



I C P S

International
Centre
for Policy
Studies

4 Borys Hrinchenko st., office 3, Kyiv, 01001, Ukraine
Phone (380 44) 279-88-23 | office@icps.kiev.ua | www.icps.com.ua

Foreign Policy Insight

November 4, 2014
Issue 10

Contents

Foreign Policy Strategies and Decisions	1
• «Elections» in separatists' republics as Minsk agreements' failure	1
European focus	3
• On 1 November, the provisional application of the EU-Ukraine Association Agreement began.....	3
Regional and global focus: implications for Ukraine	5
• Ukraine improved its position in Doing Business-2015 rating	5
• Winter gas protocol "Ukraine-Russia-European Commission"	6

Foreign Policy Strategies and Decisions

«Elections» in separatists' republics as Minsk agreements' failure



Despite Ukrainian protests and international community's warning, November 2, 2014 saw the so-called elections on the territories of Donetsk and Luhansk regions, which are now temporarily occupied by Russian troops and local illegal militants' groups. The results of the "elections" turned out as expected: both the electoral turnout and "winners" were exactly as it had been planned by the Kremlin. The reaction of the leading partner states and international organizations was obvious. Neither civilized country nor international organization has recognized the legitimacy of these "elections". «The theatre of the absurd» is the most appropriate

Turnout and "winners" were exactly as it had been planned by the Kremlin

characterization of the performance staged by the Kremlin. Germany was among the countries that reacted particularly negatively to separatists' elections. According to German chancellor's spokesperson Steffen Seibert, there can be no lifting of the sanctions against Russia due to Russia's recognition of DPR and LPR's elections. Moreover, the existing sanctions can be even tightened.

It is quite evident that Moscow expected such a reaction. However, the scenario of the disruption of the Minsk agreements has been played out. It can be assumed that Vladimir Putin is trying to accomplish two goals. The first one is to centralize the power in the self-proclaimed DPR/LPR, as skirmishes between out-of-control bandit groups began to disturb even the Kremlin. The second is to

legitimize the self-proclaimed “leaders” of the two terrorist organizations. The next step will be imposing the view on Ukraine, as well as international community, that the only legitimate negotiators as regards the resolution of the armed conflict in Donbas are the persons that were supported by popular vote at DPR and LPR’s elections, namely Oleksandr Zakharchenko and Ihor Plotnytskyi. Russia itself will try to act as a mediator and peacemaker claiming that it had nothing to do with the hostilities in Eastern Ukraine.

In such situation, it is important that Ukraine should not repeat Moldovan leadership’s mistakes, which entered into negotiations with the self-proclaimed President of Transnistria Smyrnov in the 1990s. By doing so, Moldovan leadership legitimized Smyrnov in the eyes of Moldovan citizens, who were living in the territory controlled by Smyrnov. In the end, the situation in Transnistria

became frozen for the following decades. Instead, it is reasonable to depart from further implementation of the Minsk agreements and negotiations in such format. Ukraine should publicly insist that there should be an international conference on resolution of the armed conflict in Ukraine’s East in the format «Geneva+» with the participation of Ukraine, Russia, the US, EU, OSCE and the UN.

The fact that during the entire period of the so-called Minsk ceasefire there was a continuous deployment of Russian heavy weapons and servicemen indicates that there is little time for a peaceful scenario. If not to insist on the effective diplomatic format over the next weeks, there is the likelihood of the “no war, no peace” situation turning into open military confrontation with the involvement of Russian regular troops.

There is little time
for a peaceful
scenario

European focus

On 1 November, the provisional application of the EU-Ukraine Association Agreement began



Despite Kremlin's attempts to prevent the conclusion and the further ratification of the EU-Ukraine Association Agreement, on November 1, the application of the Association Agreement began, although not all of its provisions are to be applied. However, it is the first step. In this regard, at least two public meetings have taken place, which have not been held previously.

Firstly, the Joint Declaration of the Presidents of Ukraine, European Council and European Commission has been prepared. It is especially important in view of the fact that on November 1, President Barroso resigned from office. The publication of this document on the last day of Barroso's term in office shows that this step is important not only for Ukraine, but also for the EU. In addition to protocol rules, which usually contain similar declarations, it should be noted that parties agreed to hold the inauguration ceremony of the Association Council by the end of this year. The Association Council is the main joint Ukraine-EU executive body established to identify priorities and ensure monitoring of the results of the EU-Ukraine Association Agreement implementation.

It is also stressed the EU-Ukraine Association Agreement will become an instrument for the implementation of necessary reforms in Ukraine with EU support. However, the Joint Declaration does not mention the prospect of Ukrainian membership in the EU. The document once again used the formulation that the Association Agreement is not "an ultimate goal of mutual cooperation between the EU and Ukraine".

Secondly, the beginning of the implementation of the EU-Association Agreement was one of the reasons alongside the so-called elections in DPR and LPR behind the Presidential address to the Ukrainian nation. This presidential address reiterated Ukrainian path to European integration in the most categorical terms since

Parties agreed to hold an inauguration ceremony of the Association Council by the end of this year

The beginning of the implementation of the EU-Association Agreement prompted the President to deliver his address to the nation

Ukraine's independence. «I will not allow anyone and anything to stop Ukraine on its way towards Europe», pledged the Ukrainian President.

It is worth mentioning that unilateral trade preferences for Ukraine have been preserved. This EU decision partly compensates for negative effects caused by 12 September agreement on the postponement of the Deep and Comprehensive Free Trade Area between Ukraine and the EU by January 1, 2016, which was done under Russian pressure.

In general, 1 November can be regarded as a first step in meeting public demands expressed during the Revolution of Dignity in many parts of Ukraine. Nevertheless, many top priority tasks are to be dealt with immediately, as without them, the beginning of the implementation of the Association Agreement may lose its practical value. Firstly, the Coalition Agreement should contain the Government and

Parliament's obligation to adopt a number of draft laws necessary for the implementation of systemic reforms in Ukraine and their compliance with the Association Agreement. Secondly, it is necessary to create a strong central executive body (ministry), which would deal not only with the implementation of the Association Agreement, but also with all other European integration-related issues. It should also become the reform implementation centre. As it is clear that it will take more than just the introduction of a position of First Deputy Prime Minister — Minister for European integration, which was mentioned in the first project of Petro Poroshenko's Coalition Agreement, to address the issue. Thirdly, it is necessary to prevent the introduction of any amendments to the Association Agreement under Russian pressure, which is unlikely to lessen in the near future.

Regional and global focus: implications for Ukraine

Ukraine improved its position in Doing Business-2015 rating

Doing Business 2015 Going Beyond Efficiency



Despite the ongoing war with Russia and considerable economic decline, Ukraine is in top 100 in Doing Business-2015 rating as regards the overall 'ease of doing business', elaborated by the World Bank and International Financial Corporation. Ukraine moved 16 positions up to take the 96th place.

At the same time, despite significant improvement of Ukraine's position, Ukrainian immediate neighbours are still ahead of Ukraine. In particular, Poland has occupied the 32nd place, Bulgaria — 38, Romania — 48, Belarus — 57, Russia — 62, Moldova — 63. The leader in the rating is traditionally Sin-

**Ukraine is in top
100 of Doing
Business-2015**

gapore. The first top 10 countries are New Zealand, Hong Kong, Denmark, South Korea, Norway, the US, Great Britain, Finland and Australia.

The rating is based on 10 indicators and includes 189 countries. Only data from May 2013 to June 1 2014 have been considered. Ukraine managed to improve its position in the rating due to the following factors. Ukraine moved 49 places up in the category «Simplified tax payment system for companies» due to an electronic system of the submission of tax statements. However, significant improvements in the tax sphere during this period did not happen.

Ukraine improved its position by 29 places in the category «Property registration» due to the introduction of a new system of state registration of

right to immovable property, which provides for state registration in a single State Register of property rights and their encumbrances concerning land plots and immovable objects.

The situation with other eight indicators is not very optimistic for Ukraine. In the area of enforcing contracts, Ukraine has demonstrated the minimum improvement. “Getting electricity” indicator pulled Ukraine down in the overall ranking the most. According to it, our country was ranked 185th. The number of licensing procedures in this sector reaches 10, the process of obtaining permitting documents is stretched to 277 days, and the cost exceeds 165.5% of income per capita.

“Getting electricity” indicator pulls Ukraine down in the overall ranking

Current place of Ukraine in rating Doing Business-2015 describes rather the formal regulatory improvement than the real one. It should be noted that in the beginning of 2013 the Minister of economic development Ihor Prasolov presented 23 point changes to the legislation, which should have made it possible to be in the top hundred for Ukraine.

Indices and macroeconomic indicators are the original card that indirectly characterize business and investment climate in the country. Choosing a country for investment and entering a particular local market, international investors and global corporations take into account the country’s position in international rankings. Doing Business

ranking enjoys special attention among the investors. However, its indicators in the context of other indices do not signal a significant qualitative change in the Ukrainian economy.

Unfortunately, the dynamics of Ukraine in other rankings is not too optimistic. According to the index of competitiveness, Ukraine is ranked 76th, having improved the situation only by 8 points since 2013. According to the index of economic freedom, Ukraine occupies 155th place. As regards the Corruption Perceptions Index, Ukraine has occupying most humble positions for several years. At the same time, the competition between countries has intensified over the past 10 years. As a result, the gap between outsiders and leading countries had been reduced significantly. Therefore, in order to make a significant qualitative leap, one should make much more effort than 7–10 years ago.

Taking into consideration the fact that Ukraine is in a state of actual war with Russia, there is an experts’ opinion that the current negative economic situation in Ukraine will lead to a significant deterioration in its position during the next year. However, if the government will consistently implement economic reforms, improvement of Ukraine’s positions in the world business rankings can be expected.

Ukraine can improve its own positions in the doing business ranking if comprehensive economic reforms will be implemented

Winter gas protocol “Ukraine — Russia — European Commission”

An interim “winter package” of trilateral gas agreements was signed in the night between 30 and 31 October. The package of agreements includes three documents. The first document is a tripartite binding protocol on gas supplies from Russia to Ukraine for the period of November 2014 to March 31, 2015 signed by the Ministers of Energy of Ukraine and the Russian Federation and witnessed by the European Commissioner for Energy Günther Oettinger. The document covers the basic terms and conditions for debt payment restructuring, as well as resumption of gas supplies in November 2014.

The second document is a «technical» annex to the contract on gas purchase and sale concluded on January 19, 2009 between “Gazprom” and “Naftogaz”. The annex records the details of gas supplies and was signed by the heads of the abovementioned organizations.

The third document is a letter of the President of the European Commission Jose Manuel Barroso to the President of Ukraine Petro Poroshenko that provides guarantees for financial support to Ukraine from the European Union in the case of Russia’s failure to fulfil obligations according to the contract price, as well as the willingness of the

European Commission to facilitate reverse gas supplies to Ukraine.

Gas agreements reached in Brussels cannot be qualified by using the categories of “victory” or “failure”. Agreed positions can be described as a temporary compromise. Indeed, it is an extremely difficult compromise for Ukraine, because it needs to negotiate with and pay to the state aggressor. Let us analyze the gains and losses to be incurred by the official Kyiv in the context of temporary gas agreements.

Gas agreement reached in Brussels is a temporary compromise

According to additional agreements, the amount of Ukraine's debt for November-December 2013 and the first quarter of 2014 is calculated at a price of USD 268.5 per thousand cubic meters and amounts to USD 3.1 bln. Debt repayment will be held in two phases: the Ukrainian side should make the first payment of USD 1.45 bln in the near future and the second tranche of USD 1.65 bln – by the end of this year. As a result, by the end of 2014, Moscow is going to receive USD 3.1 bln as debt repayment and USD 1.52 bln as prepayment for 4 bln cubic meters of gas. Interestingly that each signatory party comments the “debt problem” in its own manner. In particular, Russian officials believe that it is a partial payment of the debt and Moscow plans to receive the second part of the payment after the decision of the Stockholm court. At the same time, the Ukrainian government is certain of the fact that “debt debates” with Russia have ended.

The agreement was signed by a representative of the European Commission as the guarantor of the agreements and the constant price for Russian gas supplies. However, there is a question of how the European Commission will force the “Gazprom” to adhere to the “discount price”. Actually, such a mechanism is not described in the contract.

According to interim agreements, the gas price of USD 378/thousand cubic meters is fixed as “reduction in the discount rate of export duty”. The Russian government should adopt the resolution on granting USD 100-discount due to the removal of export duty on gas supplied to Ukraine. The mentioned position of the interim agreement is interpreted by Russian and Ukrainian sides differently. Actually, Yatsenyuk's government believes that it

finally managed to get the market price for Russian gas. Instead, Russia convinced that the discount has a temporary nature, and its introduction or cancellation depends solely on the Russian government. At any time, the Kremlin may unilaterally cancel the \$ 100 bonus and revert to calculations at a price of USD 478/thousand cubic meters.

The interim gas agreements are interpreted by the Ukrainian and Russian side differently

The Ukrainian delegation managed to get rid of the “take or pay” principle recorded in the previous contract. It should be noted that according to it, Kyiv had to pay for certain gas volumes, even if it did not consume them.

It is worth remembering that Russia failed to reach a strategic goal. The problem with construction of the “South Stream” is not solved, and the issue of using 100% OPAL capacity (the gas pipeline, which is used to transit Russian gas to Germany) have been postponed till January 2015. In recent months, Russia has repeatedly used political arguments arguing that Ukraine was an unreliable transit partner. The agreements signed in Brussels substantially negate the efforts of Russia in this direction, but it does not mean that the Kremlin abandoned its plans. Therefore, it is expected that Moscow will continue to look for ways to disrupt the gas supplies to Europe.

We should not exclude the possibility that Russia can ignore the interim gas agreement (as in the situation with the Minsk agreements) and it will lead to the gas dispute escalation. Currently, the government of Ukraine needs to take preventive measures and increase reserves of natural gas in the short term purchasing the abovementioned 4 bln cubic meters of gas in the next months. There is a possibility that Moscow may stop transit through Ukrainian territory referring to technical reasons and accusing Kyiv in stealing gas or under any other false pretext. In the event of complications of gas transit to Europe, there will be a problem with European reverse gas supplies to Ukraine. It will significantly disrupt the country's gas balance for the fall and winter seasons.

Moscow may disrupt gas transit through Ukraine

The aim of the publication is to provide analysis of Ukraine's foreign policy in the context of global processes in the region and the world, as well as an overview of major world events that may have an impact on the further development of Ukraine and the region. Special attention is paid to the European integration of Ukraine, in particular implementation of Ukraine–EU Association Agreement.

@2014 International Centre for Policy Studies (ICPS)

If citing please give reference on the ICPS

Idea of the project: Vasyl Filipchuk

Responsible for the project: Vadym Triukhan

Team of ICPS experts: Vadym Triukhan, Volodymyr Prytula, Iryna Ivashko, Olena Zakharova, Nataliia Slobodian, Vasyl Povoroznyk

ICPS experts are open to communicate with media. To receive professional comments on the issues covered by Foreign Policy Insight publication please contact Communication Director Ms. Svitlana Sudak at ssudak@icps.kiev.ua