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A LEGAL FRAMEWORK OF EUROPEAN DEVELOPMENT PARTNERSHIPS

With the creation of United Nations Specialized Agencies and Bretton Woods Institutions in the aftermath of the Second World War multilateral development cooperation has earned a prominent place in everyday life of international community. The benefits multilateral development cooperation is intended to provide include the achievement of collective goals through central pooling of global resources and knowledge, the creation of stable, neutral and autonomous negotiating and administrative centers and the reduction of the transaction costs of international collective action [1, 27]. Although these expectations have little to do with reality as the efficient global cooperation and coordination in the field of international development is still in process of construction, with the adoption of eight Millennium Development Goals (MDGs) in 2000 — the set of universally agreed targets for poverty overcoming — some prospects of success are placed on partnership for development which is based on shared responsibilities and mutual commitments between developed and developing countries and international organizations.

Partnership development policy is analyzed in works of M. van Reisen (modern development cooperation policy); A. Mold, T. Hauschild, K. Schilder, P. Hoebink, M. Kaltenborn, L. Bartels, H. G. Ruse-Khan (European development cooperation); W. Hout, M. Carbone, C. Gibson, S. Folke, H. Nielsen, J. Sachs (development and poverty reduction); O. Stokke, D. Dijkzeul (development policies and activities of the international organizations), etc.

The present article seeks to examine the relevant provisions of international treaties and regulations originated from the European Union (EU) law that create the legal rationale for European development partnerships and are decisive for further advancement of the EU's development cooperation. The focus on European development partnerships is account for EU's active role in MDGs' achievement. Development is at the heart of the EU's external action, along with its foreign, security and trade policies. Moreover, the EU remains the world's largest donors of official development assistance (ODA)[1].

The EU, or rather the European Economic Community (EEC)[2], from the very beginning was active in the field of development cooperation. "The association of the overseas countries and territories in order to increase trade and to promote jointly economic and social development" was mentioned as one of the Community's activities in Art. 3(k)[3] of the Treaty establishing the EEC (Treaty of Rome, 1957) [3, 4]. The core provisions concerned development (as well as free trade between the respective territories, investment and aid) contained in Part IV of the Treaty of Rome and Implementing Convention annexed to it

[1] In 2012 the EU collective ODA amounted to 55,2 billion EUR, the total ODA of the EU Member States alone amounted to 55.2 billion EUR 52,8 billion EUR [2, 1–2].

[2] After the Treaty of Maastricht (signed on 7 February 1992, entered into force on 1 November 1993) the EEC became the European Community (EC), reflecting the determination of the Member States to expand the Community's powers to non-economic domains. On 1 December 2009 the European Community was replaced by the European Union, when the Treaty of Lisbon entered into force.

[3] In consolidated version of the Treaty Art. 3(s) [4].

created the "association" on a permanent basis[1] [5, 720]. When most of the African territories covered by the Treaty of Rome declared independence two Yaoundй Conventions (1963 and 1969) were concluded. On substantive matters Yaoundй Conventions continued the main themes of Part IV of the Treaty of Rome. One change from Part IV was that the Yaoundй Conventions abandoned the obligation to liberalize trade among the associates. This was recast as a permission to form Yaoundй-compatible regional trade agreements. For the remaining dependent territories Part IV of the Treaty of Rome continued to apply [5, 722–724].

Over the next decade the number of association agreements was concluded with some non-associate countries (Nigeria, the East African Community (comprising Tanzania, Uganda and Kenya, Morocco, Tunisia etc.) [5, 727–728].

United Kingdom accession to the EEC in 1973 led to the signing of the wider reaching Lomé I agreement between 46 ACP countries and EEC member states (1975–1980). Other Lomé Conventions followed in 1980, 1985, 1990 and 1995 (revised Lomé IV)[2].

Today's relations between the EU and ACP-countries are based on multilateral agreement — the Cotonou Agreement, which entered into force on 1 April 2003 and created the framework for the EU's relations with 79 countries[3]. This special partnership is characterized by its non-reciprocal trade benefits for ACP-countries including unlimited entry to the EC market for 99 per cent of industrial goods and many other products, especially for the Least Developed Countries (LDCs). In addition, aid packages for each ACP-countries and region are regularly updated [7].

Negotiating the terms of the Cotonou Agreement the EU and the ACP-countries have agreed to sign the Economic Partnership Agreements (EPA) to promote trade between the EU and each ACP-subregion through trade development, sustainable growth and poverty reduction [8]. A first look at how the EU and its Members as well as ACP-countries conduct their trade and development relations is provided by EPA signed on 15 October 2008 between the EC, its Member States and the CARIFORUM group of Caribbean countries[4] (EC-CARIFORUM EPA). EC-CARIFORUM EPA considers itself a "Trade Partnership for Sustainable Development" (heading of Part I) emphasizing that the overarching objective is sustainable development of the parties to the partnership (Art. 1(a) and 3) [9].

As to the development partnerships between the EU and states other than ACP-countries it is usually based on bilateral trade agreements (also called "cooperation agreements" as they contain provisions concerning development cooperation) [10, 849].

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[1] One major feature of the association was the establishment of a European Development Fund (EDF) which is still the main EU's instrument for providing aid for development cooperation in the African, Caribbean and Pacific countries (ACP countries) and so-called OCTs — twenty-one overseas countries and territories depended constitutionally on four of the European Union (EU) Member States: Denmark, France, the Netherlands, and the United Kingdom. Each EDF is concluded for a period of around five years. Since the conclusion of the first Yaoundй Conventions the EDF cycles have generally followed the partnership agreement/convention cycles: 1964–1970 (Yaoundé I Convention), 1970–1975 (Yaoundé II Convention), 1975–1980 (Lomé I Convention), 1980–1985 (Lomé II Convention), 1985–1990 (Lomé III Convention), 1990–1995 (Lomé IV Convention), 1995–2000 (Lomé IV Convention and the revised Lomé IV), 2000–2007 (Cotonou Agreement), 2008–2013 (Revised Cotonou Agreement) [6].

[2] It should be noted that Lomй IV became the first development agreement to incorporate a human rights clause as a "fundamental" part of cooperation.

[3] Cotonou Agreement does not address South Africa, which is also a member of the ACP group. The EU and South Africa have concluded a bilateral agreement — Trade, Development and Cooperation Agreement.

[4] Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St Lucia, St Vincent and the Grenadines, St Kitts and Nevis, Suriname, Trinidad and Tobago.

Talking about legal rational for the development partnerships between the EU and other states, EU's entry into respective agreements is based on Treaty on the Functioning of the European Union (TFEU) Art. 217. According to TFEU development cooperation is a shared competence between the Community and the Member States and can be exercised jointly [11]. This idea takes rise from the postulate that complementarity, coordination, and coherence (so-called "3Cs") are three principles of the development cooperation[1]. As stated in TFEU Art. 208, Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action [11]. The principles and objectives of the EU's external action are specified in Art. 21 of the Treaty on European Union (TEU). They are: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law [13].

In line with TEU Art. 21, which emphasizes that the Union shall define and pursue common policies and actions and work for a high degree of cooperation in all fields of international relations in order to foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty [13], the TFEU Art. 208 (1) carries on this idea and states that Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty [11]. In keeping with TFEU Art. 208 (2), the Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organizations [11].

Besides the level of primary legislation (treaties, approved by all EU member countries), secondary legislation (regulations, directives and decisions, adopted by the European Parliament and the Council of the EU, or so-called "ordinary legislative procedure") form a legal base for European development partnerships as well. For example, the financing instrument for development cooperation is established by Regulation (EC) No 1905/2006 of 18 December 2006, OJ 2006 L 378/41 (usually referred to as the Development Cooperation Instrument (DCI). Other rules for administering the financing of the Union's development assistance via the budget are fixed in next regulations: Regulation (EC) No 1638/2006 of 24 October 2006, OJ 2006 L 310/1 (laying down general provisions establishing a European Neighbourhood and Partnership Instrument); Regulation (EC) No 1085/2006 of 17 July 2006, OJ 2006 L 210/82 (establishing an Instrument for Pre-Accession Assistance (IPA); Regulation (EC) No 1717/2006 of 15 November 2006, OJ 2006 L 327/1(establishing an Instrument for Stability); Regulation (EC) No 1889/2006 of 20 December 2006, OJ 2006 L 386/1 (establishing a financing instrument for the promotion of democracy and human

[1] The 3Cs evaluation initiative was launched by the group of Heads of the EU Member States' development cooperation evaluation services and the European Commission to carry out a series of joint evaluation studies with a view: 1) to explore and assess the role played by the Maastricht Treaty precepts of coordination, complementarity and coherence (3Cs) in the EU's development co-operation policies and operations; and 2) to determine how far these have been applied in practice and with what impact. Studies in European Development Cooperation Evaluation were published on an irregular basis to inform the interested European audience on results of Europe's development cooperation. Complementarity is intended to ensure that Community development policy is "complementary to the policies pursued by the Member States". Coordination has been defined as "activities of two or more development partners that are intended to mobilise aid resources or to harmonise their policies, programmes, procedures and practices so as to maximise the development effectiveness of aid resources". Coherence has been defined as "the non-occurrence of effects of policy that are contrary to the intended results or aims of policy" [12, 15–16].

rights worldwide); Regulation (EC) No 1257/96 of 20 June 1996, OJ 1996 L 163/1 (concerns the humanitarian aid) [14, 7].

It also should be noted that European development partnerships can hardly be ensured just through the legal instruments. That is why not strictly legal but political documents are also play an important role in the establishment and maintenance of the European development cooperation. The illustrative example is the "An Agenda for Change" — the document built on the European Consensus on Development[1] and on the EU commitments to eradicate poverty and to aid development effectiveness. It sets out new important directions on how to address better these challenges and deliver greater impact, also looking ahead to the development agenda beyond MDGs, including the role of ODA and innovative sources of financing for development [15].

The European development partnerships are also influenced by EU's membership in Organization for Economic Co-operation and Development and participation in the High Level Foras on Aid Effectiveness (resulted in the Rome Declaration (2003), Paris Declaration (2005), Accra Agenda for Action (2008) and Busan Partnership for Effective Development Co-operation (2011).

Similarly, as a member of the World Trade Organization, the EU plays a role in its activities in the field of development and poverty alleviation. Furthermore, in December 2007, the EU adopted its joint strategy on Aid for Trade, which also includes the pledge on trade-related assistance to developing countries.

All of the above stated allows to draw a conclusion that the EU development policy has a solid regulatory framework embodied in comprehensive and advanced measures both of binding and nonbinding legal nature. The Cotonou Agreement, EPAs and other cooperation agreements which the EU has to follow while establishing partnerships with developing states, as well as the TEU, TFEU and provisions of secondary legislation make European development partnerships stable, well-structured and functional.

[1] European Consensus on Development — a statement signed in 2005 by the Presidents of the Commission, Parliament and the Council to guide the EU's and its Member States' activities in the field of development cooperation and to set out the concrete action to be taken to implement this activities at the Community level.

Keywords: EU, partnerships for development, international law, EU law.

The article examines legal acts that create the legal basis for European development partnerships and are decisive for further advancement of the EU's development cooperation. The relevant provisions of the Treaty establishing the European Economic Community, Treaty on the Functioning of the European Union, Treaty on European Union, Yaoundé Conventions, Lomй Conventions, Cotonou Agreement, Economic Partnership Agreements and regulations originated from the EU law were analyzed. The analysis has allowed concluding that the EU development partnerships have a solid legal framework embodied in comprehensive and advanced instruments.

У статті розглядаються правові акти, які створюють юридичну основу для європейського партнерства в цілях розвитку і мають вирішальне значення для підвищення ефективності співпраці ЄС з іншими країнами в галузі сприяння розвитку. Проаналізовано положення Договору про заснування Європейського економічного співтовариства, Договору про функціонування Європейського союзу, Договору про Європейський Союз, Яундські конвенції, Ломейські конвенції, Угоду Котону, Угоди про економічне партнерство і норми права ЄС. Проведений аналіз дозволив зробити висновок про те, що здійснюване ЄС партнерство в цілях розвитку має міцну юридичну основу, що складається з всеосяжних і добре налагоджених правових інструментів.

В статье рассматриваются правовые акты, которые создают юридическую основу для европейского партнерства в целях развития и имеют решающее значение для повышения эффективности сотрудничества ЕС с другими странами в области содействия развитию. Проанализированы положения Договора об учреждении Европейского экономического сообщества, Договора о функционировании Европейского союза, Договора о Европейском Союзе, Яундские конвенции, Ломейские конвенции, Соглашение Котону, Соглашения об экономическом партнерстве и нормы права ЕС. Проведенный анализ позволил сделать вывод о том, что осуществляемое ЕС партнерство в целях развития имеет прочную юридическую основу, состоящую из всеобъемлющих и хорошо отлаженных правовых инструментов.

Literature

1. Gulrajani N. Who Needs More Coordination? The United Nations and Development Assistance / N. Gulrajani, S. Mulley, N. Woods // Journal of International Law and International Relations. — 2005. — N 2 (1). — P. 27–39.

2. Annual Report 2013 to the European Council on EU Development Aid Targets — Council Conclusions, 3241st Foreign Affairs Council meeting, Brussels, 28 May 2013 [Electronic Resource]. — Mode of access : http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137320.pdf.

3. The Treaty of Rome, 25 March 1957 [Electronic Resource]. — Mode of access : http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf.

4. Consolidated Version of the Treaty Establishing the European Community // Official Journal of the European Communities 2002/C 325/01 [Electronic Resource]. — Mode of access : http://eur-lex.europa.eu/en/treaties/dat/12002E/pdf/12002E_EN.pdf.

5. Bartels L. The Trade and Development Policy of the European Union / Lorand Bartels // European Journal of International Law. — Vol. 18, N 4. — P. 715–756.

6. Summaries of EU legislation, Development, Overseas countries and territories [Electronic Resource]. — Mode of access : http://europa.eu/legislation_summaries/development/overseas_countries_territories/r12102_en.htm.

7. European Commission, EuropeAid, Overview, Lome convention [Electronic Resource]. — Mode of access : http://ec.europa.eu/europeaid/where/acp/overview/lome-convention/lomeitoiv_en.htm.

8. Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, 2000/483/EC [Electronic Resource]. — Mode of access : http://ec.europa.eu/europeaid/where/acp/overview/documents/devco-cotonou-consol-europe-aid-2012_en.pdf.

9. Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part Official Journal of the European Union 30.10.2008 [Electronic Resource]. — Mode of access : http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:289:0003:1955:EN:PDF.

10. Kaltenborn M. The Legal Significance of Global Development Partnerships: European Development Cooperation and its Contribution to the International Law of Development / Markus Kaltenborn // Göttingen Journal of International Law. — 2010. — Vol. 2, N 3. — P. 843–870.

11. Consolidated Version of the Treaty on the Functioning of the European Union, 2010 O.J. C 83/13 [Electronic Resource]. — Mode of access : http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF.

12. European Commission, Joint Evaluation of Co-ordination of Trade Capacity Building in Partner Countries, Final Report, February 2006 [Electronic Resource]. — Mode of access : http://ec.europa.eu/europeaid/how/evaluation/evaluation_reports/reports/2006/727_vol2_en.pdf.

13. Consolidated Version of the Treaty on European Union, 2010 O.J. C 83/13 [Electronic

Resource]. — Mode of access : http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF.

14. Broberg M. Governing by 'consensuses' — on the legal regulation of the European Union's development cooperation policy / Morten Broberg. — Copenhagen : Dansk Institut for Internationale Studier Copenhagen, 2010. — Working Paper 23.

15. Council of the European Union conclusions 'Increasing the Impact of EU Development Policy: an Agenda for Change', 3166th Foreign Affairs Council meeting, Brussels, 14 May 2012 [Electronic Resource]. — Mode of access : http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130243.pdf.

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МИТНИЙ СОЮЗ ЄВРОПЕЙСЬКОГО СОЮЗУ: ПРОБЛЕМИ ФУНКЦІОНУВАННЯ ТА ПЕРСПЕКТИВИ РОЗВИТКУ

Митний союз Європейського союзу (ЄС) [1] є одним з найбільш успішних прикладів європейської інтеграції та європейської політики. Протягом більше сорока років він служить в якості стабільної основи для економічної інтеграції та зростання в Європі. Правова основа виявилася одночасно міцною і гнучкою, коли справа доходить до географічного розширення території і спектра завданнь. Багато в чому завдяки Митному союзу в державному секторі країн-членів підтримується загальна модернізація, спрямована на забезпечення більш ефективного використання митного кордону. Однак ще не всі ланки в ланцюзі Митного союзу однаково добре працюють. Крім того, хоча правила повинні застосовуватися однакові, результати їх реалізації різні.

Проблема митної співпраці на міжнародному рівні є надзвичайно актуальною, особливо зважаючи на перспективи участі України в митному союзі Росії, Білорусі та Казахстану. Дослідженню цього питання присвячено праці багатьох вітчизняних вчених, зокрема В. Гомоная, Г. Друзенка, Є. Додіна, О. Зеркаль, Т. Качки, С. Ківалова, А. Козиріна, Б. Кормича, Е. Кубко, Р. Петрова, В. Серафімова, В. Цвєткова та ін.

Є й інші ознаки того, що Митний союз стикається з серйозними проблемами з точки зору його способу функціонування. Ці проблеми відображені в його здатності знижувати загальну ефективність захисту ЄС і служити його інтересам. Вони пов'язані з неефективністю витрачання ресурсів та їх нездатністю вдовольнити існуючі потреби. Ці проблеми перекладаються на різні рівні надання послуг і загальний поганий стан захисту кордонів ЄС. Митний союз знаходиться у виключній компетенції ЄС, в той час як відповідальність за здійснення митного законодавства лежить в першу чергу на державах-членах.

Деякі з проблем, з якими стикаються в Митному союзі, звісно, є результатами зростаючої глобалізації торгівлі, ускладнення логістики, а також глобалізації злочинності та інших загроз. Більше того, навіть якщо всі держави — члени