

## THE EU–UKRAINE ASSOCIATION AGREEMENT, THE 2016 REFERENDUM IN THE NETHERLANDS AND VISA LIBERALISATION<sup>1</sup>

Daniel HAITAS  
Teaching Fellow (DE ÁJK)

### 1. Introduction

The European Union has created various strategies and mechanisms aiming to deepen its relationship with bordering non-member states, particularly in Eastern Europe. One of the latest and most comprehensive of these is the so-called “new generation”<sup>2</sup> of Association Agreements, such as the one signed between the European Union and Ukraine. This Agreement was not welcomed by all segments of the of the European Union’s populace, with particularly strong and organized opposition being found among a substantial segment of the citizenry of the Netherlands, leading to referendum in 2016 in relation to the ratification of the Association Agreement by the Dutch government. Here there shall be a brief overview of the background and character of the European Union-Ukraine Association Agreement, and then a survey of the 2016 Dutch referendum that took place in relation to the issue, including its causes, results and consequences. Furthermore, there shall be a survey of the recent development of the new visa free regime created for Ukrainian citizens travelling to the European Union, which can be seen as a concrete and significant manifestation of the more

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<sup>1</sup> The work was created under the priority project KÖFOP-2.1.2-VEKOP-15-2016-00001 titled „Public Service Development Establishing Good Governance” in cooperation with the National University of Public Service and the ‘DE-ÁJK Governance Resource Management Research Group’ of the University of Debrecen. For the description of the underlying concepts, see: T. M. HORVÁTH – I. BARTHA: Az ágazati közszolgáltatások rendszertanáról (The Theoretical System of Public Service Sectors). In: T. M. HORVÁTH – I. BARTHA (eds.): *Közszolgáltatások megszervezése és politikái* (The Organization and Sectors of Public Service Delivery). Budapest, Dialóg Campus, 2016. 25–37.

<sup>2</sup> Roman PETROV – Guillaume VAN DER LOO – and Peter VAN ELSUWEGE: The EU-Ukraine Association Agreement: A New Legal Instrument of Integration Without Membership. *Kyiv-Mohyla Law and Politics Journal*, 2015/1. 2.

deeply integrated relationship between Ukraine and the EU now in existence, and one specifically foreseen and provided for in the Association Agreement. The research contained in this paper is of relevance to broader questions of European integration, raising such issues as enlargement fatigue, and the extent to which EU Member States are open to the integration of new states, even on only a partial level. It should also be noted that the paper is of more of a descriptive nature, and is envisaged as a starting point for further analysis of this topic on a more empirical basis.

## 2. Background to the Association Agreement<sup>3</sup>

The basis of legal relations between the Soviet Union and the European Community had been the 1989 Trade and Cooperation Agreement (TCA), which was also taken over by Ukraine upon the attainment of independence.<sup>4</sup> However, this was an agreement relating only to matters of trade, seeking to encourage economic cooperation and investment, lacking a legislative approximation dimension.<sup>5</sup> In this context it was necessary for new agreements to be made with the post-communist states in order to establish parameters and frameworks which would act as the basis of future relations. With regards to the Central and Eastern European countries that would later go on to become EU Members States, the Europe Agreements (EAs)<sup>6</sup> were created for this purpose.<sup>7</sup> In the case of such former Soviet states as Ukraine,<sup>8</sup> it was acknowledged there was a need for a new, „intermediate type of agreement”, whose nature would go beyond the TCA, but which would not be as deep and comprehensive as the Europe Agreements.<sup>9</sup> As a result, on October 5 1992 a resolution was adopted by the Council of the European Union empowering the European Commission to conduct negotiations

<sup>3</sup> A similar analysis of the topic of the EU–Ukraine Association Agreement will appear in the future conference book of the joint 2017 international conference of the University of Debrecen Faculty of Law and Kyiv University of Law of NASU.

<sup>4</sup> Yuliana PALAGNYUK: Formation of State Policy of Ukraine towards European Integration. *Przegląd Politologiczny*, 2013/4. 251.

<sup>5</sup> Maksim KARLIUK: Legislative approximation and application of EU law in Belarus: 'Backdoor' Approximation. In: Roman PETROV – Peter VAN ELSUWEGE (eds.): *The Application of EU Law in the Eastern Neighbourhood of the European Union: Towards A Common Regulatory Space?* London, Routledge, 2014. 230.

<sup>6</sup> For a deeper analysis of the legal and political nature of EAs, as well as their role in the EU association process, see: Marc MARESCEAU – Elisabetta MONTAGUTI: The relations between the European Union and Central and Eastern Europe: a legal appraisal. *Common Market Law Review*, 32., 1995. 1327–1367. For an analysis focusing on Hungary's EA and association, see: Ildikó BARTHA: Hungary's International Agreements in the light of its EU Membership. In: Ernő VÁRNAY – Márton VARJU (eds.): *The law of the European Union in Hungary: Institutions, processes and the law*. Budapest, HVG-Orac, 2014. 320–360.

<sup>7</sup> European Commission: Europe Agreement, [https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/europe-agreement\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/europe-agreement_en)

<sup>8</sup> It should be noted that this did not apply to the Baltic States, all of which signed Europe Agreements.

<sup>9</sup> Klaus SCHNEIDER: The Partnership and Cooperation Agreement (PCA) between Ukraine and the EU – Idea and Reality. In: Lutz HOFFMAN – Felicitas MÖLLERS (eds.): *Ukraine on the Road to Europe*. Berlin and Heidelberg, Springer-Verlag, 2001. 66.

in order to create Partnership and Cooperation Agreements with the former member states of the Soviet Union that came into being after the fall of the USSR,<sup>10</sup> which would act as a mechanism in order to establish contractual bilateral relations.<sup>11</sup>

Ukraine signed such an agreement with the European Communities on June 16 1994, and which came into force in 1998.<sup>12</sup> This development may be described as the first great concrete legal manifestation of Ukraine's orientation towards and integration into Europe, and which acted as the initial basis for relations between Ukraine and the EU, a process which initially began with the recognition of Ukrainian independence by the European Community and its Member States.<sup>13</sup> As to its main, overriding goal, the Agreement stated that it aimed to strengthen the „links and to establish partnership and co-operation” between the European Community and Ukraine.<sup>14</sup> In addition, Article 51 stated that the parties recognize the importance of “the approximation of Ukraine's existing and future legislation to that of the Community. Ukraine shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community”.<sup>15</sup>

Eventually, however, it was decided that a more comprehensive and deeper framework for EU–Ukraine relations was needed, and so negotiations began on an Association Agreement in 2007.<sup>16</sup> Even before this time, the European Union had a tradition of signing Association Agreements with third parties, and their common characteristic is to establish an institutional and legal framework for developing close and privileged cooperation, particularly in the realm of politics and economics.<sup>17</sup> The Ukraine-EU Association Agreement follows in this tradition.<sup>18</sup> This Association Agreement, similarly to the ones signed by Georgia and Moldova, belong to the so-called “New

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<sup>10</sup> Khaydarali YUNUSOV: Partnership and Cooperation Agreements of the European Union with Central Asian Countries. *Studii Europene*, 2014/1. 2.

<sup>11</sup> Christophe HILLION: *The Evolving System of European Union External Relations as evidenced in the EU partnerships with Russia and Ukraine*. PhD Dissertation. Leiden University, 2005.14.

<sup>12</sup> Denys KUZMIN – Iryna MAKSYMENKO: Analysis of the EU– Ukraine Relations in the Context of the Association Agreement and Related Documents and the EU 2014-2020 Financial Perspective. Bridge: International Project co-financed by the European Commission, *EuropeAid*, 2012. 14.

<sup>13</sup> Ibid. 15.

<sup>14</sup> European Commission: *Partnership and Co-operation Agreement Between the European Communities and their Member States, and Ukraine*. L49, 19/02/1998. 4., [http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc\\_111612.pdf](http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc_111612.pdf).

<sup>15</sup> It should be noted, however, that the voluntary harmonization of Ukrainian law with Community law began even before the PCA's coming into force. See Viktor MURAVYOV: Legal approximation: evidence from Ukraine, at workshop, „The European Neighbourhood Policy: A Framework for Modernisation”. *European University Institute*, 1-2 December 2006. 2.

<sup>16</sup> European Commission: *EU–Ukraine Association Agreement Guide to the Association Agreement*. [http://eeas.europa.eu/archives/docs/images/top\\_stories/140912\\_eu-ukraine-association-agreement-quick\\_guide.pdf](http://eeas.europa.eu/archives/docs/images/top_stories/140912_eu-ukraine-association-agreement-quick_guide.pdf), 1.

<sup>17</sup> Roman PETROV – Peter VAN ELSUWEGE: What does the Association Agreement mean for Ukraine, the EU and its Member States? A Legal Appraisal. In: Aalt W. HERINGA (ed.): *Het eersteraadgevend referendum. Het EU-Oekraïne Associatieakkoord*. Den Haag, Montesquieu Institute, 2016. 2. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2779920](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2779920)

<sup>18</sup> Ibid.

Generation” of Association Agreements, which go beyond anything seen previously in this area, and its defining features have been described as „comprehensiveness, complexity and conditionality.”<sup>19</sup>

It is comprehensive because it covers all aspects of EU-Ukraine relations.<sup>20</sup> It has been described as complex because it is ambitious, in that it wishes to integrate Ukraine into the EU internal market through establishing a Deep and Comprehensive Free Trade Agreement, which requires regulatory and legislative approximation to EU norms and standards.<sup>21</sup> And the conditionality aspect of the AA is very explicit, stating in the preamble that “political association and economic integration of Ukraine within the European Union will depend on progress in the implementation of the current agreement as well as Ukraine’s track record in ensuring respect for common values, and progress in achieving convergence with the EU in political, economic and legal areas.”

The Agreement is divided into: The Preamble, plus Seven Titles, which are: General Principles; Political Cooperation and Foreign and Security Policy; Justice Freedom and Security; Trade and Trade related matters (DCFTA); Economic and Sector Cooperation; Financial Cooperation with Anti-Fraud Provisions, as well as Institutional, General and Final Provisions; There are also 43 Annexes setting out EU legislation to be taken over by a specific date and Three Protocols.<sup>22</sup> The political provisions of the Agreement were signed on 21 March 2014 while the economic part was signed 27 June 2014, in the aftermath of the Euromaidan Revolution.<sup>23</sup> From January 2016 the whole of the AA has applied provisionally,<sup>24</sup> awaiting ratification by all Member States, the last of which to do so was the Netherlands.<sup>25</sup>

<sup>19</sup> PETROV–VAN DER LOO–VAN ELSUWEGE op. cit. 2. Article 1.2 states that the aims of the Association Agreement are: (a) to promote gradual rapprochement between the Parties based on common values and close and privileged links, and increasing Ukraine’s association with EU policies and participation in programmes and agencies; (b) to provide an appropriate framework for enhanced political dialogue in all areas of mutual interest; (c) to promote, preserve and strengthen peace and stability in the regional and international dimensions in accordance with the principles of the United Nations Charter, and of the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the objectives of the Charter of Paris for a New Europe of 1990; (d) to establish conditions for enhanced economic and trade relations leading towards Ukraine’s gradual integration in the EU Internal Market, including by setting up a Deep and Comprehensive Free Trade Area as stipulated in Title IV (Trade and Trade-related Matters) of this Agreement, and to support Ukrainian efforts to complete the transition into a functioning market economy by means of, inter alia, the progressive approximation of its legislation to that of the Union; (e) to enhance cooperation in the field of Justice, Freedom and Security with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms; (f) to establish conditions for increasingly close cooperation in other areas of mutual interest.

<sup>20</sup> Ibid. 3.

<sup>21</sup> Ibid.

<sup>22</sup> European Commission: EU–Ukraine Association Agreement „Guide to the Association Agreement”, op. cit. 2.

<sup>23</sup> PETROV–VAN DER LOO–VAN ELSUWEGE op. cit. 7.

<sup>24</sup> European Commission: EU–Ukraine Association Agreement: „Quick Guide to the Association Agreement”, [https://eeas.europa.eu/sites/eeas/files/071215\\_eu-ukraine\\_association\\_agreement.pdf](https://eeas.europa.eu/sites/eeas/files/071215_eu-ukraine_association_agreement.pdf), 1.

<sup>25</sup> Peter TEFFER: Netherlands ratifies EU–Ukraine treaty, *Euobserver*, 30 May 2017. <https://euobserver.com/foreign/138060>

### 3. 2016 Dutch Referendum<sup>26</sup>

Dutch law requires that in order for an Association Agreement to be successfully ratified it must be approved by both the House of Representatives and the Senate, in line with the parameters set out in the 2015 Ratification Act.<sup>27</sup> On 7 April 2015 the Dutch Parliament's lower chamber approved the AA, which was followed by the Senate on 7 July, both with a large majority.<sup>28</sup> This was followed by royal promulgation by King Willem-Alexander on July 8.<sup>29</sup> However, a hurdle was encountered in the ratification of the Agreement with the invoking of the right to a referendum on the issue within the framework of the Consultative Referendum Law which came into force in the Netherlands on 1 July 2015, which allows for citizen initiated referendums of a non-binding, advisory nature relating to treaties and laws adopted by the country's parliament, including EU treaties.<sup>30</sup> The law stipulates that with regards to the triggering of the referendum proposal, ten thousand signatures are required, and in order for the referendum to be officially announced and the campaigning to begin there must be the signatures of at least 300,000 citizens<sup>31</sup>. These criteria was successfully fulfilled by those who wished to put the issue of the ratification of the AA to a referendum.<sup>32</sup>

A diverse and broad cross-section of Dutch politics helped to trigger the referendum procedure, including right-wing eurosceptics, left-wing groups, environmentalists and anti-establishmentarians.<sup>33</sup> It must be pointed out that in fact many of the major participants in the referendum had interests and concerns which went beyond the Association Agreement, such as the desire to strengthen the democratic process in the Netherlands and also to stop any future EU enlargements, as well as some extreme eurosceptics who wish to see their country exit the EU in the future.<sup>34</sup> Arguments utilised during the course of the referendum debate included that the Association

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<sup>26</sup> A similar analysis of the topic of the 2016 Netherlands referendum from the author will be published in the future *Profectus in litteris* conference book of the 14th Debrecen Faculty of Law PhD Conference 2017.

<sup>27</sup> Referendum Commissie: Referendum on the Association Agreement EU–Ukraine: What is it about on 6 April 2016? 3. [www.referendum-commissie.nl](http://www.referendum-commissie.nl)

<sup>28</sup> Corinne DELOY – Pascale JOANNIN: The Dutch rejected the Association Treaty between the EU and Ukraine. *Europe Issues*, No 388, 11 April 2014. Foundation Robert Schuman, <http://www.robert-schuman.eu/en/european-issues/0388-the-dutch-rejected-the-association-treaty-between-the-eu-and-ukraine>

<sup>29</sup> Ibid.

<sup>30</sup> Arjen NIJEBOER: The Dutch Consultative Referendum Law: An Overview. *Meer Democratie*, <https://www.meerdemocratie.nl/dutch-consultative-referendum-law-overview>

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Viktor SAVINOK: What Future for the EU's Association Agreement with Ukraine. *Jacques Delors Institut Berlin*, 16 December 2016. 2. [http://www.delorsinstitut.de/2015/wp-content/uploads/2016/12/20161216\\_Ukraine-Abkommen-Savinok.pdf](http://www.delorsinstitut.de/2015/wp-content/uploads/2016/12/20161216_Ukraine-Abkommen-Savinok.pdf)

<sup>34</sup> Arjen NIJEBOER: The Ukraine Referendum: The First Citizen-Initiated Referendum in the Netherlands. *Meer Democratie*, 12 April 2016. <https://www.meerdemocratie.nl/ukraine-referendum-first-citizen-initiated-referendum-netherlands>

Agreement brought Ukraine closer to one day obtaining full EU membership, that the Netherlands would be dragged into the armed conflict taking place within Ukraine, which as a result would be problematic for its relationship with Russia, and also a fear of labor market competition.<sup>35</sup> Perhaps this was best put by one of the leaders of the campaign against the Association Agreement, Arjan van Dixhoorn, who said „We don't care about Ukraine” and that „A referendum on the exit of the EU has not been possible to date, this is why we shall use the options open to us to put future relations between the Netherlands and Brussels under pressure.”<sup>36</sup> Indeed, the referendum caused alarm in the European Commission, with its President Jean-Claude Juncker stating that a rejection by voters of the Association Agreement „could open the doors to a continental crisis”<sup>37</sup> of which Russia would „pluck the fruits”.<sup>38</sup>

The specific question on the ballot paper which voters were asked to respond to was „Are you in favour of or against the Act approving the Association Agreement between the European Union and Ukraine?”<sup>39</sup> 32.2 percent of eligible voters cast their ballot, which went beyond the 30 percent threshold necessary, with 61.1 percent voting against the Association Agreement.<sup>40</sup> The result of the referendum led to what one commentator has termed „an unprecedented situation” where an international EU agreement potentially could not come into force because a certain Member State was not able to ratify it, in this case, because of the result of a non-binding referendum.<sup>41</sup>

This placed Dutch Prime Minister Mark Rutte in a very difficult position, which was as the leader of the only country obstructing the full implementation of an Association Agreement considered of great importance to both the EU and Ukraine, which sets out the framework for their relations for years to come, while at the same time a substantial part of his own electorate had rejected ratifying the Agreement, something he could legally ignore, but which would undermine his democratic credentials. This was particularly crucial in light of the elections he was facing on March 15 of this year.

#### 4. The European Union's Response

With the need to address the reality of both concerns, the Dutch government sought to gain certain concessions with regards to the understanding and interpretation of the

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<sup>35</sup> Ibid.

<sup>36</sup> DELOY–JOANNIN op. cit.

<sup>37</sup> Georgi GOTEV: Juncker sad about the Dutch referendum, Cameron says it won't affect Brexit. *Euractiv*, April 7 2016. <https://www.euractiv.com/section/global-europe/news/juncker-sad-about-the-dutch-referendum-cameron-says-it-wont-affect-brexit/>

<sup>38</sup> Eszter ZALAN: EU awaits Dutch response to referendum result. *Euobserver*, 7 April 2016. <https://euobserver.com/political/132966>.

<sup>39</sup> Referendum Commissie, op. cit. 1.

<sup>40</sup> Cynthia KROET: Dutch reject EU–Ukraine deal. *Politico*, 4 June 2016. <http://www.politico.eu/article/low-turnout-as-dutch-reject-eu-ukraine-deal/>

<sup>41</sup> Guillaume VAN DER LOO: The Dutch Referendum on the EU–Ukraine Association Agreement: Legal options for navigating a tricky and awkward situation. *Centre for European Policy Studies Commentary*, 2016. 1.

Association Agreement, which led to the European Council Conclusions on Ukraine on the 15 December 2016.<sup>42</sup> Firstly, the Conclusions affirm that

“The aim of association agreements is to support partner countries on their path to becoming stable and prosperous democracies, and to reflect the strategic and geopolitical importance the European Union attaches to the regional context. Therefore, completing the ratification process remains a crucial EU objective.”<sup>43</sup>

However, it also states that

“After having carefully noted the outcome of the Dutch referendum on 6 April 2016 on the bill approving the Association Agreement and the concerns expressed prior to the referendum as conveyed by the Dutch Prime Minister, the European Council takes note of a Decision of the Heads of State or Government of the 28 Member States of the European Union, meeting within the European Council (Annex), which addresses these concerns in full conformity with the Association Agreement and the EU treaties.”<sup>44</sup>

As a result, the following statement was made, “While aiming to establish a close and lasting relationship between the parties to the Agreement based on common values, the Agreement does not confer on Ukraine the status of a candidate country for accession to the Union, nor does it constitute a commitment to confer such status to Ukraine in the future.”<sup>45</sup> In addition, it is stated that the Agreement “does not contain an obligation for the Union or its Member States to provide collective security guarantees or other military aid or assistance to Ukraine”,<sup>46</sup> nor does the Agreement “grant to Ukrainian nationals or Union citizens, respectively, the right to reside and work freely within the territory of the Member States or Ukraine. The Agreement does not affect the right of Member States to determine volumes of admission of Ukrainian nationals to their territory in order to seek work, whether employed or self-employed.”<sup>47</sup> Also, “The Agreement does not require additional financial support by the Member States to Ukraine, nor does it change each Member State’s exclusive right to determine the nature and volume of its bilateral financial support.”<sup>48</sup>

It must be said that the abovementioned elements are not explicitly provided for in the Association Agreement, however the Dutch government wanted firmer statements with regards to these matters.<sup>49</sup> These statements should be seen as being primarily political

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<sup>42</sup> European Council: European Council Conclusions on Ukraine, Brussels, 15 December 2016. file:///C:/Users/User/Downloads/15-euco-conclusions-ukraine%20(2).pdf, 1.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid. Annex, A, 3.

<sup>46</sup> Ibid. Annex, B, 4.

<sup>47</sup> Ibid. Annex, C, 4.

<sup>48</sup> Ibid. Annex, D, 4.

<sup>49</sup> Georgi GOTEV: ‘Many not happy’ with Dutch limits of Ukraine pact. *Euractiv*, December 14 2016. <https://www.euractiv.com/section/global-europe/news/many-not-happy-with-dutch-limits-to-ukraine-pact/>

in nature, and were made in order to satisfy the concerns of Dutch politics. After the adoption of these statements, the Dutch government moved ahead with ratifying the Association Agreement. In February 2017 the Dutch House of Representatives voted in favour of ratifying the Agreement. On May 23 debate began in the Senate of the Netherlands with regards to the Association Agreement, with a final vote held May 30, the result of which was 20 to 25 in favour of ratification of the Association Agreement.<sup>50</sup> Finally, on June 14 the law on the Association Agreement's ratification was officially published in the Netherlands.<sup>51</sup> The document was later ratified by the EU Council on July 11,<sup>52</sup> with it finally coming into full effect on September 1.<sup>53</sup>

## 5. Visa-Free Travel

An important area where there has been implementation of the Association Agreement, which has a significant symbolic element, in addition to very real practical ramifications, is the recent coming into force of a visa-free regime for Ukrainian citizens travelling to most of the Member States of the European Union. According to Article 19 of the AA, "The Parties shall take gradual steps towards a visa-free regime in due course, provided that the conditions for well-managed and secure mobility, set out in the two-phase Action Plan on Visa Liberalization presented at the EU-Ukraine Summit of 22 November 2010, are in place."

The EU-Ukraine Visa Liberalisation Dialogue came into being on 29 October 2008.<sup>54</sup> The aim of this dialogue was to create a framework allowing for progress towards achieving the goal of allowing visa-free travel for citizens of Ukraine to the Member States of the European Union.<sup>55</sup> Ukraine itself allowed citizens of the European Union to cross its borders without a visa from 1 May 2005.<sup>56</sup> This was later followed by the adoption of the Visa Liberalisation Action Plan in 2010, which set out "four blocks" of factors which were to be addressed in the course of moving towards visa

<sup>50</sup> The Ukrainian Weekly: Dutch Senate backs European Union-Ukraine Association Agreement, June 2 2017. <http://www.ukrweekly.com/uw/wp/dutch-senate-backs-european-union-ukraine-association-agreement/>

<sup>51</sup> Ukrinform: EU-Ukraine Association: Netherlands fully completes ratification of agreement, 15 June 2017. <https://www.ukrinform.net/rubric-politics/2248195-euukraine-association-netherlands-fully-completes-ratification-of-agreement.html>.

<sup>52</sup> European Council/Council of the European Union: Ukraine: Council adopts EU-Ukraine association agreement, Press Release, 11/07/2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/07/11-ukraine-association-agreement/>

<sup>53</sup> European Commission: EU-Ukraine Association Agreement fully enters into force, Press Release, 1 September 2017. [http://europa.eu/rapid/press-release\\_IP-17-3045\\_en.htm](http://europa.eu/rapid/press-release_IP-17-3045_en.htm).

<sup>54</sup> European Commission: Visa Liberalisation with Moldova, Ukraine and Georgia, Migration and Home Affairs. [https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia_en).

<sup>55</sup> Ibid.

<sup>56</sup> EU-Ukraine Visa Dialogue: Action Plan on Visa Liberalisation. [www.kmu.gov.ua/document/244813932/EU-Ukraine-Action-Plan.pdf](http://www.kmu.gov.ua/document/244813932/EU-Ukraine-Action-Plan.pdf), 1.



liberalisation, which included: i) document Security, including biometrics; ii) illegal migration, including readmission; iii) public order and security; iv) external relations.<sup>57</sup>

The Action Plan's implementation was monitored by the European Commission through the publication of progress reports, as well as regular meetings between officials of the European Commission and the Ukrainian government.<sup>58</sup> The first of the progress reports was adopted in September 2011 and the final report was adopted December 2015.<sup>59</sup> This final report made an assessment of Ukraine's fulfilling the criteria entailed in the "four blocks" of the Action Plan. The report found that in the areas: of document security, integrated border management, issues of asylum, fighting and preventing organised crime, human trafficking, anti-corruption measures, the fight against drugs, money laundering, judicial cooperation in criminal justice, law enforcement cooperation, data protection, freedom of movement within Ukraine, issuing of travel and identity documents, and citizens' rights (including minority protection), the necessary benchmarks were achieved.<sup>60</sup> The report concluded that "The progress achieved by Ukraine in all areas covered by the four blocks of the VLAP is steady and effective."<sup>61</sup>

In December 2015 The European Commission, in light of the positive sixth progress report, planned to make a legislative proposal for the lifting of visa requirements for Ukrainian citizens in possession of a biometric passport.<sup>62</sup> On the 20 April 2016 the European Commission proposed that the Council of the European Union and the European Parliament transfer Ukraine to the list of countries allowed to travel to states of the Schengen Zone without a visa.<sup>63</sup> The European Union officially waived visa requirements for citizens of Ukraine on June 11 of this year.<sup>64</sup> This allows Ukrainian citizens with biometric passports to travel to all the Member States of the European Union, with the exception of the United Kingdom and Ireland, as well as to Iceland, Liechtenstein, Norway, and Switzerland, these being Schengen associated states.<sup>65</sup> They are allowed to travel to these countries for short stays for a period of up to 90 days.<sup>66</sup>

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<sup>57</sup> Ibid. 1.

<sup>58</sup> European Commission: Visa Liberalisation with Moldova, Ukraine and Georgia, op. cit.

<sup>59</sup> European Commission: Report From the Commission to the Council and the European Parliament: Sixth Progress Report on the Implementation by Ukraine of the Action Plan on Visa Liberalisation, Brussels, 18. 12. 2015. COM(2015) 905 final, <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-905-EN-F1-1.PDF>,

<sup>60</sup> Ibid. 3–11.

<sup>61</sup> Ibid. 11.

<sup>62</sup> European Commission: Commission Progress Report: Ukraine meets criteria for visa liberalisation, 18 December 2015. [http://europa.eu/rapid/press-release\\_IP-15-6367\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6367_en.htm).

<sup>63</sup> European Commission: European Commission proposes visa-free travel for citizens of Ukraine, Press Release, 20 April 2016. [europa.eu/rapid/press-release\\_IP-16-1490\\_en.pdf](http://europa.eu/rapid/press-release_IP-16-1490_en.pdf).

<sup>64</sup> Aleksandra ERIKSSON: Ukraine celebrate visa-free travel with EU love show. *Euobserver*, 12 June 2017. <https://euobserver.com/enlargement/138187>

<sup>65</sup> European Commission (18 December 2015) op. cit.

<sup>66</sup> European Commission: European Commission welcomes the Council adoption of visa liberalisation for the citizens of Ukraine, Statement, 11 May 2017, [http://europa.eu/rapid/press-release\\_STATEMENT-17-1270\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-17-1270_en.htm)

The possibility of visa-free travel was one of the major incentives the European Union has used so far in encouraging reforms in Ukraine, and thus can be seen in the context of conditionality.<sup>67</sup> This aspect was also explicitly acknowledged by the final progress report, which stated that

“The EU–Ukraine Dialogue has proved to be an important and particularly effective tool for advancing far-reaching and difficult reforms in the Justice and Home Affairs area and beyond, impacting on areas such as the rule of law and justice reform.”<sup>68</sup>

EU Commissioner for Migration, Home Affairs and Citizenship Dimitris Avramopoulos reiterated this, stating with regards to the decision to grant visa-free travel to Ukrainian citizens, that

“Today’s decision is an acknowledgement of the successful and far-reaching reforms carried out by Ukraine, often in very challenging circumstances. From the very beginning, the Ukrainian authorities have demonstrated their full commitment to address the fight against corruption as a matter of priority and have carried out important reforms in the fields of border management and anti-discrimination. Ukraine has come a long way and today this is recognised and rewarded. Now it is important to sustain this progress. The European Union stands ready to continue providing support and assistance to the Ukrainian authorities in this endeavour.”<sup>69</sup>

Understandably, this issue also possesses a strongly symbolic element, it signifying to many Ukrainians in particular that Europe has further opened to them and that they are slowly integrating with the rest of the continent. Ukrainian President Petro Poroshenko emphasised this dimension, stating that visa-free travel signifies “a return to the family of European nations”<sup>70</sup> for the country. A similar sentiment was also expressed by Commissioner Avramopoulos, who said that “Visa-free travel will bring important benefits for citizens on both sides. It will reinforce social, cultural and economic ties between the EU and Ukraine as well as strengthen people-to-people contacts.”<sup>71</sup>

However, it must also be mentioned that at the same time of there has also been a strengthening of the suspension mechanism in relation to visa-free travel for certain third countries. Regulation 2017/371 was adopted for this purposes, stating that

“The mechanism for the temporary suspension of the exemption from the visa requirement for nationals of a third country listed in Annex II to Regulation (EC) No 539/2001 [...] should be strengthened by making it easier for Member

<sup>67</sup> Gwendolyn SASSE: Ukrainians Travel Visa Free. *Carnegie Europe*, June 26 2017. <http://carnegieeurope.eu/strategieurope/71354>

<sup>68</sup> European Commission (18 December 2015) op. cit.

<sup>69</sup> Ibid.

<sup>70</sup> RadioFreeEurope/RadioLiberty: Ukrainians Celebrate Visa-Free Travel To EU, June 11 2017. <https://www.rferl.org/a/ukraine-poroshenko-cu-visa-free-goodbye-ussr/28539873.html>

<sup>71</sup> European Commission (11 May 2017) op. cit.

States to notify circumstances leading to a possible suspension and by enabling the Commission to trigger the suspension mechanism on its own initiative.”<sup>72</sup>

This strengthening allows for a suspension of visa liberalisation in the event that there are serious issues with regards to security and migration.<sup>73</sup>

## 6. Conclusion

The EU–Ukraine Association Agreement can certainly be seen as an innovative and novel legal mechanism created as part of the attempt to integrate neighbouring states into the European Union without providing a full and unambiguous membership perspective. However, the negative reaction of a certain segment of the Dutch population to the Association Agreement serves to remind us that the European Union is composed of independent states, each with electorates that have the ability to express themselves through democratic processes. This democratic will, at times, may not always be in harmony with the broader push towards EU integration or the bloc’s expansion of influence. In addition to the 2016 Dutch referendum, one need only look as far as the Brexit vote or the opposition of Belgium’s Wallonia province to the EU–Canada trade deal to confirm this reality. In this sense, the referendum may be seen as being part of broader eurosceptic trends and phenomena taking place throughout the continent. With regards to the new visa-free regime now in existence between Ukraine and the European Union, it can be said that this is a measure foreseen by the terms of the Association Agreement which both leads to concrete manifestations and consequences on a grassroots level, such as increasing travel from Ukraine to the European Union, thus further integrating the two populations, as well as being a development seen by many as possessing a highly symbolic significance.

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<sup>72</sup> European Parliament and the Council of the European Union: Regulation (EU) 2017/371 of the European Parliament and of the Council of 1 March 2017 amending Council Regulation (EC) No 539/2001 listing third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (revision of the suspension mechanism). *Official Journal of the European Union*, L 61/1, 08. 03. 2017, Preamble (2), 1. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0371&from=EN>

<sup>73</sup> European Council/Council of the European Union: Visas: Council adopts regulation on visa liberalisation for Ukrainian citizens, Press Release, 11 May 2017. <http://www.consilium.europa.eu/en/press/press-releases/2017/05/11-visa-liberalisation-ukraine/>

