

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

No. 14 (May/June 2017)

Dear Reader,

this is the 14th 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 May - 30 June 2017. 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 & Government Office for European and Euro-Atlantic Integration

I. LEGAL ASPECTS OF EU-UKRAINE RELATIONS

- **Спільний комітет Регіональної конвенції про Пан-євро-середземноморські преференційні правила походження** (Конвенція Пан-Євро-Мед) [ухвалив рішення](#) офіційно запросити Україну приєднатися до Конвенції Пан-Євро-Мед. (Прес-служба Мінекономрозвитку)
- On 17 May 2017, **the European Parliament and of the Council of the EU** adopted the [Regulation \(EU\) 2017/850](#) that amended Regulation (EC) No 539/2001 and listed Ukraine among the third countries whose nationals are exempt from that requirement to be in possession of visas when crossing the external borders. The visa waiver should, however,



apply only to holders of biometric passports issued by Ukraine in line with the standards of the International Civil Aviation Organisation (ICAO).

- **The Senate of the Netherlands** on the 30th of May 2017 [approved](#) the Association Agreement between the European Union and Ukraine. This long awaited act was [welcomed](#) by **Jean-Claude Juncker, President of the European Commission**, as well as by the [Members of the European Parliament](#). [Politico article](#), [EUObserver article](#).

Сенат Нідерландів 30 травня 2017 року проголосував за ратифікацію Угоди про асоціацію між Україною і ЄС. Це рішення слідує схваленню Угоди **Палатою представників**. Нідерланди були останньою країною ЄС, яка мала ратифікувати Угоду з Україною, проте внаслідок негативного рішення консультативного референдуму з цього питання ситуація була невизначена. [Стаття “Європейської Правди”](#)

- **“Безпека праці, боротьба з наркотиками та інше: що нового несе Україні ратифікована асоціація”**, [Стаття “Європейської Правди”](#), 1 червня 2017
- **EU autonomous trade measures in favour of Ukraine** - On 6 June 2017, Council of the EU [reached agreement](#) on **temporary autonomous trade measures in favour of Ukraine**. The proposal is aimed at improving access for Ukrainian exporters to the EU market, in view of the difficult economic situation and the economic reform efforts undertaken by Ukraine and will last for a three-year period. In its term, on 6 June 2017, **the European Parliament** has [voted](#) in favour of the Commission [proposal](#) to grant more trade concessions to Ukraine with the small number of exceptions regarding agricultural products. Finally, on 28 June 2017, **EU ambassadors** endorsed the agreement reached between **the Presidency** and **the European Parliament** on temporary autonomous trade measures in favour of Ukraine. Now **the Parliament and the Council** will formally adopt the text by the end of July and respective regulation should be published and enter into force by the end of September. [The EU Council press release, June 28 2017](#).

II. IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

- 18 травня 2017 року Верховна рада України прийняла [Закон України "Про державний контроль, що здійснюється з метою перевірки відповідності законодавству про безпечність та якість харчових продуктів і кормів, здоров'я та благополуччя тварин"](#). Цей закон визначає принципи та вимоги до державного контролю, що здійснюється державними інспекторами з метою перевірки відповідності харчових продуктів та кормів законодавству про безпечність, а також про здоров'я та благополуччя тварин. [Стаття “Європейської Правди” від 18 травня 2017 року](#)
- 23 травня 2017 року Верховна Рада України прийняла важливий закон з питань захисту довкілля. Метою [Закону України “Про оцінку впливу на довкілля”](#) законопроекту є встановлення правових та організаційних засад здійснення оцінки впливу на довкілля та забезпечення виконання Україною міжнародних зобов'язань у рамках Конвенції про оцінку впливу на навколишнє середовище в транскордонному контексті (Конвенція Еспоо) та Конвенції про доступ до інформації, участь громадськості в процесі прийняття рішень та доступ до правосуддя з питань, що стосуються довкілля (Організація Конвенція), стороною яких є Україна, а також імплементації у національне законодавство положень Директив 2003/4/ЄС та

2011/92/EC.

- **Cabinet of Ministers** approved few EU law related acts:
 - **Decision № 360** of 24 May 2017 [with regard to energy labelling of air conditioners](#) based on a Commission Delegated Regulation (EU) No 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners
 - **Decision № 359** of 24 May 2017 with regard to energy labelling of televisions based on a Commission Delegated Regulation (EU) No 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions
 - **Decision № 355** of 24 May 2017 with regard to radio equipment based on Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC Text with EEA relevance
 - **Decision № 380** of 31 May 2017 [with regard to energy labelling of household tumble driers](#) based on a Commission Delegated Regulation (EU) No 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products
 - **Decision № 381** of 31 May 2017 [with regard to energy labelling of vacuum cleaners](#) based on a Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products
- Віце-прем'єр з питань європейської та євроатлантичної інтеграції Іванна Климпуш-Цинцадзе, виступаючи на засіданні уряду, заявила, що Україна відстає від графіку виконання Угоди про асоціацію з ЄС. Протягом трьох років функціонування Угоди про асоціацію з ЄС в тимчасовому режимі Україна в жодній сфері на 100% не привела законодавство у відповідність до норм ЄС. [Стаття "Європейської Правди" 31 травня 2017 року.](#)
- 8 червня 2017 року ЄС та Україна провели зустріч для оцінки **прогресу України у проведенні реформи законодавства у сфері прав інтелектуальної власності**. ЄС розчарований повільним прогресом України, адже з часу набуття чинності Поглибленої та всеосяжної зони вільної торгівлі минуло 18 місяців: проте уряд досі не подав на розгляд до Верховної Ради більшість законопроектів, які Україна зобов'язалася прийняти. [Прес-реліз Представництво Європейського Союзу в Україні 12 червня 2017 року](#)
- Євроінтеграційні законопроекти на розгляді сесії Верховної ради України - [Стаття "Європейської Правди" 20 червня 2017 року](#)
- On June 13, 2017 the European Union and Ukraine held their **annual Human Rights Dialogue**. Among discussed topics were deterioration of the human rights situation on the

Crimean Peninsula, human rights violations and abuses in the areas of the Donetsk and Luhansk regions, not under the full effective control of the Government of Ukraine. They also called for the immediate release of illegally detained Ukrainian citizens in Russia and the Crimean Peninsula. The European Union recalled that Ukraine has committed to the ratification of the Rome Statute of the International Criminal Court. [Joint Press release 13 June 2017](#)

- 21 червня 2017 року **Кабінет Міністрів України** затвердив **Технічний регламент ліфтів і компонентів безпеки для ліфтів**, відповідно до пункту 16 Плану заходів з імплементації розділу IV „Торгівля і питання, пов’язані з торгівлею” Угоди про асоціацію. Прийняте рішенням забезпечує повну адаптацію Технічного регламенту ліфтів і компонентів безпеки для ліфтів до Директиви 2014/33/ЄС Європейського Парламенту та Ради від 26 лютого 2014 року, узгодження положень національного законодавства з нормами законодавства Європейського Союзу стосовно ліфтів і компонентів безпеки для ліфтів у частині технічного регулювання. [Прес-реліз Міністерства Соціальної політики 21 червня 2017 року](#)
- У своїй [статті](#) у “Європейській Правді” від 26 червня 2017 року **Перший секретар представництва Європейського союзу в Україні, Жослін Гітон** оцінює наслідки ЗВТ для України. Оцінюючи зміни в торгівлі між Україною та ЄС, він робить висновок, що поглиблена та всеосяжна зона вільної торгівлі (ПВЗВТ) справді діє і має позитивний вплив, а посилення торгівлі веде до створення нових робочих місць та економічного зростання. Та існують причини, за якими розвиток торгівлі між Україною та ЄС стане суттєво відчутним поступово, за певний період часу. По-перше, повна імплементація ПВЗВТ займе 7 років, як передбачено угодою. По-друге, ЄС – це великий та багатий ринок; в ньому мешкає 500 млн покупців. Але вийти на цей ринок важко. Продаж в ЄС вимагає маркетингових зусиль, встановлення зв’язків та відповідність продукції складним нормам.
- 29-30 червня 2017 року у Брюсселі відбулося **третє засідання Комітету асоціації між Україною та Європейським Союзом**. [Прес-реліз Урядового офісу з питань європейської та євроатлантичної інтеграції](#)

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

- **Comparative study on the three Association Agreements and Deep and Comprehensive Free Trade Areas** [published](#) by the Centre for European Policy Studies that the EU has concluded with Ukraine, Moldova and Georgia (June 26, 2017).
- **Application of the EU Charter of Fundamental Rights** - the European Commission has issued the [Report on the Application of the EU Charter of Fundamental Rights](#) (18 May, 2017). It comprises the current state of affairs with fundamental rights in the EU, the description of initiatives that were taken by the EU to promote and secure fundamental rights, as well as the evaluation of threats to EU values and fundamental rights in the

Member States.

- **Brexit - the Council of the EU** adopted (22 May, 2017) a decision authorising the opening of Brexit negotiations with the UK and formally nominating the Commission as EU negotiator. The Council also adopted negotiating [directives](#) for the talks. [Council of the EU Press release](#).
- **Subsidiarity principle** - the European Commission published (30.6.2017) [the 24th annual report on the application of the principles of subsidiarity and proportionality](#) in European Union law making. The report looks at how the European Union's institutions and bodies implemented these two principles in 2016 and how the practice has evolved in comparison with previous years. It also provides an analysis of the Commission proposals that were the subject of reasoned opinions from national Parliaments during the year.

● 02 CUSTOMS UNION AND FREE MOVEMENT OF GOODS

- **Trade in 'conflict minerals' - the European Parliament and the Council** have adopted (May 17, 2017) the [Regulation 2017/821](#) that establishes a Union system for supply chain due diligence for armed groups and security forces to trade in tin, tantalum and tungsten, their ores, and gold. The aim of the Regulation is to provide transparency and certainty as regards the supply practices of Union importers, and of smelters and refiners sourcing from conflict-affected and high-risk areas. The Regulation lays down the supply chain due diligence obligations of Union importers of minerals or metals containing or consisting of tin, tantalum, tungsten or gold.

● 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

- **Online games of chance - The Court of Justice of the EU** ruled (22/06/17) that the provisions of Hungarian law on the authorisation of online games of chance was not compatible with the principle of the freedom to provide services. It limited in a discriminatory manner and by reason of its non-transparent nature the opportunity for operators established in other Member States to organise such games. [Full text of the judgement in Case C-49/16](#).

● 07 TRANSPORT POLICY

- **EU 'black list' of list of air carriers - the European Commission issued** (May 15, 2017) the [Implementing Regulation 2017/830](#) on the list of air carriers which are banned from operating or are subject to operational restrictions within the Union. Ukrainian company International **Joint-Stock Aviation Company 'URGA'** has been included to the list of such companies for the failure to comply with the relevant safety requirements.
- **EU Aviation Strategy** - the European Commission presented **Aviation Strategy for Europe** (June 08, 2017) foreseeing adoption a series of measures to further support open and

connected aviation markets in the European Union and beyond. The main objectives of the strategy are a) maintain leadership in international aviation and b) tackle limits to growth in European skies. [European Commission Press release](#)

- **08 COMPETITION POLICY**

- **Antitrust - the European Commission fined Facebook €110 million** (May 18, 2017) for providing incorrect or misleading information during the Commission's 2014 investigation under the EU Merger Regulation of Facebook's acquisition of WhatsApp. When Facebook notified the acquisition of WhatsApp in 2014, it informed the Commission that it would be unable to establish reliable automated matching between Facebook users' accounts and WhatsApp users' accounts. However, in August 2016, WhatsApp announced updates to its terms of service and privacy policy, including the possibility of linking WhatsApp users' phone numbers with Facebook users' identities. [European Commission Press release](#)
- **Antitrust - the European Commission fined Automotive Lighting and Hella a total of €26 744 000** (May 18, 2017) for participating in an automotive lighting cartel, in breach of EU antitrust rules. Valeo was not fined as it revealed the cartel to the Commission. All companies admitted their involvement and agreed to settle. [European Commission Press release](#)
- **Antitrust - the European Commission fined Google €2.42 billion** (June 27, 2017) for breaching EU antitrust rules. Google has abused its market dominance as a search engine by giving an illegal advantage to another Google product, its comparison shopping service by systematically giving prominent placement to its own comparison shopping service and demoting rival comparison shopping services in its search results. [European Commission Press release](#)
- **State aid - the Court of Justice of the EU ruled** (27/06/17) that the provisions of Spanish law on various tax exemptions for the Catholic Church before Spain's accession the tax exemption at issue may constitute unlawful State aid if and to the extent to which the activities carried on in the premises in question are economic activities. [CJEU Press release](#).

- **09 TAXATION**

- **Corporate tax avoidance - the Council of the EU** adopted (29 May 2017) [the Directive](#) to prevent corporate groups from exploiting the disparities between two or more tax jurisdictions to reduce their overall tax liability, one of the main practices that multinational companies use to reduce their taxes. The EU Member States will have until 1 January 2020 to transpose the directive into national laws and regulations. The EU [Council Press release May 29, 2017](#)

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

- **Future of the Economic and Monetary Union - the European Commission** published (31 May, 2017) its [Reflection Paper](#) setting out possible ways forward for deepening Europe's Economic and Monetary Union. The paper sets out concrete steps that could be taken by the European elections in 2019, as well as a series of options for the following years, when the architecture of the Economic and Monetary Union would be completed. [The European Commission Press release](#).

- **11 EXTERNAL RELATIONS**

- **EU external trade competence - the free trade agreement with Singapore cannot, in its current form, be concluded by the EU alone, the Court of Justice of the EU ruled** (Opinion 2/15, dated 16 May, 2017). The provisions of the agreement relating to non-direct foreign investment and those relating to dispute settlement between investors and States do not fall within the exclusive competence of the EU, so that the agreement cannot, be concluded without the participation of the Member States. It follows that the free trade agreement with Singapore can, as it stands, be concluded only by the EU and the Member States acting together. However, stating that the other provisions of the agreement fall within the exclusive competence of the EU, the CJEU has confirmed the broad competence of the EU in trade related fields. CJEU [press release](#), **Centre for European Policy Studies analysis**.
- **EU Common Commercial Policy - Swedish Institute for European Policy Studies** published the [report on the EU Common Commercial Policy post the Treaty of Lisbon](#). It contains thorough legal analysis of the wider EU trade policy that now covers foreign direct investment, trade in services and the commercial aspects of intellectual property being a part of the broader framework of the EU foreign policy objectives.
- **12 ENERGY**
 - **Nord Stream 2** - the European Commission has adopted (June 09, 2017) **a request to the Council of the European Union for a mandate to negotiate with the Russian Federation the key principles for the operation of the Nord Stream 2** gas pipeline project. The Commission seeks to ensure that, if built, Nord Stream 2 operates in a transparent and non-discriminatory way with an appropriate degree of regulatory oversight, in line with key principles of international and EU energy law. [The European Commission Press release](#)
- **13 INDUSTRIAL POLICY AND INTERNAL MARKET**
 - **EU trade marks** - the European Parliament and of the Council **adopted codified version of the Regulation (EU) 2017/1001 on the European Union trade mark**. The codification does not amend the content of the regulation with exception of minor editorial corrections.
 - **Copyright - the Court of Justice of the EU ruled** (14/06/17) that making available and managing an online platform for sharing copyright-protected works, such as ‘The Pirate Bay’, may constitute an infringement of copyright, even if the works in question are placed online by the users of the online sharing platform, the operators of that platform play an essential role in making those works available. The Court held that the making available and management of an online sharing platform must be considered to be an act of communication. [CJEU press release](#)
- **14 REGIONAL POLICY AND COORDINATION OF STRUCTURAL INSTRUMENTS**
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- **15 ENVIRONMENT, CONSUMERS AND HEALTH PROTECTION**
 - **Environmental Reporting** - the European Commission published (June 09, 2017) the [Report on Actions to Streamline Environmental Reporting](#). This annual report is linked with the action plan to ensure that EU environmental law is delivering its intended effects on the ground. The purpose is to better inform the European public about these achievements and at the same time simplify the reporting burden for national administrations and businesses.

- **Marking of products - the Court of Justice of the EU ruled** (14/06/17) that purely plant-based products cannot, in principle, be marketed with designations such as 'milk', 'cream', 'butter', 'cheese' or 'yoghurt', which are reserved by EU law for animal products. The same is true if those designations are accompanied by clarifying or descriptive terms indicating the plant origin of the product concerned. [CJEU press release](#).
- **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**
 - **European Defence Fund** - the European Commission launched (June 07, 2017) a European Defence Fund to help Member States spend taxpayer money more efficiently, reduce duplications in spending and get better value for money. The focus of the Fund will be aimed at a) research and b) development and acquisition of defence equipment and technology. The Fund is expected to quickly become the engine powering the development of the European Security and Defence Union. [European Commission Press release](#)
 - **Sanctions in response to the illegal annexation of Crimea and Sevastopol** - the Council of the EU [extended](#) (June 19, 2017) the restrictive measures in response to the illegal annexation of Crimea and Sevastopol by Russia until 23 June 2018. The measures apply to EU persons and EU based companies. They are limited to the territory of Crimea and Sevastopol. The EU [Council press release June 19, 2017](#)
 - **Санкції проти Росії - Суд ЄС залишив у силі** (15 червня 2017 року) санкції проти Генерального директора МІА "Россия сегодня", головного пропагандиста Кремля **Дмитра Кисельова**, які були введені у зв'язку з діями, які загрожують територіальній цілісності, суверенітету та незалежності України. Повідомляється, що Суд ЄС визнав обґрунтованими обмежувальні заходи Ради ЄС щодо Кисельова. Окрім того, суд зобов'язав Кисельова сплатити витрати відповідно до вимог. [Стаття Європейської Правди](#)
 - **Sanctions against Russia** - the Council of the EU prolonged (June 28, 2017) economic [sanctions](#) targeting specific sectors of the Russian economy in response to Russia's actions destabilising the situation in Ukraine until 31 January 2018. The EU [Council Press release June 28, 2017](#)
 - **EU macro-financial assistance to third countries in 2016** - the European Commission prepared (June 16, 2017) a [Report on the implementation of macro-financial assistance to third countries in 2016](#). This annual report was prepared in accordance with the Commission's information obligations as laid down in the various Council and joint European Parliament and Council decisions on MFA operations and underlined progress in the implementation of existing MFA programmes for Georgia, the Kyrgyz Republic, Tunisia and Ukraine.
- **19 AREA OF FREEDOM, SECURITY AND JUSTICE**
 - **European Public Prosecutor's Office** - 20 EU Member States reached a political agreement (June 08, 2017) on the establishment of the new European Public Prosecutor's Office under

EU enhanced cooperation. Following the European Parliament consent, the independent EU public prosecutor will be equipped with the power to investigate and prosecute criminal cases affecting the EU budget, such as corruption or fraud with EU funds, or cross-border VAT fraud. It will be an independent body specialised in fighting financial crime across the EU. [European Commission Press release](#)

- **Social security benefits for a national of non-EU country** - the Court of Justice of the EU [ruled](#) (21/06/17) that a national of a non-EU country holding a single work permit in a Member State enjoys, as a general rule, the social security benefits provided for nationals of that State. The Court pointed out that the right to equal treatment is the general rule and that the directive lists the derogations from that right which the Member States have the option of establishing. The directive precludes national legislation under which a national of a non-EU country holding a single work permit cannot receive a social security benefit. [The CJEU press release](#).

- **20 PEOPLE'S EUROPE**

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