

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

No. 5 (July 2016)

Dear Reader,

this is the fifth issue of the review of current, important developments in EU law, EU legal analysis and EU legal approximation prepared in the framework of the project “[Support for the Implementation of the EU-Ukraine Association Agreement](#)”. This issue covers the 1st-31st July period. We hope you will find it useful. Your comments and contributions that could improve next issues of the review are welcome.

Some developments are reflected on daily basis on dedicated [Twitter profile](#).

*Project Team & Unit for Legal Approximation to the
EU acquis of the Government Office for European
Integration*

I. LEGAL ASPECTS OF EU-UKRAINE RELATIONS

- The EU Delegation's has [raised concerns on the draft law 4811](#) (on confiscation) in the context of the visa liberalisation process (VLAP).
- [Доповідь Європарламенту про доцільність скасування віз для України](#) (переклад "Європейської правди"). Оригінал доступний французькою.
- [Засідання діалогу з прав людини між Україною та ЄС](#) (20 липня 2016), [EEAS](#)



II. IMPLEMENTATION OF THE ASSOCIATION AGREEMENT

- **Звіт: Україна та Угода про Асоціацію. Моніторинг виконання за 2014 — I півріччя 2016 року**, Український центр європейської політики
- Урядовий комітет з питань європейської, євроатлантичної інтеграції, міжнародного співробітництва та регіонального розвитку **схвалив проект Закону України «Про енергетичну ефективність будівель»**. Метою законопроекту є імплементація у національне законодавство вимог Директиви 2010/31/ЄС «Про енергетичну ефективність будівель».
- **Уряд ухвалив постанову про реструктуризацію Нафтогазу** - 1 липня 2016, Кабінет Міністрів України затвердив Постанову «Про відокремлення діяльності з транспортування та зберігання (закачування, відбору) природного газу». Процес відокремлення функції оператора газотранспортної системи у відповідності до вимог Третього енергетичного пакету ЄС почався. **Нафтогаз Економічна правда Natural Gas Europe**
- Верховна Рада **ухвалила у першому читанні** (12.07.2016) проект закону **«Про оцінку впливу на довкілля» (№2009а-д)**. Метою 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 (Оргуська Конвенція), стороною яких є Україна, а також імплементації у національне законодавство положень Директив 2003/4/ЄС та 2011/92/ЄС.

The Ukrainian legislation necessary to implement the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment should be adopted by the end of 2017 at the latest. The Directive 2003/4/EC on public access to environmental information should be fully implemented by the end of 2017 (ANNEX XXX TO CHAPTER 6 of the AA).

- **Розпочалась реалізація** Проекту Європейського Союзу Twinning UA/49 **«Підтримка інституційної спроможності Антимонопольного комітету України** з проведення досліджень ринків та ефективності застосування конкурентного законодавства з метою наближення до стандартів ЄС».
- **Чому Рада ігнорує екологію та які проблеми це несе у відносинах з ЄС?** - стаття Остапа Семерака, міністра екології та природних ресурсів України
- **Glossary of the EU Internal Market terminology amended to include the Association Agreement between the European Union and Ukraine**, by Tuliakov V.O. (Editor), Pashkovskiy M.I., Barskyu V.R. (Technical editor), Katsyn M.Y., Alekseeva I.M.
- **Напередодні іспиту: чи готова Україна до європейської безпеки продуктів**

- **How to find EU law acts faster?** [EUR-Lex tutorials](#)

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**

- **Application of EU law by the Member States** - The European Commission has published the 33rd '[Annual Report on Monitoring the Application of EU Law](#)'. The Report reviews the Member States' performance in key areas of the application of EU law and highlights the main trends in enforcement policy in 2015. One of the key areas is the Single Market which remains Europe's most precious asset for the millions of citizens and businesses. The Annual Report provides a clear picture on how the Commission monitored and enforced European Union law in 2015 and the Single Market Scoreboard reveals that barriers to the free movement of persons, services, goods and capital in the EU are being eliminated in most areas. The constructive compliance dialogue between the Commission and Member States increasingly leads to compliance issues being resolved without the need to resort to formal procedures.
- **The role of the national parliaments in the EU** - [the European Commission Annual Report 2015 on relations between the European Commission and National Parliaments](#). This eleventh annual report on relations between the Commission and national Parliaments focuses on the political dialogue that was launched by the Commission in 2006 to provide a framework for exchanging information and opinions across all policy areas, both on legislative proposals and on non-legislative initiatives. The Commission recognises that national Parliaments, as the representatives of Europe's citizens at national level, play an important role in bridging the gap between European institutions and the public. The Commission continues to respect the balance between the institutions active on a European level, and is mindful of its right of initiative. However, it has demonstrated that it is ready to consider suggestions from national Parliaments, like their joint initiative on food waste, that indicate where action at European level could bring added benefit.
- **British referendum on EU membership**
 - [Procedural steps towards Brexit](#), CEPS Commentary by Prof. Adam Łazowski, University of Westminster
 - [Brexit Begins: an overview of the legal issues](#), article by Alan S. Reid, Senior Lecturer in Law, Sheffield Hallam University
- Council rotating presidencies: decision on revised order - [the EU Council adopted a decision](#) establishing a revised order in which the member states will hold the presidency of the Council of the EU until 2030. Following the UK decision to relinquish the Council presidency in the second half of 2017, the

Council decided to bring forward by six months the order of presidencies, starting from 1 July 2017.

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

- **Customs risk management** - the European Commission [Progress Report on the implementation of the EU Strategy and Action Plan for customs risk management](#)

- **03 AGRICULTURE**

- **Protection of geographical indications of spirit drinks** - [Commission Regulation 2016/1067 amending Regulation \(EC\) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks.](#)

Ukraine should take into account the regulation 110/2008 when gradually approximating the legislation to the EU legislation in the spirit drinks' sector (ANNEX XXXVIII TO CHAPTER 17 of the AA). At the same time Ukraine and the EU agreed that in a transitional period of 10 years from the entry into force of the AA a few geographical indications of spirit drinks (i.a. Grappa or Cognac) may be used in order to designate and present certain comparable products originating in Ukraine (Art. 208 of the AA).

- **Import and export licences for agricultural products** – [the European Commission implementing regulation 2016/1239](#) laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the system of import and export licences

- **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 [takes further steps in Google investigations](#) sending two Statements of Objections to Google. The Commission has reinforced, in a supplementary Statement of Objections, its preliminary conclusion that Google has abused its dominant position by

systematically favouring its comparison shopping service in its search result pages. Separately, the Commission has also informed Google in a Statement of Objections of its preliminary view that the company has abused its dominant position by artificially restricting the possibility of third party websites to display search advertisements from Google's competitors. [Comment](#) on Wired.

- **Antitrust – The Commission fines truck producers € 2.93 billion for participating in a cartel.** The European Commission has found that MAN, Volvo/Renault, Daimler, Iveco, and DAF broke EU antitrust rules. These truck makers colluded for 14 years on truck pricing and on passing on the costs of compliance with stricter emission rules. The Commission has imposed a record fine of € 2 926 499 000.

• 09 TAXATION

- **Corporate tax avoidance** - the [EU Council adopted](#) (12 July 2016) new *directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market* addressing some of the practices most commonly used by large companies to reduce their tax liability. The directive is part of [a package of Commission proposals](#) to strengthen rules against corporate tax avoidance. The package builds on 2015 OECD recommendations to address tax base erosion and profit shifting (BEPS), endorsed by G20 leaders in November 2015. The directive will ensure that the OECD anti-BEPS measures are implemented in a coordinated manner in the EU, including by 6 member states that are not OECD members. The member states will have until 31 December 2018 to transpose it into their national laws and regulations, except for the exit taxation rules, for which they will have until 31 December 2019.

*Under Article 351 of the AA the EU and Ukraine shall enhance and strengthen their cooperation aimed at the improvement and development of Ukraine's tax system and administration, including the enhancement of collection and control capacity, with a specific focus on Value Added Tax (VAT) refund procedures, to avoid accumulation of arrears, ensure effective tax collection **and reinforce the fight against tax fraud and tax avoidance.***

- **Tax evasion and avoidance** – The European Commission [Communication on further measures to enhance transparency and the fight against tax evasion and avoidance](#)

• 10 ECONOMIC AND MONETARY POLICY AND FREE MOVEMENT OF CAPITAL

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• 11 EXTERNAL RELATIONS

- **Allocation of powers and institutional balance in the EU external relations** – important [judgement of the EU Court of Justice](#) (Case C-660/13, ECLI:EU:C:2016:616) annulling the EU-Swiss addendum signed by the European Commission on behalf of the European Union without the prior approval of the Council of the European Union

- **12 ENERGY**

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- **13 INDUSTRIAL POLICY AND INTERNAL MARKET**

- **The 'Blue Guide' on the implementation of EU products rules 2016** – the Guide is intended to contribute to a better understanding of EU product rules and to their more uniform and coherent application across different sectors and throughout the single market. It is addressed to the Member States and others who need to be informed of the provisions designed to ensure the free circulation of products as well as a high level of protection throughout the Union (e.g. trade and consumer associations, standardisation bodies, manufacturers, importers, distributors, conformity assessment bodies and trade unions).

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

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- **15 ENVIRONMENT, CONSUMERS AND HEALTH PROTECTION**

- **Rapid alert system for dangerous products 2015 results** – [report from the European Commission, Directorate-General for Justice and Consumers](#)
- **Cyber security** – new [Directive \(EU\) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union](#) published. [Comment on VPNCompare](#)
- **Environmental Impact Assessment** – The European Commission has published [guidance document on streamlining environmental assessments conducted under Article 2\(3\) of the Environmental Impact Assessment Directive \(Directive 2011/92/EU\)](#). The Environmental Impact Assessment (EIA) Directive aims to improve environmental protection by integrating environmental considerations in the decision-making process for the approval of public and private projects that require assessment of possible effects on the environment. The notice provides guidance on streamlining the EIA procedure. It focuses on certain steps of the EIA procedure and identifies ways of streamlining different environmental assessments in the context of joint and/or coordinated procedures. This notice is not binding, and it has no bearing on whether Member States are required to choose between the coordinated and the joint procedure or to combine the two.

The Ukrainian legislation necessary to implement some parts of the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment should be adopted by the end of 2017. Some other parts should be implemented by the end of 2018 (. (ANNEX XXX TO CHAPTER 6 of the AA).

- **Greenhouse gas emissions from transport** - the Communication of the

European Commission on 'A European Strategy for Low-Emission Mobility'

- **Energy efficiency of buildings** - The European Commission has published the report on 'Progress by Member States in reaching cost-optimal levels of minimum energy performance requirements'. The report reviews progress achieved by Member States in reaching cost-optimal levels of minimum energy performance requirements for new and existing buildings, and also for building elements. It fulfils the obligation upon the Commission to report to the European Parliament and the Council on the use of the delegated powers referred to in Article 5(4) and Article 23 of Directive 2010/31/EU on the energy performance of buildings. This report also informs on the ongoing review of the Directive, which is an action point of the energy union framework strategy.

Under the Association Agreement the provisions of the Directive 2002/91/EC that was repealed by the Directive 2010/31 on the energy performance of buildings shall be reflected in the Ukrainian legislation by the end of 2018. The provisions of the (old or new) directive should be fully implemented by the end of 2020. At the same time according to the applicable obligations of Ukraine under the Energy Community that prevail in case of conflict with the AA (art. 278 of the AA), the directive should have been implemented by September 2012.

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

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- **17 LAW RELATING TO UNDERTAKINGS**

- **Trade marks** – The [EU General Court says McDonald's can prevent 'Mac' and 'Mc' registrations](#). Comments on [World Intellectual Property Review](#) and [The Journal of the law society of Scotland](#)

- **18 COMMON FOREIGN AND SECURITY POLICY**

- EU sanctions against Russia – [the decision of the EU Council prolonging economic sanctions against Russia](#) published.

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

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- **20 PEOPLE'S EUROPE**

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.