

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

No. 9 (November/December 2016)

Dear Reader,

this is the 9th 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 26 November - 23 December. 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
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I. LEGAL ASPECTS OF EU-UKRAINE RELATIONS

- [ЄС знайшов вихід з кризи щодо Угоди про асоціацію з Україною. Повний текст рішення](#), Європейська правда
- [Нідерланди та асоціація: що затвердять в четвер у Брюсселі](#), Тарас Качка, для Європейської правди, 15 грудня 2016
- [Towards a Solution for the Ratification Conundrum of the EU-Ukraine Association Agreement?](#), Peter van Elsuwege, VerfassungsBlog, 16/12/2016
- [ЄС та експорт деревини. 5 міфів навколо мораторію](#), Посольство Європейського Союзу в Україні
- [ЄС заборонив імпорт птиці з України через пташиний грип](#), Європейська правда,
- [EU assistance to Ukraine - Special report of the European Court of Auditors. Euractive comment](#), Стаття “Європейської Правди”
- [Безвізовий запобіжник ЄС: Брюссель збільшує ціну розвороту реформ в Україні](#), Сергій Сидоренко, Європейська правда 14 грудня 2016

II. IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

- **3rd Association Council meeting between the European Union and Ukraine (19.12.2016)** - The Association Council welcomed the substantial progress achieved by Ukraine in the reform process since its last meeting, including approximation with EU norms and standards across the board. The EU welcomed the commitment and determined work of the Government of Ukraine on implementation of political and economic reforms during its first nine months, reaffirming resolute support for these efforts and encouraging their continuation in swift and sustainable manner. [Press release](#)
- **New EU - Ukraine agreements signed** - on the day of the Association Council with Ukraine, the following financing agreements were signed between the European Commission and the Ukrainian government:
 - financing agreement for Public Administration Reform (PAR) programme, a 104 million euro contribution to support policy development, civil service and human resource management;
 - financing agreements for four Cross Border Cooperation (CBC) programmes in which Ukraine participates;

- five agreements between Ukraine and the European Investment Bank, underlining the importance of further successful cooperation in line with the Memorandum of Understanding between the Government of Ukraine and the European Investment Bank.

Press release

- **Association Implementation Report on Ukraine** - joint report by the European Commission and European External Action Service. The joint report looks at important developments and reforms undertaken in line with the strategic priorities agreed between the EU and Ukraine as part of our Association Agenda. According to the report, Ukraine has implemented a number of reforms to curb corruption and to clean up the banking system, and has embarked on ambitious energy reforms, as well as strengthened democracy and the rule of law. There has been significant progress in other areas in the EU-Ukraine Association Agreement, parts of which have been provisionally applied since November 2014. Especially it can be seen in the areas of the adoption of constitutional amendments to the judiciary, the adoption of an ambitious human rights strategy and action plan, and the undertaking of decentralisation reforms. [EEAS press release](#) [Прес-реліз українською мовою](#)
- **“Lawmaking and implementation of the EU-Ukraine Association Agreement”, analytical review No 2**, November 2016, Parliamentary Expert Group on European Integration / **“Законотворчість і виконання Угоди про Асоціацію Україна-ЄС”, аналітичний огляд No 2**, листопад 2016 року, Парламентська експертна група з європейської інтеграції (ПЕГ)
- **Реальна євроінтеграція: як Україна виконує Угоду про асоціацію?**, Колонки Любов Акуленко, Координатор інформаційної кампанії "Сильніші разом", 20 грудня 2016
- **Виконання Угоди про асоціацію: Україна застрягла в процесі**, Любов Акуленко, Дмитро Науменко, Європейська правда, 20 грудня 2016
- **Уповноважені економператори: чому вони потрібні та як не повторити помилок Молдови**, Європейська правда, Любов Акуленко, Антон Мельник, Світлана Майструк
- **Євроінтеграція у Раді: бізнесу додадуть обмеженої відповідальності**, Денис Черніков, Парламентська експертна група з євроінтеграції, 20 грудня 2016, Європейська правда
- **The Deep and Comprehensive Free Trade Area: Obstacles on the Way Forward**, article by Taras Kovalchuk, Legal assistant, Asters law firm, VoxUkraine

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**

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- **02 CUSTOMS UNION AND FREE MOVEMENT OF GOODS**

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- **03 AGRICULTURE**

- **Common catalogue of varieties of vegetable species — 35th complete edition** published in accordance with the provisions of Article 17 of Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed.

Directive 2002/55/EC is mentioned on the list of EU legal acts (ANNEX XXXVIII TO CHAPTER 17 of the AA, AGRICULTURE AND RURAL DEVELOPMENT) that constitute the legislative references when gradual approximation of legislation in a specific sector or product is considered by the Ukrainian side.

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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** - the European Commission [has fined](#) Crédit Agricole, HSBC and JPMorgan Chase € 485 million for euro interest rate derivatives cartel. The banks colluded on euro interest rate derivative pricing elements, and exchanged sensitive information, in breach of EU antitrust rules. In December the Commission's investigation started with unannounced inspections in October 2011. The Commission reached a settlement with Barclays, Deutsche Bank, RBS and Société Générale.
- **Antitrust** - the European Commission [has fined](#) Sony, Panasonic and Sanyo a total of €166 million. The companies and Samsung SDI in breach of EU antitrust rules coordinated prices and exchanged sensitive information on supplies of rechargeable lithium-ion batteries, used in laptops and mobile phones. Samsung SDI was not fined as it revealed the existence of the cartel to the Commission. All companies acknowledged their involvement in the cartel and agreed to settle the case. [Euractiv comment](#)
- **State aid - the [European Commission approved](#) auction scheme for electricity from renewable sources in Germany.** The European Commission has found amendments to the German renewable energy scheme to be in line with EU state aid rules. As of 2017 support will mainly be granted through auctions. This will promote the steady deployment of renewable energy whilst maintaining competition in the German energy market.
- **State aid - [Judgment of the EU Court of Justice in joined cases C-164/15P and C-165/15P Commission v Aer Lingus Ltd, Ryanair Designated Activity Company and Ireland.](#)** The Court confirmed that Ireland must recover the sum of € 8 per passenger from airlines benefiting from unlawful State aid. The difference between the lower and normal rates of the Irish air travel tax constitutes unlawful aid which must be recovered regardless of the benefit the airlines actually derived from the aid. [Press release](#)

- **09 TAXATION**

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

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- **11 EXTERNAL RELATIONS**

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- **12 ENERGY**

- **Clean Energy package** - the European Commission presented ([communication Clean Energy For All Europeans](#)) package of significant measures (including the long-term ones) to keep the European Union competitive as the clean energy transition is changing the global energy markets. The EU has committed to cut CO2 emissions by at least 40% by 2030 while modernising the EU's economy and delivering on jobs and growth for all European citizens. The new proposals have three main goals: a) putting energy efficiency first, b) achieving global leadership in renewable energies and c) providing a fair deal for consumers. [Press release](#).

[Specific proposals](#) of the European Commission concern inter alia the following areas covered by the EU-Ukraine Association Agreement:

- Electricity market and consumers
- Energy Efficiency Directive
- Energy efficiency of buildings
- Ecodesign
- Renewables & bioenergy sustainability
- Governance of the Energy Union

At the same time the European Commission presented a number of evaluation reports on EU legal acts that should be implemented by Ukraine according to the Association Agreement.

- **Renewable energy** - [Trends and projections in Europe 2016](#) – report of the European Environment Agency (EEA)
- **Energy prices** – the European Commission [Report on Energy prices and costs in Europe](#)
- **Intergovernmental Agreements in the field of energy** - Negotiators of the European Parliament and the Council [agreed](#) (7/12/2016) on having Intergovernmental Agreements in the field of gas and oil assessed by the Commission before they are signed. The European Commission welcomed the deal with the bloc's 28 nations and the European Parliament as a boost in its

drive for a single EU energy market and to curb reliance on Russian gas.
[Euractive comment](#)

- **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**

- **Food safety** – The European Commission presented the [Report on food and food ingredients treated with ionising radiation for the year 2015](#) based on Member States checks carried out in ionising irradiation facilities, including, in particular, the categories and quantities of foodstuff treated with ionising radiation and the doses administered, and the results of checks carried out at product marketing stage, according to Article 7(3) of Directive 1999/2/EC on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation.

According to “[Comprehensive Strategy for the implementation Chapter IV \(Sanitary and Phytosanitary Measures\)](#)” (point 25) the Government of Ukraine intends to implement Directive 1999/2 fully by the end of 2020.

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

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- **17 LAW RELATING TO UNDERTAKINGS**

- **Financial services** - The European [Commission Communication on the call for evidence: EU regulatory framework for financial services](#)

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- **18 COMMON FOREIGN AND SECURITY POLICY**

- **EU sanctions against Russia** - [The EU General Court confirmed](#) the fund-freezing sanctions imposed on Arkady Rotenberg for the period 2015-2016 and

it annulled the freezing of funds for the period 2014-2015. The sanctions are directed against natural and legal persons whose actions undermine or threaten the territorial integrity, sovereignty and independence of Ukraine. [Press release](#).

- **EU sanctions against Russia** - The EU Council [prolonged](#) (19/12/2016) the economic sanctions targeting specific sectors of the Russian economy until 31 July 2017.
- **European Defence Action Plan** - the European Commission has proposed (30/12/2016) a European Defence Fund and other actions to support Member States' more efficient spending in joint defence capabilities, strengthen European citizens' security and foster a competitive and innovative industrial base. [Press release](#)

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

- **Rule of Law in Poland** - the European Commission issued (21/12/2016) complementary Recommendation to Poland. the European Commission discussed the state of play of the ongoing procedure concerning the Rule of Law in Poland and decided to issue a complementary Rule of Law Recommendation, taking into account the latest developments in Poland that have occurred since the Commission's Recommendation of 27 July 2016. The Commission considers that whereas some of the issues raised in its last Recommendation have been addressed, important issues remain unresolved, and new concerns have arisen in the meantime. The Commission also considers that the procedure which led to the appointment of a new President of the Tribunal raised serious concerns as regards the rule of law. [Press release](#) [Euractiv comment](#)
- **Recommendations on football matches safety** - [Council Resolution concerning an updated handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved](#) ('EU Football Handbook')
- **EU-U.S. Data Protection "Umbrella Agreement"** - the European Parliament (1/12/2016) and the EU Council (2/12/2016) [decided on the conclusion](#) of the EU-US data protection "Umbrella Agreement". The Agreement puts in place a comprehensive high-level data protection framework for EU-US law enforcement cooperation. The agreement covers all personal data (for example names, addresses, criminal records) exchanged between the EU and the US for the purpose of prevention, detection, investigation and prosecution of criminal offences, including terrorism. The Umbrella Agreement will provide safeguards and guarantees of lawfulness for data transfers, thereby strengthening fundamental rights, facilitating EU-US law enforcement cooperation and

restoring trust.

- **Data retention - judgment of the EU Court of Justice in Joined Cases C-203/15 and C-698/15.** According to the judgement, the Members States may not impose a general obligation to retain data on providers of electronic communications services. EU law precludes a general and indiscriminate retention of traffic data and location data, but it is open to Members States to make provision, as a preventive measure, for targeted retention of that data solely for the purpose of fighting serious crime, provided that such retention is, with respect to the categories of data to be retained, the means of communication affected, the persons concerned and the chosen duration of retention, limited to what is strictly necessary. Access of the national authorities to the retained data must be subject to conditions, including prior review by an independent authority and the data being retained within the EU. [Press release Reuters article](#)

- **20 PEOPLE'S EUROPE**

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IV. EU law and EU legal approximation tools

- **EU Law: Better Results through Better Application - [Communication from the European Commission on the application of the EU law by the EU Member States](#)** including on infringement procedure (Article 158 of the EU Treaty). The Communication sets out how the Commission will step up its efforts on the application, implementation and enforcement of EU law. It also gives an overview of other action the Commission will take to help the Member States and the public ensure that EU law is applied effectively.
- **[Application of the EU law](#)** - newly designed website of the European Commission
- **[Eur-lex online tutorials](#)** on how to use EUR-Lex

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.