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Ukraine: Look both ways

16 December 2013 | By [Burhan Khadbai](/burhan-khadbai/144.bio) ([URL=/burhan-khadbai/144.bio](/burhan-khadbai/144.bio))



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Legal work is on hold as the country fights it out over whether its future lies with Russia or the EU

The sight of a mass demonstration against the government is nothing new in Ukraine. In 2004 the so-called Orange Revolution was sparked by allegations of vote-rigging by the winner of the presidential election, Viktor Yanukovich. The public united to voice their anger, led by the opposition's Viktor Yushchenko, who subsequently won the re-election in the following year.



This time, instead of a sea of orange filling the Independence Square in Kiev (the colour chosen by the Yushchenko camp during his election campaign), the colours are blue and gold – the colours of the EU and also Ukraine.

The government's failure to sign the much-anticipated Deep and Comprehensive Free Trade Agreement (DCFTA) with the EU during the Vilnius summit in November has given birth to a wave of increasingly violent protest. The agreement would have brought Ukraine closer to Europe, allowing the two to trade more freely. This would lay the foundation for the eventual goal of obtaining EU membership – which is what many argue Ukraine needs to move forward.

Gravitational strain

One reason for the government's decision not to sign the trade agreement is said to be Russian pressure. Ukraine is heavily dependent on Russia and the government is fearful of damaging its relationship with its powerful neighbour. This raises the question of where the future of the country lies – with the EU or Russia?

Despite Ukraine being an old country it is a young state, at just 22 years old, having gained independence in 1991 following a referendum.

"We have to take sides – we are not strong enough to be independent and we are a young country," says [Ulysses](http://www.thelawyer.com/ulysses/414937.supplier) ([URL=http://www.thelawyer.com/ulysses/414937.supplier](http://www.thelawyer.com/ulysses/414937.supplier)) managing partner Oleh Marchenko.

Ukrainians have not received the delay well. Nevertheless, there is some sympathy for the government.

"The president has an important decision to make and he is saying we're not ready and that it will take time to negotiate," says Astapov Lawyers partner Oleh Malskyy. "It does sound reasonable. Sometimes you have to pause to get a better deal. I heard a wonderful phrase recently – EU integration is not an elevator, you have to climb the stairs."

Projects on hold

As the political turmoil gathers momentum, the legal environment has turned stagnant.

"There's a backlash against the political situation that's affecting the legal market," says RULG-Ukrainian Legal Group president and senior counsel Irina Paliashvili. "All the projects that were planned are on hold. Nobody wants to do anything."

"December and January are usually not the best months for lawyers," adds Malskyy. "We have the European Christmas followed by the Orthodox Christmas after the new year. This always makes it a tough season for work anyway."

Infrastructure is an area where work has been particularly lagging, despite the need for projects.

"There was a push for infrastructure during the Euro 2012 football championship, but since then I'm not aware of any major projects," says Paliashvili.



Bondaryev

[Arzinger](http://www.thelawyer.com/arzinger/414930.supplier) (URL=<http://www.thelawyer.com/arzinger/414930.supplier>) managing partner Timur Bondaryev agrees. "There's a huge need for investment and improvement in Ukraine's infrastructure," he says. "Most of our infrastructure is old. For example, our streets are narrow, which doesn't work with today's traffic. Investors are happy to help, but everyone is waiting for the outcome of the political crisis. It's all about politics."

An area where Ukraine is particularly dependent on Russia is in its gas supplies. However, with developments tapping into its shale resources the country is seeking to lessen this dependency and the government has set a goal of 2020 for energy independence.

Ukraine's dependence on gas from Russia has come at a price. The country has seen two incidents of the gas supply being cut, one in 2006 following a row over prices and one in 2009 that culminated in a 10-year deal through which Ukraine pays about \$400 per 1,000 cubic metres of gas – a high price.

While developments in the country's political scene and infrastructure may be problematic, there are some good signs in the energy sector. The potential Ukraine has in shale is extraordinary. While shale gas development in Europe is slow, Ukraine is leading the way.

"Few sectors in Ukraine have seen such positive development in the past few years," says Paliashvili. "Ukraine has done a lot to ensure its own production of energy."



Marushko

"Many practical steps have already been taken by state authorities to achieve the target," says [Lavrynovych & Partners](http://www.thelawyer.com/lavrynovych-and-partners/414935.supplier) (URL=<http://www.thelawyer.com/lavrynovych-and-partners/414935.supplier>) banking and finance partner Iryna Marushko. "The cabinet of ministers of Ukraine approved the signing of three production-sharing agreements for development of hydrocarbons this autumn."

Marushko explains that feed-in tariffs kicked in in April 2012 and the development of the sector has given plenty of work to firms' energy practices, such as due diligence on permit holders, drafting legislation and regulation.

Two significant deals this year have seen Ukraine push on in its effort to become more independent. In January it signed a production-sharing agreement (PSA) with Royal Dutch Shell to tap into shale gas resources in the east. This was followed by a similar deal signed in November with US energy giant Chevron to tap into shale in the west.

[Asters](http://www.thelawyer.com/asters/414932.supplier) (URL=<http://www.thelawyer.com/asters/414932.supplier>) senior partner Armen Khachaturyan, who was involved in last month's Chevron deal, explains what the deals are about.

"The Shell and the Chevron deals are for the onshore exploration and production of hydrocarbons – expected to be mostly shale gas – in two large blocks, one in the west and one in the east," says Khachaturyan. "The projects are subject to the production-sharing regime pursuant to which the government and investors establish a bulk of operational rules otherwise subject to the statutory regulation. The PSA regime also provides for a number of favourable incentives for investors, such as a stabilisation clause guaranteeing no application of laws and regulations negatively impacting projects post-execution."

"The deals are critically important to secure Ukraine's energy independence from Russia."

He says another PSA is expected to be signed shortly, between Ukraine and an ExxonMobil-led consortium including Shell, Austria's OMV, acting through its Romanian subsidiary Petrom, and the National Joint Stock Company Nadra Ukrayny. The PSA will exploit offshore hydrocarbons in the Black Sea. Asters and Morgan Lewis & Bockius are acting as outside counsel to Nadra Ukrayny.

As the country waits, lawyers are clear about what they think Ukraine needs to move forward.

"From a legal perspective, the European direction is the best for Ukraine for various reasons," says Bondaryev. "We will become closer to Europe, which will mean a lot of opportunities."

The protests: lawyers' experiences

Lawyers, as much as everyone else, were surprised by the rapid development of the political situation in Ukraine, followed by a surge of protest. On the Thursday and Friday before the Vilnius summit it was still all about the politics – not blood, victims, chaos, abuse, power, guns, fire and depression. Nobody thought the situation would turn into what is now being called a revolution.

Some protesters insist on European integration, while others support the opposition. Regardless of the politics, many are unhappy with the status quo and as a result want to let off some steam.

From the legal perspective, this has had an influence. Clients are putting activities and payments on hold, and many are cancelling projects. It has become even more difficult to function in generally slow months such as December and January, with lots of clients leaving the country or extending their holidays to keep themselves and their families safe.

Our office is located at the centre of Kiev, close to where the protests are taking place. There was a fire in a nearby building and we could smell the smoke in our office. However, nobody was injured. Generally, our business operations have not yet been disrupted. Our employees have some trouble getting to the office, but basically so far it seems everything is organised as well as possible.

Several firms have cancelled their Christmas parties and used the money instead to support democratic movements.

Oleh Malskyy, partner, Astapov Lawyers

As you have probably seen in international media reports, tensions have been building in the Ukrainian capital following the government's decision not to sign a landmark trade deal with the EU.

Public protest intensified following the excessive use of force to remove peaceful protestors from Independence Square in the centre of Kiev on 30 November. The next day more than half a million people took part in a peaceful march and hundreds put up tents in Independence Square. There were a number of attempts by unidentified individuals to provoke clashes, but mainstream opposition leaders condemned the violence.

Our offices are next to the key government buildings, where the traffic is blocked at the moment. Despite the cold and snow, there are tens of thousands of protestors out in the central streets and many more are expected to join them soon in response to the government's failure to properly address the situation. The protests are of a peaceful nature, and the overall mood is friendly, just as it was during the Orange Revolution, which was at precisely this time of year nine years ago. Events are unfolding by the day and the next few days will be pivotal in deciding the short-term outcome for Ukraine.

While the economic ramifications of the EU trade agreement for Ukraine could be controversial, the decision not to sign has had significant negative consequences. Political instability is keeping foreign investors away from the country until a compromise is reached.

Ukraine badly needs external funds to maintain economic stability, and success in securing such funds largely depends on the resolution of the internal political deadlock. In the absence of support from international institutions or any foreign partners, Ukraine is likely to face a deeper recession or even a new wave of economic crisis. This would affect the legal market, as well as the type and volume of legal work. It may be even more sensitive for multinational law firms in Ukraine, as they are more dependent on the flow of cross-border business and foreign investment, which could dry up for the time being.

Although the direction of Ukraine's economic integration has always been subject to political bargaining we expect the government to take into account the position of the people, take steps to resolve the situation and remain integrated in the international community.

Vladimir Sayenko, partner, Sayenko Kharenko

Vitali Klitschko: big-hitter for president?



Earlier this year Klitschko was named as the first confirmed contender in the 2015 presidential elections. The holder of the WBC world heavyweight belt, Klitschko is heavily involved in politics. Ask most Ukrainians what they think of Klitschko and they will say he is a boxing superstar, putting the country on the map and representing Ukraine well along with his brother Wladimir. Together, they dominate the heavyweight division. However, a different question is posed when you ask about Vitali's credibility as a future president – a question that is getting more relevant as the likelihood of him leading Ukraine increases.

As leader of the UDAR party, which has a strong pro-EU/pro-Western stance, he looks to be the saviour of Ukraine, helping the country become the modern European country it longs to be. Add to that a long list of positive qualities including a PhD, being multilingual and of course, his sporting record.

"He has a lot of support from the population generally," says Ulysses' Oleh Marchenko. "He's a new face and neutral compared with the others."

Others are more critical.

"A lot of people won't take him seriously," says Astapov Lawyers' Oleh Malskyy.

Shale gas: production-sharing agreements

January 2013

Company: Royal Dutch Shell

Location: Kharkov and Donetsk

Value: €10bn (£6.4bn)

Advisers: [CMS](http://www.thelawyer.com/cms/415042.supplier) (URL=http://www.thelawyer.com/cms/415042.supplier) Cameron McKenna, Morgan Lewis & Bockius and Asters

November 2013

Company: Chevron

Location: Olesska

Value: €10bn

Advisers: [Clifford Chance](http://www.thelawyer.com/clifford-chance/415001.supplier) (URL=http://www.thelawyer.com/clifford-chance/415001.supplier) , Morgan Lewis & Bockius and Asters

Key figures: Ukraine

GDP: \$176bn

Population: 46m

Inflation: 0.2%

Life expectancy at birth: 71

Unemployment: 8%

Source: World Bank, State Statistics Service of Ukraine

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