

Review of European Union Law Developments and Analyses

No. 2 (May 2016)

Dear Reader,

this is the **second issue** of the review of current developments in EU law, EU legal analysis prepared in the framework of the project [“Support for the Implementation of the EU-Ukraine Association Agreement”](#). At the further stage this review will provide more information on practical aspects of EU legal approximation related to the Association Agreement implementation in Ukraine.

This issue covers end of April - 17th May period. Some developments are reflected on daily basis on dedicated [Twitter profile](#).

We hope you will find it useful. You can find [previous issue on Government of Ukraine website](#). Your comments that could improve next issues of the review are welcome.

Project Team & Unit for Legal Approximation to the
EU acquis of the Government Office for European
Integration

I. LEGAL ASPECTS OF EU-UKRAINE RELATIONS

- [Legal implications of the Dutch “no” vote for the future of the EU-Ukraine Association Agreement](#), comment by Peter Van Elsuwege, Ghent European Law Institute

“(...) a significant part of the AA already provisionally entered into force. A Dutch decision to reject the approval act will not automatically halt this practice, precisely because the provisional application only concerns those matters falling within the Union’s competence. This caveat is explicitly included in the relevant Council Decisions. In other words, the provisional application of the AA continues in anticipation of the finalisation of the ratification procedure, i.e. the adoption of a



Council Decision concluding the agreement. There is no time limit for adopting the latter decision and it is not uncommon that the provisional application lasts for several years (with a remarkable record of 11 years for the agreement on cooperation and customs union with San Marino)."

- The EU's Delegation in Kiev has issued a [statement criticizing proposal to raise export duties on metal scrap](#) (amendments to Article 13 of the Law of Ukraine "On external economic activity", voted on 21 April in the Verkhovna Rada). Under the DCFTA, Ukraine has committed itself not to introduce new customs duties on exports and to dismantling existing ones over a transitional period. [Президент повернув у парламент \(14/05/2016\) для повторного розгляду Закон](#) «Про внесення зміни до статті 13 Закону «Про зовнішньоекономічну діяльність» щодо зменшення дефіциту брухту чорних металів на внутрішньому ринку».
- [Безвізовий режим: факти і стереотипи про нові правила перетину кордону](#), Громадська організація "Європа без бар'єрів", редакція сайту "Європейська правда"

II. IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

- За ініціативи громадськості, Віце-прем'єра з питань європейської та євроатлантичної інтеграції та Урядового офісу з питань європейської інтеграції 19 травня у Верховній Раді відбудеться День Європи – розгляд низки [законопроектів, спрямованих на впровадження Угоди про асоціацію](#).
- [Legislative Approximation and Application of EU Law in Ukraine](#), article of Prof. Roman Petrov now available online
- [EU-навігатор](#) – для тих з вас, хто візуально хоче побачити¹ скільки нормативів ЄС необхідно впровадити в українське законодавство для виконання Угоди про асоціацію? Продукт Інформаційної кампанії «Сильніші Разом!».

III. RECENT DEVELOPMENTS AND ANALYSES IN EU LAW²

Is this your first experience with EU law? You may wish look at [summaries of relevant EU legislation](#)

1 Матеріали та аналіз, представлені в [EU-навігатор](#), є неофіційними та відображають точку зору авторів. Для отримання офіційної інформації слідкуйте за новинами на Урядовому порталі у розділі «Європейська інтеграція» та на сайтах міністерств, а також на сторінці Урядового офісу з питань європейської інтеграції у мережі Facebook.

2 This part of the review follows well established [systematization of EU legislation](#), even if not in every reporting period there will be substantial or relevant developments in each chapter.

- **01 GENERAL, FINANCIAL AND INSTITUTIONAL MATTERS**

- [Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making](#) of 13 April 2016 published.
- [Video recordings](#) of **annual conference “The State of the Union”** organized by European University Institute, including debate of Jean-Claude Juncker, President of the European Commission, Martin Schulz, President of the European Parliament and Donald Tusk, President of the European Council.

- **02 CUSTOMS UNION AND FREE MOVEMENT OF GOODS**

- [New customs rules came into force on Sunday 1 May](#). The new Union Customs Code (UCC) represents a major overhaul of existing EU customs legislation, which dates back to 1992. It is a milestone for the European Customs Union, the framework which allows more than €3 trillion worth of goods to flow in and out of the EU each year. The new rules aim to:
 - allow traders to clear customs procedures more simply and quickly, getting goods to consumers faster and more cheaply;
 - better protect consumers against illegal goods or goods which don't respect European environmental, health and safety requirements;
 - improve cooperation between customs administrations with the help of new IT systems.

- **03 AGRICULTURE**

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- **04 FISHERIES**

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- **05 FREEDOM OF MOVEMENT FOR WORKERS AND SOCIAL POLICY**

- The European Commission has proposed [amendments to directive 2004/37 on protection of workers against carcinogens or mutagens](#) that shall be implemented by Ukraine within 7 years of the entry into force of Association Agreement. [Press release](#).
- The European Commission has submitted [draft directive on working and living conditions of fishermen](#). The directive shall implement the agreement concluded between the General Confederation of Agricultural Cooperatives in the European Union (COGECA), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises (EUROPÊCHE) of 21 May 2012 as amended on 8 May 2013 concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation. **The Convention has not yet entered and has been**

ratified by 5 states only.

With this proposal, the Commission aims to improve the working and living conditions for fishermen working on vessels flying the flag of an EU Member State, by establishing a consolidated legal framework which is suited to working conditions for the sea fishing sector.

- [Between Law and Political Truth? Member State Preferences, EU Free Movement, Rules and National Immigration Law](#), Jo SHAW, Cambridge Yearbook of European Legal Studies (released in open access)

- **06 RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES**

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- **07 TRANSPORT POLICY**

- The Council of the EU gave its green light for [new rules that aim to improve domestic rail passenger services in the EU](#).

The revised rules - known as the [4th railway package market pillar](#) - will open up domestic rail passenger markets in the member states. Railway companies will have non-discriminatory access to the network across the EU provided that public service contracts are not compromised. This means that it will be easier for new operators to enter the market and offer their services. For the award of public service contracts competitive bidding will become the rule, although exceptions to this rule are still possible.

Infrastructure managers must comply with the new requirements from 1 January 2019. Member states must ensure that train companies have non-discriminatory access to the network in time to be able to launch new commercial services on 14 December 2020. Competitive tendering for public service contracts will kick in seven years from the publication of the legal acts. Existing directly awarded contracts will be allowed to run until they expire.

The 4th railway package will inter alia:

- amend *Regulation (EC) 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road*
- repeal *Regulation (EEC) 1192/69 of the Council of 26 June 1969 on common rules for the normalisation of the accounts of railway undertakings*

Both acts **shall be implemented by Ukraine within 8 years of the entry into force of AA** (Annex XXXII to Chapter 7 of AA)

- **08 COMPETITION POLICY**

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- **09 TAXATION**
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- **10 ECONOMIC AND MONETARY POLICY AND FREE MOVEMENT OF CAPITAL**
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- **11 EXTERNAL RELATIONS**
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- **12 ENERGY**
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- **13 INDUSTRIAL POLICY AND INTERNAL MARKET**
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- **14 REGIONAL POLICY AND COORDINATION OF STRUCTURAL INSTRUMENTS**
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- **15 ENVIRONMENT, CONSUMERS AND HEALTH PROTECTION**
 - The European Commission has adopted [Implementing Regulation on organic production and labelling](#) of organic products with regard to organic production, labelling and control. The directive implements Council Regulation 834/2007 that **is covered by ANNEX XXXVIII TO CHAPTER 17 of EU-Ukraine Association Agreement.**
 - The Court of Justice of the EU has [declared invalid the maximum annual amount of free allowances for greenhouse gas emissions determined by the Commission for the period 2013-2020](#). The Commission is granted 10 months to establish a new amount, it being understood that the previous allocations of allowances cannot be called into question
 - The European Commission [has changed](#) some fixed representative prices in the **poultry meat and egg sectors.**
 - [Global food security 2030. Assessing trends with a view to guiding future EU policies](#) – e-book from EU Publications Office

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- **16 SCIENCE, INFORMATION, EDUCATION AND CULTURE**

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- **17 LAW RELATING TO UNDERTAKINGS**

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- **18 COMMON FOREIGN AND SECURITY POLICY**

- The European Commission has proposed [extension of the WTO waiver on autonomous trade preferences which should be granted by the European Union to Western Balkans](#) until 31 December 2021.

- **19 AREA OF FREEDOM, SECURITY AND JUSTICE**

- The European Commission has proposed (04/05/2016) **significant and controversial reform of [EU asylum system](#)**:
 - [revision of 'suspension mechanism'](#)
 - draft [new Regulation on the European Union Agency for Asylum](#)
 - draft recommendation on [temporary internal border control in the Schengen area; adopted by EU Council](#) (12/05/2016)

[Summary and infographic](#) of proposed reform, [questions & answers](#) (European Commission) and [comment](#) of prof. Steve Peers on EU Law Analysis Blog.

Ukraine is not obliged to implement any EU asylum legislation. The AA foresees only *“joint management of migration flows between their territories and shall further develop the comprehensive dialogue on all migration-related issues”* and *“comprehensive dialogue on asylum issues and in particular on matters relating to the practical implementation of the UN Convention of 1951 relating to the Status of Refugees and the Protocol relating to the Status of Refugees of 1967 and other relevant international instruments, as well as ensuring the respect of the principle of 'non-refoulement'”* (Art. 15 of AA).

- The European Commission has adopted draft regulations on visa-free travels to EU for citizens of [Turkey](#) and [Kosovo](#).

“Turkey’s visa liberalisation: An insult to the EU’s eastern neighbours?” - [Comment on Euractive](#)

- The European Parliament has approved (13/05/2016) [new rules to attract non-](#)

[EU students, researchers and interns to the EU](#). The new rules merge two existing directives (one on students and one on researchers). The new directive also provides for uniform entry conditions and better protection for interns and volunteers under the European Volunteer Scheme during their stay. Optional provisions are foreseen for other volunteers, school pupils and third-country au pairs, who will be covered for the first time by an EU law. The directive enters into force the day after its publication in the European Official Journal. Member states will then have two years in which to transpose its provisions into their national laws.

- **20 PEOPLE'S EUROPE**

- [Passenger name record \(PNR\) Directive](#) 2016/681 of 27 April 2016 published in EU Official Journal
- The new general [Data Protection Regulation published](#). The Regulation repeals Directive 95/46/EC.

[Answers to FAQ](#) on Cordery and [dedicated website](#) of DLA Piper law firm

According to Article 15 of EU-Ukraine Association Agreement (Protection of personal data), the Parties agreed to cooperate in order to ensure an adequate level of protection of personal data in accordance with the highest European and international standards, including the relevant Council of Europe instruments.

- **Data protection** – [summary and comment on last 10 judgements of CJEU](#) in the field of personal data processing on Europeanpapers.eu, by Vincenzo Zeno-Zencovich, Professor of Comparative Law, University of Roma Tre
- **Data protection and police cooperation** - after 5 years of negotiations [the European Commission has proposed signing the "umbrella agreement" between U.S. and the EU](#) on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offense.

In the present situation personal information is transferred across the Atlantic on the basis of legal instruments (international agreements or domestic laws) that generally contain no or only weak data protection provisions. The Umbrella Agreement establishes (for the first time ever) a comprehensive framework of data protection principles and safeguards when personal information is transferred for criminal law enforcement purposes between the U.S., on the one hand, and the EU or its Member States on the other. The double objective is to ensure a high level of data protection and, thereby, enhance cooperation between the parties. Whilst not being itself the legal basis for any transfer of personal information to the U.S., the Umbrella Agreement supplements, where necessary, data protection safeguards in existing and future data transfer agreements or national provisions authorising such transfers.