

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

No. 3 (May/June 2016)

Dear Reader,

this is the third number of the review of current, important developments in EU law, EU legal analysis and EU legal approximation prepared in the framework of the project [“Support for the Implementation of the EU-Ukraine Association Agreement”](#). This number covers the 18th May - 5th June period. We hope you will find it useful. Your comments and contributions that could improve next issues of the review are welcome.

Here you can find [first](#) and [second](#) review. Some developments are reflected on daily basis on dedicated [Twitter profile](#).

*Project Team & Unit for Legal Approximation to the
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I. LEGAL ASPECTS OF EU-UKRAINE RELATIONS

- **EU Sanctions - [The EU Council has published a notice informing 27 people and 10 entities listed on EU sanctions against those said to be undermining the territorial integrity of Ukraine](#)** that it intends to maintain the measures against them, and will amend the statements of reasons for their listings. The notice informs those persons and entities that they may submit a request to the Council to obtain the intended statements of reasons for their designation and that they may submit a request to the Council, that the decision to include and maintain them on the list should be reconsidered.



II. IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

- **The Parliament will consider important amendments to its Rules of procedures**, submitted by the Parliament's Speaker and other MPs ([5 Drafts](#) – 4696, 4696 1, 4696 2, 46963, 46964) aimed at implementation of recommendations of the *European Parliament's Needs Assessment Mission to the Verkhovna Rada of Ukraine* led by Pat Cox on internal reform and capacity-building for the Verkhovna Rada of Ukraine (so called Pat Cox mission). The [Draft No 4696](#), if adopted, will also have implications for the procedure of the EU-Ukraine Association acquis compliance check.
- [Впроваджуючи Угоду про асоціацію Україна-ЄС: перші уроки, наслідки, практики використання](#), Олександр Сушко, Роберт Хорольський, Вероніка Мовчан, Олег Мирошніченко — Konrad Adenauer Stiftung POLICY PAPER 26
- [Joint statement by the High Representative/Vice-President Federica Mogherini and Commissioner Johannes Hahn on the vote on constitutional amendments related to the judiciary by the Parliament of Ukraine](#)
- [What does the Association Agreement mean for Ukraine, the EU and its Member States? A Legal appraisal](#) - paper by Roman Petrov (Jean Monnet Chair in EU Law, Head of the Jean Monnet Centre of Excellence at the National University of Kyiv-Mohyla Academy) and Peter Van Elsuwege (Professor of European Union Law, Ghent European Law Institute, Ghent University).

III. RECENT DEVELOPMENTS AND ANALYSES IN EU LAW¹

● 01 GENERAL, FINANCIAL AND INSTITUTIONAL MATTERS

- The European Commission has adopted [Rule of Law Opinion on the situation in Poland](#) (1/6/2016), formalising its assessment of the current situation. The Opinion sets out the concerns of the Commission and serves to focus the ongoing dialogue with the Polish authorities towards finding a solution. This is the first step foreseen in the Rule of Law Framework.

● 02 CUSTOMS UNION AND FREE MOVEMENT OF GOODS

- The European Commission [proposal for a regulation on the management of autonomous tariff quotas of the Union for certain agricultural and industrial products](#)

● 03 AGRICULTURE

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● 04 FISHERIES

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.

- [Report from the European Commission](#) on options for an EU eco-label scheme for fishery and aquaculture products
- **05 FREEDOM OF MOVEMENT FOR WORKERS AND SOCIAL POLICY**
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- **06 RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES**
 - **Digital Single Market - the European Commission has presented important [proposals](#) to boost e-commerce by tackling geoblocking and making cross-border parcel delivery more affordable. It also wants to create a fairer environment through [updated EU audiovisual rules and tables a new approach to online platforms.](#)**
 - **The European Commission [Communication](#) on stimulating cross-border e-Commerce for Europe's citizens and businesses**
 - [Analysis of new Audiovisual Media Services Directive](#) by Lorna Woods, Professor of Media Law, University of Essex
 - **Public procurement – Important [judgement of the EU Court of Justice \(Grand Chamber\)](#) on equal treatment of tenderers (Case -396/14,ECLI:EU:C:2016:347). According to the judgement “*The principle of equal treatment of economic operators, stated in Article 10 of Directive 2004/17/EC (...), read together with Article 51 of that directive, must be interpreted as meaning that a contracting entity is not in breach of that principle where it permits one of two economic operators who formed part of a group of undertakings that had, as such, been invited to submit tenders by that contracting entity, to take the place of that group following the group's dissolution and to take part, in its own name, in a negotiated procedure for the award of a public contract, provided that it is established, first, that that economic operator by itself meets the requirements laid down by the contracting entity and, second, that the continuation of its participation in that procedure does not mean that other tenderers are placed at a competitive disadvantage.*”**

The gradual implementation of the directive 2004/17 (or [the Directive 2014/25](#) that has replaced it) is linked to gradual opening of EU public procurement market to Ukraine (Annex XXI-A to Chapter 8 of the AA).
- **07 TRANSPORT POLICY**
 - **Passenger ships safety – [Directive of the European Commission 2016/844 of 27 May 2016 amending Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships.](#) The Directive 2009/45 should be implemented by Ukraine until the end of 2019 (ANNEX XXXII TO CHAPTER 7 TRANSPORT)**

- **Railway safety – [the European Commission Directive 2016/882 of 1 June 2016 amending Directive 2007/59/EC of the European Parliament and of the Council as regards language requirement.](#)** The basic Directive 2007/58 should be implemented by Ukraine by the end of 2023 (ANNEX XXXII TO CHAPTER 7 TRANSPORT)
- **Railway safety** - three recasts (consolidated versions with minor amendments) of EU acts:
 - **[Directive 2016/798 on railway safety](#)** – the recast of the [Directive 2004/49/EC on safety on the Community's railways](#) (that should be implemented by Ukraine until the end of 2023 (ANNEX XXXII TO CHAPTER 7 TRANSPORT))
 - **[Directive 2016/797 on the interoperability of the rail system within the European Union](#)** - the recast of the [Directive 2008/57 on the interoperability of the rail system within the Community](#) (that should be implemented by Ukraine until the end of 2023 (ANNEX XXXII TO CHAPTER 7 TRANSPORT))
 - **[Regulation 2016/796 on the European Union Agency for Railways and repealing Regulation \(EC\) No 881/2004](#)** (out of the scope of Association Agreement)
- **08 COMPETITION POLICY**
 - **State aid: [Commission clarifies scope of EU State aid rules to facilitate public investment](#)** (19 May 2016). The Commission has published guidance on when public spending falls within, and outside, the scope of EU State aid control. This guidance will help public authorities and companies to identify when public support measures can be granted without needing approval under EU State aid rules.
- **09 TAXATION**
 - **VAT – two judgement of the CJEU** interpreting the *directive 2006/112/EC of 28 November 2006 on the common system of value added tax* in cases:
 - [C-607/14 \(ECLI:EU:C:2016:355\)](#) interpreting Art. 135(1)(d) on exemptions from value added tax in the case of payments by debit card or credit card for purchase of cinema tickets by telephone or via the Internet;
 - [C-550/14 \(ECLI:EU:C:2016:354\)](#) interpreting Article 198(2) on reverse charge mechanism in the case of Gold material or semi-manufactured products
- **10 ECONOMIC AND MONETARY POLICY AND FREE MOVEMENT OF CAPITAL**
 - **Anti-Money Laundering – [comment](#) on recent [CJEU judgement in Safe](#)**

Interenvios case on data protection in the context of money laundering. By Marcin Kotula, Legal Officer at the European Commission. Ukraine is obliged to implement the [Anti-Money Laundering Directive 2005/60](#) by the end of 2017 (Appendix XVII-2 to Annex XVII to AA on Regulatory approximation) but the Cabinet of Ministers of Ukraine decided to implement the new [Directive 2015/849](#) that repealed the Directive 2005/60 (see [DCFTA Implementation Action Plan](#), point 100).

- **11 EXTERNAL RELATIONS**

- [European Parliament resolution of 8 October 2013](#) on **corruption in the public and private sectors: the impact on human rights in third countries**

- **12 ENERGY**

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- **13 INDUSTRIAL POLICY AND INTERNAL MARKET**

- **Standardisation package. [European standards for the 21st Century](#)** – communication of the European Commission. The Commission sets out its vision for a single and efficient European Standardisation System that adapts to the changing environment, supports multiple policies and brings benefits to companies, consumers and workers alike.

Under Article 56 of the AA Ukraine shall take the necessary measures in order to gradually achieve conformity with EU technical regulations and EU standardisation, metrology, accreditation, conformity assessment procedures and the market surveillance system. The deadlines for the implementation of relevant Decisions and Regulations differ from one till five years from the entry into force of the AA (Annex III to AA).

- **Standardisation package. [The European Commission Communication - the annual Union work programme for European standardisation for 2017](#)**
- **[Harmonised European Standards and the EU Court of Justice: Beware Not to Open Pandora's Box](#)**, article of Bardo Schettini Gherardini, Director of Legal Affairs of CEN and CENELEC (the European Committee for Electrotechnical Standardization) on jurisdiction of the CJEU on the interpretation of harmonised technical standards adopted by the European Committee for Standardisation (europeanlawblog.eu)

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

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

- **“Delivering the benefits of EU environmental policies through a regular Environmental Implementation Review”** - the European Commission Communication on better implementation of environmental policy and legislation. Under the European Implementation Review the Commission will evaluate implementation of the EU environmental acquis and highlight weaknesses and obstacles that prevent rules from working efficiently. The EU executive will also present country-specific recommendations. [EU Observer comment](#).
- **The European Commission has published Report on the effectiveness of Regulation 2006/2004 on the cooperation between national authorities responsible for the enforcement of consumer protection laws**. Ukraine is obliged to implement the [regulation 2006/2004](#) by the end of 2020 (ANNEX XXXIX TO CHAPTER 20 CONSUMER PROTECTION)
- **Explaining road transport emissions. A non-technical guide** – European Environment Agency report. The report provides a summary of the current knowledge on vehicle emissions in Europe. It also explains how emissions are monitored and the common technologies used to limit them.
- **Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels** – codification of many times amended [Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC](#). Ukraine is obliged to implement Directive 1999/32 by the end of 2017 (ANNEX XXX to Chapter 6 Environment) beside Directive's provisions on fuels used for purposes under the Treaty establishing the Energy Community that shall have been implemented by 1.1.2012.
- **31 countries 1 internal market of safe products. Rapid alert system for dangerous products 2015 results**, report from the European Commission, Directorate-General for Justice and Consumers
- **European drug report 2016. Trends and developments**, by European Monitoring Centre for Drugs and Drug. The report presents an overview of the drug phenomenon in Europe, covering drug supply, use and public health problems as well as drug policy and responses. Together with the online Statistical Bulletin, Country Overviews and Perspectives on Drugs, it makes up the 2016 European Drug Report package.
- **16 SCIENCE, INFORMATION, EDUCATION AND CULTURE**
 - **Horizon 2020. International cooperation opportunities in the work programme 2016-2017**. Booklet of the European Commission, Directorate-General for Research and Innovation explains how international cooperation in research and innovation is a cross-cutting priority of the Work Programme 2016-17

- **17 LAW RELATING TO UNDERTAKINGS**

- [**New EU Trade Secrets Directive Formally Adopted**](#) - The Council has adopted a directive setting out rules for the protection of trade secrets and confidential information of EU companies. The new EU Trade Secrets Directive aims to harmonise the protection of trade secrets across all EU Member States. The reform seeks to give businesses greater confidence in sharing trade secrets across multiple Member States by ensuring a minimum level of protection. In turn, it is hoped, this will foster cross-border research collaboration, production cooperation, outsourcing and investment. [**Comment on JD Supra**](#) [**Comment on Out-law.com**](#)

- **18 COMMON FOREIGN AND SECURITY POLICY**

- **EU sanctions against Russia - [*Opinion of Advocate General Wathelet \(31 May 2016, C-72/15, Rosneft Oil Company OJSC\)*](#) on validity of Decision 2014/512/CFSP and of Regulation (EU) No 833/2014 — Restrictive measures in view of Russia's actions destabilising the situation in Ukraine.** According to the Advocate General's Opinion sanctions valid with exception of one provision (Art. 3(5) of Regulation No 833/2014). At the same time the Advocate General analysed the scope of CJEU judicial review of EU sanctions against Russia.
- [**The frozen conflicts of the EU's Eastern neighbourhood and their impact on the respect of human rights**](#), Publication of the European Parliament, Directorate-General for External Policies of the Union

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

- [**Directive \(EU\) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings**](#) published.

- **20 PEOPLE'S EUROPE**

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