

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

No. 7 (September/October 2016)

Dear Reader,

this is the 7th 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 period 16 September - 20 October. We hope you will find it useful. Your comments and contributions that could improve the next issues of this review are welcome.

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

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

I. LEGAL ASPECTS OF EU-UKRAINE RELATIONS

- **New EU autonomous trade measures for Ukraine** – [draft Regulation on temporary autonomous trade measures for Ukraine](#) supplementing the trade concessions available under the Association Agreement (better access to the EU market for inter alia: cereals, processed tomatoes and honey, fertilizers, footwear, electronic equipment and certain metals). [Blog Post by the EU Trade Commissioner Cecilia Malmström](#); [Прес-реліз Мінекономрозвитку](#)



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- **Закрите небо – чому Україна досі не приєдналась до спільнога авіапростору ЄС,** Катерина Кульчицька, ГО "Європа без бар'єрів", 14 жовтня 2016

II. IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

- **Verkhovna Rada of Ukraine adopted (4/10/2016) Law on management of waters** ([Закон про внесення змін до деяких законодавчих актів України щодо впровадження інтегрованих підходів в управління водними ресурсами за басейновим принципом](#), Законопроект №3603), meant, *inter alia*, to implement the EU Water Framework Directive (2000/60/EC) and Directive 2007/60/EC on the assessment and management of flood risks. According to the AA Ukraine shall adopt national legislation transposing both directives and design competent authority/ies by the end of 2017 and 2016 respectively (Annex XXX to Chapter 6 of the AA)
- **Verkhovna Rada of Ukraine adopted (4/10/2016) Law on Strategic Environmental Assessment.** ([Закон про стратегічну екологічну оцінку](#), №3259) transposing Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment and the *Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context*. The provisions of Directive 2001/42 indicated in the Association Agreement should be implemented by the Ukraine by the end of 2017.
- **Verkhovna Rada of Ukraine adopted (4/10/2016) Law on Environmental Impact Assessment** ([Проект Закону про оцінку впливу на довкілля](#), №2009а-д) This Law establishes legal and organizational principles of environmental impact assessment and is aimed at preventing harm to the environment, environmental security, environmental protection, sustainable use and restoration of natural resources when making decisions on economic activities that can have a significant environmental impact, taking into account state, public and private interests. This Law lays down the base for the implementation by Ukraine of Directive 2003/4/EC on public access to environmental information and Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. The provisions of Directive 2003/4 indicated by the AA should be implemented by Ukraine by the end of 2016. And the Ukrainian legislation necessary to implement relevant provisions of Directive 2011/92/EU should be adopted by the end of 2016. Some other parts should be implemented by the end of 2017 (ANNEX XXX to Chapter 6 of the AA). For projects falling under the Treaty establishing the Energy Community all provisions of Directive 2011/92 should have been implemented by 1.1.2013 as indicated in the Protocol concerning the Accession of Ukraine to this Treaty.
- **Verkhovna Rada of Ukraine adopted (10/10/2016) Law amending the law on animal by-products, not intended for human use”** ([Проект Закону про внесення змін до Закону України "Про побічні продукти тваринного походження, що не призначені для споживання людиною" \(щодо узгодження його положень у сфері поводження з продуктами тваринного походження, що належать до категорії II, з вимогами законодавства ЄС](#), №2150а). The law supplements the implementation of Regulation 1069/2009 *inter alia* by adding to the list of animal by-products, not intended for human use, certain types of organic fertilizers.

According to “Comprehensive Strategy for the implementation Chapter IV (Sanitary

and Phytosanitary Measures)" (point 56) the Government of Ukraine intends to implement Regulation 1069/2009 fully by the end of 2018.

- **Verkhovna Rada of Ukraine adopted (22/9/2016) Law on National Commission for State regulation in Energy and Utilities" (Проект Закону про Національну комісію, що здійснює державне регулювання у сферах енергетики та комунальних послуг, 2966-д).** The law is related to the implementation of EU directives in the energy sector that 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.
- **European Anti-Fraud Office (OLAF) – NABU cooperation agreement** - The National Anti-Corruption Bureau of Ukraine (NABU) and the European Anti-Fraud Office (OLAF) [signed](#) (19/10/2016) an Administrative Cooperation Arrangement (ACA) to step up efforts to counter fraud against the European Union's financial interests. The ACA is based on, and implements, the comprehensive anti-fraud provisions in the EU-Ukraine Association Agreement. Protecting EU funds disbursed in Ukraine is particularly crucial following the adoption of the European Commission financial support package, which has an initial volume of 11 billion euro.
- **Glossary of terms for State Aid regulation** developed by the EU funded Project: "Harmonisation of Public Procurement System in Ukraine with EU Standards". The Glossary is intended to guide the state aid practitioners – Government generally, the AMCU as regulator, State aid providers, the business community, lawyers and the courts – through the terminology of main legal instruments, soft law measures and case law. As the Ukrainian State aid regulatory system continues to develop, it is clear that it is a new system of law for the country. For that reason, and given the volume and complexity of EU law in this field, it is necessary for Ukrainian stakeholders to have an accessible resource covering most of the terminology that is specific to State aid regulation. The Glossary is the first such document to be compiled in Ukraine.
- **Виступ Іванни Климпуш-Цинцадзе, віце-прем'єра з питань європейської та євроатлантичної інтеграції, у Верховній Раді України на тему здійснення Угоди про асоціацію.**
- **Conclusions of the 14th EU-Ukraine Intellectual Property Rights Dialogue** (27/9/2016)
- **EU-Ukraine Parliamentary Association Committee, fourth meeting** (20-12/9/2016) - [Заключна заява та рекомендації / Final Statement and Recommendations](#)
- **Євроінтеграція у Раді: від захисту інвесторів до великого екологічного пакету,** (3/10/2016) Парламентська експертна група з євроінтеграції
- **Ukraine confident on EU Association Agreement** – KyivPost article on the ratification of the Association Agreement by the Netherlands (14/10/2016), by Rahim Rahemtulla
- **Вкуримо по-європейськи? Чи відповідає збільшення акцизів**

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

- Transparency Register for all EU institutions – [the European Commission has proposed](#) an Interinstitutional Agreement (IIA) which will put in place a robust system ensuring the transparency of lobbying activities, building on the existing voluntary Transparency Register of the Parliament and the Commission. The Commission is proposing that all three institutions – including the Council - be subject to the same minimum standards for the first time. Under these proposals, meetings with decision-makers from the three institutions would become conditional on prior registration in the Transparency Register. [Press release](#)

• 02 CUSTOMS UNION AND FREE MOVEMENT OF GOODS

- **Free movement of goods (measures having equivalent effect to quantitative restrictions on imports)** – an [important judgement of the CJEU in the Case 525/14 Commission v Czech Republic](#). The Court pointed out that by refusing to recognise hallmarks for precious metals affixed by WaarborgHolland, a Netherlands assay office, the Czech Republic has infringed EU law. Although in some cases the Czech Republic is entitled not to recognise hallmarks affixed outside the EU by that assay office, a general and systematic refusal to recognise any of that office's hallmarks is a disproportionate measure. [Press release](#)
- **Free movement of goods** – an important [judgement of the CJEU in the Case C-148/15 Deutsche Parkinson Vereinigung eV v Zentrale zur Bekämpfung unlauteren Wettbewerbs eV](#). According to the Court's judgement fixed prices set in Germany for prescription only medicinal products are contrary to EU law. The Court pointed out that the legislation at issue constitutes an unjustified restriction of the free movement of goods. Although a restriction of the free movement of goods may, in principle, be justified on grounds of protection of the health and life of humans, the legislation at issue has not been shown to be an appropriate means by which to attain those objectives. [Press release](#).

• 03 AGRICULTURE

- **EU 'Animal Health Law'** - [Regulation 2016/429 of the European Parliament and of the Council of 9 March 2016](#) on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law'). The Regulation lays down rules for the prevention and control of animal diseases which are transmissible to animals or to humans.

The Regulation repeals 38 EU legal acts in the area of animal health (some by the day of entry into force and some as from 21 April 2021) that are mentioned in the [Comprehensive Strategy for the implementation Chapter IV \(Sanitary and Phytosanitary Measures\) Association Agreement](#) that was adopted the Cabinet of

Ministers on 24th February 2016.

- **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**
 -
- **09 TAXATION**
 -
- **10 ECONOMIC AND MONETARY POLICY AND FREE MOVEMENT OF CAPITAL**
 -
- **11 EXTERNAL RELATIONS**
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- **12 ENERGY**
 -
- **13 INDUSTRIAL POLICY AND INTERNAL MARKET**
 -
- **14 REGIONAL POLICY AND COORDINATION OF STRUCTURAL INSTRUMENTS**
 -
- **15 ENVIRONMENT, CONSUMERS AND HEALTH PROTECTION**
 - **Food safety** – [the European Commission Regulation \(EU\) 2016/1822 of 13 October 2016 amending Annexes II, III and V to Regulation \(EC\) No 396/2005 of](#)

the European Parliament and of the Council as regards maximum residue levels for aclonifen, deltamethrin, fluazinam, methomyl, sulcotriione and thiodicarb in or on certain products

According to “Comprehensive Strategy for the implementation Chapter IV (Sanitary and Phytosanitary Measures) the Government of Ukraine intends to implement some provisions of Regulation 396/2005 by the end of 2018 and some other by the end of 2020 (points 23 and 67 respectively).

- **Drinking water quality – European Commission Report** on the Quality of Drinking Water in the Union examining Member States' reports for the 2011-2013 period, foreseen under Article 13(5) of Directive 98/83/EC.

According to the Association Agreement, Ukraine should implement some provisions of Directive 98/83 by the end of 2019 (ANNEX XXX to Chapter 6, Environment)

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

- **International cooperation in research and innovation** - [Report from the European Commission](#) on the Implementation of the strategy for international cooperation in research and innovation

- **17 LAW RELATING TO UNDERTAKINGS**

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- **18 COMMON FOREIGN AND SECURITY POLICY**

- **The Court of Justice and EU Foreign Policy: what jurisdiction should it have?** – an article by Luigi Lonardo, King's College London on EU Law Analysis blog. It covers, *inter alia*, the Rosneft case, the first request ever for a preliminary ruling on a CFSP act, currently pending before the EU Court of Justice. The case stems from a Russian gas company, Rosneft, challenging sectorial measures (not targeted sanctions) prohibiting EU natural or legal persons, from engaging in contractual relations with certain Russian state-owned companies and banks, and from providing such companies and banks access to financial markets.
- CFSP Report 2016 - the EU Council approved (17/10/2016) [Common Foreign and Security Policy Report on priorities in 2016](#). EurActive comment

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

- **EU Internal Security - Communication from the European Commission: First progress report towards an effective and genuine Security Union.** It focuses, *inter alia*, on the legal framework for combatting terrorism and cutting access to financing and firearms; preventing and fighting radicalisation; improving operational cross-border cooperation with the support of EU Agencies; improving information exchange; strengthening information systems and closing information gaps; enhancing security at the external border; protecting citizens and critical infrastructures

- **Data protection, storing of IP addresses** – an important judgement of the EU Court of Justice in the case C-582/14 *Patrick Breyer v Bundesrepublik Deutschland*. The Court pointed out that the operator of a website may have a legitimate interest in storing certain personal data relating to visitors to that website in order to protect itself against cyberattacks. The dynamic internet protocol address of a visitor constitutes personal data, with respect to the operator of the website, if that operator has the legal means allowing it to identify the visitor concerned with additional information about him which is held by the internet access provider. The Court recalled that, according to EU law, the processing of personal data is lawful, *inter alia*, if it is necessary to achieve a legitimate objective pursued by the controller, or by the third party to which the data are transmitted, provided that the interest or the fundamental rights and freedoms of the data subject does not override that objective. [Press release](#); [EurActive comment](#)

- **20 PEOPLE'S EUROPE**

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The content of this Review does not reflect the official opinion of the European Union. Responsibility for the information and views expressed in the Review lies entirely with the authors.