

## 30 THE HUMAN RIGHTS ASPECT OF THE COMMON COMMERCIAL POLICY IN THE HISTORY OF THE INTEGRATION OF THE EUROPEAN UNION

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The European Union is one of the key economic operators of today. The economic integration of the Union has progressed so far during the decades that today it does not just encompass the economic activities among the member states, but is a global player in the international field. Considering the provisions of the “reform treaty” of Lisbon the common commercial policy shows such consistent image that develops together with the protection of human rights.

One of the results of the reforms introduced by the Treaty of Lisbon is that the principles and objectives of the common commercial policy cannot be considered as special, they continue to work included in the hierarchy of rules, subordinate to the general principles and objectives of the foreign affairs of the Union.<sup>1</sup>

Article 21 of Treaty on European Union (TEU) contains those general principles and goals that form basis to the international actions of the Union.<sup>2</sup> With these provisions commercial policy has become part of the uniformly regulated external activities of the Union. Thereby one of the objectives of the common commercial policy is to advance the sustainable economic, social and environmental development of the developing countries, primarily for the sake of abolishing poverty, to facilitate access for every country into the world economy, among others by gradually eliminating the barriers existing in international trade, to stabilise and strengthen democracy and the rule of law, human rights and the principles of international law, moreover to advance the creation of an international system based on responsible governance.<sup>3</sup> However, it should be noted that even before the Treaty

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1 Horváthy Balázs, ‘A közös kereskedelempolitika alapelvei és célkitűzései az integrált uniós külkapcsolatrendszer tükrében’ (*The Principles and Goals of the Common Commercial Policy in Light of the Integrated Foreign Affairs of the Union*) – *Iustum Aequum Salutare* – X. 2014. 1, pp. 51-69, p. 53.

2 Principles: democracy, rule of law, universal and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principle of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

3 Subpara. 2 Art. 21 of the TEU.

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of Lisbon trade agreements with third world countries served as facilitators of human rights in the partner countries.<sup>4</sup>

The principles and objectives of the commercial policy of the Union is not governed by the general principles of the TEU only, however its “internal” principles and objectives can be aligned with the principles of liberalisation and uniformity.<sup>5</sup>

The principle of liberalisation has influenced commercial policy even in the early stages of integration. It first appeared in Article 110 of the EEC, later Article 131 of the EC contained the provision which aimed at the gradual abolishment of international trade limitations and lowering customs barriers as the objective of the customs union together with developing world trade.<sup>6</sup> Article 206 of the TFEU lays down as the obligation of the Union to contribute to the balanced development of world trade, gradual abolishment of limitations to international trade and direct foreign investments and the lowering of customs and other barriers, according to the common interest.

The common commercial policy is based on uniform principles<sup>7</sup> which uniformity serves as a basis of a customs union as well as such can only function properly in a unified system, when cooperation with third countries is also functioning within the context of a formal framework. Primarily uniformity includes the objective to create coherence within the commercial policy itself and towards other policies.<sup>8</sup>

Pursuant to the provisions of the TFEU both the customs union and the common commercial policy fall within the exclusive competence of the Union.<sup>9</sup> Thus the Union is entitled to conclude international agreements if the conclusion of such is prescribed by one of the legislative acts of the Union or if it’s necessary to exercise its competence and to the extent it may affect the common rules or may change their scope of application.<sup>10</sup>

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4 See more: Frank Hoffmeister, *Menschenrechts- und Demokratiekláuseln in den vertraglichen Aussenbeziehungen der Europäischen Gemeinschaft (Human Rights and Democratic Clauses in the Contractual Foreign Affairs of the European Community)* – Springer 1998.

5 Horváthy (2014) p. 64.

6 Ibid.

7 Subpara. 1 Art. 207 of the TFEU: “... particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union’s external action.”

8 Horváthy (2014) p. 66.

9 Subpara. 1 Art. 3 of the TFEU.

10 Subpara. 2 Art. 3 of the TFEU.

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#### 30.1 THE COMMON COMMERCIAL POLICY AT THE SERVICE OF HUMAN RIGHTS

The Union, as mentioned above, has become a dominant economic player in the international field as well. Considering that the integration was built on the foundations of a union providing mutual economic benefits, it shows how high level has been achieved over the decades. It can be concluded when analysing the history of EU integration that besides the economic interests and objectives, the EU recognised that it has to move toward political union in favour of progression. This recognition and change of direction has led to that it could become a player both politically and economically in the international circulation.

The Lisbon Treaty has a number of achievements and it has symbolic significance in relation to our topic that it defines the Charter of Fundamental Rights as a legal basis that can be referenced to before national courts as well by incorporating it into the primary law of the Union and thereby giving binding force to it. Besides the Charter of Fundamental Rights, one of the determining element of the Treaty's regulatory system is protection of human rights and laying down facilitating of their enforcement. Considering that the common commercial policy and the closely related development policy are the most powerful pressure areas and 'tools' of the Union in its international relations, protection of human rights as well as expansion and enforcement of this protection requires special attention in these two fields.

One of the most important questions is whether the Union is sufficiently motivated in using the pressure described above as to eventually use sanctions in case of possible non-compliance with human rights and whether it has the necessary tools and willingness to that protection of human rights and unconditional enforcement thereof may overshadow the economic interests and objectives, along which the united Europe was built.

#### 30.2 PAST AND PRESENT OF COMMERCIAL POLICY OF THE UNION

##### 30.2.1 *Prior to Lisbon*

Regulation of the common commercial policy can already be found among the provisions of the EEC Treaty, for the demand of Member States to contribute via the help of a common commercial policy to gradually terminate the restrictions in international trade is expressed in its preamble. The common customs system established between the Member States and establishment of common commercial policy established against third countries laid down the foundations of the common commercial policy of the Union, the legal background of which was created by Article 113.

The EEC Treaty set forth that by the end of the specified period the common commercial policy shall be based on uniform principles, which applies to modification of tariffs, con-

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clusion of customs and commercial agreements, unification of liberalisation measures, to the export policy and to the trade protection measures, among others. The treaty conferred coordination thereof upon the Commission in a way that for the implementation thereof it submits proposals to the Council and in case of agreements to be concluded with third countries it prepares recommendations to the Council that gives authorisation to start the necessary negotiations, which negotiations shall be concluded in consultation with the special committee along the guidelines set.

The Maastricht Treaty brought significant progress – as on many other fields –, these innovations were induced by the changes that happened until then, such as regime changes in Europe, the accession requests submitted by the ‘newly democratised countries’ and strengthening of the global economic market that required transformation of the EU institutions as well as strengthening of international engagement.

The common commercial policy was part of the first pillar in the pillar system created by the Maastricht Treaty, therefore it was governed by the general rules applicable to the first pillar. Changes were observable primarily in the Community competences since in case of policies belonging to the first pillar the creating European Union had expanded competences taking into account the principles of proportionality and subsidiarity. Although substantial changes did not occur by entry into force of the treaty, change of the previous name to Common Commercial Policy emphasises its progress and removing the provisions relating to the transitional period shows that the common commercial policy of the EU already represented a higher level.

The Amsterdam and Nice Treaty amendments did not make substantial changes, however, besides the simplification and contractual renumbering, it is worth highlighting that the Council – based on the proposal of the Commission and after consultation with the Parliament – may extend application of Article 133 to international negotiations and agreements relating to services and intellectual property by its unanimous decision. At the same time, it is also an achievement of Nice that authorisation may be given to the Community based on Article 133 to conclude an international agreement only if the mandate does not exceed its internal power. The related task of the Council and the Commission is to ensure that the agreement to be concluded complies with the Community rules and policies.

### 30.2.2 *Expansion of Human Rights*

The Lisbon Treaty brought fundamental changes, uniqueness and recognition of legal personality of the European Union opened up new dimensions of the integration. The changes have brought observable innovations also in the field of common commercial policy.

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It is one of the results of reforms introduced by the Lisbon Treaty that the principles and objectives of the common commercial policy is no longer regarded as specific, it continues to operate within the hierarchy subordinated to the general level of principles and objectives of the EU external relations. The Lisbon Treaty created the basis for the Union to operate based on the same principle system in both its internal and external activities thereby also ensuring an efficient and successful common political cooperation.

Article 2 of the Treaty on the European Union specifies the 'Lisbon values' that form the basis of that principle and framework system, which came into force by entry into force of the Reform Treaty. TEU states in this Article that the Union founded on the values of respect for human dignity, freedom, democracy, the rule of law and respect for human rights, among others furthermore that these values are common to the Member States: pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women.

The above declaration defines such a direction for the Union that each EU policy shall be built up along and comply with this line. This foundation also determines external relations of the Union therefore common commercial policy also has to be aligned to these criteria.

External actions of the Union does not deal only with trade and traditional financial and technological assistance but also with economic and other reforms and with supporting infrastructure, health care and educational programs as well. Agreements concluded in the course of this activity provide framework for political dialogues and contain a clause that allows the Union to suspend or terminate the trade or aid if the partner country violates human rights.

Title V of TEU sets forth uniform rules regarding the Union's external actions, including the general provisions on its external actions and the specific provisions on the common foreign and security policy as well. Article 21 of TEU contains those general principles and objectives in line with the above that forms the basis of the Union's international actions. By these provisions, both the commercial policy and the subsequently discussed development policy became part of the Union's uniformly regulated external actions. Thereby it became the objective of the common commercial policy to foster the sustainable economic, social and environmental development of developing countries primarily in order to eradicate poverty, to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade, to consolidate and strengthen democracy, the rule of law, human rights and the principles of international law and to promote development of an international system based on good global governance, among others. Although, the common commercial policy was connected with human rights mostly after the Lisbon reforms, it shall be noted that it has a long history and the trade agreements concluded with third world countries prior to the Lisbon Treaty also served to promote human rights in the partner countries.

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### 30.2.3 *Content of Common Commercial Policy*

By analysing the principles and objectives of the EU's commercial policy, it can be concluded that it is not governed only by the general rules set forth by TEU, it has 'internal' principles and objectives that can be organised around the principle of liberalisation and the principle of uniformity.

The principle of liberalisation had influenced the common commercial policy in the early phase of the integration as well. The provision that besides development of the world trade, identified progressive abolition of restrictions on international trade and reducing tariffs barriers as objective of the customs union. appears in Article 110 of the EEC Treaty, and is to be found in Article 131 of the EC Treaty also. Article 206 of TFEU makes it an obligation of the Union to contribute according to the common interests to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment and the lowering of customs and other barriers in the course of its actions.

The principle of uniformity is not a new principle in the Union's integration either, it has been present and it is an influencing factor in development of the commercial policy since the beginning. The common commercial policy is based on uniform principles – which uniformity forms the basis of a customs union as well –, since it is able to operate properly only in a unified system when the cooperation with third countries take place within frameworks set. Uniformity primarily includes the aim to create coherence within the commercial policy and in relation to other policies.

Pursuant to provisions of TFEU, the Union has exclusive competence both in the areas of customs union and common commercial policy therefore the Union is entitled to conclude international agreements if the conclusion thereof is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

Since the Union started out as an economic integration it is not surprising that common commercial policy can be found among the provisions of the EEC Treaty as well. In the preamble of the EEC Treaty the signing member states express their need as the treaty sets out that by a common commercial policy the signing parties contribute to the gradual abolishment of the limitations of international trade.<sup>11</sup> The basis of common commercial policy was founded by the creation of the common customs tariff among the member states and the emergence of the common commercial policy towards third countries,<sup>12</sup> its legal basis was set out by Article 113.

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11 Preamble of the EEC Treaty.

12 Ibid., Point b) Art. 3.

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The EEC Treaty sets out that by the end of the defined interim period<sup>13</sup> common commercial policy shall be based on uniform principles which include among other the modification of customs tariffs, the conclusion of customs tariff and trade agreements, the standardisation of liberalisation measures, to export policies and the commercial policy safeguard measures.<sup>14</sup>

The Treaty assigned the task of the coordination of the emerging common commercial policy to the Commission by setting out that it shall submit proposals to the Council for its implementation and where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations and these negotiations are to be conducted in consultation with a special committee in line with the separate guidelines.<sup>15</sup>

It was the Treaty of Maastricht that brought changes in the common commercial policy<sup>16</sup> along with many other fields. Such improvements were induced by previous changes with respect to the regimes in the territory of Europe, new requests for accession and the strengthening of the global economic market. The changes required structural changes in the institutional system and stronger international engagement.<sup>17</sup>

In the pillar system introduced by the Treaty of Maastricht common commercial policy is established in the first pillar, thus being governed by the general rules applicable to the first pillar. The changes primarily appeared in the community competence, since the emerging European Union had extended powers in the case of first pillar policies, with respect to proportionality and subsidiarity. Even though amendments on the merit haven't been made with the Treaty entering into force, changing the previous name to Common Commercial Policy indicates progress and the repeal of the provisions for the interim period<sup>18</sup> shows that the commercial policy of the Union represents higher levels.<sup>19</sup>

The modifications of the treaties of Amsterdam and Nice did not introduce substantial changes however – besides simplification and renumbering the treaties – it is worth to note that the Council – on the proposal of the Commission and following consultations with the Parliament – acting unanimously may extend the application of Article 133 to

13 Ibid., subpara. 1 Art. 112: “Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.”

14 Ibid., subpara. 1 Art. 113.

15 Ibid., subparas. 2-3 Art. 113.

16 The Single European Act did not amend the previous relevant provisions in the merit.

17 Aszódi Ilona – Molnár István: *Európai Unió Jogi Alapismertek (Basics of EU Law)*, Perfekt Kiadó 2005, p. 16.

18 Arts. 111, 114 and 116.

19 Dienes-Oehm, Erdős, Király, Martonyi, Somssich, Szabados, *Az Európai Unió gazdasági joga I. A belső piac és a közös kereskedelempolitika (Economic Laws of the Union I., Internal Market and Common Commercial Policy)* ELTE Eötvös Kiadó 2014, p. 111.

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negotiations and conclusion of agreements in the fields of trade in services and intellectual property.<sup>20</sup> It is the *acquis* of Nice that on the basis of Article 133 authorisation of the Community to conclude an international agreement may only be given if the mandate does not exceed its internal competence. Simultaneously it is the responsibility of the Council and the Commission to ensure that such agreements are compatible with internal laws and policies.<sup>21</sup>

#### 30.2.4 *Common Commercial Policy after Lisbon*

The common commercial policy operating on uniform principles encompasses a wide range of activities, but the Treaties do not give a concise definition concerning what it exactly comprises.<sup>22</sup> Common commercial policy includes among others change in tariff rates, the conclusion of tariff and trade contracts in the field of trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and protective measures to commercial policy as well.<sup>23</sup>

The instruments of the commercial policy of the Union may be divided into two great groups, one group includes the instruments of the commercial policy of the Agreements, while the other group encompasses the Autonomous instruments of commercial policy. However, these two groups are not necessarily separated, they may be applied parallelly as well with one single stipulation, that is, that autonomous instruments may never be contradictory to an obligation undertaken in the individual agreements.

Autonomous commercial policy instruments include the customs laws of the Union, the export- and import system set up, the import protection measures, laws against subsidy and commercial protective measures.

The commercial policy instruments of the agreements represent a diverse part of the common commercial policy and as the name suggests they presume certain agreements between the Union and a third party. Besides having to apply the principles and objectives of the common commercial policy to these agreements, the regulations on international agreements set out in the TFEU shall also be taken into account.

Pursuant to the laws the Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve one of the objectives of the Treaties, or is prescribed in one of the legally binding Union laws or is likely to affect common rules

20 After Amsterdam subpara. 5 Art. 133.

21 Dienes-Oehm, Erdős (2014) p. 112.

22 Kende Tamás – Szűcs Tamás, *Bevezetés az Európai Unió politikáiba (Introduction to the Policies of the European Union)*, Complex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft. Budapest 2011, 65. old.

23 TFEU Subpara. 1 Art. 207.



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or alter their scope.<sup>24</sup> Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.<sup>25</sup> Significant agreements of the Union are the treaty with the WTO, the international commodity arrangements and other trade agreements.

However, expansion of human rights started to move significantly with the ‘Lisbon reforms’, it happened in the Union’s practice already in the ‘70s that fulfilment of the common commercial policy and of the development agreements were connected to compliance with human rights standards. The principle background of common commercial policy in the fundamental treaty was considered closed and homogeneous therefore the main question was the determination of content and legislative nature of those two principles (liberalization and uniformity).<sup>26</sup>

### 30.3 EMBARGO AS THE SANCTION OF THE COMMON COMMERCIAL POLICY

Even though it was a disputed issue whether the instruments of common commercial policy can be used with the political agenda to apply economic sanctions – in excess of the previous regulations<sup>27</sup> – the Treaty of Maastricht already established a legal basis for the application of politically motivated economic sanctions.<sup>28</sup>

The Treaty of Lisbon maintained the logic of the Treaty of Maastricht that set out the decision adopted within the framework of the Common Foreign and Security Policy (CFSP) as a precondition for applying economic sanctions. The introduction of sanctions are set out by Article 215 of the TFEU which prescribes that if a decision adopted pursuant to the decision-making mechanism of the CFSP stipulates the interruption or restriction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures.<sup>29</sup> Subparagraph 2 Article 215 allows the establishment of restrictive measures natural or legal persons and groups or non-governmental or non-state entities, by referring to a similar legal basis.

24 TFEU Subpara. 1 Art. 216.

25 TFEU Subpara. 2 Art. 216.

26 Horng, Der-Chin, ‘The Human Rights Clause in the European Union’s External Trade and Development Agreements’, *European Law Journal*, Vol. 9, 2003/5. 686.

27 Such Council Regulations were the boycott introduced against Soviet goods (596/82/EC Regulation), or the measures against Argentina (877/82/EC).

28 Kende Tamás – Szűcs Tamás (2011) p. 75.

29 TFEU subpara. 1 Art. 215.

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Article 75 of the TFEU specifically sets out the possible application of freezing of funds when it stipulates that in order to achieve the objectives<sup>30</sup> prescribed in Article 67 and to prevent terrorism, the Union may apply the sanction.

As a judicial review may control the application of the restrictive measures implemented pursuant to Subparagraph 2 Article 215 referred to above, human rights are duly observed.<sup>31</sup>

The only question is how much pressure the Union can put on its partner countries so that human rights can be enforced and so that they can receive adequate protection. Recently we examined examples of embargo when the Union hit Russia with economic sanctions during the Crimea situation and it also tried to force the Syrian government with trade retaliation during the 'Arabic spring' to respect human rights.

At the time of outbreak of the Syrian crisis, it was the Union's primary goal to deal with its concerns related to violation of human rights as integral part of the process to resolve the conflict. Besides application of economic sanctions, it emphasised its commitment to accountability and national reconciliation, the compensation or rehabilitation of victims of the conflict and the importance of steps taken towards national reconciliation. It highlighted that protection of some vulnerable groups must be ensured, we must stick to the position that if war crimes and crimes against humanity are not handled properly on national level then the International Criminal Court must take actions.<sup>32</sup>

The Union started to introduce sanctions against the Syrian regime while it applied exemptions to this sanction system in order to support the opposition and the Syrian population.

The exemptions provided assistance to the Syrian civilians to solve humanitarian problems, maintain basic services, reconstruct and restore normal economic activity, furthermore it is a beneficial step in order to realise any civil aim.<sup>33</sup>

Due to the exploding crisis and considering the repressive policy of the regime, the Union introduced numerous sanctions at the time of formation of the Syrian situation, it was the first in the world to propose restrictions. The foreign diplomats called upon the Syrian regime to release political prisoners, create democracy, respect human rights and to cease violence.<sup>34</sup>

30 Subpara. 1 Art. 67: "The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States."

31 Paul Craig, *The Lisbon Treaty – Law, Politics, and Treaty Reform*, Oxford University Press-New York 2010, p. 396.

32 Joint communication of the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions towards the comprehensive Union approach of the Syrian crisis – Brussels June 24, 2013 – p. 6.

33 Ibid.

34 Sanctions against Syria – Brussels, April 29, 2011 – [www.bruxinfo.hu/cikk/20110429-eu-szankciok-sziria-ellen.html](http://www.bruxinfo.hu/cikk/20110429-eu-szankciok-sziria-ellen.html).

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The Union froze the negotiations on the planned association agreement and suspended the bilateral cooperation programs in May 2011 that took place between the Union and the Syrian government within the framework of European Neighbourhood Policy. The developments executed by the European Investment Bank were shut down, the Union suspended its regional and credit programs and the technical assistance.<sup>35</sup> The sanction contains the mixture of trade restrictions and withdrawal of contributions for development, this also shows that the common commercial policy itself does not provide a sufficient deterrent force, suspension of measures and grants used in the course of development policy discussed later may have a stronger effect.

Within the framework of the sanctions introduced, the Union announced import ban on weapons arriving from Syria, introduced export restrictions and forbade related financial assistance, among others. The Union formulated ban related to construction investments and on building and financially supporting industrial facilities in Syria. Member States cannot give new grants and preferential credits to the Syrian government, furthermore it freezes the Syrian assets kept in the territory of the Union and impose entry ban on certain people.<sup>36</sup>

The Council emphasised in December 2014 again that the Union is going to introduce new sanctions and enforce the sanctions in force against the Syrian regime and its supporters as long as the repression continues.<sup>37</sup> It shall be noted that however the economic sanctions of the Syrian situation did not achieve big results but it has such reasons different from the topic that have very different roots and results from the subject of this study.

#### 30.4 DEVELOPMENT POLICY IN THE INTERNATIONAL FIELD

In order to be able to properly assess the development policy of the Union, global situation of development policy has to be analysed as well. Reviewing the field, we can state that not only the Union is trying to provide support for the underdeveloped partner countries within frameworks set. Besides the Union, the World Bank group, the UN and the OECD are also worth mentioning. Although, these organisations are listed in the field of development policy, we should see that the different organisations help development of the international development policy with different methods, although in order to achieve similar goals, which obviously is due to different structures and goals to be achieved as well.

35 FACT SHEET The European Union and Syria Brussels, February 5, 2015 – p. 1.

36 Ibid., pp. 3-4.

37 Council conclusions on Syria Foreign Affairs Council meeting Brussels, December 15, 2014 – [www.consilium.europa.eu/hu/press/press-releases/2015/03/150306-syria-eu-strengthens-sanctions-against-regime-and-supporters/](http://www.consilium.europa.eu/hu/press/press-releases/2015/03/150306-syria-eu-strengthens-sanctions-against-regime-and-supporters/).

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The UN tries to fulfil its commitments through its global development network established in 1965, the United Nations Development Programme (UNDP). Within the framework of the development program and in cooperation with partner countries, it works to promote sustainable development, democratic governance and peace building, climate and disaster resilience. In all its activities, it tries to protect human rights and the interests of women, minorities and the poorest and most vulnerable. Within the framework of the development program, 189 UN member states committed themselves in 2000 to reach the Millennium Development Goals by 2015. The goals include eradication of poverty, promotion of gender equality and empowering women, among others.<sup>38</sup>

The aim of Organisation for Economic Cooperation and Development (OECD) is to help governments of the member states to develop and assess the best possible economic and social policy. Development policy activities of the OECD does not manifest in providing actual development grants, its task is to influence the development policy of its member states. Thanks to its accumulated knowledge, it may unify the development policy of member states with the evaluation reports issued and the professional assistance, and common norms may develop during the consultations.<sup>39</sup>

The World Bank established in 1945 currently consists of four institutions: International Bank for Reconstruction and Development (IBRD), International Development Association (IDA), International Finance Cooperation (IFA) and Multilateral Investment Guarantee Association (MIGA). Objectives of the World Bank are to provide help to its members to reconstruct and develop, to restore economies ravaged or shattered by war, to promote private investments and to promote long-term balanced growth of international trade.<sup>40</sup>

However, the human rights criteria is not a condition of credit mechanism of the World Bank but they recognised that its activity may have undesired effects, taking this into account it initiated itself to prepare analyses about these problems. These analyses examine the possible outcome regarding human rights issues within the framework of realisation studies but the World Bank did not undertake any legal obligation in this topic.<sup>41</sup> At the same time, it declared its commitment that human rights are considered in the course of their activities when is stated that the World Bank is fighting to eradicate poverty, diseases, malnutrition, illiteracy and to protect the environment. Furthermore it intends to take a prominent role in promoting women's rights and to work as a partner of developing countries in economic development. Taking this into account, the World Bank promotes economic and social human rights and intends to play a role in accelerating creation of

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38 see more: [www.undp.org](http://www.undp.org).

39 see more: [www.oecd.org](http://www.oecd.org).

40 World Bank's Articles of Agreement.

41 Krause, C. Rosas, A. (Eds.), *Economic, Social and Cultural Rights: A Textbook*. Dordrecht: Martinus Nijhoff Publishers, 1995. Tomasevski, K, *International Development Finances Agencies*. pp. 403, 413.

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the conditions, under which the fundamental rights can prevail and develop.<sup>42</sup> Nevertheless, as long as human rights are not included in the objectives of the World Bank, the enforcement thereof cannot be realised, it has neither legal enforceability, nor does it entail consequences if ignored in the credit period.

However, establishment of a 3-member Inspection Panel, the task of which is to function as a forum to accept and investigate complaints submitted by borrowers or their representatives can be regarded as a step forward but considering that it can make recommendations only and it does not have decision-making power in terms of credit agreement in case of human rights violation, it cannot provide a sufficient solution to the issue.

Considering the above, it can be stated that examination of compliance with human rights plays a role in the course of the World Bank's activities but for the time being, compliance is no criteria for terminating an existing contract yet and it is probable that the situation will not change as long as they do not specify the human rights conditionality in their rules.

### 30.5 COMMON COMMERCIAL POLICY IN THE SHADOW OF DEVELOPMENT POLICY

#### 30.5.1 *The Union and Its Partnership Relations*

The European Union's association, development and trade agreements extend globally to the whole world, the system of association agreements concluded with developing countries is really significant among the agreements. In terms of types, they are different in strength and they can be divided into three groups based on their content: association agreements, preferential trade and cooperation agreements, economic and cooperation agreements based on the common commercial policy that does not mean preferential relationships.<sup>43</sup>

The development assistance and cooperation had originally focused on Africa, especially the former colonies then it has been extended to Asia, Latin America and to the Southern and Eastern Mediterranean countries. The basic objective is always the support of sustainable growth and development in the partner countries, and to achieve that these partner countries have resources helping to eradicate poverty. These relations had numerous stages, among which conclusion of the Lomé agreements is an important mile stone of the Union's development policy. The four Lomé agreements concluded provided unilateral trade preferences for ACP countries,<sup>44</sup> promoted the establishment of human rights, democracy and good governance, diversification of the economies, establishment of private sector

42 Shihata, I., *The World Bank in a Changing World*, Dordrecht: Martinus Nijhoff Publishers, 1991, p. 133.

43 Magdolna Káldyné Esze (Ed.) – Éva Kruppa – Balázs Ferkelt – Gábor Takács, *Integrating Europe II.*, Perfekt Kiadó, Budapest, 2010, p. 47.

44 ACP is an acronym that consists of the first letters of African, Caribbean and Pacific words.

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and tried to create increasing regional cooperation, among others. The Cotonou Agreement signed in 2000 exceeded the Lomé ideas and intended to reach even bigger development on the basis thereof, to this end it aimed to move beyond the trade agreements in such a way that it put the agreements on a new basis, it wanted to reach a wider range of political and economic cooperation than before.

One of the corner stones of the Union's development and commercial relations is the European Neighbourhood Policy (ENP), the fundamental purpose of which is to promote development of the neighbouring countries both economically and politically and their approach to the Union. The Union may conclude specific agreements with the countries concerned. These agreements may determine reciprocal rights and obligations as well as the possibility of undertaking joint actions.<sup>45</sup> However, ENP shows some similarity to the association agreements but it shall be noted that while the purpose thereof is accession to the Union thus the political goals and requirements have a much greater weight therein while the agreements concluded within the framework of ENP are of more economic nature.

It can be seen, on which bases the Union started and how it evolves in the field of development policy, it is outlined that despite being an independent policy area, numerous other EU policies are connected to it. When analysing this policy area, one can see that the development started along economic interests but over time it is noticeable that due to its complexity, this policy covers a fairly wide area in the foreign policy and external relations of the Union.

### 30.5.2 *The Rise of Development Policy*

In the course of examination of the above, it can be concluded that the organisations helping the economy, trade and poorer countries of the global world with development grants recognised the importance of human rights but the promotion of protection and enforcement thereof is not sufficient and their legal background is not settled either and it can be seen that economic interests have a greater weight therein. In addition to that in the course of development of its partnership system, the Union switched to the road to strengthen the partner countries through its trade relations by using development grants thereby making them more interested in maintaining the relationship and achieving continuous development.

Since its establishment, the Union tries to support its partner countries through its common commercial policy and with the help of development aids and formal trade and cooperation agreements concluded with some countries or regional groups. Common commercial policy of the Union had and still has effect on two levels throughout the history

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<sup>45</sup> Art. 8 of TEU.

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of integration. One of the areas is the World Trade Organisation (WTO) where the Union is actively involved in determination of the rules of the multilateral system of global trade, the other area is that the Union negotiates with some countries or regional groups of countries regarding its own bilateral trade agreements and provides assistance based on the agreements concluded.<sup>46</sup>

The common commercial policy, which was the primary policy area of the Union, was absorbed over the decades by the common development policy with different objectives launched on its side. However, the two areas are still regulated differently but the bi- or multilateral agreements concluded by the Union contain such obligations and commitments that belong to the regulatory scope of the development policy and in addition to that the common commercial policy remained an ancillary area of complementary nature.

The Union's commercial policy is closely linked to its development policy, the main criteria and objectives of the two policies are similar since the Lisbon Treaty and their tools also come from the same source that is the Union's economic power that allows it to ensure such opportunities to the partner countries through specific investments and assistance, with which they can begin the road to development. Thus the development grants of the Union helps the developing countries to improve their trade performance through ensuring better access to the Union's market.

The relationship between the development policy and the common commercial policy is also supported by the tools of development policy, which can be classified in the groups of aid and trade instruments. Financing of both the development policy and the commercial policy are important factors in the international engagement of the Union, the most important elements of which are the assistance of European Development Fund (EDF), the preferential loans of European Investment Bank (EIB) and the special items of the Union's budget.<sup>47</sup>

Title III of Part V of the TFEU lays down the actual legal basis and rules of cooperation with third countries and humanitarian aid, within this it covers the development cooperation. The Lisbon Treaty clearly declares that the main objective of the Union's development cooperation policy is to reduce and eradicate poverty. The Union's policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action. Provisions of the TFEU clearly show that the development policy operates as an individual policy on its own right.

The development policy – as it is regulated in the title above – is a shared parallel competence,<sup>48</sup> which means that although the Union is pursuing autonomous policy,

46 Global player. External relations of the European Union, Europe in move, European Commission, Press and Information Directorate, 2004, p. 5.

47 Zoltán Horváth, Manual to the European Union, HVG-ORAC, Lap- és Könyvkiadó Kft., Budapest, 2007, p. 348.

48 Magdolna Káldyné Esze (2010) pp. 24-28.

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Member States may also conclude development cooperations acting within their competence but the two areas shall operate in a way to complement each other.

### 30.6 SUMMARY

As described above, the European Union intends to make full use of its growing economic and political powers outside its borders as well. Having legal personality, the European Union has the opportunity to step up as a more pronounced player in international relations on the political field.

The Union is one of the global economic powers today but its political influence related to this remains minimal. The Union's unified action is not always smooth and possible delay in developing common position may be a serious disadvantage in the fast changing world. Consequently, the Union must be able to enforce the common interests of the Member States and of the Union firmly and successfully in its external relations both in the international organisations and in its bilateral relations that can result in an international position which allow the Union to promote its interests and values in the whole world.

The policies of the European Union are structured around a uniform framework of principles and systems since the Treaty of Lisbon has entered into force. In the centre of the uniform framework of principles and systems stands the protection and enforcement of human rights, and to achieve such objective is a crucial point for the common commercial policy as well.

The Treaty of Lisbon standardised the foreign activities of the Union thereby the common commercial policy and development policy are also included in this hierarchy. The Lisbon changes in the foreign policy started a serious reform in the whole system of external relations. By prioritising human rights, the instructions regarding the protection and enforcement thereof induced serious changes both on the field of trade and development policy.

On the political level the Union has less role for the time being, it is exposed to numerous negative impacts, possible internal dissensions, internal conflicts or external unexpected events impede the achievement of its political goals. As I referred to it many times, the Union is a community based on economic foundations, which was built along that and developed to the level where it is right now. However, we need to acknowledge that its political influence on the global world is minimal, consequently the enforcement of its will can be found in exploiting its strengths: trade and development.

Ever since its establishment, the Union has been concluding economic agreements with third countries, which set mutual obligations and different advantages; development policy is built up in the same way. The contractual parties receive capital, skills and knowledge and in return they have to fulfil specific conditions. The development policy



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came in the forefront with the Lisbon Treaty, which operates through its increasing expansion by using the common commercial policy as a complementary policy branch. The European Union concluded agreements with several underdeveloped third countries and areas of the world, which supports the contractual parties through developing mutual advantages, at the same thereby strengthening its trade and political will.

The Lisbon Treaty determines the protection of human rights as an objective and the all the above clearly show that the most appropriate tool for that is the development policy and the commercial policy. They can be regarded as the most appropriate and the simplest, we can say that the economic power and superiority of the Union allows to motivate partner countries less strong economically, requiring assistance and support, to behave in a way the Union requires, and by this promoting the expansion of human rights and democracy. Protection of human rights is not a Union aspiration, it is becoming more prominent in more and more areas and it is basis of the total global world view, it pervades the development policy and the global commercial policy as well. However, it can be stated that non-compliance with human rights does not entail serious sanctions. The European Union connects maintenance of provided support and other agreements to the compliance with them but in case of non-compliance they rarely terminate those. However, they do not advance the necessary development in this field and so the achievement of the desired goal seems to drift away. However, the solution may seem drastic but with sufficient firmness and immediate withdrawals in case of human rights violations, with using the economic advantage, even if not immediately but on the long term the expansion of human rights might be enforceable.

With respect to the European Union being one of the major global economic players, with reforms to the common commercial policy and by placing human rights into the forefront, it can take relevant steps towards the advancement and enforcement of such rights within its contractual relationships. Thus common commercial policy has become an important instrument for the protection and advancement of human rights. The European Union is able to exercise significant influence in the advancement of human rights with its common commercial policy, since the loss of benefits granted in the agreements and the introduction of a possible embargo would mean severe loss to its contractual partners. By introducing uniform framework of principles and systems, common commercial policy has become one of the most significant instruments of the Union for advancing human rights.