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Towards a Neighbourhood Economic Area – Enhanced Economic Cooperation between the European Union and Its Neighbours within the European Neighbourhood Policy

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Introduction

Upon launching on 12 May 2004 the European Neighbourhood Policy (ENP), the European Commission proclaimed that all neighbouring countries should be offered the prospect of «a stake in the internal market» with the free movement of persons, goods, services and capital. The long-term objective was to move towards an arrangement that would ultimately resemble the European Economic Area. This article examines how the objective of the Neighbourhood Economic Area (NEA) is supposed to be achieved, what it may look like and if the Euro-

pean Economic Area can be a possible model for cooperation between the European Union and its partner countries within the ENP.

In the area of trade and economic cooperation, the European Commission stated that all neighbouring partner countries are to be offered the prospect of a stake in the EU Internal Market based on legislative and regulatory approximation, participation in a number of EU programs and further integration and liberalisation to promote the free movement of persons, goods, services and capital¹. According to the European Commission, such process is expected to bring substantial direct and indirect economic benefits. Directly, the reduction of tariff and non-tariff barriers to trade should bring about efficiency gains and improve welfare through increased market integration. By bringing neighbouring countries closer to the EU economic model, the ENP and particularly the proposed extension of the internal market, should: improve the investment climate in partner countries; provide a more transparent, stable and enabling environment for private sector-led growth; and have a positive impact on foreign direct investment inflows as a result of a more favourable policy environment, falling trade and transaction costs, attractive relative labour costs and reduced risk². Furthermore, legislative and regulatory approximation is to be pursued on the basis of commonly agreed priorities, focusing on the most relevant elements of the acquis for stimulation of trade and economic integration, taking into account the economic structure of the partner country and the current level of harmonisation with EU legislation³. Common rules and standards are vital to ensure that EU neighbours will be able to access and reap the benefits of the enlarged EU internal market as well as to create a more stable environment for economic activity. The EU law, which has established a common market based on the free movement of goods, persons, services and capital, is to be a model for countries undertaking institutional and economic reform. Both the Partnership and Cooperation Agreements (PCAs) and the Euro-Mediterranean Association Agreements (EMAAs) set, in broad terms, an agenda for legislative and regulatory approximation, but without fixed deadlines. Participation in selected EU activities and programmes, including aspects such as consumer protection, standards, envi-

¹ European Commission, Communication from the Commission, European Neighbourhood Policy – Strategy Paper, COM (2004) 373 final, p. 14; Article 26(2) of the Treaty on the Functioning of the European Union describes the internal market as «an area without internal frontiers in which the free movement of goods, services, persons and capital is ensured», *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, OJ C 202, 7.6.2016, p. 1–202. «A Stake in the Internal Market» is understood as a substantial reduction of barriers by both parties to trade agreements and a progressive, albeit selective, integration into all aspects of the EU Internal Market.

² European Commission, Communication from the Commission, European Neighbourhood Policy, *supra* note at p. 14.

³ Both Partnership and Cooperation and Association Agreements contain provisions on legislative approximation over this broad area.

ronmental and research bodies, are to be opened to all neighbouring countries. Regarding goods, all necessary steps have been taken to improve administrative cooperation, and to ensure the gradual elimination of non-tariff barriers to trade and the development of appropriate infrastructure. The movement of industrial products is able to be facilitated through convergence with the EU's laws and regulatory structures. This process is to be supplemented by the conclusion of Agreements on Conformity Assessment and Acceptance of Industrial Products (ACAAs) between the EU and individual neighbour partner countries.

In 2006 the European Commission introduced the concept of «a longer-term vision of an economic area emerging between the EU and its ENP partners», which «would include such points as the application of shared regulatory frameworks and improved market access for goods and services among ENP partners, and some appropriate institutional arrangement such as dispute settlement mechanisms»⁴. So, within a short time, the stake in the internal market has thus gradually been narrowed down to improved market access for goods and services, and in return «partners must continue opening their economic systems and selectively adopt relevant parts of the EU *acquis*»⁵. Moreover, the European Commission stated that «economic integration should go beyond free trade in goods and services to also include 'behind the border' issues: addressing non-tariff barriers and progressively achieving comprehensive convergence in trade and regulatory areas such as technical norms and standards, sanitary and phytosanitary rules, competition policy, enterprise competitiveness, innovation and industrial policy, research cooperation, intellectual property rights, trade facilitation customs measures and administrative capacity in the area of rules of origin, good governance in the tax area, company law, public procurement and financial services»⁶. The European Commission also decided to strengthen the economic and trade component by introducing the prospect of concluding a new generation of «deep and comprehensive free trade agreements» (DCFTAs) with ENP partners. The DCFTAs would include «behind the border» elements and liberalisation of trade flows among partner countries, with a certain level of asymmetry, enhanced support for reforms and efforts to improve the trade and economic regulatory environment and investment climate, and strengthened economic integration and cooperation in key sectors⁷.

⁴ European Commission, Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy, COM(2006) 726 final, p. 5.

⁵ Council of the European Union, Strengthening the European Neighbourhood Policy – Presidency Progress Report, 10874/07, Brussels, 17 June 2007, p. 7; S. Gstöhl, *A Neighbourhood Economic Community – finalité économique for the ENP?*, «EU Diplomacy Papers» 2008, 3, p. 7.

⁶ European Commission, Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy, *supra* note at p. 4–5.

⁷ *Ibidem*, p. 6.

Neighbourhood Economic Area – a New Model of Cooperation between the EU and Its neighbours within the ENP

EU law does not define an economic area. Article XXIV(5) GATT, which defines types of regional integration exempted from the most favoured nation principle, refers only to free trade areas and customs unions⁸. Moreover, many lawyers draw a distinction and view the concept of the internal market as being narrower than that of a common market. In particular, the internal market is said not to embrace «a completed external trade policy, a system of undistorted competition within the common market, and the harmonization or co-ordination of legislation for reasons other than the elimination of barriers between national markets»⁹. Even though the EU's internal market happens to be a common market with a customs union and a common commercial policy, this «external dimension» is, from such a perspective, not a key element of a generic internal market. The European Economic Area (EEA), for example, «is not to be classified as an improved free trade zone – it is to be classified as a less perfect internal market»¹⁰. So, an economic area most likely constitutes a form of World Trade Organisation (WTO) compatible regional integration, located somewhere between a classical free trade area and an internal market, and equipped with a certain, albeit low degree of collective decisionmaking capacity¹¹.

In order to establish the NEA, the EU concluded and will conclude the DCFTAs with each neighbouring partner country. A «deep and comprehensive» free trade area encompasses both liberalisation of trade in goods «with respect to substantially all the trade»¹², and liberalisation of trade in services with «substantial sectoral coverage», eliminating «substantially all discrimination»¹³. The DCFTAs provide for the gradual dismantling of trade barriers and aim for regulatory convergence in areas that have an impact on trade, in particular sanitary and phytosanitary rules, animal welfare, customs and border procedures, competition and public procurement. Each DCFTA contains a commitment from the country to

⁸ Economists distinguish four well-known forms of regional integration: (1) a free trade area abolishes tariffs and quotas; (2) a customs union involves, in addition, common external tariffs against non-members; (3) a common market also removes restrictions on factor movements; and (4) an economic union harmonises certain economic policies, particularly macroeconomic and regulatory policies; B. Balassa, *The Theory of Economic Integration*, Homewood, IL, 1961, p. 2.

⁹ L. W. Gormley, *Competition and Free Movement: Is the Internal Market the Same as a Common Market?*, «European Business Law Review» 2002, 13(6), p. 518. See also T. Bruha, *Is the EEA an Internal Market?*, [in:] P.-C. Müller-Graff, E. Selvig (eds.), *EEA-EU Relations*, Berlin 1999, p. 103–105.

¹⁰ T. Bruha, *supra* note at p. 127.

¹¹ S. Gstöhl, *A Neighbourhood Economic Community ...*, *supra* note at p. 8.

¹² Art. XXIV:8 GATT, available at: https://www.wto.org/english/docs_e/legal_e/10-24_e.htm [last accessed 1.6.2017].

¹³ Art. V:1 GATS, available at: https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm [last accessed 1.6.2017].

implement the relevant *acquis* regarding technical barriers to trade and certain services. They are designed to be dynamic in order to keep pace with regulatory developments in the EU's internal market. Moreover, it is differentiated in order to take account of each partner country's economic circumstances and state of development, including a certain level of asymmetry if appropriate. For the most advanced partners, a DCFTA can lead to a progressive economic integration with the EU internal market. However, to embark on negotiations, partner countries must be WTO members and address key recommendations enabling them to comply with the resulting commitments and must also have made sufficient progress towards common values and principles¹⁴. A DCFTA is a tailor-made international agreement with a certain level of asymmetry, which is concluded on the basis of Article 217 Treaty on the Functioning of the European Union (TFEU) and is a form of mixed association agreement which may be concluded with one or more states or international organisation. Such agreement establishes «an association involving reciprocal rights and obligations, common action and special procedure» and creates privileged links with non-member countries which allow them to a certain extent to take part in the EU system, e.g. Association Council, Association Committee, or Parliamentary Assembly¹⁵. The content of an association agreement is not defined by the EU's Treaties. In general, an association comprises the creation of particular and privilege relations with third state¹⁶. The association agreement must provide reciprocal rights and obligations between the EU and the association partner. However, this does not mean that reciprocity requires strictly identical rights and obligations. It is sufficient that the agreement takes into account the reciprocal economic interests of both parties in general terms.

Three agreements on a DCFTA were concluded in June 2014 with Eastern neighbours: Ukraine, the Republic of Moldova and Georgia as part of Association Agreements and entered into force in 2016 in cases of Georgia and Moldova and in 2017 in case of Ukraine. To the South, DCFTAs are under negotiation with Morocco, Tunisia, Egypt and Jordan. Taking into account the circumstances and level of ambition of each partner country, the EU will have to also extend trade concessions in existing agreements or ongoing negotiations, notably in those sectors best positioned to provide an immediate boost to partners' economies including asymmetry in the pace of liberalisation to take into account the circumstances of each partner country. Greater market access for goods can be achieved through ACAAs, which will allow free movement of industrial products in specific sectors through mutual acceptance of conformity certificates. The main objective of such agreements is to cover all sectors where the legislation is harmonised at the EU level. A partner country having reached that

¹⁴ G. Van der Loo, P. Van Elsuwege, R. Petrov, *The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument*, «EUI Working Papers» 2014, LAW, Issue 9, p. 15.

¹⁵ Case 12/86, *Meryem Demirel v Stadt Schwäbisch Gmünd*, EU:C:1987:232, p. 3719.

¹⁶ *Ibidem*.

stage would in fact become part of a free trade area for industrial products between the EU, the EEA and Turkey. So far, ACAAs have been signed with Israel, Jordan, Tunisia and Egypt.

Finally, the EU and its Member States and the ENP partner countries would build up a common NEA. In terms of substance, the NEA is likely to resemble a patchwork of «FTA plus» or «internal market minus» agreements or a combination thereof, depending on the partner countries' ambition¹⁷. In the first case, extended market access will almost completely focus on the liberalization of trade and trade-related issues. The second case will go beyond trade but not constitute «an area without internal frontiers» nor cover all the internal policies which have an impact on free trade and competition¹⁸. The free movement of persons, for instance, has largely been reduced to visa facilitation, migration management and increased people-to-people exchanges, e.g. educational and youth exchanges, mobility of researchers and civil society contacts (although labour migration would add flexibility to the labour market and relieve demographic pressures in light of the EU's aging population and the high population growth rates in Mediterranean countries)¹⁹. In the longer term, a NEA will be based on a common regulatory framework and improved market access for goods and services among ENP partners and the EU. However, such an approach will have to consider that partners will have a fully functioning independent judiciary, efficient public administration and have made significant progress towards eradicating corruption, into the non-regulated area of the internal market for goods. The European Commission also pointed out in a non-paper the need to develop other sectoral cross-cutting policies which should supplement the NEA such as: human rights and the rule of law, justice, security, transport, energy, environment, maritime policy, social policy, education, health, information society and institutional framework²⁰.

European Economic Area: A possible model for EU cooperation with its neighbours within the ENP?

The European Commission's long-term objective therefore is «to move towards an arrangement whereby the Union's relations with the neighbouring countries ultimately resemble the close political and economic links currently enjoyed

¹⁷ S. Gstöhl, *What Is at Stake in the Internal Market? Towards a Neighbourhood Economic Community*, [in:] E. Lannon (ed.), *The European Neighbourhood Challenges/ Les défis de la politique européenne de voisinage*, Brussels 2014, p. 101.

¹⁸ *Ibidem*.

¹⁹ *Ibidem*.

²⁰ European Commission, ENP – Thematic Dimension, Non-paper Expanding on the Proposals Contained in the Communication to the European Parliament and the Council on «Strengthening the ENP», COM(2006) 726 final, p. 9–12.

with the European Economic Area»²¹. The EEA Agreement was signed on 2 May 1992 between the EU and its twelve Member States and seven countries of the European Free Trade Association (EFTA)²². After Switzerland had opted out, Austria, Finland and Sweden joined the EU, leaving Iceland, Liechtenstein and Norway as the contracting parties. The EEA Agreement was concluded by the European Union under Article 217 TFEU, which means that from the legal point of view this is also an example of an association agreement. However, the EEA Agreement is based on the primary legislation of the EU, and on secondary legislation – EEA relevant regulations, directives, decisions and certain non-binding instruments. Hence, a large part of the EEA Agreement is identical to the relevant parts governing the four freedoms as laid down in the TFEU. The main objective of the EEA Agreement «is to provide for the fullest possible realization of the free movement of goods, persons, services and capital within the whole EEA, so that the internal market established within the European Union is extended to the EFTA States»²³. In practical terms, this means to achieve a homogeneous EEA based on common rules and equal conditions of competition, thus extending the internal market to the EEA EFTA States²⁴. This is ensured through the incorporation of EEA relevant EU acts into the EEA Agreement, and the uniform interpretation and application of such rules throughout the EEA²⁵. So, the homogeneity which means that, within the EEA's functional scope, EFTA and EU Member States have to comply with the same obligations, is the main objective of the EEA Agreement and an essential element of an effective and well-functioning EEA²⁶.

The EEA which entered into force on 1 January 1994 extended access to the EU's internal market to the EFTA Member States, covering the four freedoms, i.e. the free movement of goods, services, persons and capital, as well as

²¹ Communication from the Commission to the Council and the European Parliament, Wider Europe – Neighbourhood: A New Framework for Relations with Our Eastern and Southern Neighbours, COM(2003) 104 final, p. 15.

²² Agreement on the European Economic Area, OJ L 1, 3.01.1994.

²³ Case C-452/01, *Margarethe Ospelt and Schlössle Weissenberg Familienstiftung*, EU:C:2003:493, point 29.

²⁴ Article 105(1) EEA.

²⁵ For further information see: *The Basic Features of the EEA Agreement*, available at: <http://www.efta.int/eea/eea-agreement/eea-basic-features> [last accessed 1.6.2017]; *The Two-pillar Structure of the EEA Agreement – Surveillance and Judicial Control*, available at: <http://www.efta.int/media/documents/eea/16-531-the-two-pillar-structure-surveillance-and-judicial-control.pdf> [last accessed 1.6.2017]; *How an EU Act Becomes an EEA Act and the Need for Adaptations*, available at: <http://www.efta.int/media/documents/eea/1113623-How-EU-acts-become-EEA-acts.pdf> [last accessed 1.6.2017].

²⁶ C. Frommelt, *Differentiated Integration in the European Economic Area. What Lessons Can Be Drawn for the European Neighbourhood Policy?*, [in:] S. Gstöhl (ed.), *The European Neighbourhood Policy in a Comparative Perspective. Models, Challenges, Lessons*, Routledge, 2016, p. 34.

competition and state aid rules, but also the following horizontal policies: consumer protection, company law, environment, social policy, statistics²⁷. In addition, the EEA Agreement provides for cooperation in several flanking policies such as research and technological development, education, training and youth, employment, tourism, culture, civil protection, enterprise, entrepreneurship and small and medium-sized enterprises. The EEA Agreement guarantees equal rights and obligations within the internal market for citizens and economic operators in the EEA. However, the EEA does not cover specific sectors of cooperation which are crucial to the ENP countries: the common agricultural policy, fisheries, transport, regional policy, the customs union; the common trade policy; the common foreign and security policy; justice and home affairs (the EEA EFTA States are however part of the Schengen area); direct and indirect taxation; or economic and monetary union.

The institutional framework of the EEA consists of two pillars and is thus often referred to as a «two-pillar structure». The EU and its institutions constitute one pillar (EU bodies), while the EEA EFTA States and their institutions constitute the other pillar (EEA EFTA bodies), mirroring those of the EU. Between these two pillars, a number of joint bodies have been established²⁸. Through these joint bodies, the EEA States jointly implement and develop the EEA Agreement. The two-pillar structure is necessary because the EEA EFTA States have not transferred any legislative competences to the EU or to the joint EEA bodies. In addition, the EEA EFTA States are also, as a general rule, constitutionally unable to accept binding decisions made by EU institutions directly. In order to apply to the EEA EFTA States, certain competences and tasks which are carried out by bodies in the EU pillar have to be conferred upon bodies in the EFTA pillar. That is why, pursuant to Article 108 EEA, the EEA EFTA States established the EFTA Surveillance Authority and the EFTA Court. The EFTA Surveillance Authority has been granted competences that correspond to those of the European Commission as regards surveillance²⁹. The two institutions oversee the application of the same laws in different parts of the EEA. There is close contact and cooperation between the European Commission and the EFTA Surveillance Authority to ensure uniform surveillance and application of EEA law throughout the EEA³⁰. The EFTA Surveillance Authority ensures that the EEA EFTA States respect their obligations under the EEA Agreement. It can investigate possible infringements of EEA law, either on its own initiative or on the

²⁷ S. Lavenex, F. Schimmelfennig, *EU Rules beyond EU Borders: Theorizing External Governance in European Politics*, «Journal of European Public Policy» 2009, 16(6), p. 791–812.

²⁸ European Economic Area, *The Two-Pillar Structure of the EEA Agreement – Incorporation of New EU Acts*, available at: <http://www.efta.int/sites/default/files/documents/eea/16-532-the-two-pillar-structure-incorporation-of-new-eu-acts.pdf> [last accessed 8.6.2017].

²⁹ Articles 109 and 110 EEA.

³⁰ Articles 105 and 109 EEA.

basis of complaints³¹. The EFTA Court has been granted competences mirroring those of the Court of Justice of the European Union (CJEU) and is responsible for the judicial control of the EEA EFTA States. This two-pillar system of surveillance and judicial control was endorsed by the CJEU in its Opinion 1/92 and later reaffirmed in the Judgment of the General Court of the European Union in the *Opel Austria case*³². The EFTA Court is competent to deal with infringement actions brought by the EFTA Surveillance Authority against an EEA EFTA State with regard to the implementation, application or interpretation of EEA law. Furthermore, it hears appeals against decisions taken by the EFTA Surveillance Authority and gives advisory opinions to courts in the EEA EFTA States on the interpretation of the EEA Agreement. The Court also has jurisdiction to settle disputes between two or more EEA EFTA States regarding the interpretation or application of the EEA Agreement³³. Accordingly, the jurisdiction of the EFTA Court largely corresponds to the jurisdiction of the CJEU³⁴.

The EEA is not a customs union, but represents more than the free trade area and less than the internal market which was built on the basis of two pillars: the European Community and the strengthened cooperation with the EFTA Member States³⁵. In 2002, the President of the European Commission R. Prodi suggested that it was «worth seeing what we could learn from the way the EEA was set up and then using this experience as a model for integrated relations with our neighbours»³⁶. Next, in 2003 the European Commission proclaimed that the long term objective is «to move towards an arrangement whereby the union's relations with the neighbouring countries ultimately resemble the close political and economic links currently enjoyed with the EEA»³⁷. Also the European Parliament, in the context of the ENP recent review, called «to develop proposals for cooperation with willing European Neighbours based on the model of the European Economic Area, which could constitute a further step in their Euro-

³¹ Article 109 EEA.

³² Opinion 1/92, *Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area*, EU:C:1992:189 and Case T-115/94, *Opel Austria GmbH v Council of the European Union*, EU:T:1998:166, point 108.

³³ Article 108(2) EEA.

³⁴ Articles 105 and 106 EEA.

³⁵ S. Gstöhl, *Mapping the European Union's Neighbourhood Relations. The European Economic Area as a «Prototype» for the Integration of the EU Neighbours*, [in:] S. Gstöhl (ed.), *The European Neighbourhood Policy in a Comparative Perspective. Models, Challenges, Lessons*, Routledge, 2016, p. 15; J. Pelkmans, P. Böhler, *The EEA Review and Liechtenstein's Integration Strategy*, Brussels, Centre for European Policy Studies, 13.03.2013, available at: <https://www.ceps.eu/publications/eea-review-and-liechtenstein%E2%80%99s-integration-strategy> [last accessed 10.6.2017].

³⁶ R. Prodi, *A Wider Europe – A proximity policy as a key to stability*, Speech/02/612, Sixth ECSA – World Conference, Brussels, 5–6 December 2002, available at: http://europa.eu/rapid/press-release_SPEECH-02-619_en.htm [last accessed 15.6.2018].

³⁷ European Commission, Communication from the Commission to the Council and the European Parliament, *Wider Europe*, supra note at p. 11.

pean perspective, be based on enhanced inclusion in the EU area in terms of freedoms and full integration within the common market, and also include closer cooperation in common foreign and security policy (CFSP)»³⁸. Moreover, the Council in its conclusions on a homogeneous extended single market and EU relations with Non-EU Western European countries adopted on 16 December 2014 acknowledged «the key role played by the EEA Agreement throughout last 20 years in the advancing economic relations and internal market integration between the EU and the EEA EFTA States»³⁹. The Council also noted «the EEA Agreement has continued to function in a satisfactory manner»⁴⁰. Generally speaking, the recent evaluation matches positive assessment of the EEA⁴¹, that is why we can say that so far, this form of external differentiated integration can be treated as the best model of EU cooperation with third states.

To sum up, the EEA is a highly complex model of external differentiated integration, that cannot be a «prototype» for cooperation between the EU and neighbouring countries within the ENP for several reasons⁴². The differences between the ENP and the EEA are manifold, in particular with regard to the partners, policies, and institutions⁴³. First, the EFTA states are small, rich and highly industrialised democracies with a common intergovernmental organisation. In contrast, the ENP partner countries, are politically and economically very heterogeneous and with the exception of Israel noticeably below the EU average in terms of GDP per capita or the degree of democratisation⁴⁴. Second, the EEA Agreement is the legal basis for relations between the EU and very homogeneous countries, which covers the four freedoms, as well as horizontal policies (e.g. environment, social policy, statistics and company law) and «flanking» policies (e.g. education, research and development cooperation). However, some policies are excluded from this model, that are crucial for the ENP partner countries, e.g. the common agricultural, fisheries, transport, regional policy, justice and home affairs, economic and monetary policy and financial assistance.

³⁸ European Parliament Resolution of 9 July 2015 on the review of the European Neighbourhood Policy (2015/2002(INI)), Strasbourg 9 July 2015.

³⁹ *Council conclusions on a homogeneous extended single market and EU relations with Non-EU Western European countries*, Brussels, 16 December 2014, available at: <http://www.consilium.europa.eu/pl/press/press-releases/2016/12/13-conclusions-homogeneous-extended-single-market/> [last accessed 11.6.2018].

⁴⁰ *Ibidem*, p. 8.

⁴¹ EFTA, *56th Annual Report of the European Free Trade Association*, 2016, available at: <http://www.efta.int/sites/default/files/publications/annual-report/annual-report-2016.pdf> [last accessed 11.6.2018].

⁴² D. Leuffen, B. Rittberger, F. Schimmelfennig, *Differentiated Integration: Explaining Variation in the European Union*, Palgrave Macmillan, 2013.

⁴³ U. Sverdrup, *Modes of Association to the EU: The EEA as a Model?*, [in:] H. Hoibraaten, J. Hille (eds.), *Northern Europe and the Future of the EU – Nordeuropa und die Zukunft der EU*, Berlin 2011, p. 131–142.

⁴⁴ S. Gsthöhl, *A Neighbourhood Economic Community...*, supra note at p. 13.

Thirdly, the EEA attempts to ensure a homogenous common market and uniform application of the *acquis*, the ENP aims at differentiation and tailor-made cooperation. Fourthly, the ENP countries do not have the administrative capacity to efficiently manage the obligations set out by the EEA Agreement. Finally, in contrast to the ENP Action Plans which are bilateral, political and soft law documents, cooperation within the EEA is multilateral and based on legally binding acts. On the EFTA side, surveillance and enforcement are carried out by the EFTA Surveillance Authority and the EFTA Court of Justice. Unlike the PCAs and EMAAs, the EEA Agreement does not contain a human rights clause and there is no political conditionality in EU-EFTA relations⁴⁵.

As a result, the construction of an EEA-like NEA looks rather unlikely and direct comparison between the ENP as a political concept and the EEA as a legal instrument makes a little sense. However, the EEA Agreement is a possible model for a legal basis which could connect the EU with its neighbours within the ENP in the future⁴⁶. However, it is more likely that over time differentiation between the sixteen ENP partner countries will increase and the EU will have to recognise that not all partners aspire to EU rules and standards, but the ENP will have to reflect the wishes of each country concerning the nature and focus of its partnership with the EU. There is no doubt that in time more tailor-made and differentiated partnerships between the EU and each of its neighbouring partners will be established to reflect different ambitions, abilities and interests of all involved. There is a high possibility that different patterns of relations will be established and developed, allowing a greater sense of ownership by both sides⁴⁷.

Conclusions

The ENP links partner countries with the EU's internal market and its social and economic model «in order to establish an area of prosperity»⁴⁸. The partner countries are encouraged to adopt policies which promote economic growth, the business environment and investment, and reduce the differences in develop-

⁴⁵ K. Holzinger, F. Schimmelfennig, *Differentiated Integration in the European Union: Many Concepts, Sparse Theory, Few Data*, «Journal of European Public Policy» 2012, 19(2), 2012, p. 292–305.

⁴⁶ G. Baur, *Who Can Join the European Economic Area?*, [in:] S. Gstöhl (ed.), *The European Neighbourhood Policy in a Comparative Perspective. Models, Challenges, Lessons*, Routledge, 2016, p.65.

⁴⁷ F. Schimmelfennig, D. Leuffen, B. Rittberger, *The European Union as a System of Differentiated Integration: Interdependence, Politicization and Differentiation*, «Working Paper», Issue 137, 2014, p. 19–20.

⁴⁸ Article 8 TEU which provides «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», *Consolidated versions of the Treaty on European Union...*

ment between regions. Moreover, the ENP provides for political dialogue for macroeconomic reforms, employment and social affairs and the creation of the DCFTA should be encouraged to strengthen trade ties between the EU and its neighbours. Prosperity as an ENP objective is connected with economic reform, the transition to a market economy, and economy integration. Increased prosperity in the neighbourhood region is also in the EU's interest because it is a key to stabilising and strengthening neighbouring countries' ability to tackle some of the challenges that are also a concern to the EU – from migratory flows, to radicalisation, social instability and the urgent need to provide positive perspectives for growing and predominantly young populations⁴⁹. This is the main reason why, in the longer term, the EU will take action toward the establishment of the NEA with its neighbours within the framework of the ENP. It will be based on the new type of Association Agreements which will comprise DCFTAs negotiated with each partner country that is a member of the WTO. The DCFTA's main objective is not however the creation of a homogeneous economic area but, on the contrary, to establish far reaching differentiated market access in order to take account of each partner country's economic circumstances. So, the NEA will be established and will operate on completely different rules than the EEA. In this case, the EEA may be only a «prototype» for such cooperation. The NEA will be based on the DCFTAs which present a new form of legal cooperation between the EU and neighbouring countries with the main objective of creating deep and comprehensive free trade areas between the Parties, including measures to reduce non-tariff barriers through regulatory convergence. The DCFTA's will cover substantially all trade in goods and services between the EU and the ENP partner as well as strong legally binding provisions on the implementation of trade and economic regulatory issues. Moreover, the DCFTA's will include such provisions relating to the application of shared regulatory frameworks, improved market access for goods and services among ENP partners, and appropriate institutional arrangements such as dispute settlement mechanisms.

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⁴⁹ Joint Report to the Council, the European Parliament, the European Economic and Social Committee and the Committee of Regions, Report on the Implementation of the European Neighbourhood Policy Review, JOIN(2017) 18 final, p. 14.

- Bruha T., *Is the EEA an Internal Market?*, [in:] P.-C. Müller-Graff E. Selvig (eds.), *EEA-EU Relations*, Berlin 1999.
- Case 12/86, *Meryem Demirel v Stadt Schwäbisch Gmünd*, EU:C:1987:232.
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Dążąc do utworzenia Sąsiedzkiego Obszaru Gospodarczego – wzmocniona współpraca handlowa pomiędzy Unią Europejską a państwami sąsiedzkimi w ramach Europejskiej Polityki Sąsiedztwa

Streszczenie

Dla większości państw sąsiedzkich, z wyjątkiem Izraela, Unia Europejska (UE) jest najważniejszym partnerem handlowym, z tego powodu dostęp do unijnego rynku wewnętrznego jest dla tych państw kluczowym zagadnieniem, który w perspektywie długo-

terminowej może pomóc w realizacji jednego z celów ustanowionej w 2004 r. Europejskiej Polityki Sąsiedztwa (EPS), jakim jest wzrost dobrobytu i likwidacja ubóstwa. Z tego powodu w postanowieniach przyjętego 8 XI 2015 r. komunikatu możemy przeczytać, iż UE i państw sąsiedzkie postanowiły, iż stopniowo należy dążyć do utworzenia sąsiedzkiego obszaru gospodarczego. Zasadnicze natomiast pytania, które należy sobie postawić i spróbować udzielić odpowiedzi brzmią: w jaki sposób ten obszar ma powstać oraz jakie będą w jego ramach zasady i mechanizmy współpracy?

Szczegółowa analiza komunikatu wskazuje, iż sąsiedzki obszar gospodarczy ma powstać i funkcjonować w oparciu o zawarte z państwami sąsiedzkimi umowy ustanawiające pogłębioną i kompleksową strefę wolnego handlu (DCFTA). Umowy takie zostały podpisane w dniu 27 VI 2014 r. z Gruzją, Mołdawią i Ukrainą, a 24 XI 2017 r. z Armenią. Natomiast, w dniu 14 XII 2011 r. Rada upoważniła Komisję Europejską do rozpoczęcia dwustronnych negocjacji z Egiptem, Jordanią, Marokiem i Tunezją. Poprzez utworzenie DCFTA ma nastąpić intensyfikacja wzajemnej współpracy handlowej; wzrost inwestycji bezpośrednich; poprawa klimatu inwestycyjnego; poprawa, jakości produktów i usług oraz zwiększenie konkurencyjności gospodarek państw sąsiedzkich. Widoczna jest zatem zmiana podejścia UE w stosunku do jej sąsiadów, wynikając z faktu, iż państwu tym UE nie zaproponowała ustanowienia «zwykłej» strefy wolnego handlu, ale pogłębioną i kompleksową strefę wolnego handlu. Podpisane Porozumienia ustanawiające DCFTA obejmują o wiele szerszy, niż dotychczas, wynikający z unijnej praktyki tworzenia stref wolnego handlu, zakres przedmiotowy współpracy. Widoczne są pomiędzy nimi zarówno podobieństwa, jak i zasadnicze różnice. Do pierwszych należy zaliczyć: liberalizację handlu na skutek zniesienia taryf celnych importowych i eksportowych oraz opłat o podobnych skutkach na towary wyprodukowane w UE i w krajach partnerskich; zniesienie barier technicznych w handlu oraz ograniczeń dla importu z wyjątkiem tych, które dozwolone są przez WTO oraz postanowienia dotyczące: konkurencji, ochrony własności intelektualnej, współpracy sanitarnej i fitosanitarnej oraz płatności bieżących i przepływu kapitału. Do zasadniczych różnic natomiast należą: stopniowe przyjęcie przez kraje partnerskie *acquis de l'Union* w obszarze handlu i gospodarki, w tym również handlu usługami; zapewnienie takich samych warunków dla prowadzenia działalności gospodarczej dla podmiotów gospodarczych pochodzących z krajów partnerskich i UE; współpracę w obszarach cel i ułatwień handlowych; współpracę w sektorze energetycznym; uczestnictwo krajów partnerskich w niektórych agencjach i programach UE; postanowienia dotyczące: handlu i zrównoważonego rozwoju, zamówień publicznych, utworzenie komitetów eksperckich oraz forów dialogu, dotyczących poszczególnych obszarów współpracy uregulowanych w postanowieniach porozumienia ustanawiającego DCFTA, np. współpracy sektorowej, zrównoważonego rozwoju, norm sanitarnych i fitosanitarnych itp. oraz wprowadzenia nowych procedur rozwiązywania sporów handlowych, które są podobne do mechanizmu rozstrzygania sporów na forum Światowej Organizacji Handlu.

Najnowszej generacji umowy stowarzyszeniowe zawarte z państwami Europy Wschodniej i Kaukazu Południowego oraz negocjowane z państwami basenu Morza Śródziemnego, należą do najnowszej generacji umów stowarzyszeniowych, których cechą jest ustanowienie bliskich, wzmocnionych i pogłębionych relacji pomiędzy stronami, określanymi w literaturze, jako tzw. «*integration-oriented agreements*». Umowę charakteryzują trzy cechy: po pierwsze, bardzo szeroki zakres przedmiotowy współpracy pomiędzy stronami; po drugie, złożoność, która odnosi się do wysokiego poziomu ambicji wzajemnej współpracy, gdyż celem umowy jest integracja gospodarcza krajów sto-

warzyszonych z unijnym rynkiem wewnętrznym poprzez ustanowienie DCFTA, która jak przedstawiono powyżej wymaga podjęcia szerokich działań krajowych mających na celu zbliżenie ustawodawstwa wewnętrznego do prawa UE i stworzenie mechanizmów zabezpieczających jednolitą ich interpretację i efektywną implementację oraz po trzecie, warunkowość, która zawarta została w preambule, w której możemy przeczytać, iż «stowarzyszenie polityczne i integracja gospodarcza państw sąsiedzkich z UE będą zależały od postępów w jego implementacji, a także osiągnięć w zapewnianiu poszanowania wspólnych wartości oraz postępów w osiąganiu zbliżenia do UE pod względem politycznym, gospodarczym i prawnym».

Słowa kluczowe: sąsiedzki obszar gospodarczy, Europejska Polityka Sąsiedztwa, pogłębiona i kompleksowa strefa wolnego handlu

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Торговельна співпраця між ЄС та партнерськими країнами у межах Європейської політики сусідства на шляху до утворення Економічної зони країн-сусідів

Анотація

Для більшості країн, що входять до Європейської політики сусідства, за винятком Ізраїлю, саме Європейський Союз (ЄС) є найважливішим торговельним партнером, а тому доступ до внутрішнього євросоюзного ринку для згаданих країн є ключовим питанням, котре в довготерміновій перспективі може допомогти в реалізації одного із головних пунктів мети, визначеної 2004 року Європейською політикою сусідства (ЄПС), а саме: зростання добробуту та боротьба з бідністю. Прийнята постанова ЄС і сусідськими країнами 8.11.2015 року зокрема декларує, що треба поетапно рухатися до утворення економічної зони країн-сусідів. З цього приводу виникає суттєве питання, яке треба задати собі кожній країні: як має створитися така зона і які основи та механізми співпраці діятимуть у її межах?

Детальний аналіз повідомлення дає підстави ствердити, що Економічна зона країн-сусідів повинна виникнути і функціонувати на підставі підписаних угод зі сусідськими країнами, що передбачатимуть поглиблену та комплексну сферу вільної торгівлі (DCFTA). Такі угоди були прийняті 27.06.2014 р. з Грузією, Молдовою та Україною, а 24.11.2017 р. – із Вірменією. Натомість, 14.12.2011 р. Рада уповноважила Європейську Комісію розпочати двосторонні переговори з Єгиптом, Йорданією, Марокко і Тунісом. Через утворення DCFTA повинне настати поживлення взаємної торговельної співпраці; зростання прямих інвестицій; покращення інвестиційного клімату; покращення якості продуктів та послуг, а також збільшення конкурентоздатності економік сусідських країн. Отже, можна зауважити помітну зміну підходу ЄС щодо своїх сусідів, зважаючи на факт, що тим країнам ЄС не запропонував встановлення «звичайної» сфери вільної

торгівлі, а тільки поглиблену та комплексну зону вільної торгівлі. Підписаний Договір про встановлення DCFTA передбачає значно ширший, ніж досі, масштаб предметної співпраці, що виникає з євросоюзної практики творення зони вільної торгівлі. Помітними є між ними і подібності, і розбіжності. До категорії перших варто віднести: лібералізацію торгівлі шляхом ліквідації митних тарифів на експорт та імпорт, а також подібних оплат за товари, що вироблені в ЄС та в партнерських країнах; ліквідація технічних перешкод у торгівлі та обмежень для імпорту, за винятком тих, котрі є дозволені WTO та постанови, що торкаються конкуренції, охорони інтелектуальної власності, співпраці в санітарній та фітосанітарній сферах; поточних оплатах та обігу капіталу. До принципових відмінностей належать: поетапне прийняття партнерськими країнами *acquis de l'Union* у сфері торгівлі та економіки, в тому числі також торгівлі послугами; забезпечення рівних умов для ведення економічної діяльності суб'єктам господарювання із партнерських країн та ЄС; співпрацю у сфері мита та торговельних пільг; співпрацю в енергетичному секторі; участь партнерських країн у деяких організаціях та програмах ЄС; постанови на предмет: торгівлі та сталого розвитку, державних закупівель, утворення експертських комітетів, а також форумів діалогу, відносно конкретних сфер співпраці, що регулюються положеннями DCFTA, наприклад, співпраці секторів, сталого розвитку, санітарних та фітосанітарних норм і т. д., а також упровадження нових механізмів вирішення торговельних спорів, за аналогією до процедури вирішення суперечностей на форумі Світової організації торгівлі.

Угоди про асоціацію нової хвилі, що підписані з державами Східної Європи та Південного Кавказу, як і ті, що в процесі підготовки зі Середземноморськими країнами належать до угод про асоціацію найновішого типу, характерною рисою котрих є встановлення близьких та поглиблених відносин поміж сторонами, що кваліфікується у фаховій літературі як: «*integration-oriented agreements*». Цій угоді властиві три риси: по-перше, дуже широкий діапазон предметної співпраці між сторонами; по-друге, складність, що виникає з високого рівня очікувань із взаємної співпраці, оскільки метою угоди є економічна інтеграція асоційованих країн-членів із євросоюзним внутрішнім ринком шляхом встановлення DCFTA. А вона, як вище було згадано, вимагає активізації широких дій у країні, маючи на меті зближення внутрішнього законодавства до права ЄС і створення механізмів, які гарантуватимуть одноставну їх інтерпретацію та ефективну імплементацію; по-третє, умовність, яка закладена в преамбулі, в якій зокрема йдеться, що «політична асоціація та економічна інтеграція сусідських країн з ЄС залежатиме від просування кроків його імплементації, а також здобутків у забезпеченні дотримання спільних цінностей та поступу на шляху зближення до ЄС у призмі політики, економіки та права».

Ключові слова: Економічна зона країн-сусідів, Європейська політика сусідства, поглиблена та комплексна зона вільної торгівлі