

Zuzana Novakova

The Dutch Referendum on the EU Association Agreement with Ukraine:

How Ukraine-EU Extended Trade Deal Became a Vote about Everything Else

- The rotating Dutch presidency of the European Council officially recognized independent Ukraine on behalf of the European Community in 1991, calling for closer relations.
- Almost a quarter of a century later these relations materialized in the Association Agreement between Ukraine and the EU – a deal which is now subject to a referendum by the Dutch voters.
- The referendum's implications are yet uncharted, legally and politically. The campaign has been hijacked by Eurosceptic populism. Polls suggest that “no” is the preferred vote.
- What does this tell us about the Netherlands, the EU and what does it mean for Ukraine?

The Dutch referendum about the EU Association Agreement with Ukraine leads to uncharted waters on several fronts. April 6, 2016 is the first time when an electorate of one EU member state gets a direct say on an external EU agreement. The agreement has already been ratified by the parliaments of all other EU member states as well as by the European Parliament and has provisionally entered into practice in early January. This brief provides an overview of the referendum's (i) legal and political background, (ii) state-of-play, including the argumentation of its main proponents and (iii) future prospects as the situation opens a range of new questions for the Netherlands, the EU and Ukraine in an unprecedented context.

...not so much about the actual Association Agreement

“Are you in favour or against the law that approves the Association Agreement between the European Union and Ukraine?” is the question posed to Dutch citizens. The referendum - first of its kind - is made possible by the recent introduction of the Dutch Advisory Referendum Act. This law from July 1, 2015 enhances possibilities of direct democracy by enabling citizens to initiate

a referendum on laws and treaties after they have been approved by the parliament. The fact that this trade deal has been put up for a national vote in the first-ever citizen-demanded referendum might in fact not be primarily related to Ukraine. Nor to the trade deal itself, that is to the document which exceeds 2000 pages (with annexes)¹.

While the Association Agreement between the European Union and Ukraine is a unique step forward in the relations between the two², from the broader European perspective it is not a novel or unique agreement. The EU has throughout its history concluded numerous association agreements, which set up a framework to conduct bilateral relations with the “intention to establish close economic and political cooperation”³ and which (in various degrees) lead to the progressive liberalisation of

- 1 To access the full text of the Association Agreement between the European Union and Ukraine, see http://eeas.europa.eu/ukraine/docs/association_agreement_ukraine_2014_en.pdf
- 2 Many see the agreement as a boost in speed of the ongoing Ukrainian reforms.
- 3 For full explanation see European External Action Service website: <http://eeas.europa.eu/association>

trade⁴. Within the geographic area which the European Commission delineates as the “European neighbourhood”, there are eleven association agreements in place: eight in the ambit of Euro-Mediterranean policy and three in its Eastern European branch.

The deal with Ukraine belongs to a new generation of more comprehensive association agreements introduced within the European Neighbourhood Policy in the aftermath of Arab spring, applicable to the EU’s Southern and Eastern neighbours alike. Despite their wider focus, these new generation agreements remain in essence primarily trade agreements, i.e. provisions related to the area of trade liberalization and market reforms occupy the largest amount of space. Conclusion of similar agreements with Moldova and Georgia in 2014 has gone without much public attention. Especially compared to what agreement with Ukraine gets in the Dutch referendum; a referendum which might in fact be not primarily related to one particular agreement with Ukraine.

The issue of timing and the wider context of rising Euroscepticism should be accounted for. Firstly, the choice of this subject can largely be explained in light of timing: the Association Agreement has been the first big treaty approved by the Dutch Parliament since the new law entered into effect last July. Thus, it is the first subject-matter at hand for the Dutch pro-direct democracy campaigners.

Secondly, and not less important, the subject of Association Agreement becomes a good “proxy” for taking an issue with the EU and the current course of the European integration. The anti-EU sentiments in the Netherlands have been growing in light of the multiple crises, most notably with the poorly-managed refugee crisis and the simultaneous salience of terrorist attacks within the EU, both of which evolve on top of the of economic, financial, social and political trust crisis series of the last years. From the perspective of the Dutch Eurosceptic campaigners the opposition to the EU-Ukraine trade deal, it “should first and foremost be seen as a proxy for many Dutch citizens’ desire for a broader debate about the EU and the direction it is heading in”⁵.

4 In certain cases, i.e. when concluded with candidate countries, an association agreement prepares for future membership of the EU. This is clearly not the case of Association Agreement with Ukraine. The European Neighbourhood Policy as the umbrella framework for relations with Ukraine has been devised in light of the clear limits of the EU enlargement-lite, virtually ruling out the membership perspective by its clear aim of “sharing everything but institutions” (R.Prodi), offering its partners instead “a stake in the European internal market”.

5 Cleppe, P. (2015) What to make of the Dutch referendum on the EU-Ukraine Association Agreement?, Brussels: Open Europe,

The public and the campaign

A petition which called for the referendum on whether the country should indeed ratify the agreement was signed by 427,000 Dutch nationals. Many recent polls indicate that a sufficient portion of the electorate will show up to vote, much over the mandatory quorum of 30% which is necessary to deem the referendum valid. Yet the failure of the Dutch public to engage with the referendum remained striking: one month ahead of the vote as much as 27% of the public was completely unaware of the referendum⁶. In the week before the referendum around a half of the voters did not have a clear idea about whether they would vote for or against⁷.

The campaign was started by *GeenStijl*⁸, a popular blog, which from the onset called for “a real national EU referendum”, an opportunity to be consulted about European decisions, rather than speaking about the particular deal between the EU and Ukraine. The initiative was joined by two think-tanks, *Burgercomité EU* and *Forum voor Democratie*, both of which are critical of traditional representative democracy and call for more direct citizen involvement.

Campaigning for “no”

Several populist parties, both left and right, joined the initiative. Most notable is the *Party for Freedom*, a Eurosceptic party headed by the infamously radical Geert Wilders. The party which enjoys growing popularity currently holds 8% of seats in the Lower House of Parliament of the Netherlands and 15% of seats for the Dutch members in the European Parliament. They stand against European integration beyond economic cooperation in general and see the agreement with Ukraine as a sign of the EU’s expansionism. The party campaigns for a “no” vote simply because any additional association agreement would imply “more Europe”. On the opposite edge of the ideational spectra, the *Socialist Party*, which represents 10% of the Dutch parliament, underpins its “no” by two concerns. On foreign policy field they deem the agreement as further increasing the pressures in the East – and exacerbating potential collision with Moscow. On socio-economic field their argument is that the agreement mostly benefits multinational firms, not regu-

available at <http://openeurope.org.uk/today/blog/what-to-make-of-the-dutch-referendum-on-the-eu-ukraine-association-agreement/#sthash.w4ukQBH2.pnfIdGoK.dpuf>

6 Ipsos poll released in the 2nd week of March 2016.

7 According to a poll commissioned by the Ministry of Foreign Affairs of Netherlands (For press reports see eg. <http://www.ad.nl/ad/nl/38261/Nieuws/article/detail/4270419/2016/03/26/Ja-enee-gaan-nek-aan-nek-in-referendum-Oekraïne.dhtml>)

8 See www.geenstijl.nl for their online presence

lar Ukrainians. A number of smaller parties have joined the “no” side of the campaign: diverging from *For the Netherlands*, a new group with a clear right-wing agenda, up to *The Party for the Animals* who is against the trade deal per se because they expect potential decrease in animal welfare, human rights, and environmental standards if Ukraine is to be accommodated.

Perhaps with the exception of the last one, which is not a significant party per se⁹, there is one element binding all the actors. The side campaigning for “no” uses Ukraine-specific arguments instrumentally in their campaigns, using the topic as sort of a proxy to vote about the EU and the current course of the EU affairs in general.

The “yes” camp

On the other side, the current Dutch government and all the main parties stand for a clear “yes” vote. A criticism can be raised that the energy and resources on this side hardly compare to those devoted by the opposing camp. Especially in the early stages of the debate, there was perhaps not always a pro-active campaign in comparison with the one launched by the “say no” side. The mainstream parties have been largely absent from the campaign, cautious about the potential political gains or losses on this highly divisive subject.

As the date approaches, significant initiative has been devoted to the campaign; with the Dutch Prime Minister and Ministry of Foreign Affairs involved in numerous public discussions, events and media briefings. Stem Voor Nederland (*Vote For Netherlands*)¹⁰, a leading pro-EU campaign group, runs at the forefront of information campaign appealing to facts, clarifications and, to a lesser degree, emotional appeal.

“Russia factor”: an indispensable part of the debate?

One rarely finds any contemporary debate about the EU and Ukraine which would exclude the “Russian factor”. The referendum is no exception: the Dutch discussion about Russia’s role is highly sensitive, especially in the light of the MH17 tragedy. While the Netherlands traditionally enjoyed close relations with Moscow through trade as well as investment, the status quo was disrupted when the plane with almost two hundred Dutch nationals on board was shot above the Ukrainian airspace controlled by Russia-backed separatists.

9 The Party for the Animals represents just around 1% of the Lower House of parliament in the Netherlands and 4% of the Dutch representation in the European Parliament.

10 See www.stemvoor.nl for their online presence

The way this issue features in the “no” campaign echoes the well-known propaganda rhetoric which dominates Russian media. Voices here raise suspicion about Ukraine’s role, going as far as to suggest that the country might have deliberately refused to close its airspace in the conflict zone to gain a tactical advantage¹¹. Ukraine’s approximation with the West is seen as detrimental to the security balance in Eastern Europe. Much has already been written about the keen relations of the Eurosceptic parties of Western Europe with Putin’s regime. Yet, as the group *Ukrainians in the Netherlands* reminds “this referendum would have happened without Russia”¹².

Part of the public opinion echoes the logic of this referendum being also about the actorness of Russian Federation: almost half of those determined to vote “no” believe that passing the agreement unnecessarily puts the Dutch relations with Russia at risk. On the other hand, more than half of “yes” voters believe that a rejection of the association agreement would be Putin’s victory¹³. The “yes” camp sees the agreement also as means to draw Ukraine further from Russia’s illiberal influence.

Prospects

The latest opinion poll suggests 57% against and 43% in favour¹⁴, but note that the undecided voters are excluded here. Bearing in mind the proportion of those who have not yet made up their mind, these might turn out the biggest game changer in this vote.

What would a “no” vote mean for the Netherlands, for the EU and for Ukraine’s framework of relations with the Union? It is necessary to stress the non-binding nature of the results of the so-called advisory referendum, which in principle is not legally binding. Nevertheless, a strong “no” would mean uncharted waters, more politically than legally speaking. Most of the main political parties have agreed to abide by the vote; hence the government would most probably resubmit the Association Agreement to parliament for approval. The situation is all the more interesting in light of the country’s current EU presidency. On the one hand the Netherlands has greater citizen involvement in the EU among the core themes of its presidency. Disregarding the results of such a direct democracy tool in its own electorate should not be an option here.

In light of the wider European framework the legal con-

11 According to Thierry Baudet, a leading “no” campaigner.

12 Michael Khrystenko, head of the group Ukrainians in the Netherlands. See eg. interview for Sydney Morning Herald, 26 March 2016 at <http://www.smh.com.au/world/>

13 I&O Research, March 2016.

14 I&O Research, March 2016.

notations of a Dutch “no” may remain limited. The Association Agreement is a mixed-competence field, where the signing parties are both the EU and all its member states. Major part of the treaty provisions is in the EU’s exclusive competence, that is (mainly) in hand of the European Commission (trade falls under the common commercial policy). In a narrow view, the referendum is limited to (dis)agreement on the [Dutch] law that approves the Association Agreement. In other words, even if it politically closes doors for ratification within the Netherlands, in principle it does not close doors for adopting a decision by the European Council to conclude the agreement. In such case, the agreement could enter in force between the EU (in areas of its exclusive competence), the 27 member states that have ratified it and Ukraine. The non-participation of the Netherlands would only affect those areas where exclusive competence remains in hands of the member state alone. Yet such vision presupposes the willingness of the Dutch government to grant approval on international level to something that has domestically been rejected.

The other level is symbolic: it was the rotating Dutch presidency of the European Council which in 1991 officially recognized Ukrainian independence on behalf of the European Community (which became the EU later on). It was under the Dutch presidency that a call to Ukraine for an open and constructive dialogue with the Community was issued¹⁵. And it is the current Dutch

¹⁵ Chronology of bilateral relations: EU – Ukraine, available at the website of European External Action Service: http://eeas.europa.eu/delegations/ukraine/eu_ukraine/chronology/index_en.htm

presidency whose refusal to ratify the agreement could become a symbol of the changing attitudes of the EU member states towards the neighbouring countries. In light of the growing nationalist and populist tendencies in the EU, perhaps also a dangerous precedence. In words of Jean-Claude Juncker, the President of the European Commission, a no vote in the referendum could lead the way to a “major continental crisis”.

The optimists might remind the situation after the Dutch rejection of the European Constitution in 2005; when despite all predictions of disastrous consequences the implications were simply fixed by the Treaty of Lisbon a bit later. Nevertheless, that happened in a fundamentally different context for European integration. As of today, the EU has for too long been muddling through series of internal crises, fuelling Eurosceptic voices in old and new member states alike. Those same voices are also aiming to shape the realm of the EU’s external relations¹⁶ and engagement with its neighbours, particularly those who still find the EU’s magnetism strong. The Dutch referendum on the Association Agreement with its biggest Eastern neighbour might just be one of the first visible reflections.

¹⁶ See Balfour, R. et al. (2016) Europe’s troublemakers The populist challenge to foreign policy, Brussels: European Policy Centre, available at www.epc.eu/documents/uploads/pub_6377_europe_s_troublemakers.pdf

About the author:

Zuzana NOVAKOVA is a Visiting Researcher at Jean Monnet Centre of Excellence at the Kyiv-Mohyla Academy. She is a junior researcher at International Institute of Social Studies in the Hague and works for the European Political Science Review journal published by Cambridge University Press. Her research focuses on policy responses to transitions in the “European neighbourhood”, EU external relations and Eastern partnership.

East European Security Research Initiative (EESRI) is a discussion, analytical and information-sharing international platform aimed at uniting efforts of the experts and researchers from various countries to find effective ways for strengthening security in the Eastern Europe as the most vulnerable region of the contemporary Europe.

The views expressed are those of the authors and do not necessarily reflect the position of the EESRI.

© East European Security Research Initiative Foundation, 2016