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**“Democracy promotion East and South after the Arab Spring:
Re-evaluating the EU's Engagement with Authoritarian Regimes”**

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EU-Ukraine Relations: Engagement or Alienation?

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With Viktor Yanukovich coming into power in February 2010, the new government's foreign policy has seen the expected changes. The authorities announced Ukraine's neutral status in the sphere of defense and put strong emphasis on the need of 'normalization' of political dialogue with Russia. At the same time, European integration was declared as a major priority of the new government policy in both internal and foreign policy dimensions. In particular, the new law "On fundamentals of domestic and foreign policy," confirmed European integration as Ukraine's strategic objective reflected in both its domestic and foreign policy.

Nevertheless, the announced course of strategic balancing between 'mutually beneficial' relations with Russia and Ukraine's European integration policies soon turned into 'value balancing' compromising democratic reforms for Ukraine's elites corporate interests. Although such a state of affairs raises questions as to how serious Ukrainian authorities are about the EU, our analysis reveals that economic (and consequently political) integration with Russia could not be considered as a viable alternative to Ukraine's relations with the EU.

The livening up of the intergovernmental dialogue with Russia has brought Ukraine no advantages, not even the ones expected from the Kharkiv gas accords. Ukraine achievements in 2010-11 could be best described as a thaw in its relationships with Russia, primarily the signing of the demarcation treaty in May 2010 and resuming Kerch Strait talks (with Moscow retaining its rigid stand in the matter). Another aspect of this cooperation is the resumption of vague go-between fuel supply services on the part of Russian companies that only serves to discredit the Ukrainian political leadership in the eyes of the international community.

Russia easily received political concessions from Ukraine when the Kharkiv accords were made (April 21, 2010), prolonging the deployment of the Russian Black Sea Fleet for 25 years. Ukraine declared its non-bloc status in July 2010 and Russia was suspicious: Ukraine could easily resume its Euro-

Atlantic policy. Moscow ended up expecting too much from Kyiv and the new “pro-Russian” President Victor Yanukovich, particularly considering the critical condition of the Ukrainian economy.

Subsequent events showed that there was a huge gap between Moscow ambitions and Kyiv interests, leaving the Kremlin bitterly disappointed, primarily because the Russians were barred access to Ukraine's gas transportation system and Ukraine’s unwillingness to join the Russia-Belarus-Kazakhstan Customs Union, which is being concealed behind a vague “3+1” formula.

EU-Ukraine DCFTA vs. RBK Customs Union¹

In 2007, the talks on Association Agreement with the EU were launched, and the negotiations regarding the establishment of deep and comprehensive FTA (DCFTA) have followed in 2008. In October 2011, the technical completion of DCFTA negotiations was announced, though the initializing and ratification of the agreement is under risk given challenges faced in the political dialog between the partners.

The formation of the RBK CU started on January 1, 2010 with the implementation of the common tariff scheme. The next major step took place on July 1, 2010, when the Customs Code of the Customs Union came into force, the Commission of the Customs Union became active, and customs clearance of goods originated in countries-members were abolished. Finally, in mid-2011, a common border control in the Customs Union has been established.

Currently Ukraine has appeared in a unique situation sandwiched between two custom unions, the European Union and the Customs Union of Russia, Belarus and Kazakhstan (RBK CU) established in the EurAzEs framework.

The results of quantitative assessment demonstrate that joining the customs union with Russia, Belarus and Kazakhstan would reduce welfare in Ukraine by 0.5% in the medium- and by 3.7% in the long-term. In particular, participation of Ukraine in the RBK CU would impose important costs including:

- Lost of independence in trade policy, including right to negotiate free trade agreements with other countries, like the DCFTA with the EU. The Commission of the RBK CU is entitled to conduct new foreign trade related negotiations on behalf of the member states. Thus, Ukraine would forego all efforts devoted to the EU FTA talks and lose opportunity to obtain privileged access to the largest world market;
- Slower pace of modernisation as increased tariffs on investment imports from the third countries, including the EU, would hamper renewal of fixed assets and imports of new technologies and know-how;
- Burden of renegotiations and compensations within the WTO as Ukraine’s binding import tariffs has been generally lower than in the RBK CU. The revision of these commitments is theoretically possible, but costly as other member countries have a right to request

¹ The analysis is based on the conclusions of IER and GAG policy paper by Movchan V., Giucci R., “Quantitative Assessment of Ukraine’s Regional Integration Options: DCFTA with European Union vs. Customs Union with Russia, Belarus and Kazakhstan” (November, 2011); http://www.ier.com.ua/en/publications/consultancy_work/?pid=3107

compensation or impose additional duties on Ukrainian goods or services to compensate for the losses caused by changes in commitments.

What could the RBK CU offer Ukraine to compensate these current and future losses?

Ukraine has been proposed to have cheaper energy, elimination of customs control, and stronger bargaining power in the CU multi-stage bargaining process.

Thus, benefits offered to Ukraine in case of joining the CU could be achieved with current level of regional integration, namely the FTA with all CIS countries, signed in October 2011, while the costs of the CU would be quite significant.

Among expected benefits for Ukraine from the DCFTA with the European Union are the following:

- Improved welfare of people through better access to higher variety of products, stricter safety requirements, and higher incomes thanks to new business opportunities and improved domestic resource allocation. The CGE model showed that the DCFTA would result in 4.3% welfare increase in medium term;
- Duty-free access to the largest world market for vast majority of products creating opportunities for exports;
- Improved access to markets of the third countries through harmonization of standards with the EU and thus acquisition of internationally acceptable standards;
- Better domestic investment climate as the adjustment to the EU regulations would mean changes in national legislation. In turn, these changes would result in transparent and fair rules for investors;
- Technical assistance to implement necessary regulatory changes.

These gains would come at important costs that include:

- Spending associated with legal and administrative adjustments like establishment of independent regulatory bodies, introduction of new – likely technologically more advanced – procedures, etc.;
- Higher costs of standard obedience, as the EU standards are generally more stringent and, thus, more expensive. The experience of the EU enlargement indicated that higher standards could even drive some national business out of specific market segments ;
- Increased domestic competition due to elimination of tariff barriers and a significant reduction of non-tariff measures resulting in market restructuring and reallocation of factors of production. Higher competition is beneficial for the country in the medium-term, but short-term effects of reallocations could be painful.

Summing up, the DCFTA with the EU seems to have important medium- to long-term benefits, but is likely to bear some short-term costs. However, some of these costs are likely to be shared with the EU as it is ready to provide necessary technical assistance. Moreover, many of these ‘costs’ Ukraine would have to bear in any case in order to become more competitive on the world market and attract investments required for the economic development.

Domestic policies: an authoritarian drift?

Since 2010 democratic trends have significantly worsened in Ukraine. Ukraine showed symptoms of reform stagnation in the fields of political dialogue, rule of law and independence of the judiciary. Despite optimistic declarations of the Ukrainian authorities, today's situation can lead to a significant slowdown of Ukraine's EU integration progress.

For instance, there is a substantial regress in implementing EU-Ukraine political dialogue priorities. Freedom of expression, freedom of assembly and association, as well as civil society cooperation faces significant increase in barriers. The implementation of the launched in December 2010 administrative reform lacks a clear and well-grounded concept, which leads to more centralization of the executive power, dominated by a single political force.

A parliamentary election law proposed by the government ignored basic recommendations provided by the Council of Europe and OSCE/ODIHR. It has a number of procedural deficiencies, which can potentially endanger free and fair elections in Ukraine. Ambiguous and controversial trends in the judiciary field which do not facilitate Ukraine's rapprochement with EU standards and rule of law principles.

Monopolization of the political system has destroyed constitutional checks and balances mechanism. Non-constitutional practices reappear, when, for example, the President gives non-constitutional orders to the public administration bodies or performs other functions not corresponding to provisions of the Ukraine's Constitution.

Nevertheless, due to consistent implementation of the EU-Ukraine visa liberalization action plan of November 2010 Ukraine has reached substantial progress in ensuring legal and institutional support to migration policy. The country has established a coordination mechanism to implement the EU-designed Visa liberalization action plan and established a relevant Coordination centre. Besides, Ukraine has reached substantial progress in developing Ukrainian personal data protection system, having ratified and implemented Council of Europe's 1981 personal data protection Convention and its Additional protocol.

Ukrainian authorities expressed confidence that negotiations on the Association Agreement, including establishment of an FTA, will be finalized by the next EU-Ukraine summit (19 December, 2011). However, these expectations were pronounced before Yulia Tymoshenko conviction. The Yuliya Tymoshenko trial was seen by the EU as a symptom of selective justice and of politically motivated persecution of the opposition. The recent developments confirm that the EU-Ukraine summit will only mark the finalisation of negotiations without initializing the Association Agreement.

On 12 September, the representatives of Ukrainian civil society (Ukrainian National Platform of the Eastern Partnership Civil Society Forum and leading civil society networks) addressed the EU leaders with an open letter on the importance of timely finalization of the negotiations on the Association Agreement between Ukraine and the EU. Sharing the EU's concerns about the lack of rule of law in Ukraine, the authors of the letter emphasized that signing (initializing) the Association Agreement this year will safeguard further democratic and economic reforms urgently needed for Ukrainian

citizens and offer additional leverage for Ukrainian civil society to call the government of Ukraine to accountability and responsible decision making. Whereas alternative scenarios presuming suspension of negotiations would undermine further democratic developments in Ukraine. These arguments were later reiterated by Ukrainian civil society leading pro-European platforms in their open letters to the EU leaders from 20 October and 15 November 2011.

Recommendations: Engagement through Europeanisation

- Association Agreement and the DCFTA

The EU – Ukraine Association Agreement and the DCFTA at the current stage represent the key incentive for Ukraine and EU's main leverage on Ukraine's government as a partial substitute to membership perspective. The Association Agreement determines the framework of the EU-Ukraine relations in the mid-term perspective and therefore its suspension risks to lead their political dialogue to a deadlock, alienating Ukraine and hampering further implementation of the necessary reforms.

Instead, the Association Agreement initialising and subsequent signature will provide the EU with additional policy tools to support democratic reforms in Ukraine through the joint institutions foreseen by the Agreement and further monitoring of its implementation.

- Visa free travel

The prospect of visa free regime to the EU is a clear and strong incentive, based on strict conditionality of visa liberalization action plan implementation. Visa restrictions elimination would promote socialization and Europeanisation at the societal level through the extension of people-to-people contacts and fostering reforms in the areas covered by visa liberalization action plan, i.e. migration, border management and information exchange.

- Intensifying cooperation with the civil society

The difficulties the EU faces in dealing with the political elites should not turn into sanctions against Ukraine's people. On the contrary, wider engagement with the society will remain the main channel of Ukraine's Europeanisation. Thus, a more intense 'partnership with societies' and civil society actors, through the creation of a European Endowment for Democracy, as stated in the communication on the European Neighbourhood Policy Review (ENP) of May 2011, needs to be put into practice.

- Engaging other non-state actors

To promote the domestic demand for reforms at the grass-roots level and support of pressure on the authorities for reform implementation the EU should interact with a broader range of non-state actors including CSOs, think tanks, civic initiatives and trade unions. Besides, there is a clear need in increase in the share of the aid received by CSOs to support democratic reforms (media freedom, human rights, parliamentary powers and electoral processes) as compared to the budget support provided by the EU to the government institutions.