

Урядовий офіс з питань європейської
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Review of European Union Law and EU legal approximation developments and analyses

No. 11 (February 2017)

Dear Reader,

this is the 11th 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 1-28 February 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

- **Visa-free regime for Ukraine** – the representatives of the European Parliament, European Commission and the Council of the EU (trialogue) informally agreed (28/2/2017) on principles of the visa-free (up to 90 days) regime for Ukrainian citizens. Once the change enters into force, and provided they have biometric passports, the Ukrainian citizens will be able to enter the EU for up to 90 days in any 180-day-period for business, tourist or family purposes. Before granting this visa waiver, EU member states revised the visa waiver suspension mechanism to allow visas to be reintroduced more easily in exceptional cases. This revision was approved on 27th February by the EU Council. [EP press release](#); [Стаття “Європейської Правди”](#)



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- Верховна Рада ратифікувала (8/2/2017) угоду з Європейською організацією з питань юстиції ([Проект Закону 0122](#)).
- The European Commission has informed (8/2/2017) on the expiry of anti-dumping measures steel ropes and cables originating in Ukraine ([EU Official Journal](#)). [ЄС скасував антидемпінгове мито на імпорт українських сталевих канатів, що діяло 19 років](#), УНІАН, 8 лютого 2017; Прес-реліз Мінекономрозвитку
- [В умовах пташиного грипу: між Україною і ЄС офіційно введений принцип регіональних обмежень](#), УНІАН, 8 лютого 2017
- Верховна Рада ратифікувала 22 лютого угоду між урядом України та Європейським Союзом про участь України в програмі "Конкурентоспроможність підприємств малого і середнього бізнесу" ([COSME](#)). Стаття "Європейської Правди"
- [Нижня палата парламенту Нідерландів \(Палата представників\) офіційно підтвердила ратифікацію Угоди про асоціацію з Україною \(23/02/2017\)](#), Європейська правда, 23 лютого 2017
- [ЄС затвердив механізм призупинення, що розблокує безвіз для України](#), Європейська правда, 27 лютого 2017, [Visas: Council adopts \(27/2/2017\) a revision of the visa waiver suspension mechanism, EU Council press release](#)

II. IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

- [Ніколас Бердж: Якщо влада не показує приклад у дотриманні законодавства з питань інтелектуальної власності, то чого чекати від решти громадян і приватних компаній?](#) Микола Бабич, УНІАН, 1 лютого 2017. Керівник торгово-економічного відділу Представництва ЄС в Україні Ніколас Бердж в інтерв'ю УНІАН розповів, як покласти край процвітанню інтернет-піратства, чому захист прав інтелектуальної власності важливий для розвитку економіки та чим загрожує Україні порушення авторських прав.
- [Моніторинговий звіт про просування України у виконанні Угоди про Асоціацію з Європейським Союзом у сферах енергетики та довкілля за грудень 2016 року](#), Громадська організація «ДІКСІ ГРУП», Громадянська мережа «ОПОРА», Всеукраїнська громадська організація «Енергетична Асоціація України», Ресурсно-аналітичний центр «Суспільство і довкілля», асоціація «Європейсько-Українське агентство»
- [Небезпечна держдопомога. Що зміниться з адаптацією законодавства ЄС про конкуренц](#), Олександра Булана, Інститут економіки та прогнозування, Європейська правда, 2 лютого 2017;

- **Крок до перемоги та три уроки позаду: що лишається на перешкоді Угоді про асоціацію**, Анатолій Марциновський, Сергій Сидоренко, Європейська правда, 24 лютого 2017.
- **Євроінтеграція та тривалість життя. Шість кроків, які має пройти Україна**, Катерина Березовська, експерт офісу депутата Європейського парламенту, Європейська правда, 7 лютого 2017
- **Представництво ЄС закликає Раду ухвалити закон про держконтроль харчових продуктів**, Європейська правда, 7 лютого 2017
- **Євроінтеграція у Раді: як штовхають закон про електронні комунікації, що суперечить Угоді з ЄС**, Денис Черніков, координатор Парламентської експертної групи з євроінтеграції, Європейська правда, 6 лютого 2017,
- **Україна інтегрується в європейську газотранспортну систему. Чи є прогрес?**, Микола Войтів, VoxUkraine для Європейської правди, 27 лютого 2017.

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 Parliament adopted three resolutions (16/2/2017)** exploring the future development of the European Union. The resolutions are part of a package that aims to clarify Parliament's position on the future of the EU, in time for the 60th anniversary of the Treaty of Rome. The first resolution, drafted by Mercedes Bresso (S&D, IT) and Elmar Brok (EPP, DE) focuses on making the most of the existing Lisbon Treaty. The second resolution, by Guy Verhofstadt (ALDE, BE), looks at ways to move further than the current toolbox allows and suggests various reforms of the Lisbon Treaty, in the areas of economic governance, foreign policy, fundamental rights and transparency. In the third resolution, Reimer Böge (EPP, DE) and Pervenche Berès (S&D, FR) propose bringing the euro area economies closer together and making them more resilient to outside shocks.
- **Comitology** - The European Commission adopted (14/2/2017) [the proposal amending comitology procedures](#) applied in exceptional cases in which Member States are unable – and often unwilling - to agree among themselves on the content of measures implementing EU legislative acts. In these cases, the political responsibility for taking a final decision falls upon the Commission, obliging a decision to be taken without clear political backing from Member States. In 2015 and 2016, the Commission was legally obliged to adopt 17 acts which concerned the authorisation of sensitive products and substances such as glyphosate or

genetically modified organisms (GMOs), despite Member States being unable to take position either in favour or against the decisions. The Commission considers that it is necessary to ensure wider political accountability and ownership in these cases. Changes to the Comitology Regulation must be decided jointly by the European Parliament and the Council in the ordinary legislative procedure. The proposal will now be transmitted to both institutions. Until the Commission's proposal is adopted, the current rules remain in force. [Press release](#); [Comment on Verfassungsblog by M.Weimer](#)

- [Of the State of the \(European\) Union and of Trade Deals](#), the lecture of Eleanor Sharpston, Advocate General at the Court of Justice of the European Union at the Institute of European Law, University of Birmingham

- **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'](#)

According to the Association Agreement, Ukraine should implement a significant number of EU legal acts on safety and health at work by the the end of 2018 or 2022, depending on specific legal act (Annex XL to Chapter 21, Cooperation on Employment, Social Policy and Equal Opportunities)

- **06 RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES**

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- **07 TRANSPORT POLICY**

- **Road safety** - Commission proposes to modernise the **training of professional drivers**. The European Commission presented (1/2/2017) a [proposal](#) to update and clarify the rules on the initial qualification and periodic training of truck and bus drivers (amendment to the Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers and Directive 2006/126/EC on driving licences)

According to the Association Agreement (Annex XXXII to Chapter 7 Transport) Ukraine should implement the Directive's 2003/59 provisions for drivers engaged in international transport operations by the end of 2018 and for drivers engaged in national transport operations by the end of 2020.

- **08 COMPETITION POLICY**

- **Єврокомісія оштрафувала на 68 млн євро компанії з утилізації акумуляторів**, *Європейська правда*, 8 лютого 2017, [Press release of the European Commission](#)
- **Antitrust** – The European Commission [opened](#) (2/2/2017) **three investigations into suspected anticompetitive practices in e-commerce**. The three investigations aim to tackle the specific issues of retail price restrictions, discrimination on the basis of location and [geo-blocking](#). The [preliminary results](#) of the Commission's [competition sector inquiry](#) on e-commerce show that the use of these restrictions is widespread throughout the EU. The European Commission has launched three separate investigations to assess if certain online sales practices prevent, in breach of EU antitrust rules, consumers from enjoying cross-border choice and being able to buy consumer electronics, video games and hotel accommodation at competitive prices.

- **09 TAXATION**

- **Tax avoidance** - the [EU Council \(ECOFIN\)](#) [agreed](#) on new rules to help prevent tax avoidance via non-EU countries. The new rules should prohibit multinational companies from escaping corporate tax by exploiting differences between the tax systems of Member States and those of non-EU countries (so-called 'hybrid mismatches'). [Стаття “Європейської Правди”](#)

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

- **Free movement of capital** – [Accelerating the capital markets union: addressing national barriers to capital flows](#), the report published by the European Commission. The report is looking at how to tackle national barriers with a view to fostering the flow of cross-border investments in the EU.

- **11 EXTERNAL RELATIONS**

- **External competence of the EU** - an important opinion of the Court of Justice of the EU external competences ([OPINION 3/15](#)). The Court has interpreted the Treaty provision attributing the EU exclusive competence when the conclusion of an international agreement may affect 'common rules' or alter their scope (Article 3(2) of the Treaty on the Functioning of the EU). According to the Court judgement, the EU, acting on its own, may conclude the Marrakesh Treaty on access to published works for persons who are visually impaired. The Treaty may affect common EU rules relating to copyright protection. Unlike the EU directive 2001/29/EC on

copyright the Marrakesh Treaty lays down an obligation (not merely an option) to introduce an exception or limitation for the benefit of certain persons with disabilities. The Court thus considers that, once the treaty is concluded, all the Member States will be required to introduce the exception or limitation for persons with a disability. It follows that the body of obligations laid down by the Marrakesh Treaty falls within an area that is already covered to a large extent by 'common EU rules' and that the conclusion of the Treaty may affect those rules or alter their scope. Since the conclusion of the Marrakesh Treaty may affect the directive on copyright or alter its scope, the Court concludes that the EU has exclusive competence and that the treaty may be concluded by the EU acting on its own, without the participation of the Member States. [Press release](#)

- [Recent case law on external competences of the European Union: how Member States can embrace their own treaty](#), Centre for the Law of EU External Relations, CLEER PAPERS 2017/2, by Friedrich Erlbacher, Legal Advisor in the European Commission's Legal Service
- **CETA** - on 15 February, the European Parliament voted in favour of the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, concluding the ratification process of this deal at the EU level. [Press release](#)
- **Antidumping** - The EU General Court [confirmed](#) (28/2/2017) the validity of anti-dumping and anti-subsidy measures for imports of solar panels from China

- **12 ENERGY**

- **Renewable energy** - [Renewable Energy Progress Report of the European Commission](#) (1/2/2017) in accordance with the requirements set out in the Renewable Energy Directive. The report provides a comprehensive overview of renewable energy deployment in the EU. It also includes an assessment of administrative barriers, as well as biofuel sustainability.
- **Energy Union** - [Second Report of the European Commission on the State of the Energy Union](#). The Energy Union is a European priority project, identified by the Juncker Commission as one of the 10 political priorities 5 , in which five dimensions are closely interlinked: energy security, solidarity and trust; a fully integrated European energy market; energy efficiency contributing to moderation of demand; decarbonising the economy; and research, innovation and competitiveness.

- **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**

- **Implementation of EU waste legislation** – the European Commission published the [Report on the implementation of EU waste legislation for the period 2010-2012](#). The Report refers to the implementation of Directive 2008/98/EC on waste, Directive 86/278/EEC on sewage sludge, Directive 1999/31/EC on the landfill of waste, Directive 94/62/EC on packaging and packaging waste, Directive 2002/96/EC on waste electrical and electronic equipment (WEEE), and Directive 2006/66/EC on batteries and accumulators. The report is based on information Member States provided in their replies to the implementation questionnaires. In cases in which Member States did not provide the information requested, the report draws on other available sources of information such as European Environment Agency reports, information from Member State websites and replies submitted for previous reporting periods. [Detailed information on the implementation of individual directives](#).

According to the Association Agreement, Ukraine should implement the Directive 2008/98/EC on waste and Directive 1999/31/EC on the landfill of waste by the end of 2020 and 2021 respectively (Annex XXX to Chapter 6 Environment of the Association Agreement)

- **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**

- **The EU and Human Rights at the UN** - the EU Council adopted (27/2/2017) [conclusions on EU priorities at United Nations human rights fora in 2017](#). The Conclusions include inter alia the intention of the EU to continue supporting initiatives led by Ukraine addressing these issues within the Human Rights Council and the General Assembly, as well as to lend full support to the UN Human Rights Monitoring Mission in Ukraine. The EU will continue to call for the unrestricted access to Crimea and eastern Ukraine by established regional and international human rights monitoring mechanisms in order to overcome the current obstacles impeding them from carrying out their mandate.

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

- **The EU Council adopted (27/2/2017) a regulation on visa liberalisation for Georgians travelling to the EU for a period of stay of 90 days in any 180-day period**. The Council and the European Parliament now need to sign the adopted regulation. The text will then be published in the EU Official Journal and will enter into force 20 days later, at the same time as the new visa waiver suspension mechanism.

- **"The meaning of racial or ethnic origin in EU law: between stereotypes and identities"**, Report developed by European network of legal experts in gender equality and non-discrimination published by the European Commission Directorate-General for Justice and Consumers. The report provides an in-depth analysis of the conceptual background of the ground of racial or ethnic origin as well as its practical interpretation by international as well as national courts.
- **New European handbook on equality data**, - handbook published by the European Commission Directorate-General for Justice and Consumers. The new European handbook on equality data promotes equality and contributes to fight against discrimination in the EU by analysing why and what kind of data should be collected in relation to equality and discrimination.

- **20 PEOPLE'S EUROPE**

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IV. EU law and EU legal approximation tools

- The **collection of links to key EU law resources** on the EU portals, including on law-making procedures, drafting guides and registers of documents of all EU institutions

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