THE CURRENT OBSOLETE LEGAL FRAMEWORK OF EU-ARMENIA RELATIONS AND THE EXPECTED ADDED VALUE OF THE ENVISAGED ASSOCIATION AGREEMENTS

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The General Framework of EU – Armenia Relations

Since the first days of Armenia's independence integration into European initiatives has been a foreign policy priority for the country. This is evidenced by the country's membership in Council of Europe, cooperation with EU and NATO, bilateral record of cooperation with European countries.

European Union (hereinafter EU) has started to build relations with the countries of the former Soviet Union since the dissolution of the latter and has applied various legal and political instruments which were at its disposal and are directed to bringing these countries closer to the EU. Armenia was among these newly independent states1, which warmly welcomed these initiatives and has followed a path of building relations with the EU in many ways similar to most of the other countries of the region. In 1996 Armenia applied to join the Council of Europe and has been granted full membership since 2001. This marked an important step in the country's willingness to move towards European values, in particular adherence to democratic principles and protection of human rights.

In order to illustrate the development of the EU's actions in the region one should go back to the earlier documents. In 1995 the Commission, in its Communication on the Transcaucasian States, suggested a coordinated strategy and set objectives for its actions by assisting the three republics in transition through the deployment of all instruments at the disposal of EU in a coordinated way[2].

The Communication, suggested the negotiation of a PCA, which has been achieved, and also suggested the adoption of a Common Position on the region by the Union, *inter alia* with the intention to promote democratic principles in the region as well as actions directed to further the economic interests of the EU. The General Affairs and External Relations Council (GAERC) Conclusions[3] following the Communication contain no response to the proposed Common Position and assumptions can be made for the reasons behind that.

The mentioned Communication starts out by mentioning that the region sees '*the EU*' as a '*partner of first importance*' and later moves on to describe

[1] Armenia acquired independence in 1991 as most of the other countries of the Former Soviet Union.

[2] Commission Communication to The Council – Towards A European Union Strategy for Relations with the Transcaucasian Republics, 31.05.1995 COM (95) 205 final.

[3] GAERC Conclusions, 12/6/1995 (English) - Press:174 No: 7839/95.

the geopolitical and economic interests of the EU in the region. This document reflects the support provided (or foreseen) by the EU to the region and sets out the moral interest of the EU in participating in the humanitarian activity in the region, due to the conflicts in the region which still remain unresolved. Therefore, at the initial stage the partnership was directed towards the immediate needs of Armenia and other countries of the region, which were recovering from conflicts.

The most significant suggestion made by the Commission in the Common Position annexed to the communication, which could give rise to controversy, relates to adding an EU dimension to the OSCE/Minsk Group, which is the main international actor in the mediation of the conflict between Armenia and Azerbaijan over Nagorno-Karabakh[4]. This could illustrate the ambitions of the Union in the region which are targeted at strengthening the mutual links between the EU and the two countries. While recognizing the need for strengthening the relations under the PCA framework, the parties also recognized that the main impediment to the rapprochement between the parties remains the presence of unresolved conflicts in the region[5].

What exactly the Commission meant by the suggestion to 'add an EU dimension to the OSCE/Minsk Group' is not clear. The continuous efforts by the Union to support the negotiations related to the conflicts in the region, may suggest that it aspired to take a more of an active role in those mechanisms. Furthermore, there are continuing suggestions for the EU to request observer status in the OSCE/Minsk Group, or more recent talks in the media of replacing France with the EU within the Minsk Group. In the recent Country Progress Report it is specified that The EU stands ready to provide enhanced support for confidence building measures, *in support of and in full complementarity with the Minsk Group*, with a view to facilitating further steps towards the implementation of peace[6].

As a legal framework, the EU chose to enter into Partnership and Cooperation Agreements with all the countries of the former Soviet Union[7]. These agreements are mainly directed at establishing political dialogue and providing support to the countries in their transition to market economy.

Following the 2004 enlargement, the EU started to enhance its relations with the newly independent states, as those became EU's immediate neighborhood. The initial White Paper on the Wider Europe stated that the

[4] OSCE Minsk Group is co-chaired by USA, France and Russia. It also includes Belarus, Germany, Italy, Portugal, the Netherlands, Sweden, Finland, Turkey as well as Armenia and Azerbaijan.

[5] Joint Declaration of the European Union and the Republics of Armenia, Azerbaijan and Georgia, 9405/99 (Presse 202), Luxembourg, 22 June 1999.

[6] Joint Staff Working Document, Implementation of the European Neighbourhood Policy in Armenia Progress in 2011 and recommendations for action, Brussels, 15.5.2012, SWD(2012) 110 final, p. 2.

[7] See e.g. PCA with Russian Federation OJ L 327 of 28/11/1997, PCA with Ukraine OJ L 049 of 19.02.1998, PCA Moldova OJ L 181 of 24/06/1998, PCA with Armenia, OJ L 239, 09.09.1999, PCA with Azerbaijan OJ L 246, 17.09.1999, PCA with Georgia OJ L 205, 04.08.1999.

South Caucasus ‘falls outside the geographical scope of the policy *for the time being’* (emphasis added). As described by Dov Lynch, the South Caucasus has moved from ‘a footnote to example’[8] and currently poses a bigger challenge for the EU, especially with regard to the ENP. The launch of the European Neighbourhood Policy has signified a new stage of relations. A new bilateral instrument under the ENP – the Action Plan – has been adopted between Armenia and the EU in November 2006. Action Plans (AP) are bilateral political documents, but they were expected to receive stronger support on behalf of the partners, as well as instigate more compliance as compared with internationally binding PCAs. It is certain, that the AP receives strength due to its negotiation process. It is a ‘joint’ document agreed by both sides, and thus embodies commonality, which gives to the document an added value. It has been said by practitioners not only on behalf of the EU, but also working on the ENP on the Armenian side, that the commitment to the action plans is even stronger, due to the fact that it has been agreed by a process of negotiation.

After the launch of the ENP, Armenia acquired additional assistance from the EU directed to support reform efforts and ENP Action Plan implementation. Armenia became the first country where the EU deployed a team of high-level advisors for this purposes. The decision to send the experts was made in November 2008. The international experts work with national experts to provide advice based on the EU’s and member states’ know-how and best practices. In accordance with the memorandum signed by Minister of Foreign Affairs Edward Nalbandyan and Commissioner Benita Ferrero- Waldner, the EU advisors provide consultancy assistance to institutions of public administration /government agencies, the office of Prime Minister, the National Assembly, ministries of economy, finances and transport, as well as the State Revenues Committee and the Ombudsman’s office. The EU Advisory Group is also aimed at assisting the Armenian authorities in the preparation of a process to negotiate, conclude and implement an Association Agreement with the European Union, including setting up a Deep and Comprehensive Free Trade Area (DCFTA). Core areas for policy advice of the Advisory Group are the following:

- Strengthening respect for human rights, fundamental freedoms and enhancing democratic structures;
- Supporting reforms in the field of Justice, Liberty and Security;
- Enhancing economic integration of Armenia into the European Union's internal market[9].

More importantly, with the later launch of the Eastern Partnership more concrete incentives have been provided to the eastern neighbors of the EU. In specific, it has been clearly outlined that the next generation of the legal regulation of the mutual relationship will be carried on through Association Agreements which will contain a perspective of a Deep and Comprehensive

[8] **Dov Lynch**. *The EU: Towards a* Strategy in ‘*The South Caucasus: A Challenge for the EU’*, Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003 p. 171.

[9] For further detail on the activities and functions of the advisory group visit their website at http://www.euadvisorygroup.eu/.

Free Trade Area (hereinafter DCFTA)[10]. Although none of the negotiations for the Association Agreements initiated since the launch of the Eastern Partnership have provided any result, it is still aspired that the new agreements will be concluded in particular to reflect the modern nature of the mutual relationship.

In the below sections of this paper the nature of the PCA's and their failure to meet the current demand for regulation of the relationship will be illustrated, as well as the added value that the new Association Agreements are expected to bring will be highlighted. In specific, the analysis will focus on the expected improvements with respect to participation of private parties in the EU's internal market. It is expected that with the conclusion of the Association agreements between the EU and Armenia the conditions on labour and establishment will have more precise wording and will provide for tangible rights to Armenian employees and companies. Besides, the partner country will be able to have a "certain degree of participation in the EU legal system" through participation in the decision making under the joint bodies to be established under the AA.

Objectives of PCAs and the respective requirement for legal approximation

The PCAs concluded with the Republics that emerged as a result of the dissolution of the USSR continue to provide the legal framework of the relations between the EU and the relevant states[11]. These agreements were initially envisaged for a period of 10 years, a term which has by now expired, but the agreements continue to be renewed. In case of the Armenian PCA the renewal is based on Article 94 of the Agreement[12].

The PCAs are mere cooperation agreements and are being described as 'entry-level' agreements[13], which do not provide for close trade relations. Political conditionality is also incorporated in the PCAs. It can be argued that the objectives enshrined in these agreements were not ambitious enough to ensure that the convergence and approximation with EU standards is implemented on the prescribed level. That is to say that one of the causes of the low intensity legal approximation could be that the PCAs merely aimed at establishing cooperation with the NIS states, and to support the latter in transition to market economy status. The PCA states did not have any strong

[10] Commission Communication on Eastern Partnership, COM(2008) 823/4, 3 December 2008.

[11] See PCA with Russian Federation OJ L 327 of 28/11/1997, PCA with Ukraine OJ L 049 of 19.02.1998, PCA Moldova OJ L 181 of 24/06/1998, PCA with Armenia, OJ L 239, 09.09.1999, PCA with Azerbaijan OJ L 246, 17.09.1999, PCA with Georgia OJ L 205, 04.08.1999. PCA with Kazakhstan OJ L 196 of 28/07/1999.

[12] Article 94 of the PCA states that "This Agreement is concluded for an initial period of ten years. This Agreement shall be automatically renewed year by year provided that neither Party gives the other Party written notice of denunciation of this Agreement six months before it expires".

[13] **Steve Peers**. "EC Frameworks of International Relations: Cooperation, Partnership and Association" in A. Dashwood and C.Hillion (eds.), The General Law of EC External Relations (London: Sweet and Maxwell, 2000), also in **Roman Petrov**. Legal and Political Expectations of the Neighbour Countries from the European Neighbourhood Policy, The European Neighbourhood Policy: A framework for Modernisation?, EUI, p.6.

impetus on offer that could trigger them and motivate to undertake such costly and demanding reforms. The EU itself did not focus on these countries, not until they became its immediate neighborhood.

The PCAs also served as a ground for all legal approximation efforts carried out by the partner countries under various costly EU assistance projects. Nevertheless these exercises were not carried out with due quality and at the required level. As it has been observed by policy analysts more work has been done to prepare for the legal approximation, including the development of various National Programs and methodologies, rather than actual approximation based on the developed techniques[14].

While presenting the experience of Armenia in the process of legal approximation to EU standards, this paper will try to reveal some of the main reasons why these processes were not successful in case of Armenia, which could also be true for the other countries of EU's eastern neighbourhood.

The National Programs (which were being adopted on the national level by the partner states as presidential or government decrees) were also problematic in themselves, since they mostly replicated the National Programs for approximation used by the East European countries during the accession period. Those countries had a huge incentive - the accession to the EU as the final objective of cooperation. However, they faced various issues with approximation which was not successful in all cases. Thus, relying on their methodology and applying the volume and degree of approximation that was used during the accession process to that the ENP, has not been the best choice of policy.

The EU tried to engage these countries through numerous efforts to Europeanize them, including through non-binding provisions on legal approximation to EU legislations.

The requirement of legal approximation is not a novelty to the EU and its external relations. Firstly, the EU Member States have had an immense experience of harmonization and continue to be engaged in that process, and it is doubtless that the harmonization has been an incessant prerequisite of the functionality of the EU's internal market. Therefore, the EU also recognized the importance of rule adoption by those third countries with whom it intends to develop economic cooperation or close trade relationship[15], although these two processes (harmonization within the EU and approximation in EU external relations) remain to be rather different processes in their nature and purpose.

Convergence with the EU standards was also prescribed under the PCAs. Article 43 of the Armenian PCA (this provision is common to all three PCAs of the South Caucasus countries) defines that:

> *"The Parties recognize that an important condition for strengthening the economic links between the Republic of Armenia*

[14] CASE Network Reports, Economic Feasibility, General Economic Impact and Implications of a Free Trade Agreement Between the European Union and Armenia, M. Maliszewska (ed.), N. 80/2008, p. 97-100.

[15] European countries, such as Switzerland, which are not members of the EU have been long engaged in these processes of approximation to EU standards even prior to having such a formal 'obligations' prescribed by an agreement.

and the Community is the approximation of the Republic of Armenia's existing and future legislation to that of the Community. The Republic of Armenia shall ***endeavor*** *to ensure that its legislation will be gradually made compatible with that of the Community. (emphasis added) [....] "*

Every approximation process shall meet the objective of the partnership established under the respective international agreement. That is to say that the volume and extent of 'exporting' the EU *aquis* through external agreements varies in accordance to the objective specified under a respective Partnership or Association Agreement. Thus if the agreement intends to establish a Customs Union, as in the case of the Ankara Agreement between the EU and Turkey, it will be vastly aimed at adopting the customs aquis[16]. The objectives of the partnership envisaged in the PCAs include providing an appropriate framework for political dialogue between the parties allowing the development of political relations, support for democracy, economic development and transition to a market economy, promotion of trade and economic relations, and provision of a basis for cooperation in various fields[17]. The principles underpinning the relations are widely oriented to the transmission of democratic values and human rights. They also involve considerations of cooperation among the 'independent states,'[18] although it falls short of promising integration with the EU.

It can be asserted that unlike the envisaged Association Agreements the PCAs were not pursuing the aim of achieving deep integration through free trade and were merely aimed at supporting the PCA countries to transition to market economy. Therefore the transmission of the EU *acquis* was mostly limited to competition law, consumer protection, intellectual property, etc. Implementation of the commitments under the PCAs did not produce efficient results even in those limited areas, and therefore the application of theses agreements has been extended.

This type of legal approximation 'best endeavor' clauses are typical of most of the external agreements of the EU which provide for long term cooperation[19].

As mentioned earlier, the EU has previously directed considerable amount of assistance to the legal approximation efforts of the PCA states, since the agreement recognized the partners 'endeavors' to ensure the compliance of its legislation with then the European Community[20]. Since the entry into force of

[16] **Roman Petrov**. The External Dimension of the Aquis Communautaire – EUI Working Papers, MWP 2007/02, p.24-30.

[17] See e.g. Article 1 of the PCA with Armenia, OJ L 239, 09.09.1999, PCA with Azerbaijan OJ L 246, 17.09.1999, PCA with Georgia OJ L 205, 04.08.1999.

[18] Art. 3 PCA with Armenia, OJ L 239, 09.09.1999, PCA with Azerbaijan OJ L 246, 17.09.1999, PCA with Georgia OJ L 205, 04.08.1999.

[19] See e.g. Article 68 of Europe Agreement between European Economic Community and Poland, OJ 1993 L348/1, or Article 52 of Cooperation Agreement between the European Economic Community and the Kingdom of Morocco. OJ L 264 , 27/09/1978 P. 0002 – 0118.

[20] See e.g. Article 43, Partnership and Cooperation Agreement between the European Economic Communities and Republic of Armenia, OJ L239, 09.09.2009.

the PCAs the EU has come up with various instruments directed at the advancement of the relations and PCA implementation, such as the PCA National Programs, the ENP, the ENP Action Plans, sectoral agreements etc. This may translate a degree of inability on behalf of the EU to work out viable policy instruments or to encapsulate a common EU policy[21]. At the same time it is indicative of the failure of these instruments to produce the desired results.

The reasons behind this may differ. As mentioned earlier lack of political will on behalf of the partner states, lack of sound experience of approximation from a country which could serve as an example but also the absence of a hard law obligation for approximation in the PCAs or any details or guidance on the process has caused such consequences. As it will be illustrated bellow there has been a considerable change in the current context and the objectives of the partnership, which necessitate a different quality of cooperation, where both of the partners will commit to their obligations.

After the launch of the ENP and later the Eastern Partnership, a shift appeared towards more enhanced relations between the EU and these countries, making these agreements somewhat obsolete. Currently, the EU is at the stage of negotiating new agreements with the countries of its Eastern neighbourhood, which will be the main legal foundation of the proposed ambitious Deep and Comprehensive Trade area between the EU and its neighbours.

The Association Agreements will replace the PCAs and will provide for a possibility of establishing a Deep and Comprehensive FTA between the EU and each of the Eastern partners. These agreements will regulate a much more ambitious and demanding relationship both in terms of the objective of association, and its subject matters, which will range from political cooperation to deep free trade, including all flanking policies and cooperation in justice and home affairs matters. Such relationship will certainly require a detailed international regulation through an agreement, while its successful implementation will depend on the seriousness of the commitment the parties will undertake[22]. Therefore, it is of vital importance to avoid replicating the shortcomings and the oversights of the PCAs both by the EU and its partners.

Different categories of PCAs

It is also worth categorizing the PCAs concluded with the CIS States for the purpose of illustrating the different level of interest demonstrated by the EU towards different countries and regions of the former USSR. Initially, the two categories of these agreements were distinguished: ones offering closer

[21] See **A. Mayhew and Ch. Hillion**. The Eastern Partnership – something new or window-dressing, SEI Working Paper N 109. p. 21.

[22] The Deep FTA will become a part of the Association Agreement, which will emphasize the importance of the regulatory approximation in the new relationship. Such approximation shall supplement the lifting of tariffs, entailed by the establishment of a simple FTA, with a reduction of non-tariff barriers (these are technical barriers, such as sanitary and phyto-sanitary rules, competition policy, enterprise development, innovation and industrial policy, IP, trade facilitation, etc.) by promoting the adoption of the EU standards.

connection to the EU as regards economic cooperation and aimed at 'rapprochement' (such as PCAs with Russia, Ukraine, Moldova[23]). These agreements included an 'evolutionary clause'[24], whereby the parties agree to *discuss* the feasibility of establishing an FTA. The next groups includes those agreements that are less demanding in terms of rapprochement, and less detailed in scope and content, concluded with non-European USSR Republics: Kyrgyz Republic, Kazakhstan, Uzbekistan, Turkmenistan[25]. As for Armenia, Georgia and Azerbaijan, the Commission suggested the conclusion of PCAs with the three republics of South Caucasus in the 1995 Communication to the Council, which also discusses several options as regards the content of the relationship and the level of cooperation[26]. As a result, PCAs were concluded with Armenia, Georgia and Azerbaijan containing provisions identical to each other[27]. With regard to their level of envisaged rapprochement, the Agreements with the countries of the South Caucasus find themselves in between the two categories described above. The rationale behind this classification is the level of trade relations and economic convergence that is regulated by these agreements. Under the section on Principles, the agreements of Russia, Ukraine and Moldova prescribe the possibility of establishing a free trade area (FTA) between the parties[28], which does not feature in the PCAs with the countries of the South Caucasus. Article 4 in the General Principles common to all three PCAs of the South Caucasus countries foresees a closer cooperation in case of a change in economic conditions in the Partner States, particularly in case of a transition to a market economy[29], The PCAs concluded with the Asian NIS[30] merely refer to respect for the democratic principles and international law, excluding discussions on any further trade relationship, i.e. a market-oriented reforms clause, as in the case of the South Caucasus PCAs[31]. Thus, these Agreements are more modest in terms of aspirations for the development of trade relations with the EU as compared with the PCAs with Russia, Ukraine and Moldova, but more ambitious if compared with those of Asian NIS.

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[23] See PCA with Russian Federation OJ L 327 of 28/11/1997, PCA with Ukraine OJ L 049 of 19.02.1998, PCA Moldova OJ L 181 of 24/06/1998.

[24] **Ch. Hillion**. Partnership and Cooperation Agreements between the EU and the NIS of the Ex-Soviet Union. (1998), 3 EFA Review, p. 399-420, also R. Petrov. 'The Partnerhsip and Cooperation Agreements with the Newly Independent States' in A. Ott and K. Inglis (eds.), European Enlargement Handbook (Asser Press, The Hague, 2002), p. 175.

[25] See e.g. PCA with Kazakhstan OJ L 196 of 28/07/1999.

[26] Commission Communication to The Council Towards A European Union Strategy for Relations with the Transcaucasian Republics, 31.05.1995 COM (95) 205 final.

[27] PCA with Armenia, OJ L 239, 09.09.1999, PCA with Azerbaijan OJ L 246, 17.09.1999, PCA with Georgia OJ L 205, 04.08.1999.

[28] See General Principles PCAs with Russian Federation and Ukraine.

[29] The PCA with Russia includes less emphasis on the security issues, in the contrast with the South Caucasus ones. It emphasizes in its preamble the importance of furthering Russia's integration into international trading system, whereas in the case of the latter the word trading is omitted.

[30] E.g. PCA with Kazakhstan, OJ L 196 of 28/07/1999.

[31] The absence of the FTA perspective in the PCAs with the South Caucasus Republics results in lesser regulation of areas such as competition policy, which might eventually lead to the removal of trade restrictions and liberalization. The Agreements, however, provide for legislative cooperation, which includes requirements on approximating legislation to EU standards, including in the area of competition policy.

It can be also claimed that the Russian PCA is distinct from the others since it embodies reciprocal relationship with the EU and ensures enforceability of the Russian worker's rights in the EU member states, unlike the other countries who have entered into the PCAs. This can be evidenced by a comparison of provisions on labor migration in the respective PCAs. For example the PCA with Russia stipulates a 'hard law' obligation on the EU and its Member State to ensure non-discriminatory treatment of workers who are legally employed in the EU[32]. Therefore this provision has been declared by the ECJ as directly effective[33]. The same article also provides for a 'hard law' obligation of Russia to ensure non-discriminatory treatment of EU nationals. However, in the case of all the other PCAs, the first paragraph of a similar article provides for best endeavor efforts of the EU and its MS to ensure nondiscriminatory treatment of, e.g. Armenian workers legally employed in the EU. Nevertheless, the second paragraph of the Article provides for Armenia's hard obligation to ensure non-discriminatory treatment of EU nationals on its territory[34]. This will be further elaborated below. Such provisions, will not be recognized as directly effective by the ECJ, due to the lack of stipulating a clear obligation on the Member state, and will not be able to instigate judicial protection for the citizens of the partner countries.

Institutional Aspects of the Relationship under the PCA

The PCA provides for the establishment of common institutions which oversee the implementation of the Agreement and resolve potential disputes. The bodies established under the PCAs are: Cooperation Council and Cooperation Committee, which consists of Members of the Council of EU and the European Commission on the one hand and Government representatives on behalf of the partner State, as well as the Parliamentary Committee. Article 83 of the PCA defines cooperation on the parliamentary level, by the establishment of a Parliamentary Committee, with representatives from both Parties. All these institutional arrangements are backed by rules of procedure[35]. The Agreements also encourage arbitration in case any disputes arise on the private level between the Parties. Unlike the Cooperation Bodies created pursuant to the Association Agreement, the PCA institutions are not empowered to make binding decisions and can merely make recommendations.

On the national level there have been a number of institutions established within various branches, which are specifically designated to coordinate or implement the country's commitments with respect to the EU. Within the

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[32] Article 23, PCA with Russian Federation OJ L 327 of 28/11/1997.

[33] C-265/*03 Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol.*

[34] Article 20, PCA with Armenia, OJ L 239, 09.09.1999., also Article 24 in PCA with Ukraine OJ L 049 of 19.02.1998

[35] See e.g. Rules of Procedure of the Cooperation Council between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, Rules of Procedure of the Cooperation Committee. OJ L297, 18/11/1999 P. 0024-0028.

executive branch two of the ministries have special division on European affairs: European Department at the Ministry of Foreign affairs and Finance Ministry TIAEX/TWINNING coordinator

National Security Council, Standing Committee on European Integration at the National Assembly links with the European Union and the Council of Europe, harmonization of laws of the Republic of Armenia with European legislation, Translation Center at the Ministry of Justice.

The Expected Added Value of the Association Agreements

The new agreements which will be concluded with the countries of the Eastern Partnership will be Association Agreements. The latter are a special type of Agreement which the EU concludes with countries that it wishes to have close trade relationship; either intends to integrate them into the EU. The Treaty Establishing the European Communities traditionally included a special provision on the conclusion of Association Agreements.

Lisbon Treaty, which entered into force in 2009, introduced a new legal foundation for the EU's relations with its neighbors, which will be considered as an additional legal basis for the Association Agreements. According to the new Article 8 TEU on the EU Neighbourhood Policy:

> *"The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation [....]"*[36].
>
> *"[....] For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation"*[37].

The incorporation of a specific article in a founding treaty on a region that the EU wishes to further its relations with and establish a common area already signifies the importance of that region for the EU and indicates the latter's long-term commitment to it. This provision also uses a rather strong wording – "the Union shall" - which implies the obligation of the EU to develop a special relationship with the neighouring countries, therefore indicating that the EU neighbourhood is and will continue to be a high priority on the EU's external agenda. The interests of the Union regarding a secure and a prosper neighbourhood, the development of the neighbouring states based on the EU values, as well as the concerns regarding the immediate vicinity of the Eastern neighbourhood has now been codified in a founding treaty.

[36] Article 8 TEU (Lisbon), para 1.
[37] Art 8 TEU (Lisbon), para 2.

The same article in its second paragraph also provides for the contractual basis of the relations with the neibhouring countries with some description of the content of such regulation.

One of the few explicit interpretations on the scope of an association is provided by the ECJ rulings. The judgment in *Demirel* is one of the most frequently referred sources when it comes to definition of association agreements, where the Court of Justice has stated that an association agreement implies "creating special privileged links with a non-member country which must be able at least to a certain extent, take part in the EC legal system"[38]. The below analysis will shed some light on what was meant by the court in this rather brief definition.

Firstly, most of the provisions on labour movement or movement of services within the Association Agreements meet the criteria for direct effect and allow the citizens or the companies of the third countries with whom the association agreements are concluded to rely on such provisions of the agreement to protect their interests in case of breach by the respective Member State. Most of the PCAs did not include such precise and clear provisions, which could be capable of direct effect, with the exception of the Russian PCA, which, as confirmed by the court in the *Simutenkov* judgment, could be evoked directly by the Russian football player in the Spanish court for the purposes of challenging discriminatory provisions set by the local footfall federation[39]. The current provision of the Armenian PCA on labour conditions neither reflects reciprocity nor clarity, nor provides any tangible rights to the Armenian employees in the EU member states. The respective provision does not provide a clear obligation on behalf of the EU Member states to ensure equal treatment to Armenian nationals legally employed in the territory of a Member State. However, the same provision provides for a precise obligation on behalf of Armenia to ensure equal treatment of EU nationals legally employed in Armenia[40]. Therefore, this provision will not be capable of having direct effect in the EU Member States, unlike the similar provision which is provided under the PCA with Russia.

The conclusion of an AA will also bring significant changes to the nature and structure of the common institutions to be created hereunder if compared with the current institutional arrangements under the PCA. This will bring an important change to the possibilities provided to natural or legal persons under

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[38] See Case 12/86, Demirel v. City of Schwäbisch Gmünd, [1987] ECR 3719.

[39] When analyzing the PCA with Russia in the *Simutenkov* case, the Advocate General Stix-Hackl even brings parallels and finds common grounds with Europe Agreements and Cooperation Agreements concluded with Morocco and Algeria, which are Association Agreements, since both pursue the object of 'gradual integration' with the other Contracting Party. The ECJ in its judgment in the same case also brings parallels between EU-Russia PCA and the EU-Slovakia Association Agreement while establishing the direct effect of a provision on free movement of persons prescribed under the PCA with Russia. The Court argues that a partnership agreement or an agreement other than an association agreement might lead to the achievement of the objectives expected from an association agreement. See C-265/*03 Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol.*

See C-265/03 Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol.

[40] See Article 20, of the PCA between Armenia and the EU.

such decisions. Unlike the Cooperation Council created pursuant to the PCA, which could merely make recommendations, the Association Council to be established under the AA will be empowered to make binding decisions[41]. Such decisions will also be possible to evoke in the judicial system of EU Member States by direct reference to them (the provisions in these decisions will be capable of having direct effect). Therefore, not only the provisions of the respective Association Agreement, but also the provisions of the decisions adopted by its Association Council would be capable of having direct effect. That is to say, that if an Armenian employee wishes to evoke his/her rights provided in a decision of the Association Council, he/she may directly refer to such decision in the courts of the EU member state. This has been confirmed by the Court of Justice with respect to a Turkish national in the *Sevince*[42] case.

In other words, this body would be able to take binding decisions where the agreement so provides (e.g. on labour, on DCFTA), thereby allowing the parties to elaborate the legal regime underpinning the relationship, deepen their reciprocal commitments, and thus strengthen the association of EaP countries with the EU policies. Since the Association Council will be composed of members both from Armenia and the EU, thus the participants in the Council from Armenia would result in the possibility *"at least to a certain extent, take part in the EC legal system"*(as mentioned by the ECJ in Demirel) through making binding decisions which are enforceable in EU Member States.

In order to ensure that these Agreements are efficiently implemented, they should provide for binding rules on legal approximation.

The Association Agreements shall contain legally binding commitments on regulatory approximation in trade-related areas[43], unlike the PCAs, where the provision defining legal approximation of the partner's legislation with that of the EU expresses the best endeavor of the partner state and not a legally binding obligation. With due recognition of the fact that the legal approximation is essentially a voluntary exercise for the country that wishes to be accepted to a certain legal or political system, as is the case with many other third countries, it is believed that a stronger wording and a closer regulation of the legal approximation in the Association Agreement would also play a role in the quality of this process and raise the commitment of the partner to that end. These agreements could provide for legal approximation under the aims of association, objectives or the general principles of cooperation, as in the case of the most recent Stabilization and Association Agreement concluded with Serbia[44].

The Association Agreements will replace the PCAs and will provide for a possibility of establishing a Deep and Comprehensive FTA between the EU and each of the Eastern partners. These agreements will regulate a much more

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[41] See **A. Mayhew and Ch. Hillion**¦ The Eastern Partnership – something new or window-dressing, SEI Working Paper N 109. p. 11; **Ch. Hillion**¦ 'Mapping-Out the New Contractual Relations between the European Union and Its Neighbours: Learning from the EU-Ukraine 'Enhanced Agreement'¦ EFA Review 12; Kluwer Law International, p. 179.

[42] Case C-192/89, *S.Z. Sevince v Staatssecretaris van Justitie.*

[43] Commission Communication on Eastern Partnership, COM(2008) 823/4, 3 December 2008 p. 4.

[44] See Article 1 of Stabilization and Association Agreement between the European Communities and Republic of Serbia; OJ L 334, 19.12.2007, p. 137.

ambitious and demanding relationship both in terms of the objective of association, and its subject matters, which will range from political cooperation to deep free trade, including all flanking policies and cooperation in justice and home affairs matters. Such relationship will certainly require a detailed international regulation through an agreement, which will provide for additional rights and incentives to private parties, which will have their role in furthering the economic ties between the EU and its neighbourhood.

ԱՆՆԱ ՀԱԿՈԲՅԱՆ – ***ԵՄ-Հայաստան հարաբերությունների առկա կարգավորման ոչ արդիական բնույթը և նախատեսված ասոցացման համաձայնագրերից ակնկալվող առավելությունները*** – Հոդվածում հակիրճ ներկայացվում են ԵՄ – Հայաստան հարաբերությունների կարգավորմանն ուղղված իրավական և քաղաքական տարբեր ձևաչափերը՝ հատկապես ներկայիս հարաբերությունների իրավական հիմք հանդիսացող «Գործընկերության և համագործակցության» համաձայնագիրը: Հոդվածում քննարկվում են այդ համաձայնագրի բնույթը, գործընկերության և համագործակցության մյուս համաձայնագրերի շարքում դրա կարգավիճակը, ինչպես նաև այս համաձայնագրով սահմանված նպատակներն ու դրանց համապատասխան՝ օրենսդրությունների մերձեցման պահանջները: Հոդվածում քննարկվում են «Գործընկերության և համագործակցության» համաձայնագրի որոշ դրույթների ուղղակի գործողության հարցը՝ Ռուսաստանի Դաշնության հետ կնքված «Գործընկերության և համագործակցության» համաձայնագրի համանման դրույթների հետ համեմատական վերլուծություն կատարելով: Վերլուծության արդյունքում հիմնավորվում է առկա կարգավորման ոչ արդիական բնույթը և նոր իրավական կարգավորման անհրաժեշտությունը: Ներկայացվում են մասնավոր անձանց համար հնարավոր այն առավելությունները, որոնք առկա կլինեն ասոցացման նոր համաձայնագրերի կնքման դեպքում:

АННА АКОПЯН – ***Неактуальность нынешнего правового регулирования отношений между ЕС и Арменией и ожидаемые преимущества от предусмотренного соглашения об ассоциации.*** – В статье представлен краткий обзор различных правовых и политических форматов сотрудничества между ЕС и Арменией, при этом акцент делается на его нынешней правовой основе – Соглашении о партнёрстве и сотрудничестве. Проанализирована сущность этих отношений и цели названного документа, а кроме того, оговорены предусмотренные им требования по правовому сближению. Разобран вопрос о прямом действии (применении) некоторых его положений в сравнении с подобными положениями соглашения, подписанного с Россией. Сделан вывод о том, что нынешнее правовое регулирование двусторонних отношений устарело и необходимо регулировать их по-новому. Подчёркнуто, какие преимущества получат частные лица, если будет подписано соглашение об ассоциации.