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Future Associates: An Overview of the EU-Georgia Association Agreement

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Abstract

This paper provides an overview of some legal aspects of the EU-Georgia Association Agreement (AA) in the system of European Union law as an important foreign policy instrument for the regulation of bilateral relations. It outlines the history and mechanisms of the political and economic cooperation between the European Union and Georgia prior to the conclusion of the Association Agreement. The article also examines the implication of the AA for the process of European integration of Georgia and analyses some legal challenges and results of the implementation process. In addition, the Deep and Comprehensive Free Trade Area (DCFTA), which forms an integral part to the AA, is scrutinized as particularly significant for the economic integration of Georgia in the EU and for the mutual liberalization of trade.

Keywords: association agreement, DCFTA, EU law, European integration, foreign policy, Georgia

Introduction

Over the past decades Association Agreements (AAs) between the EU and the third countries have proved to be an important instrument of the EU external policy, especially in the Central and Eastern Europe. They are international agreements concluded between the parties in order to establish a comprehensive framework for regulation of bilateral relations. AAs usually provide for the progressive trade liberalization between the EU and the third country to certain extent. In certain cases, they also serve as the tool for preparing the third country for an EU membership. (European Union External Action, 2015).

On the basis of Art. 217 TFEU the EU is authorized to conclude agreements with one or more third countries or international organizations, so as to establish an association (Lenaerts K., Nuffel P., 2011, p.977). This legal basis was used for the first time by the EU to conclude agreements with Turkey and Greece, in order to prepare them for a future accession. Although the AAs may be characterized as tailor-made contracts to some extent, their content usually varies depending on the partner country in order to fully address the country´s individual specifics and establish a comprehensive and effective cooperation.

As of June 2014 the already large number of AAs has been recently increased by the three new ones. After a long and somewhat dramatic negotiation process, the Association Agreements between EU and Ukraine, Georgia and Moldova were signed on 27th June 2014 at the EU Summit in Brussels and ratified by the national parliaments of these three countries and the European Parliament shortly after. The agreements are the outcome of the EU's "European Neighbourhood Policy" (ENP) launched in 2004 and they substitute the Partnership and Cooperation Agreements (PCAs), which were concluded between the EU and post-Soviet countries in the 90s.

This long awaited historical event has been a motivation to once again explore the Association Agreement as a

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specific legal instrument of the EU external policy as well as its implications to the legal systems and policies of the third countries in Eastern Europe, on the example of the EU-Georgian Association Agreement.

For Ukraine, Georgia and Moldova, the AAs are first international agreements which imply a comprehensive and far-reaching integration into the legal order of a superanational international organization (Petrov R., 2015, p.2). Undisputedly, the AA EU-Ukraine has been the most controversial one, and accordingly, has soon become the topic of academic research. It has even been considered that this AA triggered the Maidan protests and former Ukrainian President Viktor Yanukovych's removal from power (Central European Policy Institute, 2014). It was evaluated as "the most advanced agreement of its kind ever negotiated by the EU" by the former President of the European Council, Herman Van Roumpey and to a large extent it also served as a template for the AAs with Georgia and Moldova (Van der Loo G. et all, 2014, p.1).

However, due to the European Neighborhood Policy's (ENP) principles of differentiation and joint ownership, the new AAs contain some differences and they were drafted with a purpose to abundantly and effectively tackle the specific issues of each partner country involved (Van der Loo G. et all, 2014, p.1). Since the AA EU-Ukraine has been amply covered in literature, unlike the AAs with Georgia and Moldova, this paper will devote a particular attention to some legal aspects of the AA EU-Georgia, arguing that this agreement constitutes a new stage in the development of EU relations with Georgia.

Firstly, a short overview of the legal characteristics of the AAs and their role in the EU external policy will be depicted, followed by an outline of the external policy instruments used by the EU and Georgia to conduct their bilateral relations prior to the conclusion of the AA. In this context particular attention will be given to former PCA, European Neighborhood Policy (ENP) and Eastern Partnership. The second part of the paper will deal with some of the main legal and political aspects of the AA EU-Georgia and will subsequently analyse the challenges of the implementation process and the significance of the AA for the process of European integration of Georgia. Finally, the article will conduct a short study of the effects of the Deep and Free Trade Area (DFTA) for the Georgian economy.

Legal Characteristics of the Association Agreements

Art. 217 TFEU (ex Art 310 TEC) stipulates:

"The Union may conclude with one or more third countries or international organizations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure."

The EU first made use of this legal basis to conclude an association with Greece and Turkey, followed by AAs with the African, Caribbean and Pacific (ACP) countries under the Yaonde Convention and so-called "Europe Agreements" with the countries in Central and Eastern Europe (Craig, De Burca, 2002, p.323). Furthermore, the EU concluded the so called "Stabilization and Association Agreements (SAA)" with the countries of Western Balkans and finally, the newest AAs with Ukraine, Georgia and Moldova. On the other hand, Armenia decided to withdraw from the signing of the AA with EU after a negotiation process of almost three years and chose to enter the Customs Union with Russia, Belarus and Kazakhstan instead. As some scholars argued, these two frameworks cannot be combined due to the contradicting tariff regulations. (Grigoryan, A., 2013).

The content of the AAs usually differs depending on the partner country and the regional specifics, yet their overall, general aim is to establish an all-embracing framework for economic and political cooperation, which goes beyond the simple international cooperation. AAs provide for a much more institutionalized cooperation set-up, as they see for the creation of paritary bodies for the management of the cooperation. These bodies are also responsible for taking decisions that bind the contracting parties and will be further discussed in the following text. Additionally, another main feature of the AAs is that they offer "the Most Favoured Nation" treatment and thereby significantly intensify the economic cooperation with the partner country. Since 1995 they contain a clause on the respect of human rights and democratic principles as an essential element of the agreement (European Union External Action, 2014).

The procedure for negotiation and conclusion of the association agreement on the Union side is regulated by the Art. 218 TFEU. According to this, the Council shall authorize the opening of the negotiations, adopt negotiation directives, authorize the signing of the agreements and conclude them. Pursuant to Art. 218(6)(a)(i) TFEU, in order to adopt the the decision on conclusion of the association agreement, the Council is required to obtain a consent of the European Parliament.

The Court of Justice of the European Union (CJEU) has consistently held that these international agreements form an integral part of the EU legal order and that the CJEU enjoys a broad jurisdiction over their provisions. (Craig, De Burca, 2002, p.323). This follows the monist approach, so that there is no need for transposition of the agreements concluded by the EU through separate EU legislation (Kellermann, A., 2008, p.343).

In cases concerning the "Europe Agreements", the CJEU often dealt with the issue whether the provisions of these agreements have the direct effect, i.e. whether they are sufficiently clear and precise and confer subjective rights upon the individuals, which can be invoked before the national courts of the EU Member States. In practice, there have been several cases[1] where the CJEU affirmed the direct effect of the AA's provisions, under the condition that they are sufficiently clear and unconditional. The Court stated however, that the rights arising from the AAs are not absolute privileges, if the AA enables the host Member State to limit them by their national rules (Albi A., 2005).

However, it should be noted that the AA EU-Georgia does not include an explicit establishment provision, which would be comparable to the establishment provisions and non-discrimination clauses of the AAs with the above mentioned countries. Therefore, the issue of direct effect of this AA will be separately analysed later on.

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Art. 217 TFEU provides for "establishing an association", yet the Treaty itself does not provide any indication of the concrete content of this association, and notably, its meaning can be very broad. The initial Association Agreements included measures covering the entire subject matter of the Treaty. (Craig P., De Burca G., 2011, p.323). The note of the "association" indicates a need for the degree of institutionalization of the international cooperation. In Demirel[2] ,the CJEU held that the association agreement creates „special, privileged links with a third country, which must, at least to a certain extent, take part in the [Union] system." Also, in *Besciani*[3] , the CJEU noted that „reciprocal rights and obligations", as stipulated by the Art. 217 TFEU does not necessarily mean equality of the contractual obligations. (Lenaerts K., Nuffel P, 2011).

Furthermore, Association Agreements set up joint bodies ("association councils"), which are in charge of the implementation and the further development of the agreement. These bodies are composed, on the one hand, of members of national governments or the members of the European Council, usually supplemented by the members of the European Commission and, on the other hand, of the members of the government of the third country. The decisions of the association councils require an unanimous vote. Generally, all disputes between the Contracting Parties concerning the interpretation or application of the agreement fall under the jurisdiction of the association council. (Lenaerts K., Nuffel P., 2011, p.979).

Thus, we may conclude that the AA between the EU and the third countries indicate the folowing legal characteristics: AAs are based on the Art 217 TFEU, they are part of the EU legal system and may have direct effect and they do not require transposition into national laws of the EU member states in order to have a binding force.

AAs play a very important role for the economic integration to the EU market, which is currently the largest single market in the world. They provide for a simplified access to the Union's market for goods from the third country and, in additon, commit the EU to cooperate with this country both economically and financially. Generally, the Union unilaterally grants the zero tariff or, in case of the products qualified as "sensitive", a reduced tariff, which significantly reduces the costs of export to the EU market for the third countries. On the other hand, thrid countries are obliged to grant the products from the EU the most favored nation treatment and are prohibited from applying any fiscal discrimination (Lenaerts K., Nuffel P., 2011, p.979). Deep and Comprehensive Free Trade Area (DCFTA), as envisaged by the AAs with Ukraine, Georgia and Moldova is an example of such policy.

In addition to the economic considerations, political and legal significance of the AAs should be once again highlighted, as they lead to the approximation of laws between the EU and the third country and also provide for a regular monitoring and assessment of the implementation process. AAs have been recognized as an important step forward towards European integration, since they forsee a far reaching political and economic integration with the EU and ultimately, have a symbolic value for the acknowledgement of European aspiration and European values.

Relations between the EU and Georgia Prior to the Association Agreement

Relations between the EU and Georgia started in 1992 after Georgia declared its sovereignty from a disintegrating Soviet Union. The bilateral relations particularly intensified after the "Rose Revolution" in 2003, when the EU reiterated its support to the country's commitment for economic, social and political reforms. Constituting an important security factor, the EU has been actively supporting Georgian government to overcome consequences of internal conflicts in Georgia's "breakaway regions" of Abkhazia and South Ossetia as well as to stabilize the situation following the outbreak of hostilities in August 2008.

The EU also cooperates with Georgia on technical and financial level. Between 2007-2013 the European Neighbourhood and Partnership Instrument (ENPI), with its national, regional and interregional programs, was the main tool for providing assistance to Georgia. The ENPI was replaced by the European Neighbourhood Instrument (ENI) anticipated for the period 2014-2020, which mainly provides assistance through country, regional and multi-country Action Programs. Within this, the main sectors for EU assistance are justice reform, agriculture and rural development and public sector reform, complemented by support for aligning Georgia's laws with EU legislation across all sectors implementing the Association Agreement/DCFTA and support to organizations making up civil society (European Union External Action, 2014).

Partnership and Cooperation Agreement (PCA)[4]

Until recently, the major framework for regulating bilateral relations between the EU and Georgia was the Partnership and Cooperation Agreement (PCA), which was signed in Luxembourg in 1996 and entered into force in 1999. The PCA was concluded for an initial period of 10 years with a possibility of a regular, automatic renewal until the parties decide to cease the Agreement[5]. However, upon the entry into force of the newly signed AA between EU and Georgia, this PCA will be repealed. Moreover, a provisional application of the AA is

1 - Case C-257/99 Bakoci and Malik [2001] ECR I-6557, Case 87/75, Besciani, [1976] ECR 129, Case C-63/99 Gloszczuk [2001] ECR I-6369, Case C-268/99 Jany [2001] ECR I-8615, Case C-235/99 Kondova [2001] ECR I-6437

2 - Case12/86, Demirel [1987] ECR 3719, para. 9.

3 - Case87/75, Besciani, [1976] ECR 129, para. 22.

4 - Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Georgia, of the other part, OJ L 205. In the text shortly referred to as EC-Georgia PCA.

5 - Art. 97 EC-Georgia PCA.

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envisaged pursuant to the Article 431 of the AA EU-Georgia and in accordance with this, the AA EU-Georgia is being provisionally applied as of 1st September 2014 (Delegation of the EU to Georgia, 2014). During the period of the provisional application, in so far as the provisions of the PCA are not covered by the provisional application of this Agreement, they continue to apply[6].

Although the PCA served as a valuable legal framework for cooperation and coordination of certain policies, it was less ambitious and comprehensive than the Europe Agreements and SAAs (Lazowski A., 2015) and, consequently did not provide either for an association or the possibility of accession of Georgia to the EU. Likewise, the PCA also did not provide for the creation of the free trade area. In addition to this, the legislative cooperation was formulated rather broadly and did not entail any fixed deadlines or enforceable mechanisms as regarding to the objective of approximating Georgia's legislation to the legislation of the EU, thereby leaving the national authorities much freedom as to the deadlines and means for implementation. Article 43 PCA merely proclaimed that Georgia "shall endeavor to ensure that its legislation be gradually made compatible with that of the Community [now Union]" and despite listing a number of priority areas for the approximation of legislation[7], the Title V of the PCA does not entail any clear guidelines on the scope and the content of EU laws, which should be taken as the basis for approximation[8].

European Neighborhood Policy (ENP)

The European Neighborhood Policy was conceived in 2003, with an aim to be an overreaching policy framework for the EU to work with its southern and eastern neighbors in order to achieve the closest possible political association and the greatest possible degree of economic integration. In the light of the big enlargement in 2004, the ENP provided for a new incentive for enhancing the cooperation with its neighboring countries and move beyond the mere partnership towards a comprehensive association (European Commission, 2003).

On 14th June 2004 the ENP for Georgia was launched and on 26th November 2006 the EU-Georgia Action Plan was adopted with the aim of further strengthening the economic integration of Georgia with the EU (Delegation of the EU to Georgia, 2014).The ENP action plans set out the partner country's agenda for political and economic reforms, with short and medium-term priorities of 3 to 5 years and reflect the country's needs and capacities, as well as its and the EU's interests (European Union External Action, 2013). From the very beginning, the European Commission has recognized the need for trade liberalization and further approximation of laws and the new generation of agreements were regularly mentioned in the ENP policy papers (Lazowski A., 2015). Finally, the AAs with Georgia and Moldova were initialed at the Eastern Partnership summit in Vilnius on 29 November (European Union External Action, 2013).

Eastern Partnership (EaP)

Eastern Partnership was established by a joint declaration signed in Prague in May 2009[9], a policy initiative, which complements the ENP with an aim to establish closer ties with Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The partnership seeks to promote regional stability through trade agreements and democratic institution-building (Park J. 2014). The EaP was criticized for its one-size-fits-all approach to partner countries of disparate size and demographics and furthermore, for offering very limited incentives for partner counties to enact serious economic and political reforms, as it did not provide for the perspective of EU membership. Nevertheless, within this framework some partner countries such as Moldova and Georgia managed to undertake modest reforms (Park J. 2014). In 2014, after a long Visa-Liberalization-Dialogue, Moldova was even listed as the country whose nationals are exempt from visa requirements.

Hence, the key characteristic of the European Neighborhood Policy (ENP) and the Eastern Partnership (EaP), namely, the link between the third country's performance and the deepening of the EU's engagement (i.e. conditionality), will also remain the basis for EU relations with Georgia after the conclusion of the Association Agreement. Yet, whereas this principle has so far been applied on the basis of soft-law instruments such as the Action Plan, it is now incorporated in a legally binding bilateral agreement (Van der Loo G. et all, 2014).

Overview of the EU-Georgia Association Agreement (AA)[10]

After the signing of the Association Agreement between EU and Georgia, Georgian Parliament swiftly ratified it already on the 18th July 2014, thereby signalizing the firm devotion to the European and Euro-Atlantic integration course. The European Parliament ratified the Agreement on 16th September 2014 and, as mentioned above, the agreement is being applied on the provisional bases as of 1st September 2014, whereby 80 percent of the AA came into force including the DCFTA component[11]. Simultaneously with the AA, an EU-Georgia Asso-

6 - Art. 431(6) EU-Georgia AA.

7 - Art. 44 EC-Georgia PCA.

8 - Similarly, see Guillaume Van der Loo, Peter Van Elsuwege and Roman Petrov "The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument", 2014, p. 4.

9 - Joint Declaration of the Prague Eastern Partnership Summit Prague, Brussels, 7 May 2009, 8435/09 (Presse 78).

10 - EU-Georgia Association Agreement, OJ L 261. In the text shortly referred to as EU-Georgia AA.

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ciation Agenda was adopted, which defines a set of priorities for the period 2014-2016 with a view to implement the AA/DCFTA and which replaced EU-Georgia ENP Policy Action Plan of 2006 (Delegation of the EU to Georgia, 2014).

The EU-Georgia AA is of crucial importance for deepening and expansion of bilateral relations and it establishes a comprehensive legal framework for European integration of Georgia. It is based on a political association and economic integration, entrenching democratic principles, such as fundamental freedoms, human rights and rule of law[12]. It encompasses a wide spectrum of EU activities and amounts to about counts around 1000 pages. As such, it is one of the most voluminous AAs of the EU with the third countries. It consists of eight Titles, which deal with General Principles, Political Dialogue and Reform, Cooperation in the Field of Foreign and Security Policy; Justice, Freedom and Security, Economic Cooperation, Other Cooperation Policies, Trade and Trade-related Matters (DCFTA), Financial Assistance and Anti-Fraud and Control Provision as well as Institutional, General and Final Provisions. Furthermore, the AA also includes 34 Annexes, which lay down the relevant EU legislation that should be taken over by a specific date and 3 Protocols.

Notwithstanding the importance and necessity of a thorough analysis of political and economic implications of the EU-Georgia AA, in the following section this paper will focus on exploring some of the legal considerations that arise from this agreement. In the following, particular attention will be given to the legal nature of the AA, its applicability and the legal effects in both the EU and Georgian legal order, legislative approximation envisaged by the AA and challenges and progress of implementation.

Legal Nature and Legal Basis

The EU-Georgia AA is a part of new generation of Association Agreements with Eastern Partnership countries, which contain many novelties and go further from the previous AAs (Petrov R., 2015, p.3). Due to the number of areas covered and the detail of commitments and timelines, it is more comprehensive both in its breadth and its depth (Foreign & Commonwealth Office, 2014). It falls into a category of EU mixed agreements based on Article 217 TFEU (association agreements) and Articles 31(1) and 37 TEU (EU action in area of Common Foreign and Security Policy). This means that it concerns the issues of both the Union's and of the Member States' competencies and must be signed by both the EU and the Member States.

The EU-Georgia AA can also be characterized as an "integration-oriented agreements', i.e. agreement that includes principles, concepts and provisions which are to be interpreted and applied as if Georgia were part of the EU. Therefore, it is argued that AAs of this generation (AAs with Ukraine, Georgia and Moldova) provide a new model of integration without membership (Petrov R., 2015, p.3).

Scholars have underlined the elements of comprehensives, complexity and conditionality as the key features of these three AAs[13]. The reasons for their comprehensives were already outlined above. The complexity arises from the high level of ambition to achieve a comprehensive economic integration into the EU market through the establishment of the DCFTA. In order to succeed in this, it is necessary for Georgia to undertake a vast legislative and regulatory approximation and to provide for a high-level mechanisms, which would ensure the uniform interpretation and consistent implementation of the EU legislation into the Georgian national legal order (Van der Loo G. et all, 2014, p.3).

Finally, the conditionality element establishes a link between the third country's performance and the deepening of its integration with the EU (Petrov R., 2015, p.4). It was already familiar from the ENP and EaP, but these policy frameworks only, took account of it through soft-law instruments. The new, legally binding bilateral agreement entails both a "common values" and "market access" conditionality in several of its provisions. The AA does not exclude further development and advancement of the relations between the parties and according to its preamble, it "leaves open the way for future progressive developments in EU-Georgia relations". The market access conditionality is reflected in the link between the country's economic integration and the legislative approximation (Petrov R., 2015). In this context, the detailed regulation of the monitoring of approximation as provided for under Art. 419 EU-Georgia AA can be underlined.

Applicability of the EU-Georgia AA

The application of the EU-Georgia AA is determined by the Georgian constitutional law. In this regard, the provisions of the Georgian Constitution, which regulate the standing and application of the international agreement, are particularly relevant. Pursuant to Article 6 (2) of the Constitution of Georgia, an international treaty or agreement of Georgia, unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts. Hence, after its ratification by the Georgian Parliament on 18th July 2014, the EU-Georgia AA became an integral part of its national legal system and is ranked below the Constitution of Georgia, but above domestic legal acts. This is further confirmed also by the Article 6 (1) of the Law of Georgia "On International Treaties", which states that an international treaty of Georgia is an inseparable part of the Georgian legislation. As such the EU-Georgia AA enjoys priority over con-

11 - Council Decision 2014/494/EU of 16 June 2014on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, OJ L 261.

12 - Preamble of the EU-Georgia AA.

13 - For the first time described by Peter Van Elsuwege in Guillaume Van der Loo, Peter Van Elsuwege, Roman Petrov 'The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument' EUI Working Papers (Law) 2014/09.

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flicting national laws, but not over the Georgian Constitution. Furthermore, Georgian legal system does not foresee a direct enforceability of the international agreements in its legal order (Petrov R., 2015).

However, previous practice of Georgian judiciary as to the regard of the now almost redundant PCA shows that the Georgian courts have been reluctant to refer to this agreement. In case they did, they have mainly done so in order to support the legal argumentation in their judgments. Moreover, the courts have rarely referred to the PCA as a specific legal act, but rather brought up the EU law as a general concept, thereby mainly addressing its aims in their judgments (Gabrichidze G., 2014, p.189). Insufficient familiarity of the Georgian judiciaries with the agreements as well as the low level of claims raised by the citizens on the basis of the PCA (or, respectively AA) are some of the factors for a limited application of international agreements by the Georgian courts in practice (Van Elsuwege P., Petrov R., 2014).

However, the ratification of the EU-Georgia AA will not make it easier for Georgian judiciaries. Due to its comprehensiveness and detailed regulation, the EU-Georgia AA provides for many more possibilities to be relied upon and invoked at the Court. Should this occur, Georgian courts will be faced with a number of issues, such as for example whether the CJEU case law is the part of EU acquis contained in the annexes of the AA, what are the means of implementation of the directives specified in the annexes or what is the effect of the Association Council's binding decisions. In order to address this issues effectively, it has been argued, that the best approach would be to benefit from the experience from third countries, which have already concluded similar associations agreements with the EU. In this context, Petrov suggests an enactment of special national laws on implementations of the AA (Petrov R., 2015).

Another issue which arises in the context of applicability of the EU-Georgia AA is its possible conflict with the Georgian Constitution. This is not a new problem and constitutional courts of the associate countries from Central and Eastern Europe already had a chance to face this challenge prior to their countries' accessions. The main difficulty at this point is the lack of direct enforceability of the international agreements in the eastern neighboring countries' legal orders (Petrov R., 2015, p.9). Former associate countries from Central and Eastern Europe and now members have solved this problem by promoting EU friendly interpretation of their national legislation on the one hand and also by amending their constitutions in order to make the international agreements directly enforceable. Yet, this would mean sacrificing the national sovereignty to a certain extent and it remains to be seen whether the Georgian legislators will be eager to take this step.

Finally, legal effects of the EU-Georgia AA in the EU legal order should be addressed. It has already been mentioned that Association Agreements, as binding bilateral international agreements, constitute an integral part of the Community legal order from the time they enter into force. According to the CJEU's well-established jurisprudence, the international agreements concluded by the EU, therefore also the Association Agreements, are capable of having a direct effect in the EU legal order. For example, in Demirel case, CJEU had noted that "a provision in an international agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not a subject, in its implementation or effects, to the adoption of any subsequent measure." In other words, if the provisions of an Association Agreement are clear and unconditional, they may be invoked before the national court of an EU member state (Kellermann A., 2008).

Nevertheless, the situation with the EU-Georgia AA is different. Direct effect of the Association Agreements' provisions has mainly been relied upon in the past to support the rights of people, who are nationals of the third country and who are legally employed in the Member state. Regretfully, the EU-Georgia AA does not contain a provision on the non-discrimination of legally employed workers, comparable to the ones included in the "Europe Agreements" or even in the AA between EU and Ukraine. What is more, Article 6 of the Council's Decision of 16 June 2014 on the signing and provisional application of the EU-Georgia AA stipulates that "the Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals". This is quite an unambiguous, unilateral statement of the Council and it would be rather difficult for CJEU to overlook such clear instructions from the representatives of the Member States' governments and affirm direct effect of the provisions of EU-Georgia AA, should such a case arise. (Van der Loo G. et all, 2014, p.27). Still, it should be noted that in the Simutenkov case the CJEU ruled that the provisions of the PCA with Russia can produce a direct effect. Thus it would be paradoxical and even contrary to the aim of a deeper and more ambitious integration if the provisions of the association agreement were accorded less extensive direct implications (Van der Loo G. et all, 2014, p.27).

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by promoting EU friendly interpretation of their national legislation on the one hand and also by amending their constitutions in order to make the international agreements directly enforceable. Yet, this would mean sacrificing the national sovereignty to a certain extent and it remains to be seen whether the Georgian legislators will be eager to take this step.

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Nevertheless, the situation with the EU-Georgia AA is different. Direct effect of the Association Agreements' provisions has mainly been relied upon in the past to support the rights of people, who are nationals of the third country and who are legally employed in the Member state. Regretfully, the EU-Georgia AA does not contain a provision on the non-discrimination of legally employed workers, comparable to the ones included in the "Europe Agreements" or even in the AA between EU and Ukraine[15]. What is more, Article 6 of the Council's Decision of 16 June 2014 on the signing and provisional application of the EU-Georgia AA[16] stipulates that "the Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals". This is quite an unambiguous, unilateral statement of the Council and it would be rather difficult for CJEU to overlook such clear instructions from the representatives of the Member States' governments and affirm direct effect of the provisions of EU-Georgia AA, should such a case arise. (Van der Loo G. et all, 2014, p.27). Still, it should be noted that in the *Simutenkov*[17] case the CJEU ruled that the provisions of the PCA with Russia can produce a direct effect. Thus it would be paradoxical and even contrary to the aim of a deeper and more ambitious integration if the provisions of the association agreement were accorded less extensive direct implications (Van der Loo G. et all, 2014, p.27).

Legislative Approximation

The incentives for approximation of the Georgian national law were already created by the EU-Georgia PCA and even by the legislative preparation for its membership to WTO in 2000 (Khutsishvil, Sh., 2013). Yet, as already mentioned above, the PCA lacked concrete specifications for the legislative approximation and contained only a very generally formulated "best-endeavour clause"[18]. Contrary to this, the EU-Georgia AA encompasses very detailed specifications and mechanisms for the legislative approximation, especially in its 34 Annexes, which lay down the relevant EU legislation that should be taken over by a specific date (European Union External Action, 2014). Similar as in the EU-Ukraine AA, the approximation provisions vary as to the range of their specificity and to the level of the approximation they require (Van der Loo G. et all, 2014, p.14). Naturally, the most detailed mechanisms of the legislative approximation concern the establishment of the DCFTA, as this is essential for its functioning.

In the EU law, the concept of legal approximation means the process of harmonizing of national legislation with the EU acquis. Depending on the degree of harmonization envisaged, the EU Treaties differentiate between harmonization, approximation and coordination. Harmonization is a term generally referred to for the EU Member States, which pursuant to Art. 4(3) TEU also have to harmonize their legal systems, so as the fulfilment of the obligations arising from the Treaties, whereas the approximation indicates a lower level of the legal alignment and is used mainly in relations with the third countries, which is the case for Georgia. The EU acquis has a very broad meaning. Except from the classic legislation, it also encompasses the content, principles, political objectives of the EU treaties, legislation adopted pursuant to the EU treaties and judgments of the CJEU, declarations and resolutions adopted by the EU, CFSP and AFSJ measures as well as international agreements concluded by the EU, and conventions. Each country aspiring to become a member must align its national legislation to the EU acquis. Apart from formally including it into the national legislation, third countries must also have to prove their capability to implement harmonized laws (Policy and Legal Advice Centre, 2014).

As a legally binding bilateral agreement, EU-Georgia AA commits Georgia to gradually approximate its legislation to the EU law as set out in the Art. 417 of the AA. In order to address the challenge of constant development of the EU acquis, the EU-Georgia AA sees for "dynamic approximation" and in accordance with the Art. 418 it authorizes the Association Council to periodically revise and update Annexes of the AA, without prejudice to specific provisions concerning the

14 - Case12/86, Demirel [1987] ECR 3719, para.14.

15 - Art. 17(1) EU-Ukraine AA.

16 - Council Decision (2014/494/EU).

17 - Case C-265/03 Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol[2005] ECR I-2579, para. 22, 29.

18 - Art. 43 EC-Georgia PCA.

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Trade and Trade-related Matters under the Title IV of the AA[19]. Furthermore, the Association Council is given the power to update or amend the Annexes of the AA, also without prejudice to any specific provisions under the Title IV (Trade and Trade-related Matters) of this Agreement[20]. However, equivalent to the similar provision in EU-Ukraine AA[21] , the Association Council is not obliged to do this upon each and every modification of the EU law and such decision requires an "agreement" between the EU and Georgian representatives[22] (Van der Loo G. et all, 2014, p.19). Nevertheless, these are valuable mechanisms for keeping the AA at the latest stand of the relevant EU legislation.

Due to the PCA, Georgia has already had some experience with forming the national legal mechanisms, which regulate the legal approximation. For the first time, in 1997 Georgian parliament adopted the national resolution "On Harmonization of Georgian Legislation to the EU Law", which established an obligation for all subsequent acts adopted by the Georgian parliament to be compatible with standards and norms adopted by the EU. Additionally, in 2001 a presidential act "On Strategy of Harmonization of Georgian Legislation to EU law" was issued, albeit mostly just as a declaratory document, without any legally binding effect (Khutsishvil, Sh., 2013). Yet, these were mainly very general types of regulations without any guidelines or institutional approach.

A significant change was noted following the Georgian constitutional reform in 2004, due to the "National Program of Harmonisation of Georgian Legislation with EU law", which became a leading national instrument for legislative approximation. Special units responsible for legislative approximation were established in every ministry and governmental agency and ordered to prepare implementation plans of the harmonization programs in the spheres of their responsibility[23]. The National Program of Harmonisation contained a concrete list of EU acts (mostly Directives) with which the convergence of the relevant Georgian legal acts was to be achieved (Khutsishvil, Sh., 2013). In the context of this, successful legislative reforms of the Georgian Customs Code, the law on "Food Safety and Quality", of the Georgian tax legislation and to the "Law of Georgia on Copyright and Related Rights" can be mentioned. The harmonization was further fostered on the international level through the soft-law instruments of ENP and EaP (Office of the State Minister of Georgia on European & Euro-Atlantic Integration).

However, the EU-Georgia AA will face Georgia with a great challenge in terms of legal approximation as it envisages far more reaching legal alignment with clearly defined deadlines, which can only be accomplished with duly planned mechanisms and policies. For example, as regards to the energy sector, the post-Soviet legacy, lack of knowledge and literature on possible challenges of harmonization of the Georgian legislation, low level of competitive awareness and possibilities at the market and lack of technical facilities have been defined as key obstacles, which should be tackled (Sumbadze N., 2014). Despite the Georgian EU's Integration Commission composed by the members of the government and temporary working groups of governmental experts and staff of the Ministry on European and Euro-Atlantic Integration, there is a further need for institutionalization and structural organization of the process. In addition to this, process of legal approximation is followed by the technical problems such as lack of availability of EU law and analytical materials in Georgian, absence of unified terminology and shortage of analytical reviews of the development of already accomplished legal approximation (Khutsishvil, Sh., 2013, p.43).

To cope with these challenges, various provisions of the EU-Georgia AA provide for a technical assistance for the implementation. As already mentioned above, EU provides for financial support of Georgia's development within the framework of its regional ENI program. Depending on the country's needs and commitment to reforms, the bilateral assistance is indicated to €335 - €410 million, of which some should be allocated for the implementation of the AA/DCFTA (European Commission, 2014). Furthermore, Georgia is encouraged to cooperate with countries in region (mainly Ukraine and Moldova), as well as with other pre-accession countries and benefit from their experiences, methods and models of AA's implementation.

Institutional Framework Under EU-Georgia AA

As characteristic for the AAs, the Association Agreement between EU and Georgia provides for establishment of the bodies, which are in charge of the implementation and the further development of the agreement. According to the Arts. 404-406 of the Agreement, the Association Council is established, in order to "supervise and monitor the application and implementation of this Agreement and periodically review the functioning of this Agreement in the light of its objectives". Hence, it has a very important role in the process of legal approximation, as depicted above, and operates as a forum for exchange of information on EU and Georgian legislative acts (Van der Loo G. et all, 2014, p.11). According to the Art. 405 (1), the Council comprises out of the members of the Council of the European Union and members of the European Commission, on the one hand, and of members of the Government of Georgia, on the other. It is foreseen that the decision-making process within the Council takes place "by agreement between the Parties".

19 - Art. 418 EU-Georgia AA.

20 - Art. 406 (3) EU-Georgia AA.

21 - Art 463(3) EU-Ukraine AA.

22 - Art 408 (3) EU-Georgia AA.

23 - Enactment of Government of Georgia #22 of 8 May 2004 "On Preparation of the Unified Implementation Plan for National Program of Harmonization of Georgian Legislation with that of the EU law and a new agenda for Cooperation with the EU".

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The Association Council's decisions are binding for the Parties, which are obliged to take appropriate measures in order to implement them[24] . This is a step-forward for the political cooperation between the Parties, as the previous Cooperation Council provided for by the EU-Georgia PCA[25] was only entitled to make recommendations. However, similar to the EU-Ukraine AA and other AAs, the question remains on how these binding decisions of the Association Council will be applied in Georgian legal system. Some of the other associated countries have faced this challenge by enacting the "acts on implementation of the AA", which clarified the implication of the AA for the national legislation (Van der Loo G. et all, 2014). It remains to be seen how the Georgian legislator will react to this problem.

Furthermore, the Association Council will be assisted by the Association Committee, composed principally of the representatives of the Parties from the senior civil servants level[26]. Besides this, sub-committees are established by the AA and the Association Council is authorised to establish further special committees or bodies in specific area, should this be necessary for the implementation of the Agreement[27]. A Parliamentary Committee is also established under the Art. 409 of the Agreement, in order to serve as a forum for Parties to meet and exchange their views. New to the institutional framework is Civil Society Platform established under the Art. 412 of the AA, which serves as a valuable recognition of the role of the civil society in the process of European integration. The platform consists of representatives of civil society on the side of the EU, and representatives of the civil society on the side of Georgia and is entitled to make recommendations to the Association Council. Due to all this, it can be said that the EU-Georgia AA brings a reinforced institutional framework for the future cooperation and integration (Van der Loo G. et all, 2014, p.11).

Territorial Scope of the EU-Georgia AA

The territorial application of the EU-Georgia AA is regulated under the Art. 429 of the Agreement and is of essential significance for the question of Georgian territorial integrity and sovereignty, especially as regards to its "breakaway regions" of Abkhazia and Tskhinvali region/South Ossetia. Generally, EU-Georgia AA is envisaged to apply to the whole territory of Georgia, in consistence with the EU's policy of non-recognition of Abkhazian and Tskhinvali/South Ossetian independence. However, the issue is particularly problematic in the context of DCFTA provided under the Title IV (Trade and Trade-related Matters) of the AA, especially as the rules of origin in the Georgian DCFTA[28] do not include any specific regulation on the goods originating from these regions (Van der Loo G. et all, 2014).

Art. 429 (2) EU-Georgia AA lays down a specific regulation of the territorial application of the AA as regards to the DCFTA. It stipulates that "the application of this Agreement or of the DCFTA, in relation to Georgia's regions of Abkhazia and Tskhinvali region/South Ossetia over which the Government of Georgia does not exercise effective control, shall commence once Georgia ensures the full implementation and enforcement of this AA, or of Title IV (Trade and Trade-related Matters) thereof, respectively, on its entire territory". In other words, the application of the DCFTA in Abkhazia and South Ossetia is preconditioned by the certification of full implementation and enforcement of the AA or DCFTA in the breakaway regions. According to the Art. 429 (3) of the AA, it is for the Association Council to determine whether this is the case, therefore a unanimous decision between the EU representatives and Georgian representatives is required. Conversely, paragraph 4 of this Article also provides for the possibility of suspension of full territorial application of the Agreement, if one Party considers that the full implementation and enforcement cannot be guaranteed in the areas concerned (Van der Loo G. et all, 2014). It is important to note that the decisions of the Association Council approving or suspending the application of the Title IV of the EU-Georgia AA (DCFTA) in Abkhazia and South Ossetia must cover the entire DCFTA, so that the possibility of a partial application is excluded[29].

In this context the Preamble of EU-Georgia AA once again recognizes the territorial integrity of Georgia and reaffirms the respect for principles of independence, sovereignty and inviolability of the internationally recognized borders[30]. Furthermore, these principles are embodied also as the general principles of the AA in Art. 2 and in the Art. 3 as aims for the future political dialogue. In this sense, the AA contains common values that go beyond classical human rights and also include very strong security elements (Petrov R., 2015, p.4)

Importance of the DCFTA for Georgian Economy

The Deep and Comprehensive Free Trade Area (DCFTA) has been already mentioned several times as the key feature of the EU-Georgia AA. However, since the in-depth analysis of

24 - Art 406 (1) EU-Georgia AA.

25 - Arts. 81-84 EC-Georgia PCA.

26 - Art 407 EU-Georgia AA.

27 - Art 408 EU-Georgia AA.

28 - Protocol I EU-Georgia AA.

29 - Art 429 (5) EU-Georgia AA.

30 -Art. 5 and Art. 9 EU-Georgia AA.

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the economic impact of the DCFTA to the Georgian economy goes beyond the scope of this paper, only a brief outline of its importance and possible challenges will be given below.

DCFTA is an integral part of the EU-Georgia AA regulated under the Title IV (Trade and Trade-related Matters)[31] and it aims at achieving the gradual economic integration of Georgia to the EU Internal Market. In contrast to the DCFTA of the EU-Ukraine AA, whose provisional application is set for 1st January 2016, the DCFTA of the EU-Georgia AA has already been provisionally applied as of 1st September 2014. The DCFTA is of crucial economic importance for Georgia as it significantly facilitates the market access of Georgian goods and services and offers a possibility for Georgia to diversify its market. Furthermore, the implementation of the DCFTA will certainly have a positive impact to the growth of the country's attractiveness to foreign investment and sustainable development of the market (Chagelishvili-Agladze L., et all, 2014). According to the Trade Sustainability Impact Assessment, a report commissioned by the EU, it is estimated that the DCFTA could increase Georgia's exports to the EU by 12% and imports from the EU by 7.5%. Full implementation of trade-related reforms, according to this report, could increase Georgia's long-term GDP by 4.3%, provided that the DCFTA is duly implemented and that its effects are sustained (European Commission, 2012).

In addition to this, DCFTA is a valuable incentive for Georgia to continue with economic reforms and enforce its trade-related legislation and respective institutions (Khuntsaria, T., 2015). In this context, the gradual legal approximation, which was depicted above, will serve as an important mechanism. Up to now, Georgia regulated its trade relations with the EU under the trade scheme of the EU Generalized System of Preferences (GSP+). The GSP+ was granted to Georgia in 2005 and it will continue for a transitional period of two years after the entry into force of the DCFTA. The GSP+ provides a non-reciprocal tariff reduction on duty free access to Georgian exports to the EU (Delegation of the EU to Georgia, 2014). However, GSP+ only implied removal of tariff barriers and did not entail any regulation for the non-tariff barriers, such as food safety standards or sanitary and phytosanitary requirements. In this way, DCFTA helps the formation of a trading system, which is compatible with the EU market, especially due to the gradual convergence of the national regulation with the EU regulation and establishment of the relevant administrative mechanisms as provided by the agreed schedules in the Annexes of the EU-Georgia AA (Chagelishvili-Agladze L., et all, 2014). However, the effect certainly will not be immediate and Georgia will face some difficult challenges as regards to the implementation of the DCFTA.

Notably, as from the date of entry into force of the EU-Georgia AA, both Georgia and the EU are obliged to eliminate all customs duties on most of the goods originating in the other Party[32]. This implies a notable revenue loss for Georgian budget, once the import customs tax is not collected anymore. It is estimated that the budget revenue will be reduced by about ¼ . This expense should be covered by the gradual increase of excise on tobacco and spirits (Chagelishvili-Agladze L., et all, 2014).

Therefore, even though the DCFTA is expected to bring significant benefits to Georgia in the long run, the short-term effects of the DCFTA will bring a lot of challenges and costly reforms to Georgian economy, thereby burdening the state, local businesses and customers. There is a growing fear that the competition for foreign direct investment and the costs of modernization may be much higher than available investments, and companies (particularly SMEs) are likely to face transitional problems (Khuntsaria, T., 2015, p.7). Diversification of the market will undoubtedly be beneficial for further development of Georgian trade relations, as it will not depend as much on the exports to the Russian market and it will have a possibility to deepen its trade with the EU. Furthermore, customers will benefit from a higher variety and quality of the products available at the market. However, these benefits may be accompanied by higher prices for goods and services, as well as an increased gap between the wages of skilled and unskilled labour, possible job losses, and potentially declining incomes (Khuntsaria, T., 2015, p.7). Hence, a comprehensive cost-benefits analysis and a cautious approach to the economic reforms is highly recommended.

Conclusion

The EU-Georgia AA is a rather new document, which deserves an adequate attention in the prospective legal academic papers. Together with the AAs concluded with Ukraine and Moldova, the EU-Georgia AA is part of a new generation of the EU Association Agreements, which seek to establish a framework for deep and comprehensive integration through a complex network of legal mechanisms. By replacing the former EU-Georgia PCA, which offered only for partnership and cooperation, the new AA will certainly lead to intensified bilateral relations between EU and Georgia. The key factors in this process will be the establishment of the deep and comprehensive free trade area (DCFTA) between the EU and Georgia, as well as the extensive legal approximation of the Georgian legislation to the EU acquis, under the supervision of a detailed monitoring process.

However, many challenges will arise for Georgia as an outcome of the implementation process that follows. The effective implementation of the AA will depend on the expertise and willingness both of the judiciary and executive authorities to transpose it and regulate the implementation further through the national legislation. Judges and civil servants are recommended an advanced schooling in the EU law, in order to ensure a prompt and precise application in practice. Moreover, Georgia is advised to exchange good-practices and profit from the experiences of other countries, which have already concluded similar agreements with the EU. Therefore,

31 - See Art 22 EU-Georgia AA and the following Articles.

32 - Art. 26 (1) EU-Georgia AA. Also see exceptions in paragraphs 2,3 and 4 of this Article.

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the effective application of the AA will be subject to necessary reforms in several sectors and may have some negative public reaction as a consequence. Nevertheless, the AA provides Georgia with an opportunity to tighten its relations with the EU and promises a sustainable, long-term development in legal, administrative and economic spheres.

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