

ASSOCIATION POLICY OF THE EUROPEAN UNION AND THE ASYMMETRY QUESTION*

Ufuk ALKAN**

Araştırma Makalesi

Abstract

The aim of this article is to put an emphasis on the asymmetrical aspects of association policy of the EU. The article problematizes the weakness of institutional association between the EU and associated countries despite the high volume of direct and indirect rule taking by these countries. The main argument of the article is that the EU needs to develop an institutionalized associate membership status at least for associated countries in Europe, i.e. European in the sense of the article 49 of the Treaty on the EU. It is concluded that a new association policy may accommodate better interests of both the EU and associate countries. This is especially important for an improved image of the EU in these countries.

Keywords: *EU Association Policy, Association Agreements, Asymmetry, External Differentiated Integration*

Avrupa Birliği Ortaklık Politikası ve Asimetri Sorunu

Öz

Bu makalenin amacı, AB'nin ortaklık politikasının asimetrik yönlerine vurgu yapmaktır. Çalışmada, ortak ülkelerin doğrudan ve dolaylı olarak çok fazla kuralı üstlenmelerine rağmen, AB ile aralarındaki kurumsal ortaklığın

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** PhD candidate at Ankara University International Relations Department. E-mail: ufuk.alkan@coleurope.eu, ORCID: 0000-0001-8335-0804.

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zayıflığı sorunsallaştırılmaktadır. Makalenin temel argümanı, AB'nin, en azından AB Antlaşması madde 49'da ifade edilen Avrupalı ülkeler için kurumsallaşmış bir ortak üyelik statüsü geliştirmesi gerektiği şeklindedir. Yeni bir ortaklık politikasının hem AB hem de ortak ülkelerin çıkarlarını daha iyi karşılayabileceği sonucuna varılmaktadır. Bu, özellikle ortak ülkelerde AB'nin imajını iyileştirmesi için önemlidir.

Anahtar Kelimeler: AB Ortaklık Politikası, Ortaklık Anlaşmaları, Asimetri, Harici Farklılaştırılmış Entegrasyon

Introduction

Associated countries' direct and indirect compliance with European Union (EU) rules, norms and practices has been a precondition for their integration with the EU. The willingness of the EU for *acquis* transfer is attributed to its self-definition as an "ideal power" and its quest for recognition by the others as such¹. The self-idealization of the EU, which accounts for its asymmetrical relations with third countries is also present in its association policy. Association policy is asymmetrical, because its "rules (the pace, degree and the content of the relationship)" are determined by the EU². To reverse this asymmetry, some associated countries request more institutional ties with the EU through an enhanced association policy.

For instance, Turkey is seeking increased institutional ties with the EU through the modernization of the Customs Union³. Northern Ireland may end up in a customs union with the EU after *Brexit*. So, even Northern Ireland is seeking separate decision-shaping opportunities⁴. In 2019, Georgia recommended "a structured, institutional dialogue of EU and Associated Partners on issues related specifically to implementation of [association agreements]"⁵. Yet, the quest of associated countries for strengthened

¹Münevver Cebeci, "European Foreign Policy Research Reconsidered: Constructing an 'Ideal Power Europe' through Theory?," *Millennium-Journal of International Studies* 40, no 3, (2012): 579.

² Cebeci, "Constructing an 'Ideal Power Europe' through Theory?," 579.

³ Report of the Senior Officials Working Group on the Update of the EU-Turkey Customs Union and Trade Relations, April 27, 2015, 2, https://trade.ec.europa.eu/doclib/docs/2016/march/tradoc_154367.pdf.

⁴ Interview with David Phinnemore, Professor of European Politics at the Faculty of Arts, Humanities and Social Sciences of Queen's University Belfast in Northern Ireland, via Skype, April 24, 2020.

⁵ Michael Emerson and Tinatin Akhvlediani, *Association Agreement between the EU and Georgia European Implementation Assessment (update)*, Study for the EPRS, PE 642.820, Ex-Post Evaluation Unit, Brussels, April 2020, 58.

institutional ties is not a new phenomenon. Lycourgos relates that Greece requested its institutional association with the European Commission and the Council of the EU during association negotiations which resulted in the signing of the Athens Agreement on 9 July 1961⁶. This request was declined for the sake of the EU's institutional "autonomy", and bilateral association institutions were created instead⁷. According to an official from the Delegation of the EU to Georgia

Georgia and also, Ukraine and Moldova are seeking some institutional links to the EU. Georgia believes it could harmonize with EU rules and standards better if it had some decision-shaping or decision-making power. Therefore, Georgia could be interested in an associate membership status⁸.

The inclusion of third countries into different EU policies from outside is called external differentiated integration⁹. The EU has established deep, comprehensive and therefore, highly asymmetrical external differentiated integrations through association agreements. EU integration with associated countries is external, because they do not participate in EU decision-making although they are committed to accept EU rules, norms and practices. Their decision-shaping opportunities are limited in most cases¹⁰. It is differentiated, because each association agreement aims at a different integration level with the EU.

As an instrument of external differentiated integration, association agreements give the EU the opportunity to transfer directly and indirectly its *acquis*. Recently, some authors have noted that the lack of albeit limited participation in EU decision-making by associated countries despite their

⁶ Constantinos Lycourgos, *L'association avec union douanière: un mode de relations entre la CEE et des Etats tiers*, (Paris: Presses Universitaires de France, 1994), 64-65.

⁷ On "autonomy" of EU institutions and "bilateralism" of association institutions, please see footnotes 82-85.

⁸ Interview with an Official, Delegation of the European Union to Georgia, via Webex, 8 April 2020.

⁹ Dirk Leuffen, Berthold Rittberger and Frank Schimmelfennig, *Differentiated Integration: Explaining Variation in the European Union*, (New York: Palgrave Macmillan, 2013), 9; Sieglinde Gstöhl and Christian Frommelt, "Back to the Future? Lessons of Differentiated Integration from the EFTA Countries for the UK's Future Relations with the EU," *Social Sciences* 6, no 4, (2017): 2; Sandra Lavenex, "The External Face of Differentiated Integration: Third Country Participation in EU Sectoral Bodies," *Journal of European Public Policy* 22, no 6, (2015): 836.

¹⁰ Decision-shaping is "the process of contributing to and influencing policy proposals up until they are formally adopted". EFTA Secretariat, "Decision Shaping in the European Economic Area," *EFTA Bulletin*, (March 2009): 20.

commitment to comply with EU *acquis* and to cooperate in sectoral and thematic areas is creating democratic deficit and sovereignty issues¹¹. This asymmetry needs to be lessened. It is argued that the EU should consider developing an institutionalized associate membership status to enable further socialization of associated countries with the EU¹². According to an official from the European Commission (DG NEAR),

a new associate membership status could be relevant especially due to enlargement fatigue. [...]. This can also be called enhanced association. It would mean increased rights and commitments. This enhanced association status would be politically, theoretically and geopolitically relevant¹³.

In this respect, the aim of this article is to put an emphasis on the asymmetrical aspects of association policy of the EU with reference to selected provisions of association agreements on direct and indirect EU *acquis* transposition and sectoral and thematic cooperation. The article problematizes the weakness of institutional association between the EU and associated countries despite the high volume of direct and indirect rule taking by these countries. Direct *acquis* transposition is assured through references in association agreements to EU *acquis* that associated countries need to comply with. Indirect EU *acquis* transposition is assured through references to international agreements that associated countries need to ratify and/or implement effectively. These international agreements are chosen

¹¹ Even in the Birkelbach Report prepared by the European Parliament Political Committee in the period of 1960-61, it was mentioned that association could create sovereignty problems. European Parliament, M. Willi Birkelbach (rapporteur), *Rapport Fait Au Nom de la Commission Politique sur les Aspects Politiques et Institutionnels de l'Adhésion ou de l'Association à la Communauté*, ISBN 2837/2/62/2, Brussels, December 19, 1961, par. 101 [hereafter, Birkelbach Report].

¹² Andreas Maurer and Max Haerder, "Alternatives to Full Membership of the European Union," in *European Neighbourhood Policy Challenges for the EU Policy Towards the New Neighbours*, ed. Johannes Varwick and Kai Olaf Lang (Opladen and Farmington Hills: Barbara Budrich Publishers, 2007), 207-213; Andrew Duff, "The Case for an Associate Membership of the European Union," *European Politics and Policy Blog*, March 6, 2013, <https://blogs.lse.ac.uk/europpblog/2013/03/06/associate-eu-membership/>; Erik Oddvar Eriksen, *The EU and the Norwegian Paradox*, (Oslo: ARENA Centre for European Studies, 2014), 1-5; Sinan Ülgen, *Avoiding a Divorce: a Virtual EU Membership for Turkey*, (Brussels: Carnegie Europe, 2012), 11-26; Cemal Karakaş, "EU-Turkey: Integration without Full Membership or Membership without Full Integration? A Conceptual Framework for Accession Alternatives," *Journal of Common Market Studies* 51, no 6, (2013): 1067-1070.

¹³ Interview with an Official, DG Neighbourhood and Enlargement Negotiations, European Commission, via Skype, April 24, 2020.

from among those which reflect EU practices. Lastly, sectoral and thematic cooperation provisions help the EU transfer its rules, norms and practices implicitly.

Nevertheless, this article does not offer a concrete model for associate membership status, because a one-size-fits all approach is not feasible. According to Schimmelfennig, for reversing the asymmetry of association “it is useful to think about an intermediate membership status, e.g. decision-making in specific policy regimes or individual regulatory agencies rather than a seat and voice in the general institutions of the EU”¹⁴. Thus, an associate membership status may reflect these lines and the peculiarities of each association.

The main argument of this article is that the EU needs to develop an institutionalized associate membership status at least for associated countries in Europe, i.e. European in the sense of the article 49 of the Treaty on the EU (TEU). Associated countries could contribute to the construction of EU rules, norms and practices and internalize them better through improved decision-shaping opportunities and limited decision-making rights. These limited decision-making rights may not necessarily prejudice legal autonomy of the EU¹⁵. It is concluded that a new association policy may accommodate interests of both the EU and associate countries better. This is especially important for an improved image of the EU in these countries.

Firstly, the evolution of association policy in EU law and policy is explained. Association in EU law is elaborated with reference to the relevant articles of the founding Treaties. Secondly, a typology of association agreements is presented. Lastly, the asymmetry of association agreements is explained with reference to selected provisions of certain association agreements.

¹⁴ Interview with Frank Schimmelfennig, Professor at ETH Zürich Center for Comparative and International Studies, via email, April 1, 2020.

¹⁵ The issue of legal autonomy has been raised by the Court of Justice of the EU (CJEU). According to the CJEU, the final interpreter of EU law should be the Court. Association institutions are required to interpret the association law only according to the case law of the Court. Associated countries or association institutions cannot interpret association law differently from the Court. Opinion 1/91, *Opinion Delivered pursuant to the Second Subparagraph of Article 228(1) of the Treaty*, (1991), ECLI:EU:C:1991:490, I-6104: par. 30, I-6106: par. 39.

I. Association in EU Law and Policy

The EU has always sought to increase its integration with third countries via enlargement or bilateral arrangements like association, cooperation or trade agreements. Apart from accession negotiations, which have a clear *finalité*, the final objective of association is not clear, and the expected integration level is different in each association agreement¹⁶. Given that provisions on association in EU law are subtle, association has always been a more dynamic, varying and flexible kind of relationship.

Direct and indirect compliance with EU *acquis* and cooperation on sectoral and thematic issues are featuring aspects of association agreements. The deepening of the EU has increased the number of rules and norms to comply with and sectors included in association agreements.

Association agreements are important instruments for political association and economic integration with the EU. Association with the EU is a politically charged terrain. Therefore, some countries avoid it. For instance, Armenia joined the Eurasian Economic Union (EAEU) instead of implementing an association agreement with the EU while three other countries of the Eastern Partnership, i.e. Ukraine, Georgia and Moldova preferred association with the EU¹⁷.

These examples confirm the argument that association has become more political than economic in recent years. Therefore, the geopolitical positioning of associated country at the time of association negotiations is important. The term geopolitical rather than geographical or political has been pronounced on purpose. Accession is a possibility only for European countries in the sense of the article 49 of TEU. However, the term European is not defined in the founding Treaties. Instead, the European Commission has elaborated it to some extent.

In 1992, the European Commission, in a document titled “Europe and the Challenge of Enlargement” argued that the term European is not only geographical but also historical and cultural¹⁸. Its definition may change

¹⁶ On the accession policy of the EU, please see: Dimitry Kochenov, *EU Enlargement and the Failure of Conditionality*, (Alphen aan den Rijn: Kluwer Law International, 2008), 301-311.

¹⁷ On the influence of the Russian neighbourhood policy on EU relations with Eastern Partnership countries, please see: Andrew Wilson and Nicu Popescu, “Russian and European Neighbourhood Policies Compared,” *Southeast European and Black Sea Studies* 9, no 3, (2009): 317-331.

¹⁸ European Commission, “Europe and the Challenge of Enlargement,” *Bulletin of the European Communities*, Supplement 3/92, June 24, 1992, par. 7.

from one generation to another and “the shared experience of proximity, ideas, values, and historical interaction cannot be condensed into a simple formula”¹⁹. A similar wording has been used in the Hansch Report of the same year, which stated that “the quality of being European is not clearly definable in geographical or historical, ethnic or religious, or cultural or political terms [...], it presupposes the political desire to share a common future”²⁰. Thus, ‘European’ is a dynamic and geopolitical term. Due to dynamism thereof, a country may be considered less or more European throughout years.

A. Association in EU Law

Association in EU law is different than association in international law²¹. In international law, association rather means associate member or observer. Van Elsuwege and Chamon argue that “the association of third states [...] foreseen in the current Article 217 TFEU is not to be confused with associate membership as a form of observer status known under international law”²². Associate membership in international organizations may be defined as “membership with limited rights, possibly leading to full membership at a later date”²³. This kind of association is “internal” in the sense that it enables “partial participation of the associated to the functioning of international organization” in question²⁴. Association with the EU is “external” given the lack of participation by the associated to “the internal functioning” of the Union²⁵. Therefore, in this article, associated countries are referred to. They are not associate members. An institutionalized associate membership status for the EU could be useful to enhance asymmetries of association policy.

¹⁹ European Commission, “Europe and the Challenge of Enlargement,” par. 7.

²⁰ European Parliament, Klaus Hansch (rapporteur), *Report of the Committee on Institutional Affairs on the Structure and Strategy for the European Union with regard to Its Enlargement and the Creation of a Europe-wide Order*, A3-0189/92, Brussels, May 21, 1992, par. F [hereafter, Hansch Report].

²¹ Peter Van Elsuwege and Merijn Chamon, *The Meaning of 'Association' under EU Law: A Study on the Law and Practice of EU Association Agreements*, Study for the AFCO Committee, PE 608.861, Directorate General for Internal Policies of the Union, Brussels, February 2019, 10.

²² Van Elsuwege and Chamon, *A Study on the Law and Practice of EU Association Agreements*, 10.

²³ Jan Klabbers, *An Introduction to International Organizations Law*, (Cambridge: Cambridge University Press, 2015), 96.

²⁴ Ceren Zeynep Pirim, *Un exemple d'association à la communauté européenne : le cas de la Turquie*, (Brussels: Bruylant, 2012), 87.

²⁵ Pirim, *Un exemple d'association à la communauté européenne : le cas de la Turquie*, 87.

The objective of association has become political, legal, trade, cultural and social integration of associated countries with the EU. These objectives are achieved (at least, intended) through association agreements, which are mixed²⁶. The Rome Treaty, signed on 25 March 1957 referred to two types of association:

- i. association of the overseas countries and territories (i.e. colonies) (article 131),
- ii. association with a third country or international organization (article 238).

The Rome Treaty contemplated association because of the quest of the founding members to maintain their relations with colonies (or former colonies) at EU level²⁷. As a matter of fact, relations with colonies have been listed as part of EU activities in the Rome Treaty²⁸. The purpose of this association is stated as “to promote the economic and social development of [overseas] countries and territories and to establish close economic relations between them and the Community as a whole”²⁹. Thus, the preferential trade regime between the founding members is extended to overseas countries and territories (i.e. colonies)³⁰.

²⁶ Andrea Ott, “Different Forms of EC Agreements,” in *Handbook on European Enlargement*, ed. Andrea Ott and Kirstyn Inglis (La Hey: T.M.C. Asser Press, 2002), 207. A mixed agreement’s components fall partly within the jurisdiction of member states and partly of the EU. Therefore, both the EU and its member states become parties to the agreement. According to the CJEU, association agreements, their protocols, annexes and association council decisions constitute an integral part of EU law. Case 181/73, *R. & V. Haegeman v Belgian State* (1974), ECLI:EU:C:1974:41, 460: par. 5; Case C-192/89, *S. Z. Sevince v. Staatssecretaris van Justitie* (1990), ECLI:EU:C:1990:322, I-3501: par. 9.

²⁷ According to Pinder, countries except for African Associated States and Malagasy (AASM), viewed the first (1964-1970) and second (1970-1975) Yaoundé Convention as “a kind of colonial anachronism”. Therefore, the East African Community countries (Kenya, Tanzania and Uganda) and Nigeria did not want to participate in the second Yaoundé Convention arguing that it was incompatible “with their economic under-development and their political independence”. Instead, Kenya, Tanzania and Uganda signed the Arusha Agreement on 24 September 1969, which they deemed more favourable to their political and economic interests. It came into force on the same date as the second Yaoundé Convention. Nigeria also signed an agreement similar to the Arusha Agreement. However, it did not come into force because of the civil war. John Pinder, “The Community and the Developing Countries: Associates and Outsiders,” *Journal of Common Market Studies* 12, no 1, (1973): 57-60.

²⁸ European Union, *Treaty Establishing the European Community (Consolidated Version)*, March 25, 1957, art. 3.k [hereafter, Rome Treaty], https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf.

²⁹ Rome Treaty, art. 131.

³⁰ Rome Treaty, art. 132.1, art. 133. Today, 26 overseas countries and territories are associated with the EU under this regime. European Union, “Consolidated Versions of the

The second association type under the article 238 of the Rome Treaty originally targeted newly independent former colonies. For instance, former French colonies were invited for an association with the EU through a declaration annexed to the Rome Treaty³¹. A similar declaration was annexed for Somalia where Italian administration was ending in 1960³². Nevertheless, the first association agreements were not negotiated with former colonies, but with Greece and Turkey. The article 238 of the Rome Treaty states that

The Community may conclude with a third State, a union of States or an international organisation agreements establishing an association involving reciprocal rights and obligations, common action and special procedures³³.

The CJEU has interpreted association along similar lines. In a ruling in 1987, the Court stated that association creates “special, privileged links with a non-member country”³⁴. Special, privileged links imply that association is a politically charged relationship despite comprehensive provisions on trade integration. In the same ruling, the Court argued that an associated country “must, at least to a certain extent, take part in the Community system”³⁵. Although the Court referred to taking part in ‘Community system’, the associated country is allowed to take part in EU system only for decision-shaping purposes or not at all given that EU association is not associate membership.

The legal basis of association has not changed much since. TFEU, signed on 13 December 2007, states that

The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure³⁶.

Treaty on European Union and the Treaty on the Functioning of the European Union [TFEU] of 13 December 2007,” *Official Journal of the European Union*, C115, May 9, 2008, art. 198 TFEU, [hereafter, Lisbon Treaty].

³¹Rome Treaty, Déclaration d'intention en vue de l'association à la Communauté économique européenne des pays indépendants appartenant à la zone franc.

³²Rome Treaty, Déclaration d'intention relative à la Somalie Actuellement sous tutelle de la République Italienne. There are similar declarations in the Rome Treaty for Libya, Suriname and the Dutch Antilles.

³³Rome Treaty, art. 238.

³⁴Case 12/86, *Meryem Demirel v Stadt Schwäbisch Gmünd*, (1987), ECLI:EU:C:1987:400, 3751: par. 9.

³⁵Case 12/86, *Meryem Demirel v Stadt Schwäbisch Gmünd*. 3751, par. 9.

³⁶Lisbon Treaty, art. 217 TFEU.

Accordingly, association is a flexible mechanism consisting of ‘reciprocal rights and obligations, common action and special procedure’. As there is not a geopolitical limitation, non-EU countries may also request association with the EU³⁷. This flexibility accounts for the fact that each association is *sui generis*.

EU association has mostly been associated with accession to the EU by associated countries in Europe, because:

- i. the article 217 of TFEU does not state the *finalité* thereof,
- ii. accession prospects have been referred to in some association agreements, i.e. the Athens Agreement, the Ankara Agreement, albeit belatedly the Europe Agreements (EAs) and the Stabilization and Association Agreements (SAAs),
- iii. Malta and Cyprus became EU members although accession prospects have not been referred to in their association agreements³⁸.

As a matter of fact, only the United Kingdom (UK), Ireland, Denmark, Spain and Portugal became EU members without a previous association agreement³⁹. Therefore, the EU referred to a new type of association with neighbours in TEU, which states that:

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 cooperation⁴⁰.

The *finalité* of association under the article 8 of TEU is explicitly stated as ‘to establish an area of prosperity and good neighbourliness’. These agreements are not likely to refer to accession prospects. In summary, the EU may conclude association agreements either under the article 217 of TFEU whose *finalité* is not specified in the Treaty but in the relevant association agreement, or under the article 8 of TEU whose *finalité* is the establishment of ‘an area of prosperity and good neighbourliness’. The EU has not negotiated an association agreement under the article 8 of TEU,

³⁷ Birkelbach Report, 24.

³⁸ Roman Petrov and Peter Van Elsuwege, “Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union,” *European Law Review* 36, no 5, (2017): 693.

³⁹ Van Elsuwege and Chamon, *A Study on the Law and Practice of EU Association Agreements*, 24.

⁴⁰ Lisbon Treaty, art.8.1 TEU.

yet⁴¹. All association agreements referred to in the following section fall within the scope of the article 217 of TFEU.

B. Association in EU Policy

The EU transfers many of its rules, norms and practices directly or indirectly to associated countries. For the EU, their transfer is necessary for peace, prosperity and stability promotion in Europe and the world. EU rules and norms, integration model and identity are prescribed as “ideals” to embrace⁴².

This practice stems from the so-called normative superiority of the EU, which creates a “civilizationalist hierarchy” between the EU and associated countries⁴³. Merlingen argues that the EU’s asymmetrical approach to third country relations comes from “Europe’s normativizing universalist pretensions”⁴⁴. For Onar and Nicolaïdis, instead of framing its rules, norms and practices as normatively superior, the EU needs to adopt a post-colonial approach to third country relations, based on mutual understanding and recognition⁴⁵.

Due to the constructed normative superiority, the EU believes that adoption of its rules, norms and practices by third countries will “automatically” promote its values⁴⁶. Therefore, international political objectives of the EU are referred to as follows in TEU:

⁴¹ Ukraine, Moldova and Georgia did not want to conclude their association agreements on this legal basis, as they want to become EU members. Petrov and Van Elsuwege, “Towards a New Generation of Agreements with the Neighbouring Countries of the European Union,” 693.

⁴² Cebeci, “Constructing an 'Ideal Power Europe' through Theory?,” 564.

⁴³ Nora Fisher Onar and Kalypso Nicolaïdis, “The Decentring Agenda: Europe as a Post-colonial Power,” *Cooperation and Conflict* 48, no 2, (2013): 284-295.

⁴⁴ Michael Merlingen, “Everything Is Dangerous: A Critique of Normative Power Europe,” *Security Dialogue* 38, no 4, (2007): 438, 449.

⁴⁵ Fisher Onar and Nicolaïdis, “Europe as a Post-colonial Power,” 284-295. On the colonial approach of the EU to association, please see: Brian Stout, “It’s Africa’s Turn to Leave the European Union,” *Foreign Policy*, February 10, 2020, <https://foreignpolicy.com/2020/02/10/african-union-european-union-trade/>; Michelle Pace and Roberto Roccu, “Imperial Pasts in the EU’s Approach to the Mediterranean,” *International Journal of Postcolonial Studies* 22, no 6, (2020): 671-685.; David Chandler, “EU Statebuilding: Securing the Liberal Peace through EU Enlargement,” *Global Society* 21, no 4, (2007): 593-607.

⁴⁶ Dimitry Kochenov, “The Issue of Values,” in *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union*, ed. Peter Van Elsuwege and Roman Petrov (London and New York: Routledge, 2014), 56.

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.⁴⁷

According to Hillion, this article and the article 21.1 of TEU are the legal basis of “norm export” by the EU⁴⁸. Under “General Provisions on the Union's External Action”, the article 21.1 of TEU states that:

The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: 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.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations⁴⁹.

In order to achieve these goals, the EU makes recourse to four mechanisms in association agreements:

- i. provisions on direct transposition of EU *acquis* on sectoral policies and horizontal rules,
- ii. references to international agreements that associated countries need to ratify and/or implement effectively,
- iii. provisions on cooperation on sectoral and thematic issues,
- iv. essential clauses on human rights, fundamental freedoms, democratic principles and rule of law.

⁴⁷ Lisbon Treaty, art. 3.5 TEU.

⁴⁸ Christophe Hillion, “Anatomy of EU Norm Export Towards the Neighbourhood the Impact of Article 8 TEU,” in *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union*, ed. Peter Van Elsuwege and Roman Petrov (London and New York: Routledge, 2014), 15.

⁴⁹ Lisbon Treaty, art. 21.1 TEU.

II. A Typology of Association Agreements

In a paper prepared by Van Elsuwege and Chamon for the European Parliament, association agreements are grouped under three categories:

- i. association agreements as pre-accession instruments,
- ii. association agreements as EU membership alternatives,
- iii. association agreements as privileged relationships with non-European countries⁵⁰.

Table I: A Typology of Association Agreements

Pre-accession Instruments	EU Membership Alternatives	Privileged Relationships with non-European Countries
The Athens Agreement (9 July 1961) and the Ankara Agreement (12 September 1963)	The European Economic Area (EEA) Agreement with Norway, Iceland and Lichtenstein (2 May 1992)	The Cotonou Agreement with the African Caribbean and Pacific (ACP) countries (23 June 2000) ⁵¹
Association agreements with Malta (5 November 1970) and Cyprus (19 December 1972)	Bilaterals I with Switzerland 21 June 1999 ⁵²	The Agreement on Trade Development and Cooperation with South Africa (11 October 1999)
The EAs with Central and Eastern European countries (CEECs) (between December 1991 and June 1996) ⁵³	Association agreements with Eastern Partnership countries of Ukraine (21 March 2014)	The Euro-Mediterranean Association Agreements with North Africa and Middle East countries (July 1995- June 2002) ⁵⁴
The SAAs with the Western Balkan countries (between April 2001 and October 2015) ⁵⁵	Georgia and Moldova (27 June 2014)	Association agreement with Central America (18 June 2012) ⁵⁶
		Association agreement with Chile (18 June 2002)

Resource: Adapted from Van Elsuwege and Chamon, *A Study on the Law and Practice of EU Association Agreements*, 23. Signature dates indicated.

⁵⁰ Van Elsuwege and Chamon, *A Study on the Law and Practice of EU Association Agreements*, 23.

⁵¹ The group of ACP countries was established in 1975 with 46 countries. Currently, it comprises 79 countries.

⁵² Bilaterals I consist of seven bilateral sectoral agreements with Switzerland signed under art. 217 TFEU.

⁵³ Hungary, Poland, Romania, Bulgaria, Czech Republic, Slovakia, Estonia, Latvia, Lithuania and Slovenia.

⁵⁴ Tunisia, Israel, Morocco, Palestine, Jordan, Egypt, Algeria and Lebanon.

⁵⁵ North Macedonia, Croatia, Albania, Montenegro, Bosnia and Herzegovina, Serbia and Kosovo.

⁵⁶ Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

Originally, Van Elsuwege and Chamon do not mention Maltese and Cypriot association agreements in their typology. Agreements with Malta and Cyprus are the only non-mixed association agreements. They do not refer to accession prospects but to the establishment of a customs union as their *finalité*. In the view of Gaudissart, the economic integration achieved through association agreements have influenced positively their decision to apply for membership⁵⁷. Therefore, Malta and Cyprus association agreements which were signed under the article 217 of TFEU (former article 238 of the Rome Treaty) are placed in the Table I.

In addition, Van Elsuwege and Chamon refer to the association agreement between the EU and the Southern Common Market (Mercosur) which has not been ratified or provisionally implemented, yet and to a Deep and Comprehensive Free Trade Agreement (DCFTA) with three members of the Andean Community (signed in 2012 with Colombia and Peru, and extended to Ecuador in 2017; provisionally implemented) and a political dialogue and cooperation agreement (signed in 2003; still not implemented) with the Andean Community (Bolivia, Colombia, Ecuador, and Peru) in their typology. It is noteworthy that the EU and the Andean Community have not signed an association agreement under the article 217 of TFEU although the combined effect of three members' separate DCFTAs and the political dialogue and cooperation agreement with the Community looks like an association agreement⁵⁸. Therefore, Mercosur and Andean Community are not placed in the Table 1.

Association agreements are not accession treaties. Association is a separate process. When accession prospects emerge, they may facilitate accession thanks to the achieved integration with the EU. Association agreements with Greece, Turkey and the Western Balkan countries explicitly referred to accession prospects. Only those EAs that were signed after the 9-10 December 1994 Essen European Council referred to accession prospects of CEECs. Therefore, integration through association has served as pre-accession instruments for these countries.

In the Preamble of the Athens Agreement, on the accession of Greece it is stated that "the support given by the European Economic Community to the efforts of the Greek people to improve their standard of living will facilitate the Accession of Greece to the Community at a later date". Also, the article 72 of the Athens Agreement states that

⁵⁷ Marc-Andre Gaudissart, "Cyprus and the European Union: the Long Road to Accession," *Cyprus Review* 8, no 1, (1996): 20.

⁵⁸ Van Elsuwege and Chamon, *A Study on the Law and Practice of EU Association Agreements*, 35.

as soon as the operation of this Agreement has advanced far enough to justify envisaging full acceptance by Greece of the obligations arising out of the Treaty establishing the European Economic Community, the Contracting Parties shall examine the possibility of the Accession of Greece to the Community⁵⁹.

The same references are made to Turkish accession prospects in the Preamble and the article 28 of the Ankara Agreement⁶⁰. On the accession of the Western Balkan countries, in the Preamble of the SAA with North Macedonia, “the [EU’s] readiness to integrate to the fullest possible extent [North Macedonia] into the political and economic mainstream of Europe and its status as a potential candidate for EU membership [...]” is stated⁶¹.

Only the EAs with Estonia, Latvia, Lithuania and Slovenia were signed after the 1994 Essen European Council. At the beginning, the EU wanted to develop its relations with CEECs through association, not accession⁶². But, the EU confirmed their accession prospects at the 22 June 1993 Copenhagen European Council, which stated that “the European Council today agreed that the associated countries in Central and Eastern Europe that so desire shall become members of the European Union”⁶³.

The EEA Agreement and agreements with Ukraine, Georgia and Moldova offer an alternative to EU membership. This may not be a permanent alternative, because their accession prospects are not completely excluded.

In the Preamble of the EEA Agreement, it is stated that “the conclusion of this Agreement shall not prejudice in any way the possibility of any EFTA State to accede to the European Communities”⁶⁴. In the Preamble of the

⁵⁹ Agreement Establishing an Association Between the European Economic Community and Greece of 9 July 1961, *Official Journal of the European Union*, L 293/63, February 18, 1963.

⁶⁰ Agreement Establishing an Association Between the European Economic Community and Turkey of 12 September 1963, *Official Journal of the European Union*, L 361/1, December 29, 1964 [hereafter, Ankara Agreement].

⁶¹ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part of 9 Nisan 2001, *Official Journal of the European Union*, L 84, March 20, 2004 [hereafter, North Macedonia SAA].

⁶² Lykke Friis, “The End of the Beginning of Eastern Enlargement-Luxembourg Summit and Agenda-Setting,” *European Integration Online Papers* 2, no 7, (1998) <http://eiop.or.at/eiop/texte/1998-007a.htm>.

⁶³ European Council, *Copenhagen Presidency Conclusions*, Enlargement, June 22, 1993, par. 7.A.iii.

⁶⁴ Agreement on the European Economic Area of 2 May 1992, *Official Journal of the European Union*, L 1, January 3, 1994, art. 99 [hereafter, EEA Agreement].

association agreement with Ukraine, it is stated that “the [EU] acknowledges the European aspirations of Ukraine and welcomes its European choice [...]”⁶⁵.

Association is open also to non-European countries. Yet, their agreements do not have provisions on direct transposition of EU *acquis*. The EU transfers its rules, norms and practices indirectly through references to international agreements, provisions on sectoral and thematic cooperation and human rights clauses.

The EU makes associated countries comply with rules, norms and practices which reflect its own development, peculiarities and member state preferences. These rules, norms and practices are implemented extraterritorially without considerable input by associated countries into their construction. According to Phinnemore, association policy is creating “de facto EU satellites”⁶⁶. Kramer argues that Turkey’s association with ‘ideal’ EU rules, norms and practices despite its lack of participation in EU decision-making is causing sovereignty issues⁶⁷. Peers is of the idea that EU-Turkey association is not fit for a long-term relationship due to the mismatch between its institutional structure and the high volume of Turkey’s harmonization requirements⁶⁸. Pirim underlines that Turkey is “obliged to adopt a considerable part of the *acquis communautaire* in several fields and to align its [Customs Union related] legislation with the EU”, although it is not included in their making⁶⁹. Similar concerns may easily be extended to other association agreements⁷⁰.

The enhancement of association policy is necessary. Associated countries may be granted ample decision-shaping opportunities and albeit limited, decision-making rights. Associated countries’ identification with EU rules, norms and practices may increase if the EU gives up idealizing itself

⁶⁵ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part of 27 June 2014, *Official Journal of the European Union*, L 161/3, May 29, 2014 [hereafter, Ukraine Association Agreement].

⁶⁶ David Phinnemore, *Association: Stepping-Stone or Alternative to EU Membership*, (Sheffield: Sheffield Academic Press, 1999), 115-128.

⁶⁷ Heinz Kramer, “The EU-Turkey Customs Union: Economic Integration amidst Political Turmoil,” *Mediterranean Politics* 1, no 1, (1996): 71.

⁶⁸ Steve Peers, “Living in Sin: Legal Integration Under the EC-Turkey Customs Union,” *European Journal of International Law* 7, no 3, (1996): 430.

⁶⁹ Ceren Zeynep Pirim, “The EU-Turkey Customs Union: from a Transitional to a Definitive Framework?,” *Legal Issues of Economic Integration* 42, no 1, (2015): 41 [Original emphasis].

⁷⁰ On this matter, please see: Erik Oddvar Eriksen and John Erik Fossum, ed. *The European Union’s Non-members: Independence Under Hegemony?* (London: Routledge, 2015).

and becomes a 'post-colonial power'. A post-colonial power bases its relations with third countries on mutual recognition and understanding, not on asymmetry⁷¹. A similar approach to association has already been underlined by the European Commission in 1992 in the document titled "Europe and the Challenge of Enlargement".

In "Europe and the Challenge of Enlargement", the European Commission argues that a "European political area" comprising the EU and those European countries seeking closer relations other than accession with the EU may be established to incorporate them on discussions on the future of Europe⁷². In this respect, it is stated that an associate member status similar to the one in the Western European Union (WEU) may be created⁷³. In a similar vein, the Hansch report points out that it is not "possible or desirable for all the nations of Europe or those which feel themselves to be European or are allied with Europe to be gathered together at some future point into a union"⁷⁴. On the limits of enlargement, it underlines that:

The Union will enlarge but it will never comprise all the European countries. It will never be synonymous with Europe. Nor is this necessary. There are no clear criteria governing membership of Europe. Europe as geographical concept is different from Europe as a political concept or cultural, historical or economic concepts⁷⁵.

Associated countries expect material rewards like accession, preferential access to EU market, financial assistance or ideational rewards like identity reinforcement, protection against real or imagined enemies via association⁷⁶. Their norm compliance or rule taking is based on rational instrumentality, not internalization⁷⁷. Therefore, increased socialization with

⁷¹ Fisher Onar and Nicolaïdis, "Europe as a Post-colonial Power," 284-295.

⁷² European Commission, "Europe and the Challenge of Enlargement," par. 35.

⁷³ European Commission, "Europe and the Challenge of Enlargement," par. 36. On the WEU and its associate membership model, please see: Münevver Cebeci, "A Delicate Process of Participation: the Question of Participation of WEU Associate Members in Decision-making for EU-led Petersberg Operations, with Special Reference to Turkey," *EU-ISS Occasional Paper* 10, (November 1999): 6-32.

⁷⁴ Hansch Report, par. 3.

⁷⁵ Hansch Report, par. IV.

⁷⁶ Frank Schimmelfennig and Ulrich Sedelmeier, "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe," *Journal of European Public Policy* 40, no 4, (2004): 663; Heather Grabbe, "European Union Conditionality and the Acquis Communautaire," *International Political Science Review* 23, no 3, (2002): 256-262.

⁷⁷ Frank Schimmelfennig and Ulrich Sedelmeier, "The Europeanization of Eastern Europe: the External Incentives Model Revisited," *Journal of European Public Policy* 27, no 6, (2020): 814-833.

the EU of associated countries through an enhanced association policy may facilitate compliance through internalization.

III. The Asymmetry Question in Association Agreements

Although all association agreements have association institutions, institutional ties between the EU and associated countries are weak⁷⁸. This is because of their “diplomatic or intergovernmental character, which [...] translates in practice into a lack of parliamentary control and an absence of recourse to judicial dispute settlement”⁷⁹. In the view of Lycourgos, “autonomy and bilateralism” underlie the weakness of institutional ties⁸⁰. The autonomy of EU institutions means that decision-making rights are limited only to member states⁸¹. The bilateralism of association institutions refers to the unanimity rule, i.e. their intergovernmental character⁸². Lycourgos argues that if associated countries’ participation to EU institutions is not allowed for, then association institutions may be turned into “multilateral” settings with the creation of “independent” association institutions similar to the European Commission or the CJEU where “more than two voices” can be listened to and decisions taken by not unanimity but majority rule⁸³. Associated countries cannot influence EU decision-making through the current institutional structure. Association institutions do not provide decision-shaping opportunities but exchange of views and in some cases, settlement of disputes. This makes it more difficult to transpose EU *acquis*.

Of the EU’s European associations only the Decision 1/95 and the EEA Agreement offer decision-shaping opportunities. These consist of consultations between the European Commission and associated countries about association-related legislative proposals and/or notification of these to associated countries or participation of associated countries to the relevant

⁷⁸ Andrew Evans, “Institutions,” in *Handbook on European Enlargement*, ed. Andrea Ott and Kirstyn Inglis (La Haye: T.M.C. Asser Press, 2002), 1043-1078.

⁷⁹ Nanette Neuwahl, “The EU-Turkey Customs Union: a Balance, but No Equilibrium,” *European Foreign Affairs Review* 4, no 1, (1999): 42.

⁸⁰ Lycourgos, *L’association avec union douanière: un mode de relations entre la CEE et des Etats tiers*, 64.

⁸¹ Lycourgos, *L’association avec union douanière: un mode de relations entre la CEE et des Etats tiers*, 65.

⁸² Lycourgos, *L’association avec union douanière: un mode de relations entre la CEE et des Etats tiers*, 70.

⁸³ Lycourgos, *L’association avec union douanière: un mode de relations entre la CEE et des Etats tiers*, 70-71.

technical committee meetings under the European Commission⁸⁴. These are almost identical provisions in the two texts. However, Turkish decision-shaping opportunities are not implemented, while they are implemented effectively for the EEA Agreement⁸⁵. There is a limited decision-shaping opportunity in the Ukrainian Association Agreement. The EU is committed to notify Ukraine directly when it adopts new legislation in the areas of financial services, telecommunications services, postal services and courier services⁸⁶. Whether notification of proposals without consultation qualifies as decisions-shaping is not clear. Of the association agreements with non-European countries only the Cotonou Agreement has provisions on consultation and communication⁸⁷.

Transposition of EU *acquis* on competition and state aid rules have consistently been required by association agreements. The EU seeks to transfer its homogenous rules to its trade partners to prevent the entry into EU market of third country goods and services subsidized with unjustified state aids⁸⁸. In the view of Wolczuk *et. al.* compliance with these rules from outside “limits the sovereignty of the country with regard to economic and tax policy”⁸⁹. Associated countries accept to comply with them to secure unimpeded access to EU market⁹⁰.

⁸⁴ EC-Turkey Association Council, “Decision 1/95 of 22 December 1995 on Implementing the Final Phase of the Customs Union (96/142/EC),” *Official Journal of the European Union*, L 035, February 13, 1996, art. 55, art. 59-60 [hereafter, Decision 1/95 of the EC-Turkey Association Council]; EEA Agreement, art. 99-100.

⁸⁵ For a brief comparison of implementation differences for Turkey and the EEA, please see: Ufuk Alkan, “The Modernization of Turkey’s Customs Union with the European Union: Reasons and Possible Outcomes,” *College of Europe EU Diplomacy Papers*, (09/2017): 10-13.

⁸⁶ Ukraine Association Agreement, art. 3.2. of the Annex XVII.

⁸⁷ 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 of 23 June 2000, *Official Journal of the European Union*, L 317, December 15, 2000, art. 12, art. 38.

⁸⁸ Umut Aydın, “Promoting Competition: European Union and the Global Competition Order,” *Journal of European Integration* 34, no 6, (2012): 668.

⁸⁹ Kataryna Wolczuk *et. al.*, “The Association Agreements as a Dynamic Framework: between Modernization and Integration,” *EU-STRAT Working Paper* 6, (September 2017): 14.

⁹⁰ For example, during association agreement negotiations, Georgia stated that EU *acquis* on state aid, Sanitary and Phytosanitary measures (SPS), Technical Barriers to Trade (TBT) and competition do not meet its developmental needs and argued that compliance with them is burdensome. Wolczuk *et. al.*, “The Association Agreements as a Dynamic Framework,” 27.

Although associated countries do not have a role in the making of EU rules, they are required through association agreements to grant state aids only for cases permitted under TFEU and notify them annually to the EU⁹¹. These requirements exemplify the asymmetry of association. For instance, the UK argues that it seeks to apply its own state aid schemes not the EU's in the post-*Brexit* period⁹².

The volume of EU *acquis* to comply with has increased in line with the deepening of the EU. The EU has assumed more express and implied external competences within years⁹³. Accordingly, more areas appear in association agreements for direct and indirect *acquis* transposition or cooperation. For instance, in the association agreements with Malta and Cyprus there are no provisions on direct EU *acquis* transposition⁹⁴. This is because there are not references to their accession prospects and these agreements were signed at a time of *eurosclerosis* in EU integration.

In the EU's second association agreement, i.e. the Ankara Agreement there are few areas for *acquis* transposition or cooperation despite references to accession prospects of Turkey through a Customs Union in industrial products and industrial component of processed agricultural products. In the Ankara Agreement, it is stated that:

The Contracting Parties recognize that the principles laid down in the provisions on competition, taxation and the approximation of laws contained in the [Rome Treaty] must be made applicable in their relations within the Association⁹⁵.

Turkey was also required to “align the economic policies” with the EU through “joint measures”⁹⁶. The Customs Union requires Turkey's harmonization with CCP including CET for industrial products and industrial component of processed agricultural products⁹⁷. It is also expected

⁹¹ North Macedonia SAA, art. 69.1.

⁹² Charlie Cooper, “Whisper it ... an EU-UK Deal is there to be done,” *POLITICO*, March 4, 2020, <https://www.politico.eu/article/brexit-trade-deal-whisper-it-an-eu-uk-deal-is-thereto-be-done/>.

⁹³ On the external competences of the EU, please see: Piet Eeckhout, *EU External Relations Law*, 2nd Volume, (Oxford: Oxford University Press, 2011), 120-164.

⁹⁴ However, EU *acquis* transposition provisions on the Common Commercial Policy (CCP), the Common External Tariff (CET), competition, state aid and taxation were introduced by future Protocols. Gaudissart, “Cyprus and the European Union: the Long Road to Accession,” 16.

⁹⁵ Ankara Agreement, art. 16.

⁹⁶ Ankara Agreement, art. 4.1.

⁹⁷ Ankara Agreement, art. 10.2. Only the association agreements with Greece, Turkey, Malta and Cyprus sought to achieve the establishment of a Customs Union through association. Lycourgos, *L'association avec union douanière: un mode de relations entre la CEE et des*

to align with the Common Agricultural Policy (CAP) for the extension of the Customs Union to primary agricultural products and agricultural component of processed agricultural products⁹⁸. The Ankara Agreement and the subsequent Customs Union “constitutes, according to the EC-Turkey association law, a transitory framework before a complete integration between the parties”⁹⁹. Pirim argues that in the case of an association based on a customs union “[the associated] partner’s assimilation by the [EU] becomes inevitable” because, this kind of association “obliges the parties to bring closer several of their policies”¹⁰⁰. Therefore, the author underlies that an association based on a free trade area which does not require the alignment with CCP including CET is far less asymmetrical than an association based on a customs union¹⁰¹. Apparently, an association based on a customs union has been conceived by the EU as “a step towards accession”¹⁰².

Etats tiers, 19-39. Of these, only Turkey could establish a Customs Union before accession. In the context of CCP, Turkey applies the EU’s preferential trade regime towards third countries, i.e. free trade agreements and other autonomous regimes like the Generalized System of Preferences (GSP), GSP-plus and Everything but Arms (EBA). This is creating another asymmetry, because Turkey applies CCP including CET without input into its making. The EEA Agreement, which is the strongest association with EU single market, does not require harmonization with CCP or CET. Sieglinde Gstöhl, “Models of External Differentiation in the EU’s Neighbourhood: an Expanding Economic Community?,” *Journal of European Public Policy* 22, no 6, (2015): 858.

⁹⁸ The extension of the Customs Union to agricultural products was contemplated in the Ankara Agreement. Ankara Agreement, art. 11. Therefore, the Additional Protocol which was signed on 13 November 1970 required Turkey’s harmonization with CAP within 22 years. Additional Protocol and Financial Protocol of 23 November 1970, Annexed to the Agreement Establishing the Association Between the European Economic Community and Turkey and on Measures to be Taken for Their Entry into Force, *Official Journal of the European Union*, L 293, December 29, 1972, art. 33.1 [hereafter, Additional Protocol].

⁹⁹ Pirim, “The EU-Turkey Customs Union: from a Transitional to a Definitive Framework?,” 32. Apart from references to Turkey’s accession prospects in the Preamble and art. 28 and Turkey’s harmonization requirements with certain EU *acquis*, the Ankara Agreement has *rendez-vous* clauses on freedom of establishment and of cross-border services provision and free movement of workers (art. 12-14). These have not been achieved yet, because the Association Council did not take a decision in this respect as required by the art. 36 and art. 41-42 of the Additional Protocol. Similarly, there is a *rendez-vous* clause on liberalization of public procurement in the Decision 1/95 (art. 48). In recent association agreements of the EU, e.g. with Ukraine, Georgia or Moldova, these decisions are not left to the discretion of the Association Council, but relevant EU *acquis* for compliance is listed in the annexes. Therefore, the difficulty of seeking a unanimous decision of the Association Council in the future is circumvented.

¹⁰⁰ Pirim, “The EU-Turkey Customs Union: from a Transitional to a Definitive Framework?,” 35-36.

¹⁰¹ Pirim, *Un exemple d’association à la communauté européenne : le cas de la Turquie*, 90-93.

¹⁰² Pirim, *Un exemple d’association à la communauté européenne : le cas de la Turquie*, 94. On association based on a customs union and its relation to accession, please see:

Yet, more explicit *acquis* transposition provisions come from the Decision 1/95 of the Association Council of 22 December 1995. Turkey needs to align with EU *acquis* of direct relevance for the Customs Union, i.e. CCP, TBT, Intellectual Property Rights (IPR), competition and customs¹⁰³. Turkey's *acquis* transposition is a dynamic process in the sense that it relates to both current and future legislation of the EU. Also, *acquis* transposition requirement may be extended to new areas "in the light of the Association's progress"¹⁰⁴.

EU *acquis* transposition requirements are wider in recent association agreements. For instance, requirements for Ukraine are many more although EU-Ukraine association aims at trade liberalization through a free trade area, not a customs union and does not refer to accession prospects of Ukraine. Ukraine is required to transpose EU *acquis* on TBT, IPR, SPS, customs, geographical indications, competition and state aid, services and public procurement¹⁰⁵. Tyushka calls the Ukrainian association "association through approximation"¹⁰⁶.

The EU does not transfer its *acquis* only directly but also indirectly through references to international agreements. It transfers its priorities and practices on IPR, sustainable development, labour rights, environment etc. by obliging associated countries to ratify and/or implement effectively international agreements that were previously ratified by the EU and/or its member states. For instance, in the association agreement with Serbia, 17 IPR related international agreements are listed for ratification¹⁰⁷.

A similar trend applies to provisions on sustainable development and labour rights¹⁰⁸. One reason for the EU to transfer its norms, rules and practices on labour and environment is its quest for creating a level playing

Lycourgos, *L'association avec union douanière: un mode de relations entre la CEE et des Etats tiers*, 307-353.

¹⁰³ Decision 1/95 of the EC-Turkey Association Council, art. 54.1

¹⁰⁴ Decision 1/95, art. 54.2.

¹⁰⁵ Ukraine Association Agreement, art. 56, art. 64, art. 84, art. 87-89, art. 92, art. 157-200, art. 201-211, art. 253-267, art. 256.

¹⁰⁶ Andriy Tyushka, "Association through Approximation: Procedural Law and Politics of Legislative and Regulatory Approximation in the EU-Ukraine Association Agreement," *Baltic Journal of European Studies* 5, no 1, (2015): 56-72.

¹⁰⁷ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Serbia, of the other part of 29 Nisan 2008, *Official Journal of the European Union*, L 278, October 18, 2013, Annex VII.

¹⁰⁸ Lorand Bartels, "Human Rights and Sustainable Development Obligations in EU Free Trade Agreements," in *Global Governance through Trade: EU Policies and Approaches*, ed. Jan Wouters et. al (Cheltenham: Edward Elgar, 2015), 82.

field between EU market and the markets of associated countries¹⁰⁹. It is difficult for the EU to compete with goods and services of countries with low labour or environmental standards. For instance, in 1985 the European Commission stated that “the commercial identity of the Community must be consolidated so that our trading partners will not be given the benefit of a wider market without themselves making similar concessions”¹¹⁰. Maur criticizes this approach of the EU for being a hegemonic and “prescriptive” practice¹¹¹.

In the EU-Central America association agreement, three pillars of sustainable development are listed as economic development, social development and protection of environment, and related international agreements and declarations are referred to for ratification¹¹². Although associated countries undertake these obligations, their respective awareness might be limited. For instance, the European Commission complained about their non-implementation and prepared a handbook to explain labour rights obligations to associated countries¹¹³. Associated countries’ commitment to comply with does not guarantee effective implementation.

Although the legal framework of association agreements is based on equality in the sense that “nothing may be decided by one party against the other party unilaterally” because “everything is decided unanimously”, “the political economy of association is asymmetrical”¹¹⁴. Particularly, association agreements’ provisions on IPR, labour rights, environment or sustainable development require compliance with EU regime rather than achieving common objectives. These provisions reinforce “ideal power Europe”, i.e. the EU’s identity construction¹¹⁵.

¹⁰⁹ Maria Garcia and Annick Masselot, “EU-Asia Free Trade Agreements as Tools for Social Norm/Legislation Transfer,” *Asia Europe Journal* 13, no 3, (2015): 246.

¹¹⁰ European Commission, *Completing the Internal Market: White Paper from the Commission to the European Council (Milan, 28-29 June 1985)*, Brussels, COM (1985) 310 final, June 14, 1986, par. 19.

¹¹¹ Jean-Christophe Maur, “Exporting Europe’s Trade Policy,” *World Economy* 28, no 11, (2005): 1565-1590.

¹¹² Agreement Establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other of 29 June 2012, *Official Journal of the European Union*, L 346, December 15, 2012, art. 284, art. 286-287 [hereafter, Central America Association Agreement].

¹¹³ Non-paper of the Commission Services, *Feedback and Way forward on Improving the Implementation and Enforcement of Trade and Sustainable Development Chapters in EU Free Trade Agreements*, February 26, 2018, 9-10, https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf.

¹¹⁴ Interview with an Official, DG Neighbourhood and Enlargement Negotiations.

¹¹⁵ Please, see: Cebeci, “Constructing an ‘Ideal Power Europe’ through Theory?,” 563-572.

In addition to direct EU *acquis* transposition and references to international agreements, the EU transfers its rules, norms and practices through provisions on sectoral and thematic cooperation. The number of sectors and themes included have increased within years, especially since the EAs. EU-Turkey cooperation in the context of association concerns only assistance for Turkey's alignment with CET for textile products, TBT, IPR and customs¹¹⁶. In recent association agreements of the EU, not only technical but also political and social matters are also included in cooperation provisions. Thereby, an implicit rule and norm transfer takes place¹¹⁷.

Cultural cooperation provisions exemplify the trend towards cooperation in ideational matters. It has been promulgated for the first time in the EAs widely¹¹⁸. The objective of cultural cooperation through association agreements is to promote the idea of Europe. It is believed that cultural cooperation will empower EU identity¹¹⁹. In this respect, the European Commission published a document titled "a European Agenda for Culture in a Globalizing World" in 2007, which states that:

Europe's cultural richness and diversity is closely linked to its role and influence in the world. The European Union is not just an economic process or a trading power, it is already widely - and accurately - perceived as an unprecedented and successful social and cultural project[...]¹²⁰.

A similar approach exists for regional integration. An important reason for the EU to support regional integration is its willingness to transfer its "reconciliatory past" and to promote bigger markets with homogenous

¹¹⁶ Decision 1/95, art. 8.4, art. 12.2, Annex VII, Statement by the Community on Annex 8.

¹¹⁷ EU-Turkey cooperation directly relevant for the functioning of the Customs Union is covered by the Decision 1/95. Cooperation regarding industry, trans-European networks, energy, transportation, telecommunications, agriculture, environment, science, statistics, justice and home affairs, consumer protection, culture, information and communication and social issues are mentioned in the Resolution of 6 March 1995 of the Association Council. EC-Turkey Association Council, "Resolution of 6 March 1995," https://www.ab.gov.tr/files/AB_Iliskileri/okk_tur.pdf.

¹¹⁸ Europe Agreement Establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part of 16 December 1991, *Official Journal of the European Union*, L 347, December 31, 1993, art. 97.1.

¹¹⁹ Rod Fisher, *A Cultural Dimension to the EU's External Policies: From Policy Statements to Practice and Potential*, (Amsterdam: Boekmanstudies and European Cultural Foundation, 2007), 51.

¹²⁰ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Agenda for Culture in a Globalizing World*, COM(2007) 242 final, Brussels, May 10, 2007, 3.

rules¹²¹. The European Commission argued in 1995 that the EU needs to engage in closer relations with other regional integration initiatives “to ensure that [...] regional integration occurs in a way compatible to EU interests”¹²².

Cooperation on regional integration has been widely covered in the Central America Association Agreement. Accordingly, Central American countries are required to establish and implement a common market between themselves, and gradually progress towards an economic union¹²³. For this purpose, they are expected to harmonize their trade, customs, agriculture, energy, transportation, communications and competition policies¹²⁴. Their coordination of “sectoral policies in areas such as consumer protection, environment, social cohesion, security, prevention and response to natural risks and disasters” and “macroeconomic policies in areas such as monetary policy, fiscal policy and public finance” is also promoted¹²⁵. It is clear that the EU seeks to transfer its model to Central American region¹²⁶. These also reinforce “ideal power Europe”, i.e. the EU’s identity construction¹²⁷.

The EU also uses essential clauses on human rights, fundamental rights, rule of law and democratic principles to transfer its rules and norms. They have been common in international agreements of the EU since 1995. Their violation may result in the suspension of the relevant agreement¹²⁸. Yet, their

¹²¹ Richard Youngs, “Normative Dynamics and Strategic Interests in the EU’s External Identity,” *Journal of Common Market Studies* 42, no 2, (2004): 416; María García, “The European Union and Latin America: ‘Transformative Power Europe’ versus the Realities of Economic Interests,” *Cambridge Review of International Affairs* 28, no 4, (2015): 625.

¹²² European Commission, *Communication from the Commission-Free Trade Areas: An Appraisal*, SEC(95) 322 final, Brussels, March 8, 1995, 8.

¹²³ Central America Association Agreement, art.72.1.

¹²⁴ Central America Association Agreement, art.72.4.

¹²⁵ Central America Association Agreement, art.72.4-72.5. They are also expected to “promote investment in common infrastructure and networks in particular at the borders”.

¹²⁶The association agreement with Central America has the most comprehensive provisions on cooperation. Please see: Central America Association Agreement, art. 15-76, art. 286-287.

¹²⁷ Please, see: Cebeci, “Constructing an ‘Ideal Power Europe’ through Theory?,” 563-572.

¹²⁸ Vienna Convention on the Law of Treaties, *United Nations Treaty Series*, 1155, May 23, 1969, art. 60. The need for an essential element appeared for the first time during human rights violations in Uganda in the 1970s. Anne-Carlijn Prickartz and Isabel Staudinger, “Policy vs Practice: the Use, Implementation and Enforcement of Human Rights Clauses in the European Union’s International Trade Agreements,” *Europe and the World: A Law Review* 3, no 1, (2019): 8. Back then, relations between the EU and Uganda were carried out under the first Lomé Convention signed with ACP countries for the period of 1975-1979. The EU sought to include an essential element to the second Lomé Convention covering the period of 1980-1984. However, ACP countries did not accept. Since the EU

activation has not been consistent¹²⁹. For instance, the essential clause of the Ukraine Association Agreement is stated as follows:

Respect for democratic principles, human rights and fundamental freedoms, as defined in particular in the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe of 1990, and other relevant human rights instruments, among them the UN Universal Declaration of Human Rights and the European Convention on Human Rights and Fundamental Freedoms, and respect for the principle of the rule of law shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement. Promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence, as well as countering the proliferation of weapons of mass destruction, related materials and their means of delivery also constitute essential elements of this Agreement¹³⁰.

Mckenzie and Meissner argue that for the sake of “commercial realism” the EU may disregard human rights violations in third countries¹³¹. This could be an interesting research, especially for assessing the human rights policy of the new ‘geopolitical’ European Commission (2020-2025). Josep Borrell, EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission hinted that the EU may give up idealizing itself by arguing that:

Europeans must deal with the world as it is, not as they wish it to be. And that means relearning the language of power and combining the

continued its trade with the apartheid regime of South Africa, ACP countries opposed the inclusion of an essential element also in the third Lomé Convention (1985-1989). As a result, the first example of an essential element could be drawn up in the fourth Lomé Convention, signed in 1989. Thus, financial aid and trade concessions became conditional on the respect for human rights. Daniela Donno and Michael Neureiter, “Can Human Rights Conditionality Reduce Repression? Examining the European Union’s Economic Agreements,” *The Review of International Organizations* 13, no 3, (2017): 336.

¹²⁹ For criticisms of the European Parliament on this matter, please see: European Parliament, “Resolution of 4 September 2008 on the Evaluation of EU Sanctions as Part of the EU’s Actions and Policies in the Area of Human Rights,” *Official Journal of the European Union*, CE 295, December 4, 2009, 49-62.

¹³⁰ Ukraine Association Agreement, art. 2.

¹³¹ Lachlan Mckenzie and Katharina L. Meissner, “Human Rights Conditionality in European Union Trade Negotiations: the Case of the EU–Singapore FTA,” *Journal of Common Market Studies* 55, no 4, (2017): 832–849.

European Union's resources in a way that maximizes their geopolitical impact¹³².

In sum, the incremental politization of EU association has culminated in more asymmetry. Association has never been a purely economic policy. It has always meant political alignment with the EU¹³³. The increasing of non-economic express and implied external competences of the EU within years has been reflected in the development of association policy. Today, association agreements are viewed as instruments for rule, norm and practice export by the EU. The success thereof is contested. But, the focus of this article has been more the asymmetry of EU association policy than its success.

Conclusion

Although enlargement is becoming a less popular idea within the EU, the Union does not offer meaningful alternatives to accession. The current association policy of the EU has an asymmetrical structure. It is based on unilateral rule-taking by the associated country. The EU needs an enhanced association policy, which will make EU rules, norms and practices more legitimate, ideal and appropriate in the eyes of associated countries¹³⁴.

Therefore, the aim of this article has been to emphasize the asymmetrical aspects of EU association policy. The article has rather problematized the weakness of institutional association between the EU and associated countries despite the high volume of direct and indirect rule transfer. The provisions and declarations of the Rome Treaty on association confirm the argument that this policy has originally been prepared for colonies or former colonies. Therefore, it is intrinsically colonial and asymmetrical.

An enhanced association policy proposal is likely to face opposition from some EU circles although some EU officials have already referred to

¹³² Josep Borrell, "Embracing Europe's Power," *Project Syndicate*, February 8, 2020, <https://www.project-syndicate.org/commentary/embracing-europe-s-power-by-josep-borrell-2020-02?barrier=accesspaylog>

¹³³ Even Cyprus that concluded the most economic association agreement with the EU has seen association as a means of political alignment with the EU. Charalambos Tsardanidis, "The EC-Cyprus Association Agreement: Ten Years of a Troubled Relationship, 1973-1983," *Journal of Common Market Studies* 22, no 4, (1984): 359-361.

¹³⁴ James G. March and Johan P. Olsen, "The Logic of Appropriateness," *Arena Working Papers*, WP 04/09, (2004): 2.

it¹³⁵. The discourse on the EU's institutional and legal autonomy is limiting decision-making opportunities exclusively to EU member states and institutions. However, institutional ties between the EU and associated countries may be improved without prejudging EU legal autonomy. Similar to non-Treaty based associate membership and observer statuses of the WEU which were referred to by the European Commission in par. 36 of "Europe and the Challenge of Enlargement", the EU may invite certain countries for internal association¹³⁶.

According to Phinnemore, for a future associate membership status, the future of EU-UK relationship will be determining¹³⁷. The institutional association with the UK may set an example for other associated countries in Europe. In other words, "decision-shaping or decision-making opportunities granted to the UK will most probably be granted also to other associate countries"¹³⁸. The EU is unlikely to enhance its association with other countries until it sets the path of future relationship with the UK.

One remaining question is how associated countries that are also negotiating accession would approach to the idea of an associate membership status. An enhanced association should not necessarily be a permanent alternative to membership. But, it can be a platform for fruitful engagements between the EU and associated countries until accession. Therefore, more research may be done on candidate countries' views of and expectations from an associate membership status.

¹³⁵ Manfred Kohler, "New Membership Forms Solve EU Challenges," *EURACTIV*, February 13, 2020, <https://www.euractiv.com/section/enlargement/opinion/new-membership-forms-solve-eu-challenges/>.

¹³⁶ Cebeci, "A Delicate Process of Participation: the Question of Participation of WEU Associate Members in Decision-making for EU-led Petersberg Operations, with Special Reference to Turkey," 3.

¹³⁷ Interview with David Phinnemore, Professor of European Politics at the Faculty of Arts, Humanities and Social Sciences of Queen's University Belfast in Northern Ireland.

¹³⁸ Interview with David Phinnemore.

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