path to Ukraine's energy integration with Europe might find themselves surprised and disappointed.
- The image of the EU and Eastern Partnership as values-based projects will suffer, as will their moral authority. Having set aside its own benchmarks, Brussels could find its leverage over other Partnership countries much diminished. In the most direct manner possible, the EU will also vindicate the charge that Association and enlargement are blatantly anti-Russian projects 'disguised in parables about democracy'.<sup>12</sup> While the Kremlin is likely to maintain these views irrespective of what the EU does, the EU will gain nothing by entrenching them among the wider Russian policy community, including academics, artists, intellectuals and the middle classes, as well as small and medium-sized entrepreneurs. By such means it is likely to weaken its stance in Russia not only now but in future.

Russia will treat Ukraine's new status as a threat to its primary interests. Association is more likely to be seen as the start of an accession process than a substitute for it. To Moscow, it is immaterial whether such a process unfolds *de jure* or *de facto*, and Brussels' commentary about it is irrelevant. (Many NATO allies initially presented Partnership for Peace as an alternative, rather than a prelude, to membership for the states that later joined the Alliance in 1999 and 2004.) What matters to Russia is loss of control over

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<sup>12</sup> Sergei Karaganov, 'The New Global Chaos', *Russia in Global Affairs Online*, 28 December 2011.

Ukraine's development model, along with the possibility of transforming the Customs Union and Eurasian Union into dynamic and sustainable projects. The Kremlin is scarcely unaware that a significant proportion of citizens believe that, in their present form, these projects operate to the disadvantage of Russia and ethnic Russians.<sup>13</sup>

### Principle and realism

The post-Cold War period had a unifying theme and narrative: the triumph of Western values. That period has long gone. Today, there is less unity of aspiration and purpose in Europe than at any time since 1991, perhaps since 1985. While military blocs have not disappeared, the more potent dividing line in Europe is between normative systems demarcating different traditions of statecraft and governance, law and business. Two models have emerged: one is essentially based on rights and rules, and the other on connections, clientelism and the subordination of law to power. Each of them is underpinned by institutions, networks and well-established interests. Yet within these normative worlds, new tensions and cleavages have arisen that make their respective trajectories uncertain. These conditions, which breed uncertainty, apprehension and tension, oblige the EU to think carefully about the consequences of its actions.

On matters of principle, there can be no deviation. Ukraine is as sovereign as any other state, and it bears primary responsibility for its own future. When Ukraine is serious about integrating with the EU, the EU should welcome it *de facto* and *de jure*. Association should be offered with clear conditions but without deadlines or 'now or never' propositions. Russia should be accorded no 'special rights' in this process.

The reality is that Russia will play a role in the process whether it is accorded one or not. The significance of that role will depend in large part upon the strength of Ukraine: the competence of the state authorities, the professionalism of its institutions and the ability of state and society, *pace* former President Leonid Kuchma, to 'pull together at a crucial moment'. It will also depend upon Ukraine's standing in Europe. At present, its standing is low, and its state is not fit for purpose. To the extent that Ukraine implements the reforms defined in the Association Agenda, both of these realities will change, and Russia's opportunities will diminish. Today they are

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<sup>13</sup> For a particularly cogent argument, see Kirill Rodionov, 'Mezhdu imperiey i natsionalsiyom gosudarstvom' ['Between empire and nation-state'], *Nezavisimaya Gazeta*, 24 June 2013.

considerable. Threats to the longevity of Russia's power only magnify Moscow's incentive to exploit the advantage that it enjoys today. Despite and indeed because of this, the future will also depend upon the ability of the EU to alter its programmatic approach and articulate an ecumenical perspective of its role in Europe. The failings noted in a recent Chatham House paper deserve reiteration:

The negotiations on the Association Agreement have been highly technocratic, conducted in narrow official circles, with little effort to win over the general public or inform business of the implications and benefits.<sup>14</sup>

Four years into the economic crisis, the EU can no longer afford to assume that the merits of the 'European project' are self-evident. If it fails to 'win over' new constituencies, it will lose them.

The Vilnius summit is unlikely to lead to a situation similar to the one that existed after the Budapest summit of 1994, when Yeltsin threatened a 'cold peace' and did nothing. Rather, it is more likely to resemble the Bucharest summit of 2008, when NATO promised Georgia and Ukraine what it had no means to deliver. The West needs the wisdom to avoid a repetition of that scenario and the vision to construct a system that, in the long term, will strengthen both Ukraine and Europe.

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<sup>14</sup> Dragneva and Wolczuk, *Russia, the Eurasian Customs Union and the EU*, p. 11.

## ABOUT THE AUTHOR

James Sherr is an Associate Fellow of the Russia and Eurasia Programme at Chatham House in London. He was a member of the Social Studies Faculty of Oxford University (1993–2012), a Fellow of the Conflict Studies Research Centre of the UK Ministry of Defence (1995–2008) and Director of Studies of the Royal United Services Institute (1983–85). Over many years, he has had an intensive advisory relationship with Ukraine and worked closely with a number of official and expert bodies in the West and the former Soviet region. He has published extensively on Soviet and Russian military, security and foreign policy, as well as energy security, the Black Sea region and Ukraine's effort to deal with Russia, the West and its own domestic problems. He is the author of *Hard Diplomacy and Soft Coercion: Russia's Influence Abroad* (Chatham House and Brookings, June 2013).

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