

Approximation of Laws in the Context of the European Neighbourhood Policy – A View from Brussels

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A. Introduction

The purpose of this short note is to offer a rather different perspective on the theme of approximation of laws with the *acquis*, that of the EC Commission. Few general comments will be offered, to be followed by some more specific, sector-focused comments.

B. A View from Brussels

The 2004/07 EU enlargement changed the political geography of Europe. It also acted as a catalyst for the EU to interact more intensively with its immediate neighbours. In the aftermath of the historical changes in Europe after the demise of the Soviet Empire and of Communist ideology in 1989, the nature of the EU itself also changed. It was once regarded as an economic giant, but a political dwarf. Filling the political void left in Central and Eastern Europe, devising the Copenhagen criteria for accession to the EU, reaching out to the transformation countries through 'Europe Agreements' with a potential accession perspective, and growing itself from the European Communities to the European Union by agreeing on numerous new functions (such as a Common Foreign and Security Policy) has made the EU emerge as a global political actor. With 27 Member States and half a billion citizens it has even become something of a continental power. This is as relevant to the EU as it is to its neighbours.

But, more importantly, the accession of all new Member States, especially those of the eastern European countries, presented the EU with a formidable new task and experience. In no other enlargement before had the European Community needed first to support an arduous and lengthy transition process in candidate countries to make them fit for accession. This had never been the case right up to the preceding accessions of Austria, Finland and Sweden in 1995. Transforming candidates from the failed socio-economic model of the former Soviet block into States ready for membership provided an entirely new experience for the EU. It learned to develop new mechanisms of policy dialogue (such as thematic sub-committees) or Community support (such a 'twinning' operations, i.e. the

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dispatch of EU Member State officials to ministries and public bodies of candidate countries) and gradually refined these instruments, based on lessons-learned.

Its still young European Neighbourhood Policy (ENP) makes use of this experience within another policy context that does not have EU accession in mind, but provides its neighbours a ‘partnership-for-reform’, using many of the aforementioned tools. The ENP is more than classical foreign policy. It establishes a special hybrid category of external relations with partner countries that share land or sea borders with the EU. On the one hand, it serves as a vehicle to intensify the EU’s bilateral relations with its neighbours. On the other, it projects the European Community’s internal policies beyond its external borders, with the aim of supporting reform, transition and modernisation efforts to contribute to prosperity, democratic stability and security in its vicinity. It is therefore made up of all three ‘pillars’ of the EU’s policies, with an emphasis on Community policies that is not typical of traditional foreign policy. As a transformational policy, the ENP can be seen as a vehicle of the EU’s ‘soft power’.

As a concept, the ENP does not seek to ‘export’ the *acquis* wholesale. This would be unwise, unrealistic and – in some aspects – unaffordable. However, the EU runs an impressive legislative and scientific machinery that develops objectives, binding law and best practices for the own benefit of the Union and its Member States. It exercises strong normative powers. Its own in-depth policy debates and policy choices in many thematic areas – from environment policies to competition law, from judicial cooperation to customs codes or maritime policy – are also of interest to third countries. With only a few exemplary regulatory models in a globalised world, the ‘EU model’ appears attractive. Emulating some of the *acquis* saves interested partners own ‘invention costs’, in effect driving down the political and economic costs of transition and reform. The value of aligning with the *acquis* differs from sector to sector, and – within sectors – between different issues. Even where there are convincing economic benefits, approximation remains essentially voluntary. It requires adequate administrative capacity as well as investment from the public budget or by industry. It is happening. As partners of the enlarged EU, many of our neighbours are selectively adopting the *acquis* as a pattern for themselves. In any event, it has become inescapable that they ask themselves the question whether to approximate with the EU.

Under the ENP, the European Commission approaches the question of alignment with the EU *acquis*, Community policies and best practices selectively and on the basis of concrete ENP partner country interests. Yet, the concept of ‘convergence’ is often misunderstood: It has different meanings, depending on the sector policy in question. In no case shall it be seen, in the context of the ENP, as full alignment with the *acquis*. The sectoral ambitions of partner countries will differ according to their individual stage of development and need to be defined at realistic levels (often much) below alignment with the *acquis*. Whilst a certain degree of *acquis* compliance is relevant for some sectors linked, for instance, with market access, anything close to full compliance is clearly excluded for other sectors (e.g. environment, taxation, social issues). In many cases, the ENP Action Plans so far concluded with twelve of our neighbouring countries often merely establish a commitment to align with the *acquis* only over a long term,

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using formulations such as ‘establish a first list for *acquis* alignment’ or ‘work towards alignment’ on a certain item. In other sectors, such as on environment policies, the ENP Action Plans stipulate only very basic commitments, focusing on core functions of environmental governance, some key sectoral measures as well as regional and international cooperation.

It needs to be borne in mind that the *acquis* is not only a set of legislation, but often provides guidance on administrative needs for governance in a particular sector and thus provides an exemplary yardstick for interested ENP partners. In a wider sense, the *acquis* consists also of policies, statements of positions, established practices (covering such aspects as strategic planning, programming and implementing of policies, enhancing institutional capacities etc.) and international commitments to which the EU and its Member States have signed up. This wider *acquis* is often attractive to ENP partners, given that the EU has a well-established and complex mechanism to elaborate standard-setting sectoral policies that is not replicated elsewhere. Furthermore, the EU’s own aspirations lead it to constantly update and develop the *acquis*, underpinning the propensity of EU norms to establish globally valid best practices. Against this background, the differentiation with which the ENP addresses neighbouring partner countries needs to be sectoral as well as country-specific.

Overall, there are good and legitimate reasons for ENP partners to approximate their own legislations with the EU *acquis*, policies and best practices in selected sectors which often correspond to their national reform agendas. The *acquis* often represents best (international) practices, such as on public procurement, provisions against discrimination in social policies, the liberalisation of telecommunication markets, or guidance on administrative capacity in such areas as customs, agriculture and fisheries. It is often the EU that has created a methodology to achieve success in crucial sectors, such as the enforcement of intellectual property rights. Agreement on alignment is often selectively limited to basic *acquis* requirements, such as the independence of supervisory bodies in the financial sector or rules on corporate governance, making it more realistically achievable and attractive.

Lastly, I would like to provide a few pointers regarding specific sectors:

- (1) In the trade-related field, a clear reference to alignment as a precondition is made with regard to the negotiation of Agreements on Conformity Assessment and Acceptance of Industrial Products (i.e. ACAAs). All ENP partners, including Israel, have started drafting legislation and setting up or upgrading their quality infrastructure in selected sectors.
- (2) In the customs area, the ENP Action Plans often refer to harmonisation of customs procedures and legislation in more general terms or more specifically regarding the Harmonised System for the description of goods as well as the EU Combined Nomenclature, rules of origin or regulations on cultural, pirated and counterfeit goods. Most partner countries are showing an interest in cooperating on security and are increasingly realising our joint interest in creating a solid legal base to fight counterfeit and pirated goods.

- (3) In the area of agriculture, the only *acquis*-related element is the protection of geographical indicators in which partners like Georgia, Israel or Moldova have shown interest.
- (4) The transport sector is mainly governed by detailed international conventions, with the EU devising stronger rules for its internal needs which often act as pacemakers in the further development of international standards on international transport operations. Thereby, the aviation sector is the relatively most aligned, with maritime transport also an area where the EU encourages alignment in the interest of overall fleet safety. ENP partner countries, including Israel, have also shown interest in the EU's experience in road and rail transport restructuring.
- (5) In the field of information society, most neighbouring partners show a strong interest in aligning with the EU *acquis* that is seen as the best model.
- (6) Regarding sanitary and phyto-sanitary measures, some of our partners, such as Jordan, seek to emulate the EU system with a view to the food safety of their own citizens, whereas others, such as Israel, safeguard the interests of the consumer through their own system and seek to align with the EU *acquis* primarily in those fields in which they export to Europe.
- (7) In the energy sector, the ENP strives for a gradual convergence by neighbouring countries with the EU legislation setting the framework for its gas and electricity markets. Having recently adopted an electricity reform plan covering the period until 2013, Israel is showing increasing interest in the EU model.
- (8) Regarding social policies, the interest of our partner countries in the *acquis* varies according to their social development, with Israel having shown particular interest in the European Commission's communication on demography.
- (9) Where the EU *acquis* is 'light' and consists mainly of Community networks and events, such as in the public health field, 'exporting' the *acquis* to neighbouring countries is commensurately adapted to the exchange of information.
- (10) By contrast, taking over the 'heavy' environment *acquis* would neither be affordable nor achievable for ENP partner countries. This explains the selective definition of approximation goals as outlined above.

Overall, these few examples underline the selective character of the EC's approach to approximation in the context of the European Neighbourhood Policy.

C. Conclusions

An academic examination of the various questions and challenges that the EU's neighbours face with regard to approximating their laws to an essentially Eurocentric system of normative benchmarks makes this issue rewarding for a wider audience as well as for myself as a Commission official.