



ОФІС ВІЦЕ-ПРЕМ'ЄРА З ПИТАНЬ  
ЄВРОПЕЙСЬКОЇ ТА  
ЄВРОАТЛАНТИЧНОЇ ІНТЕГРАЦІЇ

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

**No. 10 (December 2016 / January 2017)**

*Dear Reader,*

*this is the 10th 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 23 December 2016 - 31 January 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*



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## I. LEGAL ASPECTS OF EU-UKRAINE RELATIONS

- **Уряд дозволив вводити спецмита на імпорт автомобілів з ЄС**, Європейська правда, 28/12/2016  
*According to Article 44 of the Association Agreement ('Safeguard measures on passenger cars') 'Ukraine may apply a safeguard measure in the form of a higher import duty on passenger cars originating in the EU Party under tariff heading 8703 (hereinafter referred to as the "product"), as defined in Article 45 of this Agreement'.*
- **5 кроків до відкритого неба з ЄС. Як змусити запрацювати заблоковану угоду**, Віктор Довгань, заступник глави Мінінфраструктури, Європейська правда,
- **Безвіз. Що складніше: отримати чи втримати?** Ірина Сушко, Катерина Кульчицька, Дзеркало тижня, 28 січня,

## II. IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

- Міністерство фінансів України: **Україна розпочинає впровадження європейських правил транзиту товарів**
- **Benefits and Costs of DCFTA: Evaluation of the Impact on Georgia, Moldova and Ukraine**, Amat Adarov and Peter Havlik, Wiener Institut für Internationale Wirtschaftsvergleiche, Bertelsmann Stiftung
- **Євроінтеграція у Раді: що очікувати від нового парламентського року**, Денис Черніков, Парламентська експертна група з євроінтеграції, Європейська правда
- The **EU Council decision on EU position within the EU-Ukraine Association Committee in trade configuration**. The decision has two key aims:
  - replacing the Association Agreement Annex XXI on public procurement (due to adoption of 3 EU public procurement directives after signing of the Association Agreement)
  - approving, on behalf of the EU, the comprehensive public procurement roadmap (**СТРАТЕГІЯ реформування системи публічних закупівель ("дорожня карта")**) approved by the Cabinet of Ministers of Ukraine on 24th February 2016
- **Next step in the Energy Community proceeding against Ukraine on Environmental Impact Assessment** - On 12 January 2017, the Secretariat sent a Reasoned Opinion to Ukraine in Case ECS-13/16. The Reasoned Opinion follows the Opening Letter, which was sent on 6 September 2016 and addresses the lack of complete transposition of the Environmental Impact Assessment Directive. The deadline for Ukraine, as set by its Accession Protocol to the Energy Community

Treaty, expired on 1 January 2013. On 4 October 2016, the Verkhovna Rada of Ukraine adopted a Law on Environmental Impact Assessment, which could have addressed the Secretariat's concerns as described in the Opening Letter. However, on 31 October 2016 the President of Ukraine refused to sign it and referred it back to the Verkhovna Rada for reconsideration. Ukraine has two months to react to the allegation of non-compliance with Energy Community law as set out in the Reasoned Opinion.

- **Євроінтеграція та тривалість життя. Шість кроків, які має пройти Україна**, Катерина Березовська, експерт офісу депутата Європейського парламенту, Європейська правда

### 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**

- **Europe's Other Democratic Deficit: National Authoritarianism in Europe's Democratic Union**, prof. R. Daniel Kelemen, Government and Opposition

This article argues for a radical recasting of the European Union democratic deficit debate. Critics have long argued that the EU suffers from a democratic deficit and that growing EU power undermines national democracy. But recent backsliding on democracy and the rule of law in Hungary and Poland reminds us that grave democratic deficits can also exist at the national level in member states and that the EU may have a role in addressing them.

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

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- **03 AGRICULTURE**

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- **04 FISHERIES**

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- **05 FREEDOM OF MOVEMENT FOR WORKERS AND SOCIAL POLICY**

- **Safety and health at work** - The European Commission [communication](#) - "Safer

and Healthier Work for All - Modernisation of the EU Occupational Safety and Health Legislation and Policy". The Commission has proposed three key actions:

- 1) Stepping up the fight against occupational cancer through legislative proposals accompanied by increased guidance and awareness-raising;
- 2) Helping businesses, in particular micro-enterprises and SMEs, comply with occupational safety and health rules;
- 3) Cooperating with Member States and social partners to remove or update outdated rules and to refocus efforts on ensuring better and broader protection, compliance and enforcement on the ground.

*The Association Agreement sets different 2 to 10 years' deadlines for the implementation of EU directives on health and safety at work by Ukraine (Annex XL TO Chapter 21 Cooperation on Employment, social policy and equal opportunities)*

## ● 06 RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

- **Free movement of services** - the European Commission presented (11/1/2017) [a package of measures](#) that will make it easier for companies and professionals to provide services in the [Single Market Strategy](#). The four concrete initiatives adopted are:
  - A new European Services e-card: A simplified electronic procedure will make it easier for providers of business services (e.g. engineering firms, IT consultants, organisers of trade shows) and construction services to complete the administrative formalities required to provide services abroad.
  - A proportionality assessment of national rules on professional services: the Commission is proposing to streamline and clarify how Member States should undertake a comprehensive and transparent proportionality test before adopting or amending national rules on professional services.
  - Guidance for national reforms in regulation of professions with high growth and jobs potential: architects, engineers, lawyers, accountants, patent agents, real estate agents and tourist guides.
  - Improved notification of draft national laws on services.

## ● 07 TRANSPORT POLICY

- **Port services** - A new set of rules to increase the financial transparency of ports and create clear and fair conditions for access to the port services market

throughout Europe [was formally adopted by the EU Council on 23 January 2017](#). The regulation will make it easier for new providers of certain port services to enter the market. It will create a more level playing field and reduce legal uncertainties for ports, port service providers and investors. This should encourage investment in ports, improve the quality of services provided to port users, and even help reduce prices.

- **08 COMPETITION POLICY**

- **Antitrust** - The EU Court [has confirmed](#) (Case C-623/15P) the fine of €82 million imposed jointly and severally on Toshiba and Panasonic/MTPD for their participation in the cartel on the market for tubes for television set. The Court [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**

- **Principles of conclusion of EU external trade agreements** - [“TRADING TOGETHER - For Strong and Democratically Legitimized EU International Agreements”](#) - Declaration of over 60 European academics, from more than 15 European countries. The signatories develop five proposals to make the EU stronger, less complex, with more effective democratic control, and better access for its citizens. On 25 January 2017 this Declaration was handed over to the European Parliament, the European Commission and the Maltese Presidency of the Council. [Euractive comment](#)

- **12 ENERGY**

- [Четвертий енергопакет: до чого варто готуватися ЄС та Україні](#), Андрій Білоус, DiXi Group, Європейська правда, 23 січня 2017

- **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**

- **Maritime environment** - the European Commission [Report](#) assessing Member States' monitoring programmes under the Marine Strategy Framework Directive (2008/56/EC). The Commission's report and its accompanying [Staff Working Document](#) contain the Commission's findings and provides guidance on changes needed, globally and for each Member State, including per descriptor.

*According to the Association Agreement (Annex XXX to Chapter 6 Environment), Ukraine should adopt national legislation transposing Directive 2008/56 and designate competent authorities by October 2016 (within 2 years of the entry into force of the AA). Certain provisions of the directive should be implemented within 4, 6 and 7 years of the entry into force of the AA.*

- **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**

- **EU Sanctions against Russia** - The General Court upholds the freezing of funds of the Russian company Almaz-Antey ([Judgement in the Case T-255/15 Joint-Stock Company 'Almaz-Antey' Air and Space Defence Corp. v Council](#)). In the judgment (the first concerning the freezing of funds of a Russian company in connection with the crisis in Ukraine, the Court dismisses the action brought by Almaz-Antey and thus upholds the freezing of that company's funds. The Court finds, first of all, that the Council did not act disproportionately in deciding to freeze the funds of entities supporting, materially or financially, actions of the Russian Government which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine. The freezing of funds of such entities makes it possible to reach the objective to prevent the escalation of the conflict in Ukraine. By targeting, first, persons and entities responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine and then, secondly, persons and entities materially or financially supporting such actions, the Council could legitimately expect that those actions cease or become more costly for those who undertake them, in order to promote a peaceful settlement of the crisis in Ukraine. Furthermore, such a freeze is necessary, given that alternative and less restrictive measures, such as a system of prior

authorisation or an obligation to justify, a posteriori, how the funds transferred were used, are not as effective in achieving the goal pursued, particularly given the possibility of circumventing such restrictions.

Comments and articles: [Європейська правда](#); [KyivPost](#);

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

- **Data Protection** - the European Commission communication: [Exchanging and Protecting Personal Data in a Globalised World](#)
- **Data Protection** - The [European Commission Decision 2016/1250 on the adequacy of the protection provided by the EU-U.S. Privacy Shield](#)

- **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.*