

Review of European Union Law Developments and Analyses

No 1 (April 2016)

Dear Reader,

this is the first issue of the review of current developments in EU law and EU legal analysis prepared in the framework of the project “Support for the Implementation of the EU-Ukraine Association Agreement”. The selection of information takes into account the scope of Association Agreement and Ukraine associated status and only relevant or substantial developments will be mentioned. At the further stage this review will also provide information on practical aspects of EU legal approximation related to the Association Agreement implementation in Ukraine.

This issue covers April 2016. Some developments are reflected on daily basis on dedicated Twitter profile: <https://twitter.com/EUlaw4Ukraine>

We hope you will find it useful. Your comments that could improve next issues of the review are welcome.

*Project Team and EU Law Unit of the Government
Office for European Integration*

I. EU-UKRAINE RELATIONS

- **Three comments on legal consequences of Dutch referendum:**

- *[The Dutch referendum on the EU/Ukraine association agreement: What will the impact be?](#)* Dr. Maja Brkan and Alexander Hoogenboom, *EU Law Analysis Blog*

“It therefore seems most likely that the content of the agreement will remain unchanged. It is most probable that the Agreement will (continue to) be



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provisionally applied until the final solution on the Dutch position is reached. (...) In conclusion, the Dutch referendum should be taken as a warning for the European Union leaders that things can rather easily go wrong if the EU does not sufficiently engage with the domestic level in the context of some of its more controversial decision-making."

- [Dutch farce on Ukraine: Is there a way out?](#) EU Observer opinion by Ramses A. Wessel and Adam Lazowski

"As things stand today, parts of the association agreement are already being applied on a provisional basis. The question is whether this can continue, now that one member state is not in a position to ratify it. After all, provisional application is meant to precede an actual entry into force of the agreement, not to replace it. We do have cases of international treaties that provisionally applied for years, - GATT (a predecessor of the World Trade Organisation) being a prime example. But it is not a good solution for the long term. The least difficult option is adoption of interpretative statements, in which a number of the agreements' provisions could be clarified with a view to reassure the Dutch voters."

- [What will happen if the Dutch vote 'No' in the Referendum on the EU-Ukraine Association Agreement?](#), Peter van Elsuwege on Verfassungsblog

"(...) the practical legal implications of the Dutch referendum may be expected to be minimal, even if the ratification of the agreement in the Netherlands would be rejected. The consequences would be more significant at the political level."

- **The European Commission has proposed visa-free travel for citizens of Ukraine - [proposal for a regulation amending Regulation \(EC\) No 539/2001](#)**

II. IMPLEMENTATION OF ASSOCIATION AGREEMENT

- [Introduction to DCFTA](#) and [European policy coordination](#) – free online courses available E-Platform for Neighbourhood – an EU funded project implemented by Natolin Campus of the College of Europe

III. RECENT DEVELOPMENTS AND ANALYSES IN EU LAW¹

● 01 GENERAL, FINANCIAL AND INSTITUTIONAL MATTERS

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● 02 CUSTOMS UNION AND FREE MOVEMENT OF GOODS

1. 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.

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- **03 AGRICULTURE**
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- **04 FISHERIES**
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- **05 FREEDOM OF MOVEMENT FOR WORKERS AND SOCIAL POLICY**
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- **06 RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES**
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- **07 TRANSPORT POLICY**
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- **08 COMPETITION POLICY**
 - Antitrust: [Commission sends Statement of Objections to Google on Android operating system and applications](#), informing Google of its preliminary view that the company has, in breach of EU antitrust rules, abused its dominant position by imposing restrictions on Android device manufacturers and mobile network operators.
- **09 TAXATION**
 - The European Commission has [proposed public tax transparency rules for multinationals](#)

The proposal builds on the Commission's work to tackle corporate tax avoidance in Europe, estimated to cost EU countries EUR 50-70 billion a year in lost tax revenues. Supplementing other proposals to introduce sharing of information between tax authorities, it would require multinationals operating in the EU with global revenues exceeding EUR 750 million a year to publish key information on where they make their profits and where they pay their tax in the EU on a country-by-country basis. The same rules would apply to non-European multinationals doing business in Europe. In addition, companies would have to publish an aggregate figure for total taxes paid outside the EU.
- **10 ECONOMIC AND MONETARY POLICY AND FREE MOVEMENT OF CAPITAL**
 - *The [Impact of Financial Services in EU Free Trade and Association Agreements on Money Laundering, Tax Evasion and Elusion](#), new study of*

European Parliamentary Research Service, by the T.M.C. Asser Instituut and the University of Groningen

- **11 EXTERNAL RELATIONS**

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- **12 ENERGY**

- The European Commission has adopted [regulation establishing a network code on requirements for grid connection of generators](#)

The Regulation lays down the requirements for grid connection of power-generating facilities (synchronous power-generating modules, power park modules and offshore power park modules) to the interconnected system. It shall help to ensure fair conditions of competition in the internal electricity market, to ensure system security and the integration of renewable electricity sources, and to facilitate Union-wide trade in electricity. The regulation also lays down the obligations for ensuring that system operators make appropriate use of the power-generating facilities' capabilities in a transparent and non-discriminatory manner to provide a level playing field throughout the Union.

- **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 [amended regulation 2870/2000](#) on methods for the analysis of spirit drinks
 - [Report](#) from the European Commission on environmental liability with regard to the prevention and remedying of environmental damage

Second implementation report on Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage ('the Environmental Liability Directive' or 'the Directive' or 'ELD') presents the experience gained in applying the Directive between 2007 and 2013. It contains conclusions and recommendations on how to improve the implementation on the ground, based on the REFIT evaluation undertaken over the past two years.

- **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**

- [What is happening with the EU's Russia sanctions policy?](#) Julius Lorenzen opinion on Euractive

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

- [European Parliament backs EU directive on use of Passenger Name Records](#) after 4 years of EU institutions work. [Euractive comment](#)
 - [Refugee crisis](#) – second European Commission [report on relocation and resettlement](#)

The European Council Conclusions have systematically called for an acceleration of relocation. The calls made by the Heads of State or Government must be matched with determined action by the competent national services on the ground. The Commission will continue monitoring the implementation of the recommendations and targets included in the First Report on Relocation and Resettlement and reserves the right to take action where Member States are not complying with their obligations. In parallel, Member States need to deliver on their resettlement commitments.

- EU Council has [adopted the final text of a directive strengthening rights of children in criminal proceedings.](#) The directive provides a number of procedural safeguards for children (i.e. individuals below 18) who are suspected or accused of having committed a criminal offence. The directive includes additional safeguards compared to those that already apply to suspected and accused adults.
 - The Commission has adopted [Communication on the European Agenda on Security to fight against terrorism](#) and pave the way towards an effective and genuine Security Union.

In the Communication the Commission has touched upon a significant number of current and future legislative developments. Some of them shall be taken into account by Ukrainian authorities in the context of implementation of Titles II and II of Association Agreement but also could affect trade relations (trade in firearms and cultural goods, financial services, air transport).

The Commission has inter alia called on the Council and the Parliament to:

- By June 2016 at the latest, adopt the Commission's [proposals for a Directive on combatting terrorism, the European Border and Coast Guard and changes to the Schengen Border Code](#), maintaining a high level of ambition.
- By June 2016, quickly finalise the adoption of the revised Europol Regulation.
- By end 2016, agree on the Commission's proposals on an EU Entry Exit System and [on the](#)

Extension of the European Criminal Records Information System to third country nationals as a matter of priority.

- Agree as a matter of urgency on the Commission's proposal for the revision of the Directive 91/477/EEC on control of the acquisition and possession of firearms.

The Commission itself will:

- By end 2016, propose to revise the Schengen Information System to improve its added value for law enforcement purposes.
- By October 2016, prepare an Implementing Decision on the interoperability of the Passenger Information Units for Passenger Name Record data exchanges.
- By June 2016, adopt a legislative proposal to revise the 4th Anti-Money Laundering Directive.
- By June 2016, adopt a Delegated Act to identify high risk third countries with strategic deficiencies in their anti-money laundering/countering terrorism financing (EU blacklist).
- By September 2016, propose EU-wide rules on certification of airport screening equipment.
- By December 2016, adopt a legislative proposal harmonising money laundering criminal offences and sanctions.
- By December 2016, adopt a legislative proposal against illicit cash movements.
- By December 2016, adopt a legislative proposal on the mutual recognition of criminal assets' freezing and confiscation orders.
- By December 2016, adopt a legislative proposal for a Directive on combatting fraud and counterfeiting on non-cash means of payment.
- By 1st quarter 2017, adopt a legislative proposal reinforcing customs' powers and cooperation and addressing terrorism financing related to trade in goods.
- By 2nd quarter 2017, adopt a legislative proposal against illicit trade in cultural goods.
- By summer 2017, propose solutions, including legislation if required, to address the problems of obtaining digital evidence in relation to criminal investigations.

● **20 PEOPLE'S EUROPE**

- Right to the [protection of personal data, the right to the protection of private life, access to documents and the right to freedom of expression – Overview of relevant case-law of CJEU, ECHR and national courts of EU Member States](#), published by European Data Protection Supervisor