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TEPSA POLICY PAPER

‘TIME TO HIT THE RESET BUTTON: “THE EASTERN PARTNERSHIP AFTER THE VILNIUS SUMMIT AND THE ROLE OF RUSSIA”

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Berlin, 19 March 2014**

1. INTRODUCTION

Despite the fact that Georgia and Moldova initialled their Association Agreements (AA) at the Vilnius Eastern Partnership Summit on 28/29 November 2013, the summit and its aftermath have to be rated as a low point in the Eastern Partnership. Not only did then President of Ukraine Viktor Yanukovych refuse to sign the Association Agreement for Ukraine, favouring instead a loan and a reduction in gas prices from Russia. This refusal to sign the Association Agreement initially resulted in frustration and protests at the end of 2013. Later on it led to the mobilisation of extreme right wing forces civil unrest and in February 2014 to numerous deaths on the streets of Kyiv.

The final outcome of the open confrontation of the EU and Russia after the Vilnius Summit is still unclear, as the events about the future of Crimea are still unfolding. Nonetheless some preliminary lessons from the Ukrainian case can be drawn. In order to do so, this paper will give a brief account of the events in Ukraine and EU's role therein before giving some ideas of what this means for the role of Russia and the Eastern Partnership in the short and medium term and offering policy recommendations for the improvement of the Eastern Partnership. Thereby, it will argue that the EU overestimated its attractiveness to the Ukrainian leadership due to the pressure of short-term decision making in politics and underestimated the reservations Russia had regarding the Association Agreement and the Deep and Comprehensive Free Trade Area (DCFTA) and how much it was willing to pay to prevent its signing. The events unfolding after the interim government took office on 27 February 2014 including the secession referendum in Crimea and Russia's recognition of its independence on 17 March 2014 are further indicators for Russia's opposition to Ukrainian western alignment.

2. THE UKRAINE AND THE AA/DCFTA

The negotiations on the Association Agreement, a new and enhanced basis for cooperation started in autumn 2008. During the round of negotiations on 11 November 2011 in Brussels, Kyiv agreed to Brussels' term-free contract but secured the option to revise it after five years with both parties' consent. Ukraine also agreed to make changes in its law, extending the jurisdiction of the International Criminal Court to citizens of Ukraine. However, the most disputed issue remained unresolved: the inclusion of a formal note on the prospect of EU membership, for which Ukraine had been pushing but

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which gave various EU member states (especially France and Germany) cause for concern. On 20 December 2011, the negotiations were finalized, ultimately not including mention of a prospective EU membership for Ukraine. The Association Agreement nonetheless constituted a major step for Ukraine towards much closer ties with the EU, and signing the Agreement would elicit an unprecedented level of integration between the EU and a country without a membership perspective. The level of integration could be as high as 80% of the *acquis communautaire*, since the agreement also includes a Deep and Comprehensive Free Trade Agreement.²

The DCFTA envisages the following trade regime between the EU and Ukraine: Duty free exports to the EU for industrial products; loosen quotas on duty-free exports of selected agricultural products, including dairy products, grain and cereals, and sugar, to the EU; transition periods for tariff liberalization in Ukraine; duty free imports of a majority of EU agricultural products into Ukraine; special regimes for imports of motor vehicles and for second-hand clothes into Ukraine; abolishment of EU agricultural exports subsidies in trade with Ukraine; gradual elimination Ukraine's export duties, but introduction of temporary surcharges on exports of sunflower seeds, nonferrous metal scrap, and cattle skins under so-called "bilateral protection measures"; and finally further service trade liberalization. The full implementation of this DCFTA is likely to take at least 5–10 years. But while the Association Agreement was supposed to be ratified at the end of 2011, it was postponed due to the legal situation in Ukraine, most notably relating to the case of former Prime Minister Yulia Tymoshenko. The EU threatened not to sign the Association Agreement if Tymoshenko remained in jail since it considered her conviction a renunciation of the rule of law and democracy. Despite condemning the conviction of Tymoshenko, the European Parliament continued to fight for the ratification of the Association Agreement. In a resolution passed on 27 October 2011, Parliament argued that signing the Association Agreement could serve as a lever to bring about the reforms in Ukraine favoured by the EU. According to the European Parliament, the agreement should have already been initialled by the end of 2011, while MEPs also said it should be possible to suspend the agreement temporarily should fundamental principles be breached. Tymoshenko and civil society urged the European Union to sign the Association Agreement as well, emphasizing that her conviction should not lead the EU to question closer integration with Ukraine. The Association Agreement was initialled on 30 March 2012 as a compromise, but no resolution to the Yulia Tymoshenko case had been found. By then, the EU had managed to manoeuvre itself into a corner by insisting on unrealistic conditions, namely that Tymoshenko be freed before signing of the Association Agreement. Reforms should have been the objectives, not the prerequisites for EU cooperation with this transforming state.

The Foreign Affairs Council in December 2012 reaffirmed its commitment to the Association Agreement, underlining that Ukraine had control over the pace of the

² Emerson, Michael, T. Huw Edwards, Ildar Gazizullin, Matthias Lücke, Daniel Müller-Jentsch, Vira Nanivska, Valeriy Pyatnytskiy, Andreas Schneider, Rainer Schweickert, Olexandr Shevtsov, and Olga Shumylo 2006: *The Prospect of Deep Free Trade between the European Union and Ukraine*. Brussels, Kiel and Kyiv: Centre for European Policy Studies (CEPS), Institut für Weltwirtschaft (IFW), and International Centre for Policy Studies (ICPS); Dreyer, Iana 2012: "Trade Policy in the EU's Neighbourhood: Ways Forward for the Deep and Comprehensive Free Trade Agreements." *Notre Europe Study and Research* No. 90. Paris: Notre Europe; Van de Water, Ina Kirsch. 2011. „Das Freihandelsabkommen mit der Europäischen Union (DCFTA): Potential für Reformen der ukrainischen Gesellschaft und die Modernisierung der ukrainischen Wirtschaft.“ Berlin: Friedrich Ebert Stiftung.



agreement based on addressing the issue of selective justice and preventing its recurrence and implementing the reforms defined in the Association Agenda.³ Ukrainian President Viktor Yanukovich said he would put all his efforts into addressing these issues but also negotiated with Russia on a Eurasian Customs Union (with Belarus and Kazakhstan), although EU representatives had repeatedly described these as mutually exclusive.

In the months leading up to the summit, actors from the EU continued to encourage Ukraine to fulfil its prerequisites, emphasising that they were part of the Association Agenda. Russian concerns that signing the AA would violate the treaty on strategic partnership and friendship with Russia and warnings that it could lead to disruptions in trade resulting in financial difficulties for Ukraine as Russia was its main creditor and that Russia “would intervene if pro-Russian regions of the country appealed directly to Moscow”⁴ were addressed in an offhand manner, with Ashton and Füle stating that the Eastern Partnership “does not operate at the expenses of anyone” but rather “can be beneficial also for the regional cooperation and for the neighbours of EU’s neighbours”, while it is “unacceptable to exercise pressure on partner countries willing to sign an Association Agreement with the EU.”⁵ The closer the date for the summit, the more explicit these statements became. In September 2013, Commissioner Stefan Füle said: “Any threats – of any form – from Russia linked to the signing of agreements with the European Union are unacceptable”⁶, and in October 2013: “we stand ready to support their choices against undue interferences”⁷. It became clear already at this point that stating that the AA/DCFTA would not be to the detriment of Russia was not enough, and Füle therefore suggested “to find ways to promote greater regulatory convergence between the EU and members of the Customs Union”.⁸

3. THE VILNIUS SUMMIT AND THE ENSUING CRISIS IN UKRAINE

On 21 November 2013, Viktor Yanukovich announced that there would be no decision to free Yulia Tymochenko and that Ukraine would not sign the AA/DCFTA at the Vilnius summit on 28/29 November 2013. Instead, he agreed with Russia’s president Vladimir Putin on an 11 billion Euro loan and reduced gas prices for Ukraine, of which the first tranche was paid in December 2013, whereas the EU had offered a total of 600 million Euros to support the Ukrainian deficit. On 22 November 2013, the protests now known

³ Council of the European Union 2012: Foreign Affairs Council, 10 December 2012, p. 13, URL: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/134644.pdf (last accessed 3 March 2014).

⁴ Walker, Shaun 2013: Ukraine’s EU trade deal will be catastrophic, says Russia, 22 September 2013, URL: <http://www.theguardian.com/world/2013/sep/22/ukraine-european-union-trade-russia> (last accessed 19 March 2014).

⁵ European Union External Action Service 2013: Eastern Partnership: High Representative Ashton and Commissioner Füle with Foreign Ministers on preparations for Vilnius, New York, 26 September 2013, p. 2, URL: http://eeas.europa.eu/statements/docs/2013/130926_01_en.pdf (last accessed 3 March 2014).

⁶ Füle, Stefan 2013: Time to get stronger in our commitment to EaP and reforms in Ukraine, European Commission SPEECH /13/1055, 10 December 2013, URL: http://europa.eu/rapid/press-release_SPEECH-13-1055_en.htm (last accessed 3 March 2014).

⁷ Füle, Stefan 2013: EU-Ukraine: Dispelling the myths about the Association Agreement, European Commission SPEECH/13/808, 11 October 2013, URL: http://europa.eu/rapid/press-release_SPEECH-13-808_en.htm (last accessed 3 March 2014).

⁸ Füle, Stefan 2013: EU-Ukraine: Dispelling the myths about the Association Agreement, European Commission SPEECH/13/808, 11 October 2013, URL: http://europa.eu/rapid/press-release_SPEECH-13-808_en.htm (last accessed 3 March 2014).



as Euromaidan started. These protests of both organised groups and individual citizens with differing political opinions remained peaceful but without consequence for several months. Only after President Yanukovych tightened demonstration laws on 16 January 2014 did the protests increase.⁹ On 18 February 2014, shooting with live ammunition started and at the end of three violent days, 82 deaths were counted. Russia paid a further 2 billion of its loan on 18 February 2014, which some commentators have tied to the police violence. The EU intervened by sending the foreign ministers of Germany, France and Poland – Steinmeier, Fabius and Sikorski – who mediated a deal between President Yanukovych and the opposition. In addition, at an extraordinary Foreign Affairs Council on the same day, targeted sanctions vis-à-vis Ukraine and the suspension of export licences for equipment for internal repression to Ukraine were decided.¹⁰ The deal reached through negotiations mediated by the three foreign ministers envisaged presidential elections still in 2014, between September and December. This agreement broke the stalemate between government and opposition and led to an end of the violence, but its terms only lasted a few hours, after which elections were scheduled for 25 May 2014. Despite long hesitation and the fact that the agreement did not hold for long, it was the activity by the EU that opened the deadlock in Ukraine, contrary to earlier expectations that other actors would become active (US, UN, OSCE). Steinmeier had even said himself at the end of 2013 that he was ill suited to mediate in Ukraine.¹¹

An interim government was presented on 26 February led by Arseniy Yatsenyuk and including several members of the extreme right wing Svoboda as high-ranking officials, such as Defence Minister Ihor Tenyukh. One of the first legislative actions of the new government was to introduce a law to abolish Russian as a regional language, leading to protests from Russian speaking citizens in Eastern Ukraine and on the Crimean peninsula. As members of the Party of Regions are not included in the interim government a large part of the Ukrainian population – be it Russian or Russian speaking is currently not represented. Russia does not recognise the interim government. It mobilised troops stationed in the western part of Russia, and increased Russian troop movements on the Crimean peninsula were reported by Ukrainian media. In reaction to this, the EU suspended bilateral talks with Russia on visa matters as well as on the New Agreement.¹²

⁹ Council of the European Union 2014: Council Conclusions on Ukraine, Foreign Affairs Council meeting, 20 January 2014, URL:

http://consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/140659.pdf (last accessed 3 March 2014).

¹⁰ Council of the European Union 2014: Council Conclusions on Ukraine, Foreign Affairs Council meeting, 20 February 2014, URL:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/141110.pdf (last accessed 3 March 2014); European Union External Action Service 2014: Remarks by EU High Representative Catherine Ashton following the extraordinary Foreign Affairs Council on Ukraine, Brussels, 20 February 2014, http://eeas.europa.eu/statements/docs/2014/140220_03_en.pdf (last accessed 3 March 2014).

¹¹ Sturm, Daniel Friedrich 2013: Steinmeier lehnt eine Vermittlerrolle ab, Die Welt, 19 December 2013, URL: <http://www.welt.de/politik/ausland/article123143999/Steinmeier-lehnt-eine-Vermittlerrolle-ab.html> (last accessed 3 March 2014); see also Deutsche Welle 2013: Plenty for the new government to do, 19.12.2013, URL: <http://www.dw.de/plenty-for-the-new-government-to-do-in-europe/a-17306915> (last accessed 3 March 2014).

¹² European Council 2014: Remarks by President of the European Council Herman Van Rompuy following the extraordinary meeting of EU Heads of State or Government on Ukraine, 6 March 2014, URL: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/141373.pdf (last accessed 19 March 2014).



On 16 March 2014 a referendum on independence was held on the Crimean peninsula in which 97% of voters preferred joining the Russian Federation. Even though this referendum was widely condemned by many governments, the Russian president Vladimir Putin recognised Crimean independence on 17 March 2014. In reaction to this, the EU and the US decided on further sanctions against Russian, Ukrainian and Crimean individuals said to have been involved in this move for independence.

Even though the final outcome of the events in Ukraine is not clear at this point, it is beginning to show that solving the crisis in Ukraine will become much more expensive for the EU now than it would have been had the EU decided to financially support the country more substantially before the summit. Russia has refused to continue its payments after Yanukovych is no longer in power as it sees Ukraine as lacking a government that could be held accountable. By the end of February 2014, the total sum said to be needed to stabilize the country financially was 25.5 billion Euro. Besides the financial cost, the political cost is much harder to estimate. Suspended visa talks and targeted sanctions against Russia are more symbolic than effectively hurting the Russian government and a disruption of gas exports to EU member states cannot be summarily excluded as a possible Russian reaction. In addition, visa liberalisation would benefit especially the Russian citizens and enable them to travel freely allowing them to form their own opinion about life in the EU. This confrontational approach, which also includes Stefan Füle's offering Ukraine EU-membership, at this point in time, shows a lack of strategy concerning the current development of events.¹³ Since it is and must be the goal of the EU and its member states to make Europe a continent of peace and cooperation, the bridges it is now tearing down will have to be carefully rebuilt after the crisis is over.

4. THREE INITIAL LESSONS LEARNT

When analysing the events up to the end of February, there are three initial lessons to be learnt:

1. The EU has wildly underestimated the role of Russia both in the negotiations on an AA/DCFTA and in dealing with the crisis in Ukraine. In addition, instead of trying to understand the Russian position and to keep communication channels open, actors and media have quickly turned to anti-Russian rhetoric without seriously considering Russian interest in the region or attempting to see Russia as a rational actor, while failing to equally scrutinize US economic interests in Ukraine, eg. Chevron's gas drilling rights.¹⁴ It has taken Western media two weeks to realise the threat of the extreme right

¹³ Zeit online 2014: Erweiterungskommissar will Ukraine in die EU aufnehmen, 18 March 2014, URL: <http://www.zeit.de/politik/ausland/2014-03/ukraine-krim-eu-sanktionen-putin> (last accessed 19 March 2014); Kissinger, Henry A. 2014: „Eine Dämonisierung Putins ist keine Politik“ Vier Vorschläge für eine asubalancierte Unzufriedenheit, in: Internationale Politik und Gesellschaft, 6 March 2014, URL: <http://www.ipg-journal.de/kommentar/artikel/henry-a-kissinger-eine-daemonisierung-putins-ist-keine-politik-298/> (last accessed 19 March 2014).

¹⁴ Polityuk, Pavel/Balmforth, Richard 2013: Ukraine signs \$10 billion shale gas deal with Chevron, 5 November 2013, URL: <http://www.reuters.com/article/2013/11/05/us-ukraine-chevron-idUSBRE9A40ML20131105> (last accessed 19 March 2014).



wing Svoboda being part of the Ukrainian government, while Russia's calling them out as Nazis all along had been put down to propaganda almost instinctively.¹⁵

2. The role of the European External Action Service and the European Commission was weak in the months following the Vilnius summit, with their inability to agree on a common approach vis-à-vis Ukraine leading to the now infamous frustration of the assistant US secretary of state, Victoria Nuland.¹⁶ Significantly, while Catherine Ashton attended negotiations on Iran, three foreign ministers travelled to Ukraine to conduct negotiations on her behalf leading to an end of the violence.¹⁷

3. The decreasing attractiveness of the Eastern Partnership to the partnership countries became apparent already before the Vilnius summit, when Armenia decided in September 2013 to put to a halt to negotiations of an Association Agreement in favour of membership in the Eurasian Union, which resulted in reduced prices for Russian gas. However, the EU did not question or change its approach towards the Eastern Partnership countries at the time.

5. WHAT ROLE FOR RUSSIA?

One quite frequent question regarding the role of Russia is whether it is a partner or an opponent in Central Europe, and the answer will remain: both. It is crucial to re-enter into a dialogue with Russia as soon as possible in order to identify common goals and interests or if necessary to find a compromise between the two. In order to be able to do so, the EU has to refrain from using cold war rhetoric, which would only reveal that it does not, as it maintains, see the Eastern Partnership as a win-win situation for the EU, Ukraine and Russia, but rather wants to engage in a geopolitical tug of war, the first two rounds of which it has lost spectacularly (Armenia, Ukraine).

In the remarks by Catherine Ashton on the situation in Ukraine from 25 February 2014, it is evident in her reference to the relevance of Russia and its trade relations with Ukraine that some learning has already taken place.¹⁸ This more inclusive approach has also been chosen in a multi-party declaration of the European Parliament that "Russia, just like the EU, must live up to its responsibility for the stability and territorial integrity of Ukraine."¹⁹ Commissioner Stefan Füle also wants to involve Russia: "Russia has a chance to become part of the efforts to bring stability and prosperity back to Ukraine,

¹⁵ Salem, Harriet 2014: Who exactly is governing Ukraine? 04.03.2014, URL: <http://www.theguardian.com/world/2014/mar/04/who-governing-ukraine-olexander-turchynov> (last accessed 5 March 2014); Klußmann, Uwe 2014: Konflikt mit Russland: Die fatalen Fehler der Regierung in Kiew, 03.03.2014, URL: <http://www.spiegel.de/politik/ausland/krim-krise-die-fatalen-fehler-der-kiewer-regierung-a-956680.html> (last accessed 5 March 2014).

¹⁶ The Guardian 2014: 'Fuck the EU': US diplomat Victoria Nuland's phonecall leaked – video, 7. February 2014, URL: <http://www.theguardian.com/world/video/2014/feb/07/eu-us-diplomat-victoria-nuland-phonecall-leaked-video> (last accessed 5 March 2014).

¹⁷ EEAS 2014: Remarks by EU High Representative Catherine Ashton in reaction to the agreement signed between President of Ukraine Yanukovich and the opposition leaders, London 21 February 2014, URL: http://eeas.europa.eu/statements/docs/2014/140221_07_en.pdf (last accessed 5 March 2014).

¹⁸ European External Action Service 2014: Remarks by EU High Representative Catherine Ashton at the end of her visit to Ukraine, Kyiv, 25 February 2014, URL: http://eeas.europa.eu/statements/docs/2014/140225_01_en.pdf (last accessed 3 March 2014).

¹⁹ Brok, Elmar 2014: Statement Elmar Brok MEP following EP delegation to Ukraine, 24 February 2014, URL: <http://www.elmarbrok.de/archives/statement-elmar-brok-mep-following-ep-delegation-to-ukraine> (last accessed 3 March 2014).



including being part of the coordinated international efforts to help Ukraine address its economic challenges.”²⁰

It seems to be a first step in the right direction that the EU and Russia are now entering into technical negotiations on the effects of the DCFTAs on Russia, while continuing to leave the political decision on with whom and on what level to cooperate to the sovereign central European states. In addition, some actors in the EU are starting to see the need to consider making the DCFTA and Ukrainian membership compatible with affiliation with the Eurasian Customs Union on the basis of WTO-membership and rules.

6. CONCLUSION

Despite some significant mistakes and despite underestimating the relevance of Russia for Central Europe economically and financially as well as the relevance of Central Europe to Russia politically and militarily, the aftermath of the Vilnius summit offers a chance for the EU to learn and to become a more proactive foreign policy actor. Its aim seems to be to put the Eastern Partnership back on track and to involve Russia more. This could be done in the following way:

First of all, the EU should start a serious and moderated reflection process on its Foreign Policy priorities. In this reflection process, it should take into consideration its interests but also its limited resources, its strengths and weaknesses and base its priorities on its common values. It seems that one reason for the escalation of the situation was the unwillingness of the EU to invest in Ukraine’s future as it did not grasp the necessity for financial aid if Russia as a main lender would retreat, as it did not seem to be able to decide how much of a priority Ukraine should be. It can be expected that the neighbourhood will be one of the priorities emerging from such a reflection process because of its relevance for foreign policy and security, but also internal policy (migration) and economically. The fact that the EU together with the IMF is now willing to step up and offer Ukraine loans on a larger scale is a first indicator for this.

Only after such a careful reflection process and based on its results is it time to reconfigure the Eastern Partnership and its instruments. In 2011, the then newly established EEAS and the Commission tried to find answers to the Arab Spring very quickly and before the situations had fully developed.²¹ This led to changes in the policy that did not turn out to be ideally suited for the problems the Mediterranean countries are currently facing. In this second step of the process, the issues of conditionality and differentiation will play a crucial role. In addition, other actors in the region – not only Russia but also the US and China - and their respective interests have to be taken into consideration to see what room for manoeuvre the EU actually has. If the EU continues to acknowledge the high relevance that its immediate neighbours have for its own well-being and the responsibility it in turn has that the people in these countries are able to enjoy the same rights and opportunities as EU citizens, it will be on the right track to a more sustainable foreign policy towards Eastern Europe.

²⁰ Rettman, Andrew 2014: EU urges Russia to help stabilise Ukraine, EUobserver, 27 February 2014, URL: <http://euobserver.com/foreign/123296> (last accessed 3 March 2014).

²¹ High Representative of The Union For Foreign Affairs And Security Policy/European Commission 2011: A new response to a changing neighbourhood, URL: http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf (last accessed 3 March 2014).

