

M. O. Sarakutsa

Ph.D, Associate Professor

*of the Department of Constitutional Law and Justice
Odessa I. I. Mechnikov National University*

M. L. Rabinovych

Doctoral Candidate

*at the Department of Constitutional Law and Justice
Odessa I. I. Mechnikov National University*

THE EU'S DEVELOPMENT POLICY: LEGAL FOUNDATIONS AND THE PROSPECTS OF EVOLUION

Following the 2013 Revolution of Dignity and the signature of the ambitious EU-Ukraine Association Agreement, the EU plays ever growing role in supporting political and socio-economic development in Ukraine. For the time being, such support is being exercised on two legal bases: the support to the implementation of the Association Agreement (the application unilateral financial and technical assistance instruments) and 2014 State-Building Contract for Ukraine that combines macro-financial credits and direct budget support instruments (whose total value accounts for 11.2 billion euro). Given the fact that the latter set of instruments goes beyond the Eastern dimension of the ENP and is close to the EU's development policy approach (the EU is presently applying state-building contracts in its relations with Ivory Coast, Tunisia, Mali and South Sudan), this paper will focus on the policy and legal foundations, trends and prospects of the EU's development policy's evolution. Along with the development-orientedness of the EU-Ukraine relations, the topicality of respective research is determined by the EU's

commitment to the Sustainable Development Goals (SDGs), contained in the UN Agenda 2030 [1].

Thus, pursuant to the Commission's Communication on Next Steps for a Sustainable European Future [2], the UN Agenda 2030 constitutes the foundation for the EU's development policy. The commitment to the Agenda and the mode of the Union's cross-policy implementation thereof is reaffirmed in the New European Consensus on Development «Our world, our dignity, our future» [3]. Despite the fact that both the UN Agenda 2030 and the respective Union's implementing documents are characterized with «soft» legal nature, they constitute a crucial foundation for the EU's development policy and the reforms thereof. Substantively, the Agenda features the three-dimensional model of sustainable development, encompassing economic growth, environmental sustainability and social cohesion. Of special interest with regard to the UN Agenda 2030 are the systemic issues of its implementation, such as the strive for the revitalization of the Global Partnership for Development; an emphasis on the *interlinkages* between the Goals and integrated approach to the policies, directed to Goals' implementation, as well as boosting developing countries' role in the attainment of the Goals. In accordance with the New European the Consensus on Development, all of the above systemic focus points are presently being integrated to the EU's development policy, as well as other policies the Union uses to attain development-related goals, such as *inter alia* Enlargement; the European Neighbourhood Policy and external dimension of the EU's environmental policy.

The overall mandate and objectives of the EU development policy stem from Art.21 TEU [4]. In particular, Art.21(2)(d)TEU mentions «fostering the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty» as one of the objectives of the Union's external action. Art.208(1) TFEU emphasizes poverty eradication as the major long-term objective of the EU development cooperation. According to the Art.4(4) TEU, «in the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member

States being prevented from exercising theirs». The provisions on the institutional design and decision-making within the EU development policy are contained in Art.209(1) TFEU. Substantiating the efforts towards the coherent development cooperation, Art.210 and 211 TFEU address the coordination efforts between the Union and its Member States, as well as the Union and its Member States, on the one hand, and international organizations, on the other, respectively [5].

Importantly, the EU's development policy is tightly linked to the Union's value promotion through the general objectives of the EU's external action, contained in Art.21 TEU. Moreover, the Regulation, establishing a financing instrument for development cooperation for the period 2014-2020, mentions the rule of law as an essential for development (the Preamble to the Regulation), the general principle of the EU's development cooperation, as well as the cooperation area under both the geographical and the thematic programmes of the Union. Similar to the «more for more» approach, applied by the ENI, the 2012 EU Agenda for Change stipulates that the Union's support to partners «will be adapted to their development situation and commitment and progress with regard to human rights, democracy, the rule of law and good governance», thus advancing the role of the governance issues in the EU's development cooperation [6].

The geographical scope of the EU development cooperation is defined in Art.1(a) of the Development Cooperation Instrument (DCI) [7]. It includes the countries that are signatories to the 2000 Cotonou Agreement [8] (excluding South Africa); countries eligible for the European Development Fund; countries, eligible for the European Neighborhood Instrument funding, as well as the acceding countries (those, eligible for the IPA II funding). Thus, it can be stated that, despite the focus on the ACP countries the overseas territories, the EU development cooperation may also encompass the European Neighborhood and Candidate countries. The legal basis for the EU's concluding agreements with developing countries is constituted by Art. 209 TEU. Pursuant thereto, «The Union may conclude with third countries and competent international organizations any agreement helping to achieve the objectives referred to in Article 21 of

the Treaty on European Union and in Article 208 of this Treaty». Among most prominent of the EU's development policy-centered agreements, one can mention the expansive 2000 Cotonou Agreement with African, Caribbean and Pacific states and the succeeding European Partnership Agreements (EPAs) between the EU and particular regions of Africa, the Caribbean and the Pacific. In these Agreements, the EU seeks to establish linkages between political and economic development (e.g., Art.9 of the Cotonou Agreement); ensure WTO compatibility (e.g., EPAs) and create action, most suitable to the needs of particular developing countries or regions.

The implementation and advancement of the EU development policy is concerned with numerous conceptual and coordination-related difficulties. The key challenge, doubtlessly, deals with the «growing skepticism about the effectiveness of aid as an instrument and the need to get value for money with the risk of focusing on «quick fixes» producing immediate measurable results without deeper «social change» [9]. Moreover, it is challenging for the Union to ensure joint ownership of its development cooperation projects with third countries in view of the long-lasting lack of equal partnership between the EU as a donor and aid recipient countries. Third, certain EU Member States tend to question the present allocation of the 0.7 percent of the EU budget for development aid, willing to put greater emphasis on security and climate change-related issues. Overall, with the ever growing development aid industry within the EU and its Member States, as well as internationally, ever greater efforts are required to ensure the coordination of donor efforts and appropriately prioritize among the areas of cooperation, especially with regard to the implementation of the Agenda 2030 within the varying geographical contexts of the Union's action, including *inter alia* the European Neighborhood Policy.

References:

1. Resolution adopted by the General Assembly on 25 September 2015, A/Res/70/1, Transforming our world: the 2030 Agenda for Sustainable Development [Electronic resource]. – Mode of access: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E. – The title from the screen.

2. Commission's Communication on Next Steps for a Sustainable European Future [Electronic resource]. – Mode of access: https://ec.europa.eu/europeaid/commission-communication-next-steps-sustainable-european-future_en. – The title from the screen.
3. New European Consensus on Development [Electronic resource]. – Mode of access: https://ec.europa.eu/europeaid/new-european-consensus-development-our-world-our-dignity-our-future_en. – The title from the screen.
4. Consolidated version of the Treaty on the European Union // Blackstone's EU Treaties and legislation / N. Foster (ed.). – Oxford: Oxford University Press, 2014. – PP.1-20.
5. Consolidated version of the Treaty on the Functioning of the European Union // Blackstone's EU Treaties and legislation/ N.Foster (ed.). – Oxford: Oxford University Press, 2014. – PP.21-112.
6. Agenda for Change. [Electronic resource]. – Mode of access: https://ec.europa.eu/europeaid/policies/european-development-policy/agenda-change_en. – The title from the screen.
7. Development Cooperation Instrument. [Electronic resource]. – Mode of access: https://ec.europa.eu/europeaid/how/finance/dci_en.htm_en. – The title from the screen.
8. Cotonou Agreement. [Electronic resource]. – Mode of access: http://www.europarl.europa.eu/intcoop/acp/03_01/pdf/mn3012634_en.pdf. – The title from the screen.
9. Concord Cotonou Working Group Briefing Paper (2013). Trends and challenges in EU development policy: the agenda for change. [Electronic resource]. – Mode of access: http://concordeurope.org/wp-content/uploads/2016/07/Brussels_Briefing_Papers__Agenda_for_Change_En.pdf?1855fc. – The title from the screen.