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What Future for the EU's Association Agreement with Ukraine?

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On April 6, 2016, a referendum in the Netherlands rejected the ratification of the EU's Association Agreement with Ukraine. On 15 December 2016, roughly eight months after the vote, the European Council took note of the referendum outcome and adopted a decision aimed at addressing the Dutch concerns. This blog post reviews the developments and arguments underlying the Dutch 'no' vote, analyses the European Council Decision in light of alternative response options and assesses broader implications for the EU.

1 Legal basis: the Consultative Referendum Law

On 1 July 2015, [the Consultative Referendum Law](#) entered into force in the Netherlands. It allows a total of 300.000 citizens to initiate a national, advisory referendum on the laws and treaties adopted by parliament. In the initial phase, ten thousand people can trigger a referendum proposal. To announce the referendum and to start campaigning the signatures of 300.000 citizens are required. The law provides that the decision of the plebiscite can be taken into account by the parliament, if the turnout passes a 30% threshold. The Association Agreement between the EU and Ukraine (AA) was granted by royal promulgation on 8 July 2015 making it [eligible for a referendum](#).

2 Who triggered the plebiscite?

The spectrum of political actors that triggered the referendum was extraordinarily varied, bringing right-wing eurosceptic parties and anti-establishment movements together with left-wing political alliances and environmental activists. The main initiators of the referendum on the AA were political parties that had also been involved in triggering the referendum law proposal. The eurosceptic Party for Freedom (Partij voor de Vrijheid, PvdV) led by prominent EU-opponent Geert Wilders, the Animal Welfare Party (Partij van de Dieren, PvdD) as well as the left-wing Socialist Party (Socialistische Partij, SP) led the political campaign against the AA ratification. The left liberal party Democrats 66 (Democraten 66, D66) also supported the idea of the plebiscite despite voting in favour of the AA in June 2015, considering it as a means for strengthening democracy in the Netherlands.

The main civil society actor in the process was the grassroots initiative GeenPeil (meaning “no vote”), established in 2014 to monitor violations of the electoral law. After the Consultative Referendum Law entered into force, this citizens’ group started promoting the idea of consultative plebiscites on several issues, considering them as means to return to “real democracy”. The initiative is connected to the satirical blog GeenStijl (meaning “no style”), which has [developed an online-platform and app for the collection of signatures](#), needed to initiate the referendum.

3 Opponents and proponents: main arguments

GeenPeil and the eurosceptic civil society initiative Burgercomité EU (meaning Citizens Committee EU) were the leading actors in the “No”-campaign. Another actor involved in the “No”-campaign was the right-wing party For the Netherlands (Voor Nederland, VNL), now headed by Jan Roos, ex-journalist, who left the GeenPeil-campaign in August 2016 to launch his own political project. The plebiscite was also supported by the Forum for Democracy (Forum voor Democratie, FvD), a eurosceptic citizens’ alliance in favour of direct democracy.

The majority of the arguments of the “No”-campaign were either not directly connected to Ukraine and or based on a [misinterpretation of the AA](#). The main arguments of GeenPeil, for instance, were related to the [inefficiency of EU institutions as well as democratic deficits](#) both in the Netherlands and in the EU. It presented the plebiscite as the first Dutch “[real EU vote](#)”. This is in line with the goal of the initiative to establish itself as a political party, aiming to introduce “app-democracy” and “micro-referendums” on all law proposals going through parliament. Burgercomité EU misrepresented the AA as a step towards Ukraine’s EU accession. However, the Agreement [does not include any provisions on EU membership](#).

At the same time, several actors, such as the SP or VNL presented Ukraine as [a corrupt and insecure state, suffering from “civil war”](#) and unable to develop into a stable and prosperous country. Eurosceptic parties also used the migration crisis to spread the illusion that the AA as well as visa liberalization with Ukraine would open the doors to Ukrainian migrants that would [increase competition on the Dutch labour market](#). Ratification of the AA was also seen as a source of [tensions](#) in Dutch-Russian relations.

The “Yes”-campaign was mainly promoted by the liberal People’s Party for Freedom and Democracy (Volkspartij voor Vrijheid en Democratie, VVD) of Prime Minister Rutte and the civil campaign group “Stem voor Nederland” (meaning Vote for the Netherlands). They pointed out possibilities to [increase Dutch exports to and investments in Ukraine](#). The proponents also underlined the necessity of supporting progressive Ukrainian reforms that aim at abolishing corruption and oligarchical interventions. “Yes”-campaigners stressed that the Agreement does not promise Ukraine EU membership and that it will not increase the number of refugees or migrants coming to the Netherlands. This argument was inter alia backed by a corresponding [statement](#) by European Commission President Jean-Claude Juncker, in which he confirmed that Ukraine will not become an EU member during the next 20-25 years. The proponents also pointed out that a “no-vote” would not only cause [political instability](#) within the Netherlands, but also a crisis within the EU as a whole.

Several Ukrainian politicians, experts and representatives of civil society also contributed to the “Yes”-campaign. The latest attempt to promote a positive decision was the [visit of Ukrainian Foreign Minister](#) Pavlo Klimkin to the Netherlands on 2-3 April 2016. Klimkin discussed possible referendum outcomes and their implications with Dutch officials, took part in political talk-shows and in the 'Ask me anything' online chat on the Reddit platform.

4 Referendum and initial reactions

The ratification of the AA was [rejected](#) by a majority of 61% of voters against 38,2% that were in favour. The turnout was 32%. While only about 4,15 million of the 12,9 million eligible voters went to the polls, the legal threshold was passed.

Dutch Prime Minister Mark Rutte described the referendum result as [“disastrous”](#), but conceded that the “no”-campaign had been more convincing. During parliamentary debates in June 2016, he also mentioned that he does not support plebiscites on multilateral agreements and pointed out the complexity of the EU’s negotiations with regard to the AA. In the months to follow, he repeatedly pointed out that the [Russian threat](#) has become more and more significant and that a consensus decision within the EU should be found as soon as possible.

The President of the European Council, Donald Tusk, [stated](#) after the plebiscite that “the government of the Netherlands should analyse the outcome and decide the course of action”. In April 2016, European Commission President Jean-Claude Juncker [described](#) the negative outcome of the referendum as a case, which could be advantageous to Russia and have negative consequences for the whole Union. On 15 December 2016, at the European Parliament, Juncker [stated](#) that the “ratification of the AA is an issue of geopolitical responsibility”.

Ukrainian President Petro Poroshenko [insisted](#) that the referendum result should “not be an obstacle for Ukraine” on its way towards deepening relations with the EU. Ukrainian Deputy Foreign Minister for European and Euroatlantic Issues and one of key negotiators of the AA from Ukrainian side Olena Zerkal [considered](#) the debates over the AA as a “test case for trust in the relations between the EU and Ukraine” and pointed out that “it would be complicated [for Ukraine and its citizens] to believe all the promises, made by the Union”.

5 Response options and preliminary solution

After the referendum, the government of Prime Minister Rutte was faced with multiple [pressures](#). Domestic, eurosceptic forces were [calling](#) for a modification of the AA ahead of important national elections in March 2017. Representatives of several member states, notably Poland, Lithuania and Czechia [called](#) for ratification without modifications and minimal concessions to the Dutch side. Meanwhile, EU institutions were interested in a rapid settlement of the matter. In light of these pressures, several response options emerged in the aftermath of the referendum.

A. Rejection of the AA

The Dutch government could have rejected the AA, which would likely have entailed its rejection by the Dutch parliament. This scenario would have been politically opportune for the ruling government and could have [bolstered](#) the coalition parties against Eurosceptic parties in the March 2017 parliamentary elections. Before late October, the vast majority of experts and government representatives described this as the most likely scenario. However, on 1 November 2016, Rutte and the Minister for Foreign Affairs, Bert Koenders (PvdA) addressed a [letter](#) to the parliament, which underlined the necessity to ratify AA and treated it as an issue of strategic national and European interest.

B. Adjusting protocol

“[Adjusting protocols](#)” have been used in the past, for instance, with regard to Switzerland’s EEA membership. This would have implied amending the AA to delete ‘the Netherlands’ as one of the contracting parties. The Netherlands could have adhered to the referendum decision by abstaining from AA ratification in Dutch parliament. Yet the government would still have had to vote in favour of the AA in the Council where the agreement is formally concluded on behalf of the EU. In fact, 70% of the [AA’s provisions](#) (mainly those related to the DCFTA) belong to EU competences. The DCFTA provisions would thus still apply in the Netherlands as in any EU member-state. It would be [less clear](#), which of the provisions would really fall under national and thus also Dutch competence.

C. Formal joint declaration or protocol

The European Council could also adopt a joint declaration or protocol, [providing](#) for a legally binding exemption of the Netherlands from the implementation of some parts of the AA, for instance, those related to financial aid or security cooperation. The limitations of this scenario are twofold. First, the [AA does not regulate](#) many of those areas that were of particular concern for the Dutch no-campaign. For instance, it does not include security assurances for Ukraine and military support is provided outside the EU framework, mainly through NATO channels. Second, a formal declaration [would have required ratification](#) by all EU member states, the European Parliament as well as the Ukrainian authorities.

D. Preliminary solution: European Council Conclusions

European Council Conclusions have already [been used](#) in the past to address specific member state concerns and in response to national referendums. A recent example were the [Conclusions](#) of the European Council adopted on 19 February 2016, providing for a number of possible actions (e.g. decisions, statements, declarations) catering to specific British concerns. These actions were to be implemented in case of a positive outcome of the Brexit referendum.

This is also the path that the Heads of State or Government have [chosen](#) during their meeting on 15-16 December 2016 to respond to the Dutch concerns. They have agreed on a legally binding Decision that would take effect once the Netherlands has ratified the AA and the Union has concluded it. Otherwise, the Decision would cease to exist. The Decision provides that the AA:

- “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”
- “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”
- “does not grant to Ukrainian nationals or Union citizens, respectively, the right to reside and work freely within the territory of the Member States or Ukraine”
- “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”
- Establishes a framework under which “the Parties will cooperate in combating and preventing corruption both in the private and public sector”

While these provisions do not deviate from the AA in its current form, they clearly reflect the concerns raised by the Dutch no-campaign. And yet, AA ratification in the Netherlands remains debatable due to the domestic political circumstances in the Netherlands. Before the European Council Decision, the governing coalition of VVD and PvdA had a majority in the Second (Lower) Chamber of Dutch parliament, but [lacked](#) approximately 17 votes in the First Chamber (Senate). At this stage, it is unclear when the corresponding Dutch parliamentary debate and vote will take place. However, in light of opinion polls, a positive outcome for Ukraine [might be more likely](#) if it took place before the upcoming election in mid-March 2017.

6 EU credibility and Ukraine's future at stake

National referendums have become a recurrent stumbling block for EU policy-making. Recent examples include the Greek referendum on the Eurozone, the British referendum on EU membership as well as the Hungarian referendum on binding migrant quotas. The Dutch referendum is a special case insofar as it is one of the few instances where a national EU-related plebiscite affects the area of foreign policy. With this referendum, less than 1% of the EU's citizens have put the future of the bloc's relations with an important and strategic neighbour and partner on shaky grounds.

In some ways, the current situation is similar to the national referendums concerning the Maastricht and Constitutional Treaties. In these cases, the EU has found compromise solutions satisfying specific member state concerns within its legal framework. Hence, the EU has enough experience in developing responses in the spirit of differentiated integration.

In this very case, the EU's credibility as an international actor and the future of Ukraine are at stake. We have intentionally not discussed the scenario of negotiating a new AA between EU and Ukraine. In light of the current circumstances including economic challenges in the EU and Ukraine, Brexit and continued Russian aggression in the Donbas, this process could take years. Only swift ratification by all involved parties could reaffirm the EU's "normative power" and demonstrate unity in the face its manifold internal and external challenges. It could also demonstrate to the world that the notion of "European integration" does not exclusively mean "EU membership", but also sharing common values and legal approaches.