



DECLASSIFIED*

AS/Mon(2015)13

15 April 2015

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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Ukraine

Information note by the co-rapporteurs on their fact-finding visit to Kyiv (25 to 27 March 2015)

Co-rapporteurs: Ms Mailis Reps (Estonia, Alliance of Liberals and Democrats for Europe), and Mr Jean-Claude Mignon (France, Group of the European People's Party)

* Document declassified by the Monitoring Committee at its meeting on 23 April 2015.

I. Introduction

1. The main purpose of this visit was to be updated about the latest political developments in Ukraine, especially after the signing of the agreements in Minsk on 12 February 2015¹. Key in this respect is the state of play regarding the reform agenda, especially with regard to constitutional and electoral reform. These two issues are also very topical, as the package of measures agreed upon in Minsk foresees the adoption of constitutional amendments to allow for decentralisation of central government and local elections in eastern Ukraine. We also discussed the developments regarding the lustration law, as well as the on-going investigations into the violence during the Euromaidan protests in Kyiv and into the events in Odessa on 2 May 2014.

2. During our visit we held meetings with, inter alia, the Speaker of the Verkhovna Rada; the Deputy Prime Minister for Regional Development, Construction, Housing, and Utilities, the Deputy Prosecutor General, the Deputy Minister of Justice, the Chairman of the Security Service of Ukraine, the Chairperson of the Foreign Affairs Committee of the Verkhovna Rada, the Chairman and members of the Ukrainian delegation to the Parliamentary Assembly, the Co-Chairman of the sub-committee for electoral reform of the Verkhovna Rada, the Representative of the OSCE Chairmanship in the Trilateral Contact Group; the Head of the UN Human Rights Mission in Ukraine; constitutional experts; as well as members of the international community and representatives of civil society in Ukraine. Regrettably, the meetings with the President and Prime Minister were cancelled at the last moment. The programme of the visit is attached, as is the statement issued at the end of the visit.

3. We would like to thank the Verkhovna Rada as well as the Head of the Council of Europe office in Kyiv and his staff for the programme and kind assistance given to our delegation, as well as the Ambassador of Estonia for his kind hospitality.

II. Recent developments and reform agenda

4. Recent developments in Ukraine have been dominated by the on-going conflict in eastern Ukraine, which has had a profound impact on the reform agenda. Since our visit, Ukraine has witnessed a gradual but dramatic breakdown of the Minsk September 2014 ceasefire agreement, cumulating into the separatist offensive around Donetsk, Mariupol and Debaltseve. Following intense negotiations, led by the German Bundes Chancellor and French President, to address the escalation of hostilities in eastern Ukraine, an agreement called "Package of Measures for the Implementation of the Minsk Agreements" was signed in Minsk on 12 February 2015. It is clear that the announcement by the United States administration that it was considering providing lethal military aid to the Ukrainian army as a result of the deteriorating security situation was an important factor in ensuring an agreement in Minsk. The full text of this agreement is attached to this information note.

5. The cease fire regime, that took effect following the signature of the package of measures, led to a halt in large-scale hostilities but it remains extremely fragile and regrettably is violated on a daily basis. Similarly, both sides have withdrawn considerable numbers of heavy weapons from the so-called security zone, as stipulated in the package of measures, but many reportedly remain. In addition, the extent of the withdrawal of heavy arms cannot be conclusively verified by international monitors who are regularly restricted in their movements by both sides. Following the signing of the package of measures, and in clear violation of it, the offensive of separatists and Russian troops around Debaltseve continued until Debaltseve was brought under separatist control. In addition, several Western governments, as well as NATO, noted a considerable influx of Russian arms and equipment to the rebels immediately following, and in apparent violation of, the agreements in Minsk of February 2015.

6. The violations of the ceasefire agreement are especially frequent around Donetsk airport and Mariupol. The situation around Mariupol is especially sensitive, with some separatist leaders openly announcing that they wish to take the city from the Ukrainian army. The occupation of Mariupol by separatist and Russian forces would be an important step towards establishing a land bridge to Crimea (or even further, to Odessa), which is considered by many to be a possible long-term objective of the Russian authorities. Both President Hollande and Chancellor Merkel have repeatedly stated that an offensive towards Mariupol would result in a significant intensification of sanctions against Russia by the EU. In addition, in the view of several interlocutors, a separatist offensive towards Mariupol could trigger the supply of lethal military aid to the Ukrainian army by the USA and possibly other NATO member States.

¹ These agreements are formally called "Package of Measures for the Implementation of the Minsk Agreements".

7. With the ceasefire regime generally holding, attention is now turning to the next phase of the Minsk agreements, namely the modalities for a long-term political resolution of the conflict. The package of measures for the implementation of the Minsk Agreements contains a number of paragraphs that outline the first steps for the political settlement of the conflict. Most of these steps are directly related to issues that have been under close scrutiny in the framework of the PACE monitoring procedure and therefore of special relevance for the committee.

8. According to paragraph 4 of the package, on day 1 of the withdrawal of troops, a dialogue should be started on the modalities for local elections in line with Ukrainian legislation and on the “future regime” of the areas under separatist control. At the same time, according to paragraph 12, these elections should be discussed and agreed upon with representatives of the areas not under control of the central government. The same paragraph also states that these elections should not only be organised in line with Ukrainian legislation, but also conducted in line with OSCE standards and monitored by the OSCE/ODIHR.

9. The Ukrainian authorities, as well as the international representatives in the contact group, see these elections as a key mechanism for the election of legitimate representatives of the areas not under their control. This raises the question as to who will represent these areas in the discussions on the modalities for these elections.

10. The local elections in these regions will take place according to Ukrainian legislation. The local election code is in the process of being amended to address the many shortcomings that were noted during the 2010 local elections. The authorities have indicated their wish that this revised local election code be valid for the local elections on all of Ukraine’s territory, including the areas currently not under its control. Therefore, the parliamentary parties, who need to adopt this law, have vested interests with regard to its provisions, which may not coincide with those of the separatist forces. This could hinder, if not derail, the adoption of an election code that is acceptable for both Kyiv and the separatist leadership. In addition, it is not clear who would assure the security and secrecy of the vote in the areas under separatist control, which is especially important as the Ukrainian parliamentary parties will most likely insist on their right to field candidates in these regions. In addition to this, the package of agreements has made a direct link between the local elections, constitutional reform and the return of full control by the Ukrainian authorities over their international borders.

11. The package of measures, in paragraph 11, calls for the adoption of constitutional reform to implement decentralisation of government, as well as the adoption of permanent legislation on the status of the regions under separatist control. The reference to the specificities of “certain parts of the Donetsk and Luhansk regions” should be agreed upon with the representatives of these areas. The constitutional reforms are not limited to decentralisation but are also supposed to address important areas such as the division of powers between the President, government and Verkhovna Rada as well as the framework for the independence of the judiciary. It will therefore be part of intense political negotiations and balancing of interests between the different political forces in Ukraine, in order to obtain the two-thirds majority needed for the adoption of amendments to the Constitution. A key factor that could complicate this process is the fact that the package of measures stipulates that Ukraine would regain full control over its external border with Russia only when a number of pre-conditions are met, including agreement on the decentralisation chapter of the Constitution and the law on the special status of the regions under separatist control. The wish of the separatist forces and Russian authorities to maintain control over the border could become a potential obstacle for an agreement on the constitutional amendments and special status law

12. The package of measures foresees the adoption of an amnesty for persons in connection to their actions in the regions that are not under government control, as well as the release of all hostages and unlawfully detained persons. Serious human rights violations have been committed by both sides in this conflict. The Ukrainian authorities have made it clear that grave crimes and human rights violations, irrespective of who committed them, are not covered by the amnesty. This is to be welcomed as there cannot be any impunity for grave human rights violations in the context of this conflict.

13. In our view, the interlinkage between constitutional reform, elections and control over the border is the potential Achilles Heel of the package of measure for the implementation of the Minsk Agreements.

14. Even without the linkage with control over external borders, it is clear that there is a mutually interdependent relationship between the reform process and a political solution to the conflict in eastern Ukraine, with the reform agenda being heavily affected by the peace process, while the success of the latter is dependent on the successful implementation of several chapters of the reform agenda. That notwithstanding, it is clear that the key to the resolution of the conflict will be the cessation of any

interference, and especially direct armed intervention, by the Russian Federation to further destabilise the situation in eastern Ukraine.

15. At the time of our visit, the implementation of the political paragraphs had not been formally started. Ambassador Tagliavini, the representative of the Chairman-in-Office of the OSCE in the Trilateral Contact Group, informed us that the technical working groups that are foreseen in the package of measures - on security, political process, economic affairs and humanitarian issues – will normally be established in mid-April. However, it is not clear what impact the recent escalation of hostilities around Donetsk airport and Shyrokyne, near to the city of Mariupol² will have on the establishment and work of these working groups. Ambassador Tagliavini sees a clear role for the Council of Europe and its Parliamentary Assembly in the working group on political process and in particular for the Monitoring Committee, given its long-term involvement in the reform process in Ukraine, which is a key subject for that working group.

16. With regard to the constitutional reform process a Constitutional Commission, tasked with drafting the constitutional amendments, was set up by President Poroshenko on 3 March 2015. This commission is chaired by the Speaker of the Parliament. Its composition was agreed upon on 31 March 2015 and includes 12 members from the international community. The Council of Europe is represented by three members, the Special Representative of the Secretary General of the Council of Europe, the Congress of Local and Regional Authorities and the Venice Commission. Following its establishment, three working groups were set up, reflecting the priorities of the commission: on judicial reform, chaired by the Deputy Head of the presidential administration, Oleksiy Filato; on decentralisation, chaired by the Speaker of the Verkhovna Rada, Volodymyr Groysman; and on human rights and fundamental freedoms, chaired by Volodymyr Butkevych, former judge of the ECtHR and member of the International Advisory Committee. Reportedly, a fourth working group dealing with the balance of powers was suggested by the Prime Minister but rejected by the presidential administration.

17. Until now, we have consistently insisted that the authorities aim to implant a single comprehensive constitutional reform in order to avoid multiple consecutive constitutional amendment processes for which it may be increasingly more difficult to find a constitutional majority in the Verkhovna Rada. Regrettably, the reform process experienced a number of delays before it was initiated, also as a result of the developments in eastern Ukraine. In line with the agreements in Minsk of February this year, the Ukrainian authorities would need to adopt, in first instance³, the constitutional amendments dealing with decentralisation. It is clear that the Ukrainian authorities have no time to draft a comprehensive package of constitutional amendments covering all other areas that are in need of reform by that time. Like the Venice Commission, we therefore call upon the authorities to adopt constitutional reforms with regard to the decentralisation and judicial chapters before the 2015 summer recess of the Verkhovna Rada. The drafting of the constitutional amendments for the remaining chapters, including on the division of powers, should start immediately after the summer recess. We wish to highlight that the Venice Commission adopted, at its last session, an opinion⁴ in which it clearly states that none of the laws reforming the judiciary that have been recently adopted with a view to addressing the systemic shortcomings of the independence of the judiciary, can be implemented without commensurate constitutional amendments.

18. It has been suggested that Ukraine should consider an asynchronous constitutional reform process, with special constitutional arrangements for the areas that are currently not under the control of the central government, similar to the constitutional arrangements adopted in the Republic of Moldova. However, all constitutional experts we met emphasised that such a constitutional arrangement would be detrimental to the country's unity and stability, given the large number of minorities in Ukraine. In their view, any special status and arrangements for those areas of Luhansk and Donetsk that are not under central control should be established by ordinary law and not by (temporary) constitutional clauses.

19. A draft law "on introducing changes to the Constitution of Ukraine (on immunity of the members of the Ukrainian Parliament and judges)" has been prepared by the Verkhovna Rada. This draft limits the immunity of judges to actions and decisions made by them in the conduct of their work and foresees the possibility of the lifting of immunity in case of serious criminal charges against a judge. On 3 March 2015, the Speaker of the Verkhovna Rada requested the opinion of the Venice Commission on this draft law.

² See also: <http://www.bbc.com/news/world-europe-32296796>

³ According to Ukrainian legislation Constitutional amendments need to be adopted twice in two different sessions of the parliament. The current session will end in June 2015 and a new session will start after the summer recess allowing for Constitutional amendments to come into force before the end of 2015 if they are adopted for the first time before mid-June 2015.

⁴ CDL-AD(2015)007.

20. A working group on the reform of the law on local elections has been set up by the Speaker of the Verkhovna Rada. The members of this group informed us that the (yet to be adopted) local election code, would be combined, at a future stage with, inter alia, the law on parliamentary elections, the law on presidential elections and the law on referenda, in order to form the basis of a unified election code, which has been a long-standing recommendation of the Assembly.

21. At the time of our visit, a power struggle was taking place between the central authorities in Kyiv and the Governor of Dnipropetrovs'k, Ihor Kolomoyskyi, resulting in the resignation of the latter. Mr Kolomoyskyi is a wealthy businessman who is widely credited as having used his influence to avoid that the insurgency that was instigated in Luhansk and Donetsk from spreading to Dnipropetrovs'k. In addition, he has been financing a number of the voluntary battalions that have been fighting in eastern Ukraine alongside the Ukrainian army. Possibly also fearing that those battalions could become involved in a political standoff, President Poroshenko decreed that all volunteer battalions should be brought under direct hierarchical control of the Ministry of Defence.

III. Lustration law

22. The lustration law was formally adopted by the Verkhovna Rada on 16 September 2014. The President and his administration expressed concern about the compatibility of this law with international human rights standards, and for some time it was expected that President Poroshenko would veto it. However, in order not to antagonise the Ukrainian public⁵ just before the parliamentary elections, President Poroshenko signed the law on 9 October 2014. The law came into effect on 16 October 2014.

23. According to this law, persons that, inter alia, helped the previous authorities to usurp power; took action or inaction that undermined the foundations of the national security of Ukraine; served in leading positions in the Soviet Union; or ordered or abetted the police action against Euromaidan protesters, are excluded from serving in government positions or holding high level civil service positions. Elected persons are expressly excluded from lustration as are persons who have since served in Anti Terrorist Operations (ATO) operations (both in the regular army as well as in volunteer battalions) in eastern Ukraine. The range of persons subject to lustration as well as the range of subjects that can lead to dismissal are overly wide and allow for too much discretion by those who investigate. This law therefore raises serious human rights and rule of law concerns. On 29 September 2014, on a proposal by the rapporteurs, the Monitoring Committee decided to send the lustration law to the Venice Commission for opinion.

24. On 18 October 2014, the External Intelligence Service of Ukraine filed an appeal with the Constitutional Court with regard to the constitutionality of certain provisions of the lustration law. On 17 November 2014, the Supreme Court of Ukraine also filed an appeal asking the Constitutional Court to rule on the constitutionality of the lustration law. The Constitutional Court has not yet made its decision regarding the law.

25. The first phase of the lustration process, the lustration of government ministries and security services, was implemented immediately after the law was signed into force. On 28 October 2014 the Justice Ministry published on its website a list of 179 government officials who had been dismissed as a result of the lustration process.

26. On 5 November 2014, Prime Minister Yatsenyuk announced the start of the second phase of the lustration process that would involve all State agencies, including law enforcement agencies. On 6 November 2014, the Deputy Head of the presidential administration expressed his concern about the lustration process, claiming that many long term civil servants had become vulnerable due to this process, affecting the efficiency of the government.

27. In its interim opinion⁶, adopted at its plenary meeting on 12 and 13 December 2014, the Venice Commission acknowledged that lustration does not per se constitute a violation of human rights, or is in contravention of European standards. However, in order to be acceptable in the context of European standards, the lustration process needs to fulfil a number of criteria: guilt must be proven in each individual case; due process before the courts must be guaranteed; lustration needs to have strict time limits both in the period of its enforcement as well as period to be covered; and it should not be intended as a substitute for criminal law i.e. be intended as a punishment for people who have violated the law.

⁵ The issue of lustration is popular among the Ukrainian public, especially with the large segments of society that supported the Euromaidan protests.

⁶ CDL-AD(2014)044.

28. The Venice Commission noted that a number of procedural irregularities had taken place with regard to the adoption of this - controversial - law, which undermines the legitimacy of, and public trust in, the law.

29. With regard to the period covered by this law, both the Soviet period as well as the period of Yanukovich's presidency are covered. The inclusion of the later period seems to be caused by a wish to punish those responsible for the crimes committed during the latter period, which is not a function of a lustration process. In addition, the need for a lustration process with regard to the communist period, two decades after this ended, seems questionable. With regard to the period within which the lustration process is taking place, the Venice Commission noted that this is period is potentially open-ended, which is not in line with European standards for such processes.

30. With regard to the positions that will be screened, the Venice Commission questioned its broad range and recommended that this be limited. Moreover, guilt needed to be established in each individual case; merely having been in a certain position during a certain period of time did not suffice. In the view of the Venice Commission, the procedural safeguards which are required by Article 6 of the ECHR are not sufficiently guaranteed by the current lustration law.

31. The Venice Commission noted a number of specific concerns with regard to the lustration of judges, who are already subject to another lustration procedure. No judge should be lustrated twice on the same grounds. In addition, there may be a possibility that a judge would be lustrated for correct interpretations of the law at the time. Lustration for such decisions would not be acceptable. Lastly, the dismissal procedure for judges as outlined in the current lustration law may not be in line with constitutional provisions.

32. On the basis of, inter alia, these concerns the Venice Commission concluded that the current law contains serious shortcomings. A number of aspects should be changed in order for it to be in line with international human rights standards and principles. The Ukrainian authorities have recognised that the law needs to be amended and have sought the assistance of the Venice Commission in this process.

33. The Venice Commission, at its plenary meeting on 20 and 21 March 2015, noted that since its opinion was published, a number of items had been clarified or addressed via separate decrees. However, a number of other issues remain unaddressed including the scope of the period covered by the law and the decentralised nature of the lustration process, which may affect its independence and impartiality. From our meetings with the authorities, it was clear that great importance is attached to the lustration process for the stability and security of the State structures. This will affect the manner in which the authorities will address the remaining issues noted by the Venice Commission.

IV. Investigations into the Euromaidan human rights violations and the 2 May events in Odessa

34. Despite the massive human rights violations that took place during the Euromaidan protests, mostly against protesters but also against law enforcement officers (around 100 protesters and 20 police officers were killed during the protests), very few persons have been charged with responsibility for these crimes.

35. The lack of results with regard to the investigations into the human rights violations during the Euromaidan protests, despite the fact that a good number of them were filmed and photographed, has led to increasing criticism in Ukrainian society against the authorities and the Office of the Prosecutor General in particular. On 10 February 2015, the Verkhovna Rada dismissed Prosecutor General Vitaliy Yarema, as well as some of his deputies. The same day the Verkhovna Rada appointed Deputy Prosecutor General Viktor Shokin as Prosecutor General.

36. The Council of Europe has established an international advisory panel to assist the Ukrainian authorities with their investigation into the human rights violations during the Euromaidan protests. After the tragedy in Odessa, the mandate of this advisory panel was enlarged to include the events at, and leading up to, the Trade Union House incidents in Odessa on 2 May 2014.

37. The advisory panel presented its report on the investigations into the violence during the Euromaidan protests in March 2015. The discussion of this report is outside the scope of this information note. The advisory panel has started its work on the events in Odessa in February of this year. The committee has invited the Chair of the advisory panel, Sir Nicolas Bratza for an exchange of views at one of its next meetings.

Appendix 1 – Programme

Programme of the fact-finding visit to Kyiv (25–27 March 2015)

Co-rapporteurs: Ms Mailis Reps (Estonia, Alliance for Liberals and Democrats for Europe) and Mr Jean-Claude Mignon (France, Group of the European People's Party)

Secretariat: Mr Bas Klein, Deputy Head of Secretariat, Monitoring Committee

Wednesday, 25 March 2015

- 09:00 Briefing by the Head of the Council of Europe Office
- 10:30-11:00 Meeting with Mr Groysman, Chairman of the Verkhovna Rada of Ukraine
- 11:15 NGO round table on the latest political developments and reform process*
- 12:00 Round table with civil society and experts on constitutional reform*
- 14:30 Round table with civil society and experts on electoral reform*
- 18:00-18:45 Meeting with the Delegation of the Verkhovna Rada of Ukraine to the PACE
- 20:00 Dinner with Ambassadors or the representatives of the international community: Estonia, France, Italy and Switzerland

Thursday, 26 March 2015

- 08:00 Breakfast meeting with Mr Armen Harutyunyan, Head of the UN Human Rights Monitoring Mission in Ukraine
- 11:00-11:45 Meeting with Mr Chernenko, Co-chairman of the Sub-Committee on Electoral Reform of the Legal Affairs Committee of the Verkhovna
- 12:00-12:35 Meeting with Ms Hanna Hopko, Chairperson of the Foreign Affairs Committee of the Verkhovna
- 14:00-14:45 Meeting with Mr Zubko, Vice Prime Minister of Ukraine - Minister of Regional Development, Construction, Housing and Utilities of Ukraine
- 15:05-15:50 Meeting with Mr Vitalii Kasko and Mr David Sakvarelidze, Deputy Prosecutors General of Ukraine
- 16:15-17:00 Meeting with Mr Nalyvaichenko, Chairman of the Security Service of Ukraine
- 17:15-18:00 Meeting with Mr Gia Getsadze and Ms Oksana Ivanchenko, Deputy Ministers of Justice of Ukraine

Friday, 27 March 2015

- 09:00 Meeting with Ambassador Heidi Tagliavini, Special Representative of the OSCE Chairperson-in-Office in Ukraine and in the Trilateral Contact Group on the implementation of the peace plan in the East of Ukraine*
- 11:00-12:00 Joint meeting with the Expert Group on Legislative Support of decentralisation and local governmental reform and the Expert Group on preparation of the draft law "On Elections of Deputies of the Autonomous Republic of Crimea, local councils and village, town and city mayors"

(*) Meetings organised by the Council of Europe Office in Kyiv

Appendix 2 – Declaration by co-rapporteurs

Co-rapporteurs encourage the Ukrainian authorities to continue and further the reform process in the country

- 31/03/2015



Following their visit to Kyiv, the two co-rapporteurs for Ukraine of the Parliamentary Assembly of the Council of Europe (PACE), Mailis Reps (Estonia, ALDE) and Jean-Claude Mignon (France, EPP/CD), have encouraged the authorities to continue and further the important reforms that are needed for the country.

They welcomed the legislative package for reforming the judiciary but, as on previous occasions, highlighted the fact that constitutional changes are needed to allow for the implementation of these reforms and to ensure the genuine independence of the judiciary. “Constitutional reforms are the cornerstone of all reform in Ukraine, but the time-frame to adopt Constitutional amendments is getting smaller,” pointed out the co-rapporteurs. They noted that the Constitutional amendments foreseen in February’s Minsk agreement need to be adopted in the first instance by mid-June this year. “Regrettably this is too short a time-frame to prepare and adopt a comprehensive constitutional reform package. The authorities should now focus on adopting the judicial and decentralisation chapters in June. However, the other chapters should be elaborated immediately after that,” they said.

The co-rapporteurs took note of the work on a new local election code and expressed their hope that the adoption of such a law would take place in the very near future. “The next local elections are scheduled to take place in October. These elections are crucial to ensure local authorities that have the legitimacy to implement the decentralisation process. In addition, the conduct of genuinely democratic elections, under Ukrainian law, in the territories of Luhansk and Donetsk – areas that are currently not under the control of the government in Kyiv – will provide the authorities with legitimate counterparts to implement the Minsk agreements. These local elections cannot therefore be postponed to a later stage, as some have suggested,” emphasised the co-rapporteurs.

While expressing their concern at the fragile nature and continuing violations of the ceasefire agreement, the co-rapporteurs welcomed the focus given by the Trilateral Contact group and Normandy format Ministers of Foreign Affairs to strengthening the political process agreed upon in Minsk, including the setting up of the working groups, to which they believe the Council of Europe and its Assembly can make an important contribution.

During their visit the co-rapporteurs discussed the Lustration Law as well as the concerns expressed in the recent interim opinion of the Venice Commission on this law. Noting that the lustration process is on-going, the rapporteurs called on the authorities to promptly adopt the promised amendments to this law with a view to addressing the remaining concerns and recommendation of the Venice Commission.

The co-rapporteurs will return to the country in May this year and visit Kharkiv, Dnipropetrovsk and possibly Mariupol, in addition to Kyiv.

Appendix 3 – Package of Measures for the Implementation of the Minsk Agreements

1. Immediate and comprehensive ceasefire in certain areas of the Donetsk and Luhansk regions of Ukraine and its strict implementation as of 15 February 2015, 12am local time.

2. Withdrawal of all heavy weapons by both sides by equal distances in order to create a security zone of at least 50 km wide from each other for the artillery systems of caliber of 100 and more, a security zone of 70 km wide for MLRS and 140 km wide for MLRS 'Tornado-S', Uragan, Smerch and Tactical Missile Systems (Tochka, Tochka U):

for the Ukrainian troops: from the de facto line of contact;

for the armed formations from certain areas of the Donetsk and Luhansk regions of Ukraine: from the line of contact according to the Minsk Memorandum of Sept. 19th, 2014;

The withdrawal of the heavy weapons as specified above is to start on day 2 of the ceasefire at the latest and be completed within 14 days.

The process shall be facilitated by the OSCE and supported by the Trilateral Contact Group.

3. Ensure effective monitoring and verification of the ceasefire regime and the withdrawal of heavy weapons by the OSCE from day 1 of the withdrawal, using all technical equipment necessary, including satellites, drones, radar equipment, etc.

4. Launch a dialogue, on day 1 of the withdrawal, on modalities of local elections in accordance with Ukrainian legislation and the Law of Ukraine 'On interim local self-government order in certain areas of the Donetsk and Luhansk regions' as well as on the future regime of these areas based on this law.

Adopt promptly, by no later than 30 days after the date of signing of this document a Resolution of the Parliament of Ukraine specifying the area enjoying a special regime, under the Law of Ukraine 'On interim self-government order in certain areas of the Donetsk and Luhansk regions', based on the line of the Minsk Memorandum of September 19, 2014.

5. Ensure pardon and amnesty by enacting the law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of the Donetsk and Luhansk regions of Ukraine.

6. Ensure release and exchange of all hostages and unlawfully detained persons, based on the principle 'all for all'. This process is to be finished on the day 5 after the withdrawal at the latest.

7. Ensure safe access, delivery, storage, and distribution of humanitarian assistance to those in need, on the basis of an international mechanism.

8. Definition of modalities of full resumption of socio-economic ties, including social transfers such as pension payments and other payments (incomes and revenues, timely payments of all utility bills, reinstating taxation within the legal framework of Ukraine).

To this end, Ukraine shall reinstate control of the segment of its banking system in the conflict-affected areas and possibly an international mechanism to facilitate such transfers shall be established.

9. Reinstatement of full control of the state border by the government of Ukraine throughout the conflict area, starting on day 1 after the local elections and ending after the comprehensive political settlement (local elections in certain areas of the Donetsk and Luhansk regions on the basis of the Law of Ukraine and constitutional reform) to be finalized by the end of 2015, provided that paragraph 11 has been implemented in consultation with and upon agreement by representatives of certain areas of the Donetsk and Luhansk regions in the framework of the Trilateral Contact Group.

10. Withdrawal of all foreign armed formations, military equipment, as well as mercenaries from the territory of Ukraine under monitoring of the OSCE. Disarmament of all illegal groups.

11. Carrying out constitutional reform in Ukraine with a new constitution entering into force by the end of 2015 providing for decentralization as a key element (including a reference to the specificities of certain areas in the Donetsk and Luhansk regions, agreed with the representatives of these areas), as well as

adopting permanent legislation on the special status of certain areas of the Donetsk and Luhansk regions in line with measures as set out in the footnote until the end of 2015.⁷

12. Based on the Law of Ukraine 'On interim local self-government order in certain areas of the Donetsk and Luhansk regions', questions related to local elections will be discussed and agreed upon with representatives of certain areas of the Donetsk and Luhansk regions in the framework of the Trilateral Contact Group. Elections will be held in accordance with relevant OSCE standards and monitored by OSCE/ODIHR.

13. Intensify the work of the Trilateral Contact Group including through the establishment of working groups on the implementation of relevant aspects of the Minsk agreements. They will reflect the composition of the Trilateral Contact Group.

Participants of the Trilateral Contact Group:

Ambassador Heidi Tagliavini

Second President of Ukraine, L. D. Kuchma

Ambassador of the Russian Federation

to Ukraine, M. Yu. Zurabov

A.W. Zakharchenko

I.W. Plotnitski

⁷ Such measures are, according to the Law on the special order for local self-government in certain areas of the Donetsk and Luhansk regions:

- Exemption from punishment, prosecution and discrimination for persons involved in the events that have taken place in certain areas of the Donetsk and Luhansk regions;
- Right to linguistic self-determination;
- Participation of organs of local self-government in the appointment of heads of public prosecution offices and courts in certain areas of the Donetsk and Luhansk regions;
- Possibility for central governmental authorities to initiate agreements with organs of local self-government regarding the economic, social and cultural development of certain areas of the Donetsk and Luhansk regions;
- State supports the social and economic development of certain areas of the Donetsk and Luhansk regions;
- Support by central government authorities of cross-border cooperation in certain areas of the Donetsk and Luhansk regions with districts of the Russian Federation;
- Creation of the people's police units by decision of local councils for the maintenance of public order in certain areas of the Donetsk and Luhansk regions;
- The powers of deputies of local councils and officials, elected at early elections, appointed by the Verkhovna Rada of Ukraine by this law, cannot be early terminated.