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The Dutch reject the Association Treaty between the EU and Ukraine

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On 6th April the Dutch rejected the Association Agreement between the EU and Ukraine during a consultative referendum. Only 38.21% voted "yes" to this popular consultation which inspired few and in which just 32.38% of the Dutch turned out to vote. But this low turnout was however slightly over the quorum of 30% required to declare the referendum valid. Six voters in ten (61%) answered "no" to the question "Do you approve the Association Agreement between the EU and Ukraine?"

THE EU-UKRAINE AGREEMENT

The Association Treaty between the EU and Ukraine¹, signed in March 2014, as far as its political chapter was concerned and in June 2014 regarding the trade chapter, aims to strengthen political dialogue and economic exchange between the two sides.

It was a decisive element in the Ukrainian revolution of the winter of 2013. The announcement during the Eastern Partnership Summit in Vilnius (November 2013), that the then Ukrainian President Viktor Yanukovich was refusing to sign the agreement triggered demonstrations that led to the destitution and disastrous flight of the latter in February 2014.

The text was approved by the Ukrainian Parliament and the European Parliament on 16th September 2014, and ratified by 27 EU Member States except for the Netherlands.

The agreement has been implemented temporarily since 1st November 2014 as far as its political chapter is concerned and since 1st January 2016 regarding the trade chapter.

The Chamber of the States General (Tweede Kammer der Staten-Generaal), the lower chamber of the Dutch Parliament ratified the agreement on 7th April 2015, with a high majority of 119 votes in support, 31 against and the Senate (Eerste Kamer) the upper chamber of Parliament, did the same on 7th July 2015, again with a high majority of 55 votes (63%) in support, 20 against. King Willem-Alexander promulgated it on 8th July 2015.²

WHY A REFERENDUM?

However a law that entered into force on July 1st 2015 in the Netherlands enables the people to demand a consultative referendum to be organised on a legislative text if at least 300,000 signatures are collated from the electorate to this purpose. Three Eurosceptic organisations (the GeenPeil, a collective that comprises two think-tanks and the internet site www.GeenStijl.nl) managed to collate 470,000 signatures in support of a consultation that the Dutch authorities were therefore obliged to organise.

Here we might wonder about the consequences of this new legal measure that allows a challenge to be made to a vote cast by the elected representatives of the people (representative democracy) with a threshold that can only leave one perplexed and sceptical. In the past voices were raised about the majority necessary to win Montenegro's independence from Serbia which was then set 55%! We might do the same in the Dutch case where the threshold is set at 30%! If we compare the number of voters in the country's electorate we note that a minority (under 20%) can block – in the name of participative democracy – the majority declared in the ballot box.

Indeed the Netherlands finds itself in an extremely difficult and uncomfortable position in which the mechanism has backfired. Not only is this now a problem for the Dutch government (certainly this was one of the goals of those who initiated the referendum)

1. [http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:22014A0529\(01\)&rom=FR](http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:22014A0529(01)&rom=FR)

2. <https://www.eerstekamer.nl/9370000/1/j9vvhwtbnzpbzcc/vjvzbjbj1kzm/f=y.pdf>

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but it also affects a European agreement with a third State (Ukraine), itself in conflict with another third State (Russia). This goes beyond the Netherlands' domestic political landscape.

THE REASONS BEHIND THE "NO" VOTE

Most of the political parties called to vote "yes": the two present members of the government coalition – the People's Party for Freedom and Democracy (VVD) led by Prime Minister Mark Rutte and the Labour Party (PvdA) led by Diederik Samsom – but all by Christian-Democratic Appeal (CDA), the Christian Union (CU), the Democrats 66 (D66), the Green Left (GL) and the Political Reform Party (SGP).

Prime Minister Mark Rutte repeated that the agreement was "good for the Netherlands" and that "Ukraine was not destined to enter the European Union". But all was in vain.

He also said that in an interview with the daily *Algemeen Dagblad* that the treaty was mainly about trade even though it also involved a battle to counter corruption, the building of the rule of law and the stability of the borders of Europe. "Who is not for more stability?" asked the leader of the Dutch government.

The Deputy Prime Minister and Minister for Social Affairs and Employment, Lodewijk Asscher (PvdA), said that the Association Agreement was to both Ukraine and the Netherlands' advantage. "This vote is about Ukraine, there are other ways of expressing your feelings about the European Union," he declared as he tried to prevent the Eurosceptics from the using the referendum for the expression of their hostility to Brussels. Again, all was in vain.

Conversely the Party for Freedom (PVV), the Socialist Party (SP), For the Netherlands (VoorNederland, VNL) and the Animals Party (PvdD) campaigned for the "no".

"It appears that the Dutch said "no" to the European elite and "no" to the treaty with Ukraine. It is a movement of censure by the people against the elites in Brussels and The Hague which is the beginning of the end of the European Union," maintained Geert

Wilders (Party for Freedom PVV), one of the text's main opponents.

For their part the opponents to the association treaty put forward the high levels of corruption in Ukraine (the referendum came three days after the publication of the Panama Papers in which the names of some Ukrainian personalities feature, including Petro Poroshenko), the authoritarian nature of the government in power in Kyiv, the difficult negotiations ongoing to form a new government, the country's poor economic situation, their refusal to see Ukraine as member of the EU in the future and their fear of conflict with Russia.

A share of the Dutch population is still traumatized by the explosion of Malaysia Airline's flight MH17 on 17th July 2014 in the region of Donetsk (East of Ukraine) as it flew from Amsterdam to Kuala Lumpur. Most of the 297 victims in the catastrophe – the responsibility of which was placed with the pro-Russian forces and Moscow by the country's public opinion - were Dutch.

Opponents to the European text especially wanted to show their hostility to Brussels. Historian Arjan van Dixhoorn, one of the leaders of the campaign against the Association Agreement explicitly indicated this: "We don't care about Ukraine," adding, "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."

"We believe it is time that someone sounded the alarm on democracy. Brussels want too much and too fast (...) Citizens have to be able to weigh up what is happening in Brussels," said Bart Nijman, a member of GeenPeil, one of the three Eurosceptic organisations which instigated the referendum.

For some of the Dutch this referendum is the first step towards the "Nederexit", ie the exit of the Netherlands from the European Union. "The referendum is a clash between the people and the elites of the Netherland, the Ukrainian population, is only of secondary importance," summarises political expert René Cuperus.

The final results of the referendum will be announced by the central electoral commission on 12th April³.

3. <https://www.kiesraad.nl/en/news/announcement-results-referendum-association-agreement-ukraine>

Results of the referendum on the Association Treaty between the EU and Ukraine on 6th April 2016 in the Netherlands

Turnout: 32.2%

Question set	Number of "yes's" The % of "yes" votes is in brackets	Number of "no's" The % of "no" votes is in brackets
Do you approve the Association Agreement between the EU and Ukraine?	1 575 183 (38,41%)	2 526 081 (61,59%)

Source : Agence France Presse

HOW WILL THE NETHERLANDS EXTRICATE THEMSELVES FROM THIS SITUATION?

The EU-Ukraine Agreement has to be ratified by the 28 Member States in order to enter into full legal force. However since it has already been implemented for example in terms of reducing customs duties between the EU and Ukraine and also in terms of energy and sustainable development cooperation, hence it will continue to be applied – at least temporarily – since the referendum does not imply the agreement’s suspension. And this can go on for several years.

But the issues raised by this unique event in terms of ratification by an EU member does not allow for any obvious solution in the immediate future.

Indeed according to Dutch Prime Minister Mark Rutte (People’s Party for Freedom and Democracy, VVD) *“the Association Agreement cannot be ratified in its present form.”*

Although the referendum is not legally binding the Dutch government cannot ignore the victory of the “no” vote which will lead to a re-examination of the Association Agreement before Parliament.⁴ This will be the case on 13th April next. *“The Dutch “no” to the agreement between the EU and Ukraine will be debated in the lower chamber of Parliament,”* announced the Prime Minister on 8th April, as he spoke of his country entering “unchartered territory”. *“This involves a complex process and a new phenomenon that has never occurred to date. It might take some time yet. This is all I can say at the moment,”* he said during his weekly press conference.

But consultation within Parliament alone will not be enough.

In a quirk fate the country – which is presently presiding over the Council of the European Union until 30th June next – must also negotiate with its European partners, which have all ratified the agreement.

The Dutch Prime Minister could undoubtedly negotiate the addition of a protocol stipulating that this agreement does not comprise the first step towards Ukraine’s accession to the EU or that the fight to counter corruption is a priority. He might suggest adding an “opt-out” clause for his country. He could also ask Brussels, with the agreement of the European Parliament, for amendments to be made, with the addition of specific clauses: the possibility for example of the Netherlands being able to withdraw from certain parts of the agreement and/or ask for the removal of certain clauses, such as the paragraph regarding greater military cooperation. The Netherlands might try to retain the commercial aspects of the Agreement whilst relinquishing the strengthening of political dialogue.

All of this will take time since, in all likelihood, this will have to be negotiated with its 27 European partners and with Ukraine. Ukrainian President Petro Poroshenko deemed on 7th April that this vote raised a domestic issue for the Netherlands and that it did not challenge the EU-Ukraine agreement.⁵

4. <https://www.government.nl/latest/news/2016/04/07/advisory-referendum---reaction-dutch-government>

5. <http://www.president.gov.ua/en/news/komentar-prezidenta-z-privodu-poperednih-rezultativ-referend-36963>

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But the problem is even deeper than that. Any convoluted legal considerations are politically dangerous. One of the consequences of this referendum is that it has weakened Europe's position vis-à-vis Moscow and strengthened that of Russian President Vladimir Putin, who was furious about the EU and Ukraine's rapprochement and constantly opposed it.

Four months after the Danish "no" to their country's participation in the European security programmes by

53.1% during the referendum on 3rd December 2015, the Dutch "no" heralds the start of a new crisis to be managed by Brussels, just three months before the referendum on the UK's membership of the EU on 23rd June.

But for the Netherlands the present political situation is also dangerous, as it comes just months before general elections that absolutely have to take place before mid-March 2017.

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