

МІЖНАРОДНЕ ТА ЄВРОПЕЙСЬКЕ ПРАВО

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Surmava Lita,
PhD, Associate Professor, School of Law,
New Vision University (Tbilisi, Georgia)¹

APPROXIMATION OF LEGISLATION: SOME CONSIDERATION ON THE CONCEPT OF APPROXIMATION IN THE EU EXTERNAL CONTEXT

This paper discusses the concept of harmonization/ approximation in EU external context and makes remarks on to what degree of legal convergence shall be reached by a country in order to comply with the requirements/ expectations of the EU.

Key words: harmonization of laws, approximation of legislation, EU, PCA, SAA, EA, European integration, economic integration.

У статті аналізується поняття гармонізації /апроксимації європейського законодавства у зовнішньому контексті Європейського Союзу. Досліджено питання про ступінь правової конвергенції, що має бути досягнуто в державі для того, щоб відповідати вимогам/очікуванням ЄС.

Ключові слова: гармонізація законодавства, апроксимація законодавства, Європейський Союз, європейська інтеграція, економічна інтеграція.

Inclusion of the approximation/harmonization provisions in the international agreements with the third countries has become an established practice of the EU, therefore the issue of approximation of legislation of a state with that of the EU are one of the most important issues in many non EU countries.

In spite of the long tradition of approximation practices of the EU with the third states, no definition of these notions (approximation/harmonization) is found in the official documents of this organization. These terms are still being developed. Considering the abovementioned this paper discusses the issue of definition of the concept of harmonization/ approximation and makes remarks on to what degree of legal convergence shall be reached by a country in order to comply with the requirements of the EU.

With the view of studding this issue, the article, first, refers to already existing in scholarly literature definitions of approximation/ harmonization in their external context, secondly, article focuses on a number of integration models existing in Europe, which carry (carried) out the harmonization

¹ Surmava Lita, PhD in International Law, Associate Professor, School of Law, New Vision University (Tbilisi, Georgia)

process in practice and therefore discusses the elements which are relevant to the interpretation of the harmonization in a specific context.

In regard to the different integration models existing in Europe it must be noted that approximation practice is quite diverse. Considering the degree and the level of integration into EU, one can recall for example, the EU/EFTA framework of integration, which can be considered as the most advanced model of *economic* integration with European Union. With well-developed administrative and judicial structures, EEA is a well functioning hybrid where the homogeneity of EEA and EC law is secured [1]. The other, often called- “the most unique” framework- is EU/ Swiss framework of integration. Here the integration is achieved through sectoral harmonization (sectoral agreements). Unlike the EEA with several common organs, the institutional framework of the sectoral agreements is limited and weak. There is no single adaptation mechanism under the relevant EU/Swiss agreements.¹ In comparison with EU/ EEA framework this cooperation is based on the mixture of static/dynamic models, with static prevailing. When talking about European integration models or framework, one can't leave out referring to EU /Europe agreements and SAA-s, which have been concluded with some of the former soviet countries, and which however contain, compared with previous two, much looser clause of approximation and more political ambitions. Likely, with the loose and soft approximation provisions the EU /PCA agreement integration format has also to be recalled. Despite of the apparent difference of the later with the so called transition association agreements, they are still the most appropriate pattern for comparison” [2, p. 178].

The recently concluded EU/ New association agreement countries integration format is also an interesting and at the same time less studied new model of integration. As a fact, approximation provision are not the novelty in these, so called enhanced new generations of agreements. Admittedly in these agreement the approximation obligations are much more strengthened (together with conditionality) then in any other association types of agreements. All the tree countries, with whom the agreements where concluded are the so called former PCA countries, thus entering into the new enhanced agreement with the EU is a step forward for them in economic as well as in political terms. Progress in contractual terms is evident.

¹ For more information about Swiss integration model see: Andrés Delgado Casteleiro, “Relations Between Switzerland and EU,” *EUI Working Paper* (MWP 2008/32): 103-110; *Lazowski 2008*.

This paper, suggesting that interpretation and scope of the terms could differ depending on the contractual relationships and the level of integration with EU which is desired and aimed to be achieved within the specific framework, will mainly look at the model of harmonization and approximation within of EU/ SAA, Europe Agreement s and PCAs¹. The choice is not random. The choice of EA/EU and SAA/EU integration (approximation) framework, owes to the *status of the countries- parties to the agreements as candidates, or potential candidates* for EU Membership. Likely, discussion of the PCAs approximation clauses, while bearing in mind that three of the PCA countries are the ones now who act in the changed and advanced format, will make the picture and stand toward approximation more clear.

Existing Definitions: Harmonization and Approximation. In the EU documents and legal literature the concepts of harmonization and approximation arise in internal as well as in external context. In the internal context this concepts are related to the inside EU legal mechanism, while in the external context they are used in the framework of EU relationships with the third countries.

There is no agreement regarding the terminology in the scholarship. Some authors refer to this process as a harmonization of laws, for example Pajoras and Claus, or even subdivide harmonization into to the categories, like Evans. Others use word approximation, for example Velluti [3, p. 415].

While reading definitions bellow, two basis for approximation/ harmonization should be bared in mind: first, general obligation to approximate domestic legal system to the law of the European Union steams from provisions contained in different types of agreements between EU and third countries, and second, obligation to approximate may in addition steam from goal of the foreign policy: for example, perspective of membership of the EU, whereas approximation/ harmonization with EU laws are essential to becoming a member state. Hence the concepts approximation and harmonization are often met in the enlargement context.

Evans [4, p. 201] provides categorization of Harmonization. Precisely, he identifies two forms of it: “multilateral” and “voluntary”, multilateral harmonization, meaning -harmonization with the third states

¹ Among the most important association type agreements (based on Article 217 TFEU) are agreements with ACP countries, Conotonou Agreement, EEA agreement, stabilization and association agreements with certain western Balkans and Euro-Mediterranean agreement, and Euro-pe agreement.

may have an informal basis¹. *Voluntary harmonization, on the other hand, means that a third state adapts its national law to community rules which have no binding force in relation to that state and in framing of which that state may have had no real participation.* Evans looks at harmonization from two points: EU and Third state [4, p. 481]. He considers that, from the Union point of view, *voluntary harmonization* by third states has the “advantage of entailing no legal constraints on its future freedom of action”. From the third state perspective *voluntary harmonization* “may be claimed to entail no loss of the sovereignty.”

Velluti [3, p. 415], in contrast to Evans, is using term approximation, however notes the voluntary nature of it. She describes approximation as a process by which candidate countries, as third countries, are voluntarily approximating their legal system to an external legal regime, ie. the EU. She claims, that approximation is different from harmonization, in the way, that harmonization in EU legislation has a binding effect on the current Member states legal systems. Therefore, she sees harmonization as a binding instrument used explicitly in the internal context. Velluti also states that the obligation to approximate the legal system to the Union Law is an obligation to *act*, not an obligation of *results*.

Velluti’s stand however, is contrary to Piontek, as according to the Piontek “the approximation process entails an obligation to incorporate the respective community rules into the legal order of the associated county to the fullest extent possible as an important condition of membership in the Union [5, p.76].

Maresceau and Montaguty [6] also provide, definition of harmonization in the context of associate agreements (EA), stating, that harmonization in practice means the alignment of country’s legislation with EC Rules. They see the approximation as one of the tools for integration into the internal market of EU. The main strategy of *approximation* they think is two fold: first, it is helping to set up a legal framework to accommodate the transformation of a state economy, into the market economy; second, it is a means to prepare the associated countries gradually for legal integration into the community, beginning with the communities internal market, by identifying the key sectors where integration is needed, and by suggesting a sequence in which approximation could be achieved.

¹ For example: EC- EFTA Declaration in Luxemburg of April 1984, or EC EFTA Declaration in Brussels of December 1989. According to Evans Techniques include information exchange, consultations, etc.

Recalling again to the definitions given above, concepts approximation and harmonization process relates not only to the member states, but to non EU member countries as well. In both contexts, whether describing the process which takes place inside the EU or outside it (EU/ Third Country relationship) terms are often used interchangeably as synonyms, even though noting, that the term harmonization might involve a greater degree of integration, from the legal perspective terms are vague in their definitions and have an indeterminate nature.

Framework for harmonization in Europe Agreements, Stabilization and Association Agreements and PCAs. The implicit **call for approximation**, is seen in many agreements of the EU with the third European countries. Among these agreements are, as noted Europe agreements (EA), Stabilization and Association Agreements (SAA), Partnership and cooperation Agreements (PCA) and New Association Agreements (AA).

Europe Agreements and Stabilization and Association Agreements. Europe Agreements are bilateral association agreements that have been concluded from 1991, between the European Communities and their Member States on the one hand and each of the following countries of Central and Eastern Europe: Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Romania, Slovakia, Slovenia and Poland. All EA states are presently members of the European Union.

Objective of the EAs is the eventual membership of the EU¹. The content of Europe agreements is a set of formally structured trade relations, containing both, political and economic provisions. They are intended to create a FTA and to implement the four freedoms of single market over a 10 year timeframe; they also provide a general framework for political and economic cooperation, including approximation of legislation.

Originally, at the start of the 1990 s, when the Europe Agreements were signed, they were seen more of an alternative to accession, than the vehicle towards it², as suggested by the preamble of the EAs with Poland

¹This objective has been gained later however, therefore is not officially listed among the objectives of the agreements.

²Commission Communication to the Council COM (90) 278 final act of 27 Aug. 1990, the conclusions of the Edinburgh European Council of 11-12 Dec. 1992, based on the Commission's report entitled Europe and the Challenge of Enlargement. See the Contribution by *Marsesceau and Montaguti*, (1995) 1329, cited from *Inglis* (see above), also see Eugenius Pi-ontek, "Central and Eastern Countries in Preparation for Membership in the European Union- A Polish perspective", *1 Yearbook of Polish European Studies* 73 (1997): 73.

and Hungary, and by initial Commission's Communication on the new type of association¹. Considering the hesitance on the side of some member states, in relation to the possible enlargement in context of CEECs, EU had to package the EA as a special and exclusive breed of association agreement to make it less objectionable for the CEECs [7, p. 176]. Including the former Soviet Republics in the already widening bundle of the EAs [8, p. 257]² (EA also concluded with Bulgaria, Romania, Baltic states and Slovenia)), would have allegedly diminished their exclusive character and diluted their political values [7, p.176]. Yet Direct link between the EAs and accession, was established following the Copenhagen European council of 1993³. The Copenhagen European Council recognized accession as a common objective of the EU as much as for the associated countries, then 10 of which have since applied for the EU membership. 1993 Copenhagen European Council established the criteria attaching to membership, and the later EAs with the Baltic States and Slovenia reflect this in their preambles⁴. Therefore, EUs relations towards CEE involved two different goals: on the one hand supporting post communist transformation, and on the other, guiding the CEE towards taking on the obligations of membership [9].

Stabilization and Association Agreements. Stabilization and Association Agreements, just like Europe Agreement, are association type bilateral agreements concluded between the European Communities and their Member States and Western Balkans starting from 2001: Bosnia and Herzegovina, Croatia, Federal republic of Yugoslavia, Macedonia and Albania). Presently Croatia is already a member of the EU, FYRM and Albania (from year 2014) is candidate for membership. Bosnia- and Herzegovina enjoy the status of "Potential candidate"⁵.

¹ Commission's Communication on Association Agreement with the countries of Central and Eastern Europe: A General Outline, COM (90) 398. Commission Communication to the Council COM (90)278 final of Aug.1990, the Conclusions of the Edinburgh Council of 11-12 Dec.1992, based on Commission report entitled Europe and Challenge of Enlargement.

² Eligibility for Europe Agreement formally depended on five condition: rule of law, human rights, a multi-party system, free and fair election and a market economy.

³Already before the Association Agreements have been formally ratified, the EC, at the Copenhagen summit of June 1993 launched a Major policy change by making an explicit link between European security order and membership. More on why EC substituted association with membership as the key instrument for creating stability, please, see: Luck Friis and Anna Murphy, "EU and Central and Eastern Europe- Governance and Boundaries," *Journal of Common Market Studies* 37/2 (1999): 211-232, 220.

⁴ In the parallel to an accession process Europe agreements have also changes slightly. In this respect later EAs depart in certain respects from the model Europe agreements. For more information on the evolution of Europe Agreements please see: Kristyn Inglis, "The Europe Agreements Compared in the Light of their Pre-Accession Reorientation," *Common Market Law Review* 37 (2000): 1173-1210.

⁵ In 15-02-2016 BiH submitted its application to join the EU

The idea of concluding the SAA with the countries of the Western Balkans dates back to what Friis and Murphy refer to as the “turbo-charged negotiations”, leading to the launch by EU leaders of the Stability Pact for South-Eastern Europe, in Cologne on 10 June 1999 [10]. As part of these negotiations it was agreed that the EU could build on its existing set of policies towards the western Balkans by implementing a new Stabilization and Association preprocess [11, p. 78]¹. Here the commission considered, that the SAAS would provide an appropriate alternative to the Europe Agreements, which are now, as noted above, regarded as leading to EU membership. Hence in order to drop down the pre accession expectations of the Western Balkans and discourage the membership applications new type of accession agreements, not having the membership as a final goal Stabilization and Association Agreement has been elaborated. Instead of being linked to the membership, therefore the successful implementation of the agreement was intended merely to lead to candidate status and the commencement of negotiations [12, p. 389].

Even though the SAAs were conceived as a new type of agreements they were very closely modeled to EAs and have many common characteristics. Preambles of both agreements describe the purpose of associations being created: establishment of political dialogue; legislative approximation with EC, development of climate conducive to increased trade and investment; EC support of reform. The aims of the SAAs are also somewhat identical to EAs: to provide an appropriate framework for political dialogue between the parties, support efforts to develop its economic and international cooperation, also though the approximation of its legislation to that of the EU, support to complete the transition into a market economy, to promote harmonious economic relations and develop gradually a free trade area between the community and SAA country, to foster regional cooperation in all fields covered by this agreement.

However some slight differences are seen: first, SAA agreements are not providing an appropriate framework for the countries gradual integration into the EU. Such a goal is inferred in the essentially declaratory preambles, but it is not an explicit aim of the association.

¹ On the relations prior to signing of the Stabilization and Association Agreements see Marise Cremona, “Creating the New Europe: the Stability Pact for South Eastern Europe in the Context of EU-SEE Relations” in Alan Dashwood and A. Ward, (eds.) *The Cambridge Yearbook of European Legal Studies*, Volume 2, 1999, (Oxford, Hart Publishing,) 463-506.

Whereas, this wording is met in the aims of the EAs. Hence in SAA there is a question of long term goal of association, the preamble recall the status as the SAA countries as potential candidates¹ for EU membership. Second, explicit aim of the SAA is not only association as indicated in its title, but also stabilization. Only SAA have among their aims the fostering of regional cooperation² in all fields they cover. This was included in the agreements, in an attempt to seize a relative peace in the region [11, p. 79]. And is considered an essential condition for the further development of the relationship with the. EU³

However, turning from the initial aims, of these agreements, one has to note again. Two countries Croatia, Albania and FYRM, which embarked at the time of the signature of the SAA agreements, presently already either have the status of a member of the EU (Croatia) or of the candidate country, within the framework of “potential candidate”, whereas the rest still struggle for that status.

Legislative framework of harmonization of laws within EA and SAA frameworks. Approximation of national laws within both: EA and SAA agreements, is considered as one of the most efficient methods for involving these countries in the legal integration. As noted above, in general EAs as well as SAAs share similar structure and provisions regulating the related subject matters. The same is also true about approximation provisions: each agreement has a chapter on Approximation of laws [and law enforcement] and provisions on approximation. These provisions within same groups of agreements provide for similar approaches to harmonization. Analysis of the agreements in the context of approximation, draws characteristics common as well as specific for the approximation clauses in each type of agreement.

Characteristics Common for EA and SAA. *Link between Integration and Approximation:* In all agreements the success of

¹ According to David Phinmore “Term potential candidate has no official definition, and does not confer on the holder a de jure right to become member of the EU”. He considers. Implicit in such recognition is an EU willingness to see the membership ambitions of the holder realized”. Please see: *Phinmore* (2003) 100.

² This is not to say that EAs do not include regional cooperation for example agreements with ESTONIA, Latvia and Lithuania require associated to “maintain and develop cooperation among themselves”, however clauses for Regional cooperation are more explicit in SAAs.

³ Relations with the Western Balkans countries were unique mix of stabilization, democratization and accession through conditionality and socialization instruments. Please, see: Maire Braniff, “Transforming the Balkans? Lesson Learning and Institutional Reflexivity in the EU Enlargement Approach,” *European Foreign Affairs Review* 14 (2009): 547-563, 554.

further *integration* is linked to an obligation of approximation. For example, Article 67 of the association agreement between Hungary and the Community.

Extent of commitment: Extent of commitment to approximation under both types of agreements are similar: "The [country] shall endeavour to ensure that its laws will be gradually made compatible with those of the Community"¹. However slight variations of the clause are also present in agreements, as in the case of EA with Poland and Hungary, where, "Poland [should have used its] best endeavours to ensure that future legislation is compatible with Community legislation".

Prospectus of Membership: Character of neither agreement guarantees the membership upon the accomplishment of the provisions. It only demonstrates importance attached to the harmonization as a means for creating the conditions for closer cooperation of these countries with the European communities.

Involvement in EU Rule creation: Neither agreements provide for the institutional mechanism that provides for the country opportunity of involvement in the creation of the EU rules.

Methodology of Approximation: None of the agreements provides a unique list or description of the method that has to be used by the countries for the adoption of *acquis*, however some minor elements can still be observed².

Characteristics specific to approximation clauses in EA and SAA. *Prioritization of area:* All EA agreements provide a priority list of areas³ to which approximation of laws shall extend. Whenever certain provisions in the agreements regulates a specific sphere, a Country in addition to accepting legal norms, could be obliged to accede to international conventions in this field. SAAs, have no priority list of areas, only a reference to the "fundamental elements of the Internal market *acquis*". *Timetable of approximation.*

¹ Macedonia SAA, Article 68.

² In case of EAs for instance, majority of the priority sphere for approximation are integrated in the special provisions of the Europe agreements which outline the areas for cooperation. Herein, this provision sometimes provides the for a precise method for harmonization, which are mainly drafting and implementation of national laws in accordance with community standards and conclusion of agreements on the mutual recognition of existing standards between the parties. For example in EA of Hungary. Industrial standards and conformity assessment- article 73, agriculture- article 76. Various document for adoption of *acquis* in the form of national programs and documents of the European Union create a time frame and the method for the approximation work.

³ Minor differences between the spheres of approximations are evident from the agreement: for example article 69 of Estonian EA also include nuclear law and regulation, statistics and product liability.

Europe Agreements do not provide a general timetable for the adoption of *acquis*¹, however, situation for the SAA countries is different. The agreement sets the time frame for the approximation work. For example, Article 68 of the SAA EC-FYROM requires that this process has to start from the date of signing the agreement and it has to be completed by the end of ten years transition period. According to article 68(3), the first transition period of five years will cover areas of the internal market *acquis* and related areas. This includes competition law, intellectual property standards and etc. During the second phase the remaining field shall be covered. However, not all SAAs are creating such a detailed time framework. Article 69(2) states the “the approximation will start on the date of signing the agreement, and will gradually extend to all the elements of the Community *acquis*, referred to in this agreement by the end of the period defined in article 5 of this Agreement”. In case of both Stability and Association agreements, detailed programs of approximation shall be adopted in coordination² or agreed with the commission of the EU³.

Partnership and cooperation agreements. Partnership and Cooperation Agreements, which were signed with almost all newly independent countries of former Soviet Union⁴, constitute (Moldova, Georgia and Ukraine have signed a new association agreement with the EU in 2014) a contractual framework for the Union’s relations with the former Soviet Union.

As an international agreement between the EU members on one side, and the NIS country on the other, PCAs are binding documents and constitute an integral part of both EU and Member States Legal Systems⁵.

The text and the structure of all PCA is almost the same, except some minor differences, similarly to the association and stabilization types of agreements, discussed in the previous part. The general aims of the PCAs are establishment of a political dialogue, facilitation of economic relations between the PCA countries and the EU Member

¹Except that the documents prepared by candidate countries (national programs for Approximation) and EU (Accession Partnerships or Progress Reports) could create timeframe for approximation works.

² Article 68(3) of SAA of FYROM

³ Article 69(2) of SAA with Croatia.

⁴ Russia, Ukraine, Armenia, Azerbaijan, Georgia, Kazakhstan Kyrgyz Republic, Uzbekistan, Belarus, Turkmenistan.

⁵For the acknowledgement of the ECJ of international agreements as part of the EC legal System, see Case 104/81, Hauptzollamt Mainz v. Kupferberg, [1982] ECR 3641, para 13

States, promotion of democratic reforms, protection of human rights and establishment of the rule of law. None of the PCAs agreements envisage the membership, on the short or a long run. They ultimately aim to develop closer political links, foster trade and investment development, support the reform process and create the conditions necessary for the establishment of closer links between the parties in different fields.

The PCAs contain also “evolutionary clauses”, which are the clauses through which EU applies the “conditional differentiation” in its external policy. These clauses are non binding clauses which provide an opportunity for further progress in relations between the EU and the PCA country, where the later meets certain political and economic conditions¹. However, evolutionary clauses of all PCA are not with the same objectives. For example, Ukraine PCA agreement contains “Free trade” evolutionary clause, however, this clause is not included in all the PCA agreements². In general, the need for placing such of evolutionary clauses in the agreements steamed from the necessity if situation requires to be able to intensify the bilateral relations. Therefore, this clauses play quite a vital role as a policy tool of EU.

According to R. Petrov [2, p. 178], the most appropriate pattern for comparison, despite their apparent differences with the PCAs are so called “transition” association agreements, such as Europe Agreements and Stabilization and Association Agreements, already discussed in the previous section. “The PCAs compare to EA and SAA in that *can* establish free trade areas³ with the(then EC) EU; they are similar because the political dialogue mechanism and the structure of the institutional framework under EA SAA and PCA are also similar. Certain common objectives can also be identified such foresting economic and international cooperation [2, p. 178]. Therefore, the EAs and SAAs may be considered a “pattern model” or “structural role model” that are designed to foster the PCA countries links with the EU [13].

Before the discussion of the framework of the approximation provisions in the PCA, the new developments in the relationships and contractual relations of the three PCA countries and EU shall be

¹For more information about Conditional differentiation please see Maarise Cremona „Flexible Models: External Policy and the European Economic Constitution” in *Constitutional Change in the EU from Uniformity to flexibility*“, eds. Grainne De Burca and Joanne Scott (Oxford: Hart Publishing, 2000), 60-61.

² Article 4 of the PCA Ukraine.

³Please, see Russian and Ukrainian PCA

recalled. Admittedly, three of the PCA countries- Georgia, Ukraine and Moldova have signed in 2014 signed a new enhanced type association agreements with the EU. Compared to all other association type of agreements of the EU, this agreements are most ambitious. In regard to approximation there is a strong emphasis on comprehensive regulatory convergence between the parties and possibility for the application of the vast scope of the EU *acquis* within the Ukrainian, Moldovan and Georgian legal orders [14, p. 244]. AAs provide an provisions for Deep and Comprehensive Free Trade Areas (DCFTA), leading to gradual and partial integration of these countries into the EU Internal Market. Hence the stronger conditionality which links the third country's performance and the deepening of its integration with the EU is also not a surprise of this agreements.

Legislative framework of approximation in PCAs. Similarly to EA and SAA agreements, all PCA agreements also contain approximation clauses, in “embryonic” form, as referred by Maresceau and Montaguti [6, p. 1341]. If we compare this approximation clause, present in most of the PCA agreements, the wording is almost the same as with most of the SAA agreements.

The clauses of the PCAs themselves are also almost identical with exception to some minor difference, as the one with the evolutionary clauses. For example the Ukrainian clause envisages “ the beginning of negotiations on the establishment of a *free trade* area upon advances in market oriented economic reforms and the economic conditions”. The exceptional case with the PCA also is Russia, “where the preamble explicitly promulgates the objective to create the necessary conditions for the future establishment of a Free Trade Area between the Community and Russia”. However this should be mentioned that in these cases the evolutionary clauses are not linked as such to the approximation and in General PCA agreements do not specify, what should be done for the evolutionary clause to take effect.

A few notes are quite clear in relation to the wording of the approximation clauses of PCAs: Like as in EA AND SAAs in PCAs , first there is a link between integration and approximation — PCAs consider legislative approximation to be an important condition for strengthening the economic links between the parties. Second, even though there can be slight variations in the wording extent of commitment (for example “shall endeavor”) indicates about the soft nature of obligation imposed by this article. Third, there is no immediate obligation established, PCA countries in the long run are

called upon to bring their legislation into conformity with the EU law.

Elaborating on the external concept of approximation. Having discussed different models of integration and the process of approximation/ harmonization within these models, a few things have to be recalled.

In EU approximation and harmonization are seen as vital for the functioning of internal market, which is the main economic rationale of the EU. Therefore approximation in EU is used for economic purposes. Harmonization within EU is not voluntary in character, as all the member states are under treaty obligation to harmonize their national legislation with the EU laws. Seeing harmonization as crucial, the treaties also provide mechanism for the proper functioning of the process.

The case with EA and SAA agreements is much different. The purposes of these agreements are not merely of economic nature, even though some components of the former can be identified. These agreements serve as an element of either of pre-accession process (EAs) or pre-pre accession (SAAs), however recalling that most of them didn't imply such goals at the time of their conclusion. Thus within these agreements approximation is seen as a voluntary process, linked to the success of further integration (not only economic) between the parties, however at the same time being necessary *condition for membership*. In respect to the extent of approximation commitment within EA and SAA agreements only vaguely worded approximation chapter is the basis for approximation, where even the scope of approximation is not precise. However, again, this does not entail any practical problems, as the agreements being the part of a pre accession- or pre-pre accession process, are being elaborated on by other non binding documents. Therefore, in this framework, approximation even being voluntary in theory seems not to be voluntary in practice.

Similar conclusion can be reached in regard to the PCAs.

Hence, in discussion on approximation clauses if the discussed models, one must admit that approximation clause shall not be read independently, only as extracted from the article, so to say literally. This would simply mean that it has been extracted from its content. The provisions must be read depending on the two circumstances: 1. the contractual relationship of the country with the EU (contractual obligation) 2. objective aimed within the bilateral relations. If the clauses are read so then the answer to the question, why would a state approximate, if there is no direct obligation of

approximation, would lead to conclusion that approximation is a tool of triggering the relations whether economic or political to the next degree of relationship, possibly envisaged in the treaties. Therefore, in this case the so called non binding obligation to approximate exceeds the non-binding scope of the clause.

From the above said a few simple conclusions can be made, in relation to the concept of harmonization as well as its scope.

Conclusion: Indeed on external level, in many cases harmonization is voluntary by nature, and third states don't take part in the legislation making process. Harmonization provisions within different agreements are in different contexts and different incentives serve the purpose of harmonization. In the case of the EEA/ Swiss framework, economic rational serves as aim of harmonization, whereas in EA and SAA framework, such a purpose is seen in membership.

To conclude it would be reasonable to state that harmonization provisions in agreements give the grounds for the literal interpretation. However, if interpreted so, some of the countries are under obligation to make attempt to approximate their legislation with that of the EU, whereas the others, like EEA countries for example have of course much more contractual obligation of harmonization. On the other side, if looking from the broader view, and considering that the external aim of the agreements also implies membership the literal interpretation can not be used.

Considering the above said, one can make a contribution to the existing definitions of the external concept of harmonization, by noting that, "harmonization/ approximation is often a voluntary process in which the third state unilaterally aligns its legislations with that of the EU, extent of which depends on the state's contractual relationship with the EU, as well as the aims desired to be achieved within this contractual relationship.

References

1. Lazowski A. Enhanced Multilateralism and Enhanced Bilateralism: Integration Without Membership in the European Union // *Common Market Law Review* 45 (2008): 1433—1458.
2. Petrov R. The Partnership and Cooperation Agreements with the Newly Independent States“, in *Handbook on European Enlargement*, eds. A. Ott and K. Inglis, (The Hague: T.M.C. Asser Press, 2002), 175—194.

3. Velluti S. European Employment Strategy and the Challenges of Enlargement” // European Union Law for the Twenty First Century, Vol. I, Constitutionalism and Public Law, External Relations (Editors and authors severally) (USA, Oregon: Hart Publishing, 2004).

4. Evans A. Voluntary Harmonization in Integration Between the European Community and Eastern Europe // European Law Review 22 (1997): P. 201—220.

5. Piontek E. Central and Eastern Countries in Preparation for Membership in the European Union- A Polish perspective // Yearbook of Polish European Studies 73 (1997).

6. Marsesceau M. and Montaguti E. Relations Between the EU and Eastern Europe: A Legal Appraisal // Common Market Law Review 32 (1995): 1327—1367.

7. Hillion C. Mapping out the New Contractual Relations between the European Union and its Neighbors: Learning from the EU-Ukraine ‘Enhanced Agreement’ // European Foreign Affairs Review 12 (2007): 169—182.

8. Grabbe H. European Union Conditionality and the Acquis Communautaire // International Political Science Review 23/3 (2002): 249—268.

9. Grabbe H. A partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants // Robert Schuman Center Working Paper 12/99, San Somenico di Fiesole (FI): European University Institute (1999): 2.

10. Friis L. and Murphy A. Turbo Charged Negotiations: The EU and the Stability Pact for South Eastern Europe // Journal of European Public Policy 7 (2000): 767-786.

11. Phinnemore D. Stabilization and Association Agreements: Europe Agreements for the Western Balkans? // European Foreign Affairs Review 8 (2003): 77—103.

12. Fakiolas Efsthathois T. and Tzifakis N. Transformation of Accession? Reflecting on the EU’s Strategy towards the Western Balkans // European Foreign Affairs Review 13 (2008): 377-398.

13. Cremona M. External relations and external competence: The emergence of integrated policy“, in P. Craig and G.de Burca, the Evolution of EU law (oxford, Oxford University Press 1999), 137—176.

14. Petrov R. Constitutional challenges for the implementation of association agreements between the EU and Ukraine, Moldova and Georgia // 21 European Public Law, Issue 2, (2015), 241—253.

СУРМАВА Л. ГАРМОНІЗАЦІЯ ЗАКОНОДАВСТВА: СУТНІСТЬ ГАРМОНІЗАЦІЇ ЗАКОНОДАВСТВАУ ЗОВНІШНЬОМУ КОНТЕКСТІ ЄС

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