

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

No. 12 (March 2017)

Dear Reader,

this is the 12th 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 1-31 March 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

- **Скасовано антидемпінгове мито щодо імпорту українських сталевих канатів до Європейського союзу.** В офіційному віснику Європейського Союзу було опубліковано повідомлення (8/02/2017) про скасування з 10 лютого 2017 року антидемпінгового мита щодо імпорту сталевих канатів з України. [Прес-реліз Мінекономрозвитку](#), 8 лютого 2017



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- **The EU Council confirmed (2/03/2017) agreement on visa liberalisation for Ukrainian citizens.** On 2 March 2017, EU ambassadors confirmed, on behalf of the Council, the informal agreement reached on 28 February 2017 between the Maltese Presidency and the European Parliament on visa liberalisation for Ukrainians. The agreement provides for visa-free travel for Ukrainian citizens when travelling to the EU for a period of stay of 90 days in any 180-day period.
- **The EU Council prolonged (13/03/2017) sanctions over actions against Ukraine's territorial integrity until 15 September 2017.** The restrictive measures are prolonged for a further six months over actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. [EU Delegation to Ukraine Press release](#); [Стаття «Європейської правди»](#), 14 березня 2017; [Стаття «Європейської правди»](#), 2 березня 2017; [Стаття «Європейської правди»](#), 4 березня 2017
- **Гібралтар ні до чого. Чи готова Україна до відкритого неба з ЄС?** В уряді заявили про готовність імплементувати угоду в односторонньому порядку. [Стаття «Європейської правди»](#), 3 березня 2017
- **EU and Crimea - EU External Action Service published (17/3/2017) factsheet on the EU non-recognition policy for Crimea and Sevastopol.** It covers the background information, issues of asset freezes and visa bans, restriction imposed on Crimea and Sevastopol, guidelines for the Schengen visa application etc.
- **First EU-Ukraine high-level industrial and regulatory dialogue** - the first meeting of the EU-Ukraine high-level industrial and regulatory dialogue [took place in Brussels \(2/3/2017\)](#).
- **Naftogaz of Ukraine has filed a lawsuit (29/3/2017) in the EU Court of Justice (General Court) demanding to cancel the decision of the European Commission from 28 October 2016 to expand the capacity of the OPAL gas pipeline.** [Interfax-Ukraine article](#); [Стаття «Європейської правди»](#)

II. IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

- Кабінет Міністрів України опублікував (01/03/2017) **Звіти про виконання Угоди про асоціацію між Україною та ЄС.**
- **Проект Закону України «Про стратегічну екологічну оцінку».** 21 лютого 2017 року у парламенті групою депутатів був зареєстрований проект закону «Про стратегічну екологічну оцінку». [Публікація Resource and Analysis Centre «Society and Environment»](#), 3 березня 2017
- **Слабкість ЄС та шахрайство Києва: чому спотворюють євроінтеграційні закони,** [Стаття «Європейської правди»](#), 7 березня 2017
- **Пільги для електромобілів. Які з них відповідають законодавству ЄС?** Огляд законопроектів "Про внесення змін до Податкового кодексу України щодо масштабного розвитку ринку електромобілів в Україні" №5494 та "Про внесення змін до Податкового кодексу України щодо стимулювання розвитку електромобілів" №5494-1. [Стаття «Європейської правди»](#), 20 березня 2017
- **The Energy Community Secretariat published (27/03/2017) a report on Ukrainian Gas Sector Reform Implementation Plan.** The Report provides a

comprehensive assessment of Ukraine's 2-year progress with respect to the Plan's implementation.

- Кабінет Міністрів України затвердив (10/03/2017) новий **Технічний регламент** обмеження використання деяких небезпечних речовин в електричному та електронному обладнанні. Технічний регламент розроблено на основі **Директиви 2011/65/ЄС** Європейського Парламенту та Ради від 8 червня 2011 р. про обмеження використання деяких небезпечних речовин в електричному та електронному обладнанні.
- Кабінет Міністрів України прийняв **рішення** (10/03/2017) вжити заходів щодо вилучення з обігу товарів, які імітують продовольчі товари та становлять загрозу для здоров'я та безпеки споживачів, особливо дітей. Рішення відповідає євроінтеграційним зобов'язанням України, в частині імплементації положень **Директиви Ради 87/357/ЄЕС** від 25 червня 1987 р. про зближення законодавств держав-членів стосовно товарів, що не відповідають їх зовнішньому вигляду та становлять загрозу для здоров'я та безпеки споживачів.
- Кабінет Міністрів України схвалив **Стратегію розвитку** (16/03/2017) туризму та курортів на період до 2026 року. Запровадження Стратегії передбачається за напрямками, серед яких є також імплементація законодавства Європейського Союзу у сфері туризму.
- Міністерство економічного розвитку і торгівлі України **опублікувало інформацію** щодо імплементації Угоди про асоціацію в торгівельній та економічній сферах.
- Міністерство енергетики та вугільної промисловості України **опублікувало інформацію** про хід і результати виконання Програми діяльності Кабінету Міністрів України у 2016 році щодо виконання зобов'язань, передбачених Угодою про асоціацію між Україною та Європейським Союзом.
- Кабінет Міністрів України схвалив (29/3/2017) **Концепцію державної політики у сфері захисту прав споживачів до 2020**. Одним із головних напрямків Концепції є адаптація національного законодавства до законодавства Європейського Союзу відповідно до зобов'язань, передбачених Угодою про асоціацію.

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**
 - **The future of the EU - The European Commission presented (1/3/2017) the **White Paper on the future of Europe: Avenues for unity for the EU at 27****. The White Paper sets out five scenarios, each offering a glimpse into the potential state of the Union by 2025 depending on the choices Europe will make (see Annex). The scenarios cover a range of possibilities and are illustrative in nature. They are neither mutually exclusive, nor exhaustive:

- Scenario 1: Carrying On
- Scenario 2: Nothing but the Single Market
- Scenario 3: Those Who Want More Do More
- Scenario 4: Doing Less More Efficiently
- Scenario 5: Doing Much More Together
- [Стаття «Європейської правди»](#), 1 березня 2017
- **“The Commission’s Decision on ‘Less EU’ in Safeguarding the Rule of Law: A play in four acts”**, Petra Bárd, Sergio Carrera, Centre for European Policy Studies. In its report of 25 October 2016, the European Parliament invited the European Commission to establish a new EU mechanism on the rule of law, fundamental rights and democracy, which the Commission has declined to take up. This paper argues that this decision constitutes the final act of what it calls a “rule of law” play, in which the European Commission is shirking its responsibilities and rendering itself irrelevant in upholding and safeguarding the rule of law in the EU.
- **Rome Declaration (25/03/2013) of the Leaders of 27 Member States and of the European Council, the European Parliament and the European Commission.** The Declaration lays down the Rome agenda, i.e. the directions in which the EU commits to work closely in the nearest decade. [Стаття «Європейської правди»](#), 25 березня 2017
- **Brexit: UK triggered Article 50 TFEU.** The United Kingdom submitted (29/03/2017) [the letter](#) from the British Prime Minister, Theresa May, notifying the United Kingdom's intention to leave the European Union. [Statement by the European Council](#); [Заява Європейської Ради](#)
- **02 CUSTOMS UNION AND FREE MOVEMENT OF GOODS**
- **03 AGRICULTURE**
- **04 FISHERIES**
- **05 FREEDOM OF MOVEMENT FOR WORKERS AND SOCIAL POLICY**
 - **Non-discrimination principle - The Court of Justice of the European Union ruled (14/03/2017) that internal company rule prohibiting wearing of religious symbols does not constitute direct discrimination (14/03/2017).** However, in the absence of such a rule, the willingness of an employer to take account of the wishes of a customer no longer to have the employer's services provided by a worker wearing an Islamic headscarf cannot be considered an occupational requirement that could rule out discrimination; [Full text of the judgement in case C-157/15](#); [Full text of the judgement in the case C-188/15](#); [Стаття «Європейської правди»](#), 14 березня 2017
- **06 RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES**

- **07 TRANSPORT POLICY**

- **Air passenger rights** - Commission gives [guidance to consumers on the role of claim agencies](#). The European Commission has published new information explaining to all travellers the role of claim agencies (business offering to claim compensation for disrupted travel on behalf of the passenger) for air passenger rights.

- **08 COMPETITION POLICY**

- **State aid - The EU General Court confirmed (1/3/2017) that France must recover €220 million in aid granted to SNCM in respect of certain maritime transport services it provided between Marseille and Corsica.** The Commission found, contrary to what was submitted Applicants, that the first of conditions for costs to not be classified as state aid was not satisfied in relation to the additional service and that the second condition was not satisfied in relation to either of the services at issue. The General Court has confirmed the Commission's analysis. [Full text of the judgements in case T-366/13](#); [Full text of the judgement T-454/13](#)
- **State aid - The European Commission concluded (6/03/2017) that Hungary's financial support for the construction of two new nuclear reactors in Paks (Paks II) involves state aid.** It has approved this support under EU state aid rules on the basis of commitments made by Hungary to limit distortions of competition. [Стаття «Європейської правди»](#), 6 березня 2017
- **Mergers - The General Court annulled (7/03/2017) the decision by which the Commission refused to authorise the merger between UPS and TNT in the express small package delivery services sector.** The ground for annulment is a procedural irregularity. The Commission infringed UPS' rights of defence by relying on an econometric analysis which hadn't been discussed in its final form during the administrative procedure. [Full text of the judgement in the case T-194/13](#)
- **Antitrust law - The European Commission fined (8/03/2017) car suppliers €155 million.** Germany's Mahle Behr, France's Valeo and four Japanese firms (Panasonic, Calsonic, Denso, Sanden) were accused on Wednesday (8 March) of taking part in one or more cartels. The six car component suppliers colluded to coordinate prices or markets, and exchanged sensitive information for the supply of climate control components and engine cooling components in the European markets.
- **Antitrust law - The Court of Justice of the EU upheld (9/03/2017) the fines imposed on Samsung SDI and Samsung SDI (Malaysia) for their participation in the cartel on the market for tubes for television sets and for computer monitors.** The Commission imposed fines totalling approximately €1.47 billion on seven undertakings which had participated in one or two separate cartels on the market for cathode ray tubes. The three undertakings brought an action before the EU General Court for the annulment of the Commission's decision. The ruling at hand dismisses the appeal and confirms the fines imposed jointly and severally on Samsung SDI and Samsung SDI (Malaysia). [Full text of the judgement in the case C-615/15 P](#)
- **Antitrust law - The European Commission invited (13/03/2017) comments**

from all interested parties on Gazprom commitments concerning Central and Eastern European gas markets. The commitments will enable cross-border gas flows at competitive prices. In the Commission's view, the commitments offered by Gazprom cover its competition concerns. They help to better integrate Central and Eastern European gas markets, facilitating cross-border gas flows at competitive prices. [Стаття «Європейської правди» 13 березня 2017](#); [Стаття «Європейської правди», 17 березня 2017](#)

- **Antitrust law - The European Commission re-adopted decision (17/03/2017) and fines air cargo carriers for price-fixing cartel.** The European Commission has re-adopted a cartel decision against 11 air cargo carriers and imposed a fine totalling € 776 465 000 for operating a price-fixing cartel. The Commission's original decision was annulled by the General Court on procedural grounds. Among the fined companies are Air Canada, Air France-KLM, British Airways, and others. [Стаття «Європейської правди», 17 березня 2017](#)
- **Antitrust law - The European Commission introduced (16/03/2017) new anonymous whistleblower tool.** A new tool to make it easier for individuals to alert the Commission about secret cartels and antitrust violations has been launched by the Commission. Individuals can now help anonymously in the fight against cartels and other anti-competitive practices. The protects whistleblowers' anonymity is protected through a specifically-designed encrypted messaging system that allows two way communications. [Стаття «Європейської правди», 28 березня 2017](#)
- **Mergers - The European Commission has approved (27/03/2017) under the EU Merger Regulation the proposed merger between US-based chemical companies Dow and DuPont.** The approval is conditional in particular on the divestiture of major parts of DuPont's global pesticide business, including its global R&D organisation. [EURACTIV comment, 27 March 2017](#)

- **09 TAXATION**

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

- **11 EXTERNAL RELATIONS**

- **12 ENERGY**

- **International energy contracts - The EU Council adopted a decision on establishing an information exchange mechanism with regard to intergovernmental energy agreements and non-binding instruments between member states and third.** The decision aims to enhance the transparency and consistency of the EU's external energy relations and to strengthen the EU's negotiation position vis-à-vis third countries.

- **13 INDUSTRIAL POLICY AND INTERNAL MARKET**

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

- **15 ENVIRONMENT, CONSUMERS AND HEALTH PROTECTION**
 - **Climate protection - The EU Council [adopted \(6/03/2017\)](#) conclusions on EU climate and energy diplomacy as part of the implementation of the EU Global Strategy.** The objective is to strengthen synergies and links between the relevant elements of EU climate diplomacy and energy diplomacy and to establish priorities for 2017.

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

- **17 LAW RELATING TO UNDERTAKINGS**

- **18 COMMON FOREIGN AND SECURITY POLICY**
 - **Defence - The EU foreign ministers [approved \(6/03/2017\)](#) the creation of a headquarters for its military operations abroad.** EU foreign affairs chief Federica Mogherini said it would provide a "more efficient approach to the existing military training missions we have". [Стаття «Європейської правди»](#), 6 березня 2017
 - **Sanctions - The Court of Justice of the EU [ruling \(28/03/2017\)](#) in Rosneft case.** The Court found that restrictive measures adopted by the Council in response to the crisis in Ukraine against certain Russian undertakings, including Rosneft, are valid. The judgment also clarifies for the first time some aspects of the CJEU's jurisdiction over the Common Foreign and Security Policy. [Full text of the judgement in the case](#); [Стаття «Європейської правди»](#); [EU Law Analysis blog post](#)

- **19 AREA OF FREEDOM, SECURITY AND JUSTICE**
 - **Civil law - Civil law. European judicial cooperation.** The [updated e-book](#) featuring both legal instruments and comments by high-profile academics, judges and officials from several EU member states. The edition includes a completely new chapter on the account preservation order procedure, and a thoroughly revised chapter on insolvency proceedings.
 - **Rights of the child - The EU Council [adopted \(6/03/2017\)](#) EU guidelines for the promotion and protection of the rights of the child.** The Council adopted EU Guidelines for the promotion and protection of the rights of the child. This 2017 version is a revision of the 2007 EU guidelines. The guidelines recall international standards on the rights of the child and provide comprehensive guidance as well as concrete ways to promote effectively and protect the rights of the child.
 - **EU external borders - The EU Council [adopted \(7/03/2017\)](#) regulation to reinforce checks at external borders.** The amendment obliges member states to carry out systematic checks against relevant databases on all persons, including those enjoying the right of free movement under EU law (i.e. EU

citizens and members of their families who are not EU citizens) when they cross the external borders. This obligation shall apply at all external borders (air, sea and land borders), both at entry and exit.

- **Terrorism - The EU strengthened (7/03/2017) rules to prevent new forms of terrorism.** New rules adopted by the Council on 7 March 2017 will help prevent terrorist attacks by criminalising acts such as undertaking training or travelling for terrorist purposes, as well as organising or facilitating such travel. They also strengthen the rights of the victims of terrorism. The new rules, in the form of a Directive, strengthen and widen the scope of the existing legislation (Framework Decision 2002/475/JHA in particular).
- **Humanitarian visas - The Court of Justice of the EU ruled (7/03/2017) that Member States are not required, under EU law, to grant a humanitarian visa to persons who wish to enter their territory with a view to applying for asylum.** They, however, remain free to do so on the basis of their national law. [Full text of judgement](#), [Стаття «Європейської правди»](#), 7 березня 2017; [EU law blog post](#); [Associated Press article](#); [CEPS publication](#)
- **Non-discrimination - What is the point of minimum harmonization of fundamental rights? Some further reflections on the Achbita case**, EU Law Analysis Blog, 21st March 2017
- **Personal data protection - The Court of Justice of the EU considered (9/03/2017) that there is no right to be forgotten in respect of personal data in the companies register.** Member States cannot guarantee that natural persons whose data are included in the company register have the right to obtain, after a certain period of time from the dissolution of the company, the erasure of personal data concerning them. Such interference is recognized by the Court as proportionate in the light of right to data protection under Charter of Fundamental Rights. Upon expiry of a sufficiently long period after dissolution of the company concerned, however, Member States may provide for restricted access to such data by third parties in exceptional cases. [Full text of the judgement in the case C-398/15](#)
- **Security Union - the European Commission published Fifth progress report towards an effective and genuine Security Union (2/03/2017).** The fifth monthly report on the progress made towards building an effective and genuine Security Union and covers developments under two main pillars: tackling terrorism, organised and cyber crime and the means that support them; and strengthening our defences and building resilience against those threats.

- **20 PEOPLE'S EUROPE**

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