

P7_TA(2011)0545

Negotiations on the EU-Ukraine Association Agreement

European Parliament resolution of 1 December 2011 containing the European Parliament's recommendations to the Council, the Commission and the EEAS on the negotiations of the EU-Ukraine Association Agreement (2011/2132(INI))

The European Parliament,

- having regard to the Partnership and Cooperation Agreement (PCA) between the European Union (EU) and Ukraine, which entered into force on 1 March 1998 and is set to be replaced by the Association Agreement¹,
- having regard to Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument (ENPI)², and to the National Indicative Programme 2011-2013 for Ukraine,
- having regard to the ongoing negotiations between the EU and Ukraine on the Association Agreement, including negotiations on a deep and comprehensive free trade area (DCFTA),
- having regard to the Council conclusions of 22 January 2007 on Ukraine, in which it adopted negotiating directives,
- having regard to Ukraine's membership of the World Trade Organisation, which has been effective since March 2008,
- having regard to the statement by its President on the sentencing of former Ukrainian Prime Minister Yulia Tymoshenko on 11 October 2011,
- having regard to the Joint Declaration of the Prague Eastern Partnership Summit of 7 May 2009,
- having regard to the outcomes of recent EU-Ukraine summits, including the recognition by the 2008 EU-Ukraine summit in Paris of Ukraine as a European country which shares a common history and common values with the countries of the EU, and the conclusions of the EU-Ukraine summit held in Kiev on 4 December 2009,
- having regard to its previous resolutions on Ukraine, in particular its resolutions of 25 February 2010³, of 25 November 2010⁴, of 9 June 2011⁵ and of 27 October 2011⁶,
- having regard to the Foreign Affairs Council conclusions on the Eastern Partnership adopted on 25 October 2010,

¹ OJ L 49, 19.2.1998, p. 3.

² OJ L 310, 9.11.2006, p. 1.

³ OJ C 348 E, 21.12.2010, p. 1.

⁴ Texts adopted, P7_TA(2010)0444.

⁵ Texts adopted, P7_TA(2011)0272.

⁶ Texts adopted, P7_TA(2011)0472.

- having regard to the EU-Ukraine Action Plan on Visa Liberalisation adopted on 22 November 2010,
 - having regard to Ukraine’s accession to the Energy Community Treaty on 1 February 2011,
 - having regard to the EU-Ukraine Association Agenda, which replaced the Action Plan and was endorsed by the EU-Ukraine Cooperation Council in June 2009, and to the list of priorities for the EU-Ukraine Association Agenda for 2011 and 2012,
 - having regard to the joint communication of 25 May 2011 entitled ‘A new response to a changing Neighbourhood’ (COM(2011)0303), and to the Council conclusions on the European Neighbourhood Policy adopted by the Foreign Affairs Council on 20 June 2011,
 - having regard to the Commission’s progress report on Ukraine adopted on 25 May 2011 (SEC(2011)0646),
 - having regard to the EU Strategy for the Danube Region,
 - having regard to Rules 90(5) and 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs and the opinion of the Committee on International Trade (A7-0387/2011),
- A. whereas the future Association Agreement with Ukraine heralds a new generation of association agreements under Article 217 TFEU and involves an unprecedented level of integration between the EU and a third country; whereas, with this agreement, Ukraine is committing itself to implement a large portion of the *acquis communautaire*; whereas the negotiations with Ukraine are among the most advanced in the Eastern Neighbourhood and therefore serve as an example for the European Neighbourhood Policy (ENP) as a whole;
- B. whereas Ukraine is a country of strategic importance to the EU; whereas Ukraine’s size, resources, population and geographical location give it a distinctive position in Europe, making it a key regional actor which exerts considerable influence on the security, stability and prosperity of the whole continent, and which should therefore bear its respective share of political responsibility;
- C. whereas Ukraine is a European state and, pursuant to Article 49 TEU, may apply for membership of the EU, as can any European state provided it adheres to the principles of democracy, respect for human rights and fundamental freedoms, minority rights and the rule of law; whereas the conclusion of an EU-Ukraine Association Agreement, including a DCFTA, will be important to Ukraine’s European perspective,
- D. whereas the EU strongly advocates for a stable and democratic Ukraine that respects the principles of a social and inclusive market economy, the rule of law (including an independent judiciary), human rights and the protection of minorities, and which guarantees fundamental rights; whereas Ukraine’s efforts to build domestic political stability, to create an environment characterised by robust political pluralism, democratic freedoms and respect for the rule of law, and to step up internal reform, are accelerating and facilitating the further development of Ukraine’s European perspective;
- E. whereas the sentencing on 11 October 2011 of Ukraine’s former Prime Minister, Yulia

Tymoshenko, to seven years in prison and the trials of other ministers have raised serious concerns in the EU and are widely seen as either acts of revenge or as part of an attempt to convict and imprison opposition members in order to prevent them from standing and campaigning in next year's parliamentary elections or in the 2015 presidential election; whereas the law selectively applied against Tymoshenko dates back to Soviet times and makes provision for criminal prosecution for political decisions; whereas Articles 364 and 365 of that law, which are currently under review by the Verkhovna Rada, do not comply with EU and UN standards;

- F. whereas there have recently been concerns about media freedom, the freedom of civil society, the conduct of elections and the rule of law in Ukraine;
- G. whereas Ukraine's political and state leadership has repeatedly confirmed its commitment to European integration and its long-term ambition to enable Ukraine to become an EU Member State, and considers an association agreement to be a key instrument in achieving this objective; whereas this goal continues to be supported by all actors on the Ukrainian political stage, as well as by civil society and the general public; whereas the increased level of cooperation between the Ukraine and Members of the European Parliament, and between Ukraine and the parliaments of the Member States, is a commendable example of different political forces working together to advance Ukraine's European perspective, and should be continued;
- H. whereas the EU has made human rights and democracy a central aspect of its European Neighbourhood Policy;
- I. whereas Ukraine has actively participated in the creation and work of the Euronest Parliamentary Assembly, which is the parliamentary dimension of the Eastern Partnership and a platform for cooperation between the European Parliament and the national parliaments of the EU's eastern neighbours;
- J. whereas Ukraine's European perspective must be based on a policy of systematic and irreversible reforms in a number of important institutional, political, economic and social areas; whereas important reforms have already been, or are being, carried out, while others still need to be introduced; whereas the framework afforded by the Association Agreement will provide Ukraine with a crucial modernisation tool and a roadmap for steering internal domestic reforms, as well as a tool for national reconciliation, which will help the country to overcome the recent negative trends, bridge existing cleavages in Ukrainian society and unite it in its goal in relation to its European perspective, on the basis of the values of democracy, rule of law, human rights and good governance;
- K. whereas Ukraine should be commended for its sound economic performance, including the reduction of its budget deficit, spending restraint and pension reform, which have contributed to a better foreign credit rating and increased foreign direct investment;
- L. whereas the Association Agreement will have a positive impact on the business climate in Ukraine, since it provides EU and Ukrainian businesses with common rules and standards, thereby enhancing the predictability and financial security of investments in Ukraine; whereas the Association Agreement is based on compliance with international taxation standards; whereas that positive impact would be further strengthened by the full and effective implementation of anti-corruption legislation;

- M. whereas the Russian Federation is exerting excessive pressure on Ukraine not to establish a DCFTA with the EU but instead to join a customs union with Russia, Belarus and Kazakhstan; whereas this is unprecedented in the history of the EU's relations with external partners, and whereas these are countries outside the WTO which still constitute a major export market for Ukrainian products; whereas the DCFTA is a tool for modernisation and whereas its establishment offers Ukraine financial benefits, the tangibility of which will increase with time;
- N. whereas Ukraine recently celebrated the 20th anniversary of its independence; whereas there is a new generation of educated Ukrainians who did not experience the Soviet era, who have strong pro-European ambitions and who will ensure the modernisation of the country;
- O. whereas the current political situation in Ukraine, especially in the field of civil liberties and the rule of law, is at odds with the spirit of the EU-Ukraine Association Agreement under negotiation;
1. Addresses, in the context of the ongoing negotiations on the Association Agreement, the following recommendations to the Council, the Commission and the EEAS:
- (a) to take the view that a deepening of relations between the EU and Ukraine and the fact of offering Ukraine a European perspective are of great significance and in the interests of both parties; to recognise Ukraine's aspirations pursuant to Article 49 of the Treaty on European Union, provided that all criteria, including respect for the principles of democracy, human rights, fundamental freedoms and the rule of law, are met;
 - (b) to make the necessary progress in order to achieve the rapid initialling of an EU-Ukraine Association Agreement, preferably by the end of 2011 if possible; to ensure at the same time, in line with the demands made in Parliament's resolution of 27 October 2011, that this important initiative within the Eastern Partnership goes hand in hand with commitments by Ukraine to implement the necessary reforms and strengthen democratic values, human rights and the rule of law;
 - (c) to reschedule the recently postponed meeting with President Yanukovich ahead of the foreseen EU-Ukraine Summit in December 2011 as this is to be considered an important opportunity to tackle serious concerns addressed towards the Ukrainian Government and re-establish a constructive dialogue that could lead to the Association Agreement to be initialled provided there is significant progress on both technical and vital political obstacles still in place;
 - (d) to strive to have the agreement signed by the Council during the first half of 2012, and to make all documents pertaining to the ratification process available to the European Parliament and to national parliaments by the end of 2012 at the latest, provided that the call for respect for the rule of law and the other demands set out in the European Parliament's resolution of 27 October 2011 have been met;
 - (e) to provide Ukraine with sufficient financial, technical and legal assistance during both the preparatory period and the implementation of the agreement, and to strengthen its administrative capacity by increasing all forms of available assistance in this area; to this end, to make better use of the Comprehensive Institution-Building Programme

(CIB) and to consider setting up a high-level EU advisory group to assist Ukraine in its efforts to align itself with EU legislation; whereas the precondition for any assistance should be an evaluation of the reforms designed to strengthen Ukraine's administrative capacity, as published in annual reports to be prepared by EU and Ukrainian independent experts;

- (f) to set up a mutual exchange programme for civil and judicial servants in order to facilitate the implementation of the Association Agreement, and in particular the DCFTA;
- (g) to assist the Ukrainian authorities in informing the Ukrainian people of the benefits of the Association Agreement in order to build support for the reform agenda; to disclose the content of the agreement to the public as soon as possible;
- (h) to open an EU information office in Ukraine as soon as possible, which will work both to raise awareness among the Ukrainian public of the functioning of the EU and of its policies and values, and to facilitate greater participation in EU programmes;

Institutional aspects / political dialogue

- (i) to develop clear safeguard measures and a possible mechanism for the temporary suspension of the whole Association Agreement in the event that essential and fundamental principles thereof are ignored or deliberately violated;
- (j) to urge the President and the Government of Ukraine to bring the political, legal and administrative situation in the country into line with what was agreed in the Association Agenda, and to promote good governance and respect for the rule of law as fundamental principles in the context of relations between the EU and Ukraine; to ensure that Yulia Tymoshenko and other opposition leaders are allowed to exercise their right to participate fully in the political process, both as of now and in the forthcoming elections in Ukraine;
- (k) to strengthen the existing framework for cooperation between the EU and Ukraine in relation to the protection of human rights and fundamental freedoms;
- (l) to assist Ukraine in the process of achieving a comprehensive reform of the judiciary in line with EU standards, so as to prevent the selective use of justice and guarantee an independent, fair, impartial and transparent legal procedure ensuring that legal proceedings cannot be used for political purposes and are conducted in strict accordance with the rule of law; to set up, to this end, a joint mechanism involving Ukrainian and EU experts, with the participation of representatives of the Venice Commission; to establish further training and exchange programmes in the field of justice and home affairs and in the security sector with a view to implementing EU best practice in relation to the rule of law;
- (m) to assist the Ukrainian authorities in the process of reforming the country's constitution and electoral law along the lines proposed by the Venice Commission and the OSCE/ODIHR; to ensure the expedient, inclusive and comprehensive implementation of these recommendations, with the involvement of both opposition parties and civil society, in order to prevent the shortcomings which have occurred in previous election campaigns; to stress, in this regard, the importance of media

freedom and the freedom of civil society, and to ensure that the Ukrainian authorities refrain from any attempt to control, directly or indirectly, the content of national media reporting;

- (n) to include in the Association Agreement a comprehensive mechanism between Parliament and the EEAS, so as to allow for the regular provision of comprehensive information on the progress made in implementing the agreement, and in particular in achieving its objectives; this mechanism should contain the following elements:
 - information on the action taken and positions adopted by the EU with regard to the implementation of the agreement;
 - EEAS progress reports setting out the results of the action taken by the EU and Ukraine, highlighting the situation of human rights, democracy and the rule of law in the country;
- (o) to stress the importance of implementing all rulings of the European Court of Human Rights, and to draw the attention of the Ukrainian authorities to the high number of cases against Ukraine pending before that court;
- (p) to support the necessary reforms and to ensure that the Ukrainian authorities give high priority to developing an anti-corruption policy, including appropriate legislation on conflicts of interest;
- (q) to ensure that the Ukrainian authorities make the archives of former communist secret services available to the public, since this is essential for successful national reconciliation, particularly with regard to atrocities having taken place during the 20th century;
- (r) to stress the importance of Ukraine ratifying the Rome Statute of the International Criminal Court, as part of the process of constitutional reform;
- (s) to take the necessary action to step up dialogue between the EU and Ukraine's various political parties, and to encourage dialogue within Ukraine between parties and with representatives of civil society, the social partners and national minorities;
- (t) to ensure that the interim agreement contains provisions on cooperation between the civil societies of the contracting parties, so as to enable them to exercise their rights and become influential actors under the Association Agreement;
- (u) to include standard conditionality clauses on the protection and promotion of human rights which reflect the highest international and EU standards, taking full advantage of the OSCE framework, and to encourage the Ukrainian authorities to promote the rights of persons belonging to national minorities, in accordance with the Council of Europe Framework Convention on National Minorities and the EU Charter of Fundamental Rights;

Economic and sectoral cooperation

- (v) to strengthen, as part of the agreement, cooperation between Ukraine and the EU in the energy field; to strive for the conclusion of further agreements between the EU

and Ukraine aimed at securing energy supplies for both sides, including a reliable and diversified transit system for oil and gas and a common response mechanism in the event of disturbances or interruptions to oil and gas deliveries from the Russian Federation;

- (w) to provide the necessary technical assistance in the energy sector, in order to help Ukraine substantially improve and modernise its electricity grid and energy efficiency, and to ensure that the Ukrainian authorities comply fully with the targets set in the energy efficiency programme for the 2010-2015 period and continue to implement innovative and environmentally conscious solutions in order to tackle their energy needs; to assist, at the same time, the Ukrainian authorities in negotiating the conditions governing the delivery of gas from Russia, in order to ensure that Ukraine's gas trade with Russia is consistent with EU trade standards and prices;
- (x) to note that, although the liberalisation of services and investment in the energy sector would be beneficial to the EU, taking on commitments in respect of particular energy services may involve some risks, since strong energy players controlling Ukrainian companies could use the free trade agreement to dominate transmission networks in the EU;
- (y) to call for action to improve EU and Ukrainian energy security through the introduction of bilateral mechanisms to provide early warnings and prevent interruptions to the supply of energy and the related raw materials;
- (z) to ensure the acceptance of geographical indicators and European patents;
- (aa) to stress how important it is to the EU for Ukraine to ensure that toxic and nuclear waste are disposed of properly on its territory, thereby protecting food safety;
- (ab) to step up cooperation with regard to youth and student exchanges and the development of scholarship programmes, thereby enabling Ukrainians to become acquainted with the EU and its Member States and vice versa;
- (ac) to ensure that the Association Agreement reflects the highest environmental standards, bearing in mind inter alia the Strategy for the Danube Region; to give further consideration to the importance of regional cooperation in the Black Sea region and of Ukraine's active participation in EU policies for this area, including as part of a future EU strategy for the Black Sea;
- (ad) to develop specific instruments (such as a civil society platform) to support Ukraine's civil society, given its vital role in the democratisation process, for instance in raising awareness and increasing social and political participation;
- (ae) to ensure that cooperation in relation to the implementation of health reform addresses the health needs of patients suffering from incurable illnesses, including through the provision of technical assistance for reforming the relevant health and drug policies in line with international standards and best practice;

Trade issues

- (af) to recognise the substantial efforts made by the Ukrainian Government in terms of

reducing barriers overall and adapting geographical indications, and in relation to sanitary and phytosanitary measures, competition and technical barriers to trade, as well as the very limited achievements reached in the course of the DCFTA negotiations in areas such as investment, services, agriculture, energy and export barriers;

- (ag) to call on Ukraine to refrain from applying export tariffs or any other export restrictions, which would increase price volatility in EU markets;
- (ah) to ensure that the tariff rate quota opened in respect of sugar does not lead to unintended triangular trade or fraud;
- (ai) to emphasise that the agreement must include a chapter on animal welfare, thereby ensuring equal competition between EU and Ukrainian farmers;
- (aj) to note that sustainable development is one of the priority areas set out in the National Indicative Programme for 2011-2013; recommends, therefore, including a sustainable development chapter as part of the free trade area;
- (ak) to stress that the sustainable development chapter should contain a provision concerning Ukraine's undertaking to respect the OECD Guidelines on Multinational Enterprises and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy;
- (al) to prepare for its implementation in conjunction with Ukraine so as to ensure that commitments which have not been backed up by preconditions and will not deliver immediate rewards, especially in the field of animal welfare, become a reality and have a substantial impact in the long run; to call for the free trade agreement eventually to lead to the full dismantling of tariff barriers in every sector of industry, without any negative listings or import quotas, and therefore to the effective elimination of both export taxes and import and export restrictions; to provide Ukraine with post-liberalisation adjustment funds, as envisaged in the ENP National Indicative Programme for 2011-2013, and with technical assistance in relation to customs issues and the adaptation of geographical indications;
- (am) to continue to call for political and economic reforms in Ukraine that would lead to the modernisation of its infrastructures, notably in the energy and transport sectors; to help the business sector, most urgently through easier access to credit and land and simpler and faster processes for tax collection and customs, in particular by making noticeable improvements in the areas of refunding value-added tax to exporters, customs clearance and approval procedures for imports (particularly in respect of taxation, documentation requirements and product testing for certification); to remove red tape and corruption; to enforce the rule of law and democratic practices; to give consideration to lower transaction costs and secure procedures, in particular for SMEs, bearing in mind that this is a vital prerequisite for building commercial relationships; and to improve the law in the area of protection of material assets and intellectual property and more effective mechanisms for the vindication of rights and claims by businesses through the courts;
- (an) to call for a fundamental improvement in the investment climate for foreign investors in Ukraine, and in particular for a rapid resolution of national budget indebtedness in

respect of entities on account of untimely refunding of VAT overpayments, and for steps to be taken to prevent such situations occurring again in the future; to make customs procedures more effective (and in particular to curtail the common practice of applying an unjustified increase in customs value to goods imported into Ukraine);

- (ao) to promote entrepreneurship and SME development through macro-economic cooperation;
- (ap) to stress that Ukraine should not relax its protection of labour standards in order to attract foreign investment;
- (aq) to call – pursuant to the provisions of Article 218(5) TFEU – for a decision to be taken authorising provisional application of the regulations of the free trade agreement, which is a fundamental part of the Association Agreement, before it enters into force;

Justice, freedom and security

- (ar) to work actively towards the establishment of a visa-free regime between Ukraine and the EU rather than maintaining a long-term perspective, provided that Ukraine fulfils the necessary technical criteria set out in the Action Plan on Visa Liberalisation; to establish the intermediate objective of abolishing existing visa fees; and to introduce appropriate measures during the European Football Championship with a view to using this special occasion as a trial period for a visa-free regime;
- (as) to encourage Ukraine to play a constructive role in 5+2 talks, with a view to helping to find a sustainable solution to the Transnistrian conflict;
- (at) to strengthen Ukraine’s potential as a key partner in the management of migration flows and borders, and to envisage further joint action in the fight against organised crime;
- (au) to request, as a matter of urgency, that the Association Agreement include provisions to counteract fraud and the smuggling of excisable products in accordance with the EU’s Internal Security Strategy and taking into account the anti-illicit trade protocol to the World Health Organisation’s Framework Convention on Tobacco Control;
- (av) to step up cooperation in the area of integrated border management, using the highest EU standards and building capacity with a view to fighting cross-border crime, illegal migration, human trafficking and illicit trade more effectively;
- (aw) to support convergence on regional and international issues, conflict prevention and crisis management, and to strengthen coordination in combating security threats;

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2. Instructs its President to forward this resolution, containing Parliament’s recommendations, to the Council, the Commission, the EEAS and, for their information, the Ukrainian authorities.