

The Ukraine-EU Association Agreement after the Dutch referendum



CENTRE
FOR INTERNATIONAL
RELATIONS

Analysis

4/2016

www.csm.org.pl



Robert Steenland

Born in 1989 in the Netherlands. Currently finishing his double-degree master in European Governance at the Utrecht University and the University of Konstanz. Has a Bachelor in International Affairs, as well as a Bachelor in Law and Economics. Currently works as a research intern at the CIR. Has a special interest in Eastern Europe.

On 6 April 2016, in a referendum held in the Netherlands on the Ukraine-EU Association Agreement, 61,1% votes were against and 38,1% - in favour. More than 10 years earlier, the Netherlands had voted in a similar way against the EU constitutional treaty, together with France. Although the referendum is non-binding and turnout was low with 32,2%, it will have political implications for both the EU and Ukraine. It is also a bad news for the European future.

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The Ukraine-EU Association Agreement (AA) has a difficult past and uncertain present. The process was initiated in 2012 and the document was supposed to be signed in November 2013, during the Eastern Partnership Summit in Vilnius. However, Viktor Yanukovich, the President of the country at that time, refrained from doing it under the Russian pressure. The EU was shocked and Ukrainians went out on the streets to protest. With the time, over 1 million people joined the protests, the police decided to use force to break them down and over a 100 civilians died. In February 2014, Yanukovich decided to flee the country and a new government was formed, backed up by a pro-EU dominated parliament. In the same time, Russia annexed Crimea, helping so called “pro-Russian separatists”, backed up military and financially by the Russian Federation¹. Several thousands of people died in the conflict in Eastern Ukraine.

The new elected President Petro Poroshenko vowed to bring the country back on track to the European Union. On 26 June 2014, the AA was finally signed by both the EU and Ukraine. Its political parts were already provisionally applied on 1 November 2014, while the economic part was provisionally applied on 1 January 2016, awaiting the ratification

process. The European Parliament and the Verkhovna Rada, the Parliament of Ukraine, ratified the agreement symbolically at the same time, on 16 September 2014. Throughout 2014 and 2015, all EU members except for the Netherlands subsequently ratified the treaty. The Dutch government however had to await the result of a referendum.

The Dutch referendum

Initially, the Dutch Parliament and Senate approved the AA by a big majority on 7 April 2015 and 7 July 2015 respectively, following a royal promulgation on 8 April 2015. However, a new law, the Advisory Referendum Act, entered into force on 1 July 2015, just 7 days before the promulgation. The law stipulates that a non-binding referendum can be requested if initially 10.000 signatures within 4 weeks after promulgation are collected, followed by another 300.000 within another 6 weeks, all of which are checked by the Electoral Council.

Three scenarios are possible under the new law when a referendum is voted on. The first scenario is that the necessary threshold of 30% turnout is not achieved. In this case the referendum is simply not valid. If the threshold

¹ Confirmation of this can be read for example here: <http://www.bbc.com/news/world-europe-31796226> and here: <http://www.theguardian.com/world/live/2015/dec/17/vladimir-putins-annual-press-conference-live>.

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is indeed reached, and people vote in favour of the law, the government can continue on to ratification. The last scenario is that the necessary threshold is reached but people vote against. In this case the government – since the referendum is non-binding and thus merely “advisory” – can decide whether to ratify the agreement or not.

The AA turned out to be one of the first EU related laws that was suitable for such a referendum based on the new law. The euro-sceptic organization *Burgercomité EU* had wanted a referendum on the EU for a long time and saw a new opportunity to show their discontent with the EU. They called in the help of the organizations *Forum voor Democratie* and *GeenStijl* which hold similar ideas. The first 10.000 signatures were collected well in time within 4 weeks and eventually over 427.000 other signatures came via an App. The victory was announced on 14 October 2015, when the Electoral Council confirmed the referendum could be held.

The campaign

The campaign did not directly kick off as different parties were awaiting their subsidy. This was another aspect of the new law that made non-binding referendums possible, as different parties that are either campaigning in favour,

against, or neutral could ask for funds in order to be able to hold their campaigns. Some bureaucratic hurdles had to be overcome, but eventually the resources of almost €2 million were disbursed at the beginning of March. Funds were given for a wide array of campaign tools: flyers, seminars, radio-commercials, online discussion forums but also toilet paper with arguments written on it.

The government initially took a backseat role in the referendum, as did many parties that were in favour of the agreement. In the meanwhile, the “NO” campaign heated up, campaigning across the country, on the Internet, through social media, and attempted to get as much prime time possible. The “YES” campaign made an ambitious attempt to catch up at the end, but only managed to narrow the differences in the polls a bit, as from the onset national polling showed the referendum would most likely result in a “NO” against the AA.

Different political parties have their own view on the AA, as well as on the referendum itself. This has resulted in some parties barely campaigning or even refusing to campaign as they oppose the referendum as a tool of direct democracy. Political parties such as the social liberals, social democrats, socialists and greens are more in favour of more forms of direct democracy through referendums like these,

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while parties such as the liberals and Christian parties oppose referendums, arguing that such agreements should not be decided on by the people in such a vote, but rather indirectly by electing representatives – showing their belief in representative democracy rather than direct democracy. When it comes to the AA itself, most of the mainstream centre-left, centrist and

centre-right parties such as the social-democrats, greens, social liberals, Christian parties and liberals were in favour of the AA and thus campaigned for a “YES vote”. On the other hand, the more fringe, populist and one-issue parties such as the socialists, nationalists and the parties for the animals and elderly opposed the AA.

Positions held by political parties

Political Party	Stance on referendum	Campaigned for
Groenlinks (Greens)	Positively	YES vote
PvdA (Social Democrats)	Positively	YES vote
VVD (Liberals)	Negatively	YES vote
CDA (Christian Democrats)	Negatively	YES vote
CU (Christian Democrats)	Negatively	YES vote
SGP (Orthodox Protestants)	Negatively	YES vote
SP (Socialists)	Positively	NO vote
PVV (Nationalists)	Positively	NO vote
PvdD (Animals party)	Positively	NO vote
50 Plus (Elderly party)	Positively	NO vote ²

² Initially voted in favour of the AA, yet “campaigned” for a “NO vote”.

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There were furthermore also a lot of concerns with regards to the specific topic of this particular referendum. These concerns were not about referendums in general, but were critical about the fact a referendum was organized on something they considered not so important. Likewise, critique was given as well at the fact the motivation of the organizers to hold the referendum was not primarily because they opposed the AA, but made use of the opportunity to generate an anti-EU sentiment, as all the organizers are Euro sceptic, and would like to see the EU either abolished or want the Netherlands to leave it, a so called “Nexit”³.

The main initiator was the bluntest by confirming this and making the following statement:

*We do not care about Ukraine. You have to understand that. We want to destroy the European Union or to make the Netherlands leave it. Therefore we are making use of all the instruments available (such as the referendum) to create tension between the Netherlands and the European Union*⁴.

Therefore there were actually different issues at stake during the referendum: whether you were in favour of referendums in general, whether you were in favour or not of a referendum should be held on this issue, and if so, whether you were in favour or against the AA. These different stakes made strategic motivations to vote or not even more complex, as it led to the situation where people decided not to vote in order to make the referendum fail, as it would decrease the chances of the sufficient turnout amount being reached. Some websites even advised on this. And the low-profile of the government campaign of a positive voted, suggested the government itself was hoping no more than 30% of the electorate would show up.

The information warfare

The campaign prior to the referendum vote was to some extent comparable to any election. Often different political parties come up with their own biased frames when it comes to their view on certain issues. This often involves coloured information, and in some cases disinformation

³ The initiators of the referendum have not been shy about their actual motivations, as shown by media performances by three main organizers of the referendum: Jan Roos, Thierry Baudet and Arjan van Dixhoorn, which can be consulted here (Dutch): http://www.npo.nl/oog-in-oog/19-10-2015/KN_1674698, here (Dutch): <http://programma.vpro.nl/buitenhof/afleveringen/2016/buitenhof-6-maart---referendum-oekraine---hubert-bruls.html> and here (Dutch): <http://www.nrc.nl/next/2016/03/31/oekraine-kan-ons-niets-schelen-1606419>.

⁴ Statement by Arjan van Dixhoorn, that heads the *Burgercomité EU*, the main initiator of the referendum. The statement has been translated in English. The full interview can be consulted in the last source of the above footnote.

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or even lies. Such things could be considered normal part of a democracy, and the citizen should be able to distinguish what is true and what is not, and what he or she should believe. However, the proportions of the amount of negative framing, providing disinformation and even lies have been astonishing for a campaign in the Netherlands.

Those in the “YES” campaign mostly suggested the AA was merely just another trade agreement and who could be against trade? Furthermore geopolitical implications were often downplayed. Even a leaked government strategy suggested government officials should frame the benefits in economic terms and refrain from using security or geopolitical arguments. On the other hand, the “NO” campaign suggested the agreement had no value as there was no trade with Ukraine. Furthermore it was suggested the AA was about extensive military cooperation and that the AA would lead to membership of the EU.

The reality is more complex however. The AA is not just a trade agreement. In any case it is not perceived by Ukraine as such. While in nature comparable to trade agreements that have been agreed before with a wide array of countries from different countries such as South Africa and Chile, it is beyond doubt that the agreement has symbolic implications, and

could be a first step towards EU membership. It must be said however in this regard, that it would be a step in a potential decades long process with an unclear outcome whether it would ever reach the requirements of EU membership as most countries take years if not decades before they are even classified as a candidate EU member. We can see this in the Balkans, as most countries, while having been given a clear prospect of EU membership during association agreements. This is something Ukraine has not received and which many EU countries oppose such as the Netherlands.

Furthermore, if some miracle would occur and all corruption would be eradicated over night in Ukraine, and it would transform into a democratic, free market state where the rule of law is respected, each EU member state still has the right to veto accession of a country to the club or even become recognised as a candidate-EU country. Actually, as we have seen especially with Turkey, if you do reach that stage, member states even have a veto on every single negotiation chapter, which has been used several times, most recently also by Croatia on Serbia’s accession. Therefore, as Ukraine is not even close to receiving EU candidate status or being given the prospect of eventual EU membership, it is beyond doubt that Ukraine membership is all but clear and if it would occur it would take (at least) several decades. On the

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other hand, it would be incorrect to say the AA has no geopolitical implication whatsoever, as Russia has lost its influence in the neighbourhood increasingly already since the demise of the Soviet Union. With Ukraine moving further to the West, even with merely a symbolic agreement, would decrease Russia's influence in the region. Therefore it is also more than just a trade agreement.

A critique of the referendum

While often hailed as one of the most democratic instruments, one could say it would be undemocratic if a referendum of this kind would be able to determine a joint democratic process of the EU and its 27 member states. As in the introduction, all EU member states have already agreed. One could argue it would be undemocratic if one relatively small member state could stop the whole process, neglecting the wish of all the other EU members. Compare this to a friend group of 27 people wanting to visit the mountains, while one member of the group wants to stay in the hotel, and prevents the others from going to a hike in the mountains. Most would agree this wouldn't be optimal nor fair or democratic as the democratic rights of others are not taken into consi-

deration in this "democratic" process. Even if the vote would have full-fledged implications, this would imply democratic rights of other EU states that also have a vote are being neglected. Coming back to the example, this would mean the whole group is not able to go the mountains because one member wants to stay in the hotel.

Furthermore it is impossible to be aware and informed about every single topic. And here comes another problem: most people do not know what they are actually voting for or against. Are they voting merely for a trade agreement? Are they voting for Ukraine membership of the EU? Are they voting for or against the EU itself? The information war that took place surely did not make the citizens more capable of making an informed, weighed and balanced vote. Misinformation, misleading frames and even blatant lies were provided on either sides, although the "NO" camp surely went the furthest, claiming Ukraine is simply divided in east and west and in a civil war, that the West caused war in Ukraine with the AA, that Ukrainians shot down the MH17 - not separatists, that the Ukraine government is dominated by Nazis and even that the Association Agreement could lead to more AIDS in the Netherlands⁵.

⁵ An overview of made controversial statements can be found here: <http://www.nrc.nl/nieuws/2016/04/07/alles-wat-je-moet-weten-over-het-oukrajne-referendum#bewering12>. Following critique, the remark about AIDS was later adjusted by Thierry Baudet on his Twitter account, one of the main initiators of the referendum.

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A third critique is that a referendum had unclear implications. It was non-binding, meaning the government is not obliged to respect the results. Moreover, according to a legal analysis even if the government would follow up a negative vote on the AA, it would not take away that about 70% of the AA falls under the exclusive competence of the EU and the remainder 30% could still be applicable in the other 27 EU countries⁶. Therefore 70% of the AA can be implemented anyway and the implementation of the remainder 30% can only be blocked with regards to its application in the Netherlands, and not in all the other EU countries, for example through an opt-out in a protocol. It is hard to believe that this would be in line with the expectations of those who voted against the AA. Whether the outcome in case of a negative vote is followed up or not, it would only further reduce trust that people have in politics as either their vote would be perceived as neglected if not followed up and if followed with a simple protocol up it wouldn't make much of a difference.

A last critique that is related to the latter, is that a significant part of the electorate that was favourable to the deal actually opted to stay at home, for strategic reasons. They believed the necessary threshold would perhaps not be reached if they would not vote. In the end, the threshold was surpassed by merely a few percent. A poll following the result of the vote suggests people would have gone to the polls more if they had known this threshold would have been surpassed. The same poll also indicated that in this case about 41% of the electorate would have voted – still low – and would have narrowed the “overwhelming”⁷ “NO” vote to 53% versus 47% in favour⁸.

This is not a general objection against the referendum as an instrument. Although a flawed and blunt instrument that could hardly replace representative democracy, it – if designed well – could be supplementary and applied in certain cases in which citizens of a particular constituency – whether it is a municipality, province, sub-state, state, or federation, actually

⁶ For two analyses on what the actual effect of a Dutch veto by its government would imply for the applicability of the AA, read here: <http://verfassungsblog.de/what-will-happen-if-the-dutch-vote-no-in-the-referendum-on-the-eu-ukraine-association-agreement/> and here: <https://euobserver.com/opinion/132984>.

⁷ Note that with a negative vote of 61,1% based on a turnout of 32,2% implies less than 1 out of 5 people of the electorate actually bothered to show up and vote “no”.

⁸ This poll can be consulted here: <https://www.noties.nl/v/get.php?a=peil.nl&s=weekpoll&f=2016-04-10b.pdf> and suggested a significant portion of the electorate opted to not vote out of strategic reasons, an unintended result of the obligatory 30% threshold for a referendum to be valid.

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can and more important should have influence on a topic. The constituency has to be related to the scale of the issue. As illustrated it would be undemocratic to let a relatively small member state determine the outcome of a process that should be agreed on by the EU as a whole, with Ukraine as the other party that has an equal say. Referendums could work out, if the scale of the issue corresponds to the constituency. An example that would make more sense could be voting in favour or against the construction of a shopping street or a cultural centre in a certain city by its people. But not an agreement that involves all the members of the EU, an EU wide referendum would be more appropriate for this.

The parallel with the referendum in 2005

In the end, although with a lower turnout, a similar percentage of people voted against the AA, as did people back in 2005 vote against the European Constitution. Different motivations emerged back then as well, on what they were actually voting for and why. A lot of people actually believed that by voting for the constitution, the gates would be opened to EU membership of Turkey. Something which was not related to the treaty, as was EU membership of Ukraine strictly taken not part of this AA and neither did it provide a prospect for possible EU

membership. Another motivation to vote at the time was furthermore whether you supported the current government or not. At the time, the coalition government led by Prime Minister Jan-Peter Balkenende was particular unpopular, and many expressed their discontent actually with the government, rather than with the constitution, through a protest vote. Looking at the current situation, the ruling social democrats and liberals are also quite unpopular, scoring lower together than the nationalists by themselves. Although no extensive research has been done yet, it could be the case that such motivations were again present during this vote.

More parallels can be made when looking at the actual campaign at that time and the information warfare that took place. Back then the “YES” camp suggested there could be heavy consequences if there would be a negative vote. Some even suggested we could have war again in Europe and the “lights could go out”. Although not a direct parallel, it could be said that the exaggerated statement by European Commission President Jean-Claude Juncker that a continental crisis would be triggered in case of a negative vote fits in the same category. On the other hand, the “NO” camp at the time suggested the EU was to become a super state with this treaty, even though power still remained dominantly in the hand of the member states, as it did with previous treaties. At the time it

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was also the case that the nationalists and the socialists campaigned against. They especially kicked off the campaign right away, while just as occurred now with the campaign over the AA, the government basically campaigned slowly, and took a backseat role.

A final comparison when looking back at this referendum, it has to be said that despite the outcome, a lot of people felt cheated on later as they perceived the replacement – the Lisbon Treaty – as the constitution in disguise, that what they had voted down earlier. Some argue this referendum is a follow up to this one, and the discontent created at the time led partly to the current euro-scepticism now, a frame which is also pursued by those who organized the referendum. One could argue the current referendum would make voters feel neglected, if the AA would not be affected, even if it shouldn't for the reasons mentioned earlier, as they could perceive once again that their vote is not taken seriously. It shows the flaws of using a referendum for something on which a vote has limited influence.

But what about Ukraine?

The people in Ukraine, however, have been the biggest losers of the negative outcome of the Dutch referendum. Despite the limited legal implications, it could have political ones, espe-

cially if the AA is discussed again. The flawed referendum disregards this. Arguably it is even disrespectful of the sacrifices and suffering Ukraine and its people have made.

Having experienced enough bloodshed and suffering already, as shown in the thousands of deaths that have occurred during the Maidan revolution and especially during the war in the Donbass and by the fact it has lost territories in the south and east to its aggressive neighbour Russia, they did not receive even a mere symbolic trade agreement. Something which would not overnight fix the country, but simply provides them with some hope. This would imply that what initiated the first protests, the hope to move closer to the European project and the West, could be further shattered. In this context, it is hard to believe the EU would decide to abolish the AA due to a flawed referendum held in one EU member state that presents 3,3% of the total population of the EU, of which less than 1 out of 5 people voted against.

What next?

The Advisory Referendum Act is quite clear when it comes what should be done with a result. As the outcome is negative, the government now has to decide whether to ignore the vote or to not ratify. Following the negative vote, in any case the Dutch Prime Minister Mark Rutte sta-

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ted it would not be possible right now to “just” ratify the AA. The next step would be consultations with the Parliament, as well as with other EU member states during the next EU Council Summit, a process which could take months, especially as the next EU Council Summit will only take place by 28 June 2016.

The “nuclear” option of changing the AA or cancelling it seems likely, as other EU states would not agree to this and most of the AA falls under the competence of the EU. In any case the Ukraine government has stated it would continue its pro-EU path and commit to reforming the country. Furthermore, although not directly linked to the AA, visa liberalisation is expected to be proposed soon by the European Commission. Therefore this “nuclear” option of blowing up the AA, which would trigger a continental crisis as Juncker suggested, seems unlikely and closer relations between Ukraine and the EU are to continue. As stated before, it would have been undemocratic if the Dutch vote would change this.

The earlier mentioned protocol option therefore seems more viable, in which the Netherlands would have an opt-out from the political component that is about 30% of the treaty. In practice this would mean that for example when dialogues about human rights are being held between EU countries and Ukraine, the Netherlands would not be part of those. It is questionable whether the “NO” voters, whatever their motivations were and based on which information, would had expected this and would consider this as their vote being taken seriously. Therefore this referendum as argued only creates losers, apart from the organizers that got their platform to create more discontent with the EU.

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Centre for International Relations (CIR) is an independent, non-government analytical centre established in 1996 which deals with Polish foreign policy and the most important issues of international politics. CIR is active in research, education and publishing, organises conferences and meetings, and participates in international projects in collaboration with similar institutions in many countries. CIR creates a forum for debate and exchange of ideas in matters of international politics, relations between states and challenges in the global world. CIR's activities are addressed above all to local-government officials and to entrepreneurs, as well as to officials of the central administration, politicians, diplomats, political scientists and the media. In 2014, CIR was again recognised as one of the best think-tanks in East-Central Europe in the study "The Leading Public Policy Research Organisations in the World" conducted by the University of Pennsylvania.

