

Review of European Union Law and EU legal approximation developments and analyses

No. 6 (August/September 2016)

Dear Reader,

this is the 6th issue of the review of current, important developments in EU law, EU legal analysis and EU legal approximation in Ukraine prepared in the framework of the project “[Support for the Implementation of the EU-Ukraine Association Agreement](#)”. This issue covers the 1st August – 15th September period. We hope you will find it useful. Your comments and contributions that could improve next issues of the review are welcome.

Some developments are reflected on daily basis on dedicated [Twitter profile](#).

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



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I. LEGAL ASPECTS OF EU-UKRAINE RELATIONS

- **"Deepening EU-Ukrainian Relations. What, why and how?"** – comprehensive handbook by the Centre for European Policy Studies (CEPS), Brussels, Institute for Economic Research and Policy Consulting (IER), Kyiv (editors: Michael Emerson and Veronika Movchan)
- **Visa free regime** – the Justice and Home Affairs Committee of the European Parliament discussed the first [draft report on visa abolition for citizens of Ukraine](#) (Переклад "Європейської правди").
- **EU sanctions against V. Yanukovych, A. Klyuyev and O. V. Yanukovych confirmed** - [The General Court of the EU confirmed](#) the freezing of funds of three Ukrainians, one being Viktor Yanukovych, former President of Ukraine, for the period from 6 March 2015 until 6 March 2016. Judgments in cases [T-348/14](#), [T-346/14](#), [T-340/14](#)

II. IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

- The Parliament adopted the [draft Law of Ukraine on strategic environmental assessment \(no. 3259\)](#) in first reading. This is an important step towards implementation of the Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, that should be implemented by November 2017.
- The Secretariat of the Energy Community initiated (6th August 2016) a [dispute settlement case against Ukraine for non-compliance with the Environmental Impact Assessment Directive](#). By sending an Opening Letter, the Secretariat initiates a preliminary procedure, the purpose of which is to give Ukraine the opportunity to react to the allegation of non-compliance with Energy Community law within two months and to enable the Secretariat to establish the full background of the case. The deadline for Ukraine, as set by its Accession Protocol to the Energy Community Treaty, expired on 1 January 2013.
- ["Європейські норми реєстрації лікарських засобів. Два шляхи для України"](#), Ілля Костін, Наталія Модленко, "Правовий Альянс"

III. RECENT DEVELOPMENTS AND ANALYSES IN EU LAW

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**
 - ["How is the EU Charter of Fundamental Rights used at national level?"](#) – new report published by the European Union Agency for Fundamental Rights
- **02 CUSTOMS UNION AND FREE MOVEMENT OF GOODS**
 - [Imports of organic products from third countries \(including Ukraine\)- the European Commission regulation amending Regulation \(EC\) No 1235/2008](#)

laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries

- **03 AGRICULTURE**

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- **04 FISHERIES**

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

- **Labour law** – an important [judgement of the EU Court of Justice in case C-16/15](#). According to the Court decision the recourse to successive fixed-term contracts to cover permanent needs in the healthcare sector is contrary to EU law. The use of such contracts cannot be justified by the requirement to cover temporary needs. The Court has interpreted the Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP under which the EU Member States must introduce measures to prevent abuse arising from the use of successive fixed-term employment contracts and thereby avoid job insecurity for employees.

The Directive 1999/70 should be implemented by Ukraine by the end of 2019 (ANNEX XL TO CHAPTER 21 of the Association Agreement)

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

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- **07 TRANSPORT POLICY**

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- **08 COMPETITION POLICY**

- **State aid - tax benefits to Apple.** The [European Commission has concluded](#) that Ireland granted undue tax benefits of up to €13 billion to Apple. This is illegal under EU state aid rules, because it allowed Apple to pay substantially less tax than other businesses. Ireland must now recover the illegal aid.

- **09 TAXATION**

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- **10 ECONOMIC AND MONETARY POLICY AND FREE MOVEMENT OF CAPITAL**

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- **11 EXTERNAL RELATIONS**

- **EU wins a WTO dispute on Russian pork ban** – The World Trade Organisation panel declared illegal the Russian import ban on live pigs, fresh pork and other pig products from the EU in the light of international trade rules. The ruling concerns a ban imposed by Russia in early 2014 because of a limited number of cases of African Swine Fever (ASF) in areas in the EU close to the border with Belarus.
- **Antidumping - The regulation of the European Commission 2016/1328 imposing definitive anti-dumping duties on steel product from China and Russia.** These duties will be in place for five years and for the first time they will also be levied retroactively on imports registered during the two months that preceded the adoption of provisional measures on 12 February 2016. The product at stake is "cold rolled steel", an industrial input for the packaging, white goods, general industry, automotive industry and the construction industry. The investigation was initiated on 14 May 2015 following a complaint submitted by the industry. The duties range from 19.7% to 22.1% for Chinese and from 18.7% to 36.1% for Russian companies. In the wake of the global steel overcapacity crisis, the Commission is applying the trade defence instruments to re-establish a level-playing field between EU and foreign producers. The EU currently has over 100 trade defence measures in place, 37 of them targeting unfair imports of steel products, 15 of which from China. 12 more investigations concerning steel products are still ongoing. [Euractiv comment](#)

- **12 ENERGY**

- Commission [Regulation 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection](#), implementing the Regulation No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity. The Regulation establishes a network code which lays down the requirements for grid connection of: transmission-connected demand facilities; transmission-connected distribution facilities; distribution systems; demand units, used by a demand facility or a closed distribution system to provide demand response services to relevant system operators and relevant TSOs. The Regulation helps 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 demand facilities' and distribution systems' capabilities in a transparent and non-discriminatory manner to provide a level playing field throughout the Union.

According to [Governmental Action Plan on Implementation of the AA](#) (resolution of the Cabinet of Ministers 17 September 2014 № 847, point 184), Ukraine is going to implement the basic Regulation No 714/2009 till July 2017.

- **Access to electricity grids** - the Regulation of the European Commission [2016/1447 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules](#). The Regulation implements the Regulation No 714/2009 of the

European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003.

The Regulation 1228/2003 (or the newer one) should have been implemented by Ukraine by 1.1.2012 as indicated in the Protocol concerning the Accession of Ukraine to the Energy Community Treaty (ANNEX XXVII TO CHAPTER 1 of the AA)

- **13 INDUSTRIAL POLICY AND INTERNAL MARKET**

- **Internet neutrality** - The Body of European Regulators for Electronic Communications (BEREC) has published [Guidelines on the Implementation by National Regulators of European Net Neutrality Rules](#) in accordance with Article 5(3) of the Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access. They are designed to provide guidance on the implementation of the obligations of National Regulators. Specifically, this includes the obligations to closely monitor and ensure compliance with the rules to safeguard equal and non-discriminatory treatment of traffic in the provision of internet access services and related end-users rights as laid down in Articles 3 and 4 of the Regulation. [Blog Post by Commissioner Günther Oettinger; Comment on The Verve](#)
- **EU certification system for airport security equipment** – the [European Commission proposes EU certification system for airport security equipment](#) to promote a more competitive EU security industry. [Press release](#)

- **14 REGIONAL POLICY AND COORDINATION OF STRUCTURAL INSTRUMENTS**

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- **15 ENVIRONMENT, CONSUMERS AND HEALTH PROTECTION**

- **Energy efficiency of buildings** - The European Commission [guidelines for the promotion of nearly zero-energy buildings and best practices to ensure that, by 2020, all new buildings are nearly zero-energy buildings](#)

Under the Association Agreement the provisions of the Directive 2002/91/EC that was repealed by the Directive 2010/31 on the energy performance of buildings shall be reflected in the Ukrainian legislation by the end of 2018. The provisions of the (old or new) directive should be fully implemented by the end of 2020. At the same time according to the applicable obligations of Ukraine under the Energy Community that prevail in case of conflict with the AA (art. 278 of the AA), the directive should have been implemented by September 2012.

- **EU Action Plan against Wildlife Trafficking** – the Communication from the European Commission
- **Waste management from extractive industries** – The European Commission

has published [report on the implementation of Directive 2006/21/EC on the management of waste from extractive industries](#).

The Directive 2006/21/EC shall be implemented by Ukraine by the end of 2020 (ANNEX XXX TO CHAPTER 6)

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

- [Research and Development - Annual Report on Research and Technological Development Activities of the European Union in 2015](#)

- **17 LAW RELATING TO UNDERTAKINGS**

- **EU copyright law reform** – [the European Commission proposes modern EU copyright rules](#). As part of the Digital Single Market strategy presented in May 2015, the newest proposals complement the proposed regulation on portability of legal content (December 2015), the revised Audiovisual Media and Services Directive, the Communication on online platforms (May 2016). Later this autumn the Commission will propose to improve enforcement of all types of intellectual property rights, including copyright. The proposals along with initiatives to boost internet connectivity in the EU are part of the EU strategy to create a Digital Single Market (DSM). Documents adopted by the Commission on 14th September:

- [Communication - Promoting a fair, efficient and competitive European copyright-based economy in the Digital Single Market](#)
- [Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes](#)
- [Proposal for a Directive on copyright in the Digital Single Market](#)
- [Proposal for a Regulation on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled](#)
- [Proposal for a Directive on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society](#)

- **Copyright – the EU Court of Justice judgement on hyperlinks sending users to sites publishing photos without authorisation** – [an important judgement](#) in the Case C-160/15. According to the judgement the posting of a hyperlink on a website to works protected by copyright and published without the author's consent on another website does not constitute a 'communication to the public' when the person who posts that link does not seek financial gain and acts without knowledge that those works have been published illegally. In contrast, if

those hyperlinks are provided for profit, knowledge of the illegality of the publication on the other website must be presumed. [CJEU press release](#) [Comment on IPCat blog](#).

- **Copyright** - an [important judgement of the EU Court of Justice judgement](#) in the Case C-484/14 Tobias Mc Fadden v Sony Music Entertainment. According to the judgement the operator of a shop who offers a Wi-Fi network free of charge to the public is not liable for copyright infringements committed by users of that network. However, such an operator may be required to password-protect its network in order to bring an end to, or prevent, such infringements. [Press release](#)

- **18 COMMON FOREIGN AND SECURITY POLICY**

- **EU prolongs sanctions over actions against Ukraine's territorial integrity** - the [EU Council prolonged](#) (15th September) by 6 months the application of EU restrictive measures targeting actions against Ukraine's territorial integrity, sovereignty and independence. These sanctions consist of an asset freeze and a travel ban against 146 persons and 37 entities. They have been extended until 15 March 2017.
- **Export of dual-use goods** - [the European Commission report](#) on implementation of Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, (related *intera alia* to EU sanctions to Russian Federation)

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

- **Data protection** – the European Commission has published [guide for citizens on EU-US Privacy Shield](#). The EU-U.S. Privacy Shield became operational on 1st August 2016. It guarantees that everyone in the EU has a number of rights when their data is processed, such as the right to ask a company for further information about the data they hold about them, or to amend their records if the data are outdated or inaccurate. Also they will benefit from several accessible and affordable dispute resolution mechanisms. The guide explains how individuals' data protection rights are guaranteed under the Privacy Shield and what remedies are available for individuals, if they consider their data has been misused and their data protection rights have not been respected.
- **European Border and Coast Guard: final approval** - on 14th September 2016, the [EU Council gave its final approval to the European Border and Coast Guard](#). The adoption of the regulation, which the Council approved by written procedure, paves the way for the Border and Coast Guard to begin its activities in mid-October.

- **20 PEOPLE'S EUROPE**

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