

The partnership principle and public participation in neighbouring countries: experiences with the European Neighbourhood Regulation

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Introduction

This paper highlights the deficiencies of the partnership principle and public participation within the European Neighbourhood Policy, in terms of addressing the political and cultural situation in the region. The paper provides recommendations for improvement during the midterm review of the European Neighbourhood Instrument and the proposal from the Commission proposal for a legislative framework for the new EU budget 2021–2027. The paper is based on the experience of CEE Bankwatch Network and its partners between 2012 and 2016.

Public participation in Neighbourhood countries is constrained by problems linked to the protection of human rights, a lack of democratic institutions and a legal framework for the enforcement of public participation.

In recent years we see shrinking space for civil society in various countries of the European Neighbourhood Policy (ENP) region, like Egypt and Azerbaijan, with the adoption of laws limiting the possibilities for funding, the imposition of travel bans, asset freezes and the summoning of human rights defenders and targeting EU partner organisations. This should be addressed by the EU and acknowledged as one of the major failures of the ENP.

The positive feedback and increased involvement of CSOs in ENP framework, programmes and projects, can be seen only in cases of a few leading countries, like Moldova, Georgia and Ukraine. In those countries the signing of an Association Agreement with the EU, where the partnership principle established official EU–Civil Society Platforms, has resulted in the increased public participation and involvement both within EU programing activities and in government actions on the project and budget levels. However, even in those countries performing well, public participation lags far behind European norms, due to insufficient legislation and the good will of authorities.

The experience of EU new Member States shows that the enforcement of the partnership principle in the case of EU Structural Funds resulted in multiple benefits like increased administrative capacity, expertise and improved efficiency.

The link between the partnership principle, public participation and transparency has emerged as a source of good governance, sustainable development and the fight against corruption. Such partnership is necessary to ensure effective programming and implementations of operational plans that hold to account the needs and priorities of stakeholders and final beneficiaries on the local level.

While the full application of the partnership principle is not possible in the majority of Neighbourhood countries, the EU should provide the means and instruments to address these challenge. Measures like the development of country roadmaps for CSO engagement that have been developed in almost all ENP countries¹ is a step forward.

The European Commission should take into account the practices and failures of public participation and implementation of the partnership principle between 2013 and 2015 for the forthcoming ENI evaluation and incorporate these in the new instrument by June 2017.

It is important that in countries with authoritarian regimes, the Commission strengthens its dialogue with existing CSO groups, not only regarding wider political issues but also regarding the allocation of funds to the countries, both in terms of sectorial budget support and bilateral dialogue between the Commission and CSOs. In countries where democracy is shrinking, like Egypt and Azerbaijan, it should also address the impacts of the projects and programmes funded by the EBRD and EIB.

Background

The EU was one of the first to articulate the concept of 'good governance' and to formalise it within its agreements with outside collaborators. Since the European Neighbourhood Policy (ENP) was launched in 2004², promoting good governance has become an integral part of EU foreign policy²⁻³ through strengthening government administrations, further including non-state actors in public policy making and pushing for democratic governments.

1 With the exception of Egypt and Azerbaijan
2 http://ec.europa.eu/regional_policy/fr/policy/cooperation/international/neighborhood-policy/

The 2011 popular uprisings in the Arab world and other political developments in the Neighbourhood exposed the ENP's shortcomings and the contradiction inherent to the EU's approach: cooperating with authoritarian regimes while advocating democracy and human rights in the region. This led to the Commission's communication "A new response to a changing Neighbourhood" which emphasises³ the need to help bring about deep and sustainable democracy, stronger partnerships with civil society, and introduce the meritocratic "more for more" approach." The new concept intends to set the foundations for proper differentiation between neighbours based on their performance rather than the EU's interests.

In March 2014, the European External Action Service (EAAS) and the Commission presented 'Neighbourhood at a crossroads',⁴ highlighting the importance of CSOs as a structural element of EU cooperation with its eastern and southern neighbors⁵. The efforts were focused on establishing a structured dialogue between civil society, local authorities and the EU. From the beginning of 2014, EU delegations in the ENP countries had the responsibility to engage with civil society.

The Commission provided CSOs with some financial support and expected them not only to successfully scrutinise their governments, but also to take part in the programming, planning and monitoring of EU operations in their countries alongside their European counterparts.

Yet between 2011 and 2015, public involvement in ENP-related activities in neighbouring countries has been limited. While success varies from country to the country, overall deteriorating democratic processes and the worsening state of affairs in a number of countries plays an increasingly negative role in civil society involvement in decision-making procedures.

The new ENP policy adopted in November 2015 stresses that, "The EU is committed to promoting good governance, democracy, rule of law and human

3 http://eeas.europa.eu/enp/pdf/pdf/com_11_300_en.pdf
4 <http://europeanpublicaffairs.eu/a-review-of-the-european-neighborhood-policy-2014-edition/>
5 http://eeas.europa.eu/enp/pdf/2014/joint_communication_en.pdf

rights.” Therefore it will seek “more effective ways to promote reforms with each partner in mutually agreed formats” and “do more to support civil society”.

The new ENP policy stresses that the key role of civil society is “ensuring the rule of law and independent and effective justice systems,” “strengthening democratic and independent institutions”, and that “Effective anti- corruption measures, mostly on the preventive side, should be implemented in relation to large-scale public procurement, [re] privatizations reform of state-owned/controlled companies or similar areas where vulnerabilities to corruption are high⁶,” as well as the implementation of the EU’s Action Plan on Human Rights and Democracy and achieving gender equality through the implementation of the EU Gender Action Plan 2016–2021. The EU has committed to support “citizens ability to hold governments accountable and will work to improve the pluralism, independence, and professionalism of the local media, helping it to act as a forum for public debate and as the catalyst for change in partner countries.”

In spite of these commitments, the ENP still lacks the tools to achieve these ambitions. The ENI regulation adopted in 2013 simplified the decision-making procedures regarding the implementation of the ENP and broadens the scope of the partnership; it states that:

*“the objectives of this Regulation Should be pursued with an appropriate involvement of external action partners, including civil society organization and local authorities, in preparing, implementing and monitoring Union support, given the importance of their roles. The ENI should also support the strengthening of the capacity of civil society organizations to guarantee effective domestic accountability and local ownership, and to be full actors in the democratization processes”.*⁷

This clause acknowledges the role of civil society in implementation, but also in the early preparation and

6 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015JC0050>
7 <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014R0232>

further monitoring stages of the programming process. The regulation adds that EU support itself shall be established in partnership with beneficiaries and shall involve, as appropriate, national and local authorities, as well as civil society organisations. The involvement of these stakeholders will be established through regular consultation and timely access to relevant information allowing them to play a meaningful role in that process⁸.

This clause is considered a substantial step forward to increase the involvement of CSOs in Commission programming activities through EU delegations, complementing the previous formulation of this goal in the ENI priorities for partner countries (part of the programming process for the 2014–2020 Multiannual Financial Framework (MFF)).⁹

However, the clause above lacks specific rules to ensure CSO involvement in the ENI programming, implementation, monitoring and scrutinising the use of EU funds. Therefore the implementation of the partnership principle and public participation in the ENI programming activities since 2013 not surprisingly varies from country to country.

Good governance in the EU

The white paper on European governance¹⁰ stresses the following elements for good governance in the EU: *openness and transparency* of EU institutions; *systematic participation of citizens* in drafting and implementing policies; *accountability* of each institution; *effectiveness* of decision making processes and delivering on time; *coherence* in EU policies and action.

One of the best examples of improved good governance in the EU is the Cohesion Policy which aims at providing assistance to disadvantaged EU regions and localities through a multilevel, rationalised and partnership-based approach with the use of a constantly evolving set of instruments. Four major practical principles underpin the Cohesion Policy: concentration (of resources, efforts, spending),

8 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:077:0027:0043:EN:PDF>
9 Phase I consists in identification of three priority sectors for 2014–2020 for each partner country ; phase 2 involves EU delegations developing a single support framework
10 http://europa.eu/rapid/press-release_DOC-01-10.htm

programming (funds multi-year national programmes aligned with the EU objectives and priorities}, partnership and 'additionality'.

The partnership principle is a formal arrangement for consultation, co-ordination and decision-making for Structural Funds. Since its introduction in 1988, it has become "a complex nexus of strategic and operational relationships concerned with programme development, programme management and substantive developmental tasks of programmes themselves"¹¹. These various stages should however not be solely in the hands of state authorities, but include regional and local authorities as well as CSOs. Through their experience in a wide range of fields such as regional development, environmental protection and social exclusion, CSOs guarantees a minimum public control and increased transparency and efficiency.

European Commission efforts to strengthen civil society through its CSO roadmaps

In general, the Commission tries to support the "stronger role for CSOs and their networks and for social partners, and aimed to strengthen direct engagement with these parties".

However, it also recognises that as a result "of political and security developments in the region in the last two years, the conditions under which CSOs can operate changed, and significant differences developed between individual countries regarding the political and legal regulatory frameworks for CSOs and their implementation. In some countries (particularly in Egypt) the space for CSOs to operate shrank considerably but in others, governments paid more attention to civil society (e.g. Tunisia)¹²."

The EU approach is twofold: on the regional level, the EU develops direct links with CSOs both from the

Eastern Partnership and MENA region, including the creation of civil society forums for the EaP region and/or structured regional dialogue between CSOs, to facilitate the interaction directly between CSOs, the EU and, in the case of willingness, country authorities. "These mechanisms, developed in consultation with civil society, will include an online platform for virtual dialogue and information exchange regional thematic communities which meet physically and online to discuss policy-related issues, and knowledge- and trust-building activities¹³".

The establishment of civil society forums both for the EaP, as well as for the MENA region, allows CSOs to meet and discuss challenges in particular sectors. It also gives the opportunity for participation in bilateral and multilateral processes between the EU and respective countries. This is important because it increase not only the leverage of CSOs towards national governments, but also the possibilities for joint advocacy and experience-sharing both between CSOs as well as government representatives.

On the country level, the recipe was the same for all countries. "EU Delegations, in collaboration with Member States, began drafting EU country roadmaps for the engagement with civil society and the establishment of a dialogue with the EU, governments and CSOs. The roadmaps are designed to improve the effectiveness, predictability and visibility of EU actions in relation to civil society"¹⁴

The roadmaps for CSO engagement country by country address the issue only partially by strengthening the position and leverage of organisations towards their government, However, realistically, this would function only in so called 'advanced countries'¹⁵ where governments understand the role and significance of civil society and where space for dialogue exists. It should be stressed that roadmap preparation in those countries really increased the level of cooperation and engagement between local CSOs, governments and EU delegations, which should be considered as a positive step forward. In Moldova, Georgia and Ukraine, official dialogues began in 2015, based on

¹¹ http://ec.europa.eu/regional_policy/sources/docgener/evaluation/doc/rathe/asec8.pdf

¹² Joint Staff Working document Implementation of the European Neighbourhood Policy Partnership for Democracy and Shared Prosperity with the Southern Mediterranean Partners Report Accompanying the document JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN COMMISSION ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Implementation of the European Neighbourhood Policy in 2014, <http://eur-lex.europa.eu/legal-content/ES/ALL/?uri=CELEX%3A52015SC0075>

¹³ <http://eur-lex.europa.eu/legal-content/ES/ALL/?uri=CELEX%3A52015SC0075>

¹⁴ https://eeas.europa.eu/enp/pdf/2015/enp-regional-report-southern-mediterranean_en.pdf

¹⁵ Ukraine, Georgia, Moldova, Tunisia

respective Association Agreement. However, there is still a long way before its efficiency will be assessed.

The civil society roadmaps prepared for almost all countries are useful tools both in terms of forming the analytical foundations for civil society and EU engagement, including the mapping of CSOs in some countries (like Lebanon), while designing EU priorities for forthcoming years.

In countries with a poor track record on freedom of speech and restrictive legislation towards CSOs,¹⁶ there is little chance that the roadmaps will work. For example in the case of Azerbaijan, the EU delegation announced consultations regarding the C80 roadmap development in the same week that a major crackdown on human rights organizations and the arrest of rights defenders took place. For now, roadmaps have been prepared for all neighbouring countries, with the exception of Azerbaijan in the EaP region and Egypt in the MENA region.”

Strengthening public participation in environmental impact assessments in the Neighbourhood

According to the EU's Common Rules Regulation, the appropriate environmental screening, including for climate change and biodiversity impacts, should be undertaken at a project level, in accordance with the applicable legislative acts of the EU, including Directive 2011/92/EU of the European Parliament and of the Council Directive 85/337/EC comprising, where applicable, an environmental impact assessment (EIA) for environmentally sensitive projects, in particular for major new infrastructure. Where relevant, strategic environmental assessments shall be used in the implementation of sectoral programmes. The involvement of interested stakeholders in environmental assessments and public access to the results of such assessments shall be ensured.¹⁷“

It also requires that “In the design and implementation of programmes and projects, criteria regarding accessibility for persons with disabilities

¹⁶ Like Azerbaijan, Belorussia, Egypt

¹⁷ Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0236>

shall be duly taken into account” and that “Natural and legal persons who have been awarded contracts shall comply with applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards.”

The regulation requires a high quality EIA and in particular cases an SEA process in order to ensure the impacts of proposed projects and programmes on the environment and society are minimised.

EIA can be defined as an information gathering exercise carried out by a project developer and other bodies that should enable a state authority to understand the environmental and social effects of a development before deciding whether or not it should go ahead. The ultimate goal of the EIA process is to protect the environment and affected people or communities by high quality decision-making, which implies choosing the most adequate alternatives and ensuring the protection of sensitive areas rich with flora, fauna, social environment and cultural heritage.

Public participation is a compulsory element of properly regulated and executed EIA processes. The ‘public’ refers to all groups potentially affected by the project, e.g. local people, civil society, state institutions and officials, academics, industry representatives and financial institutions (the “stakeholders”). It is widely recognised that an EIA procedure without proper public participation usually generates poor results and creates problems for the stakeholders.

However, the assessments produced by countries of the ENP region differ. For example in the case of the MENA region, the public participation component in the EIA is almost non-existent, and it is not even a formal requirement in well-developed EIA systems in Tunisia, Jordan and Egypt. Meanwhile, in the case of Lebanon and Morocco, there are quite comprehensive EIA laws that require for public involvement in decision-making. However, implementation needs to be better organised in order to be used as a tool for environmental protection and increased space for public participation.

Countries of the MENA region are not signatories to the UNECE Convention on access to information, public participation and access to justice, nor to the

UNECE Convention on transboundary environmental impact assessment.

In EaP countries, EIA legislation does not correspond to relevant EU Directives or the Aarhus Convention, even though the convention has been ratified by all six countries in the EaP. AS in the MENA region, in the EaP region none of the countries has SEA legislation, so the application of SEA tools is limited, even though required by some donors, as in the case of sectoral programs.

EaP countries conduct environmental and social impact assessments (ESIA) in relation to infrastructural projects in line with policies of international financial institutions. Nevertheless, social issues like problems with vulnerable, indigenous and internally-displaced people, gender disparities and involuntary resettlement persist.

Since 2014 the EU has run a programme called EaP Green. It aims to promote and elaborate SEA and EIA legislation. Within two years of Association Agreements entering into force, Moldova, Georgia and Ukraine should ensure the compliance of its legislation with respective EU directives. While draft laws on ESIA and SEA have been elaborated in all EaP countries, it has been approved only in Moldova on time, with delays in Ukraine and still not approved in Georgia.

It is important that the EU ensures proper EIA and SEA processes for the projects and programmes implemented with ENI support, including EIB and EBRD funding.

The partnership principle and standards for the ENI regulation

In 2015, when it adopted the new ENP, the Council underlined, "that the EU's partnerships under the ENP should be focused on people as well as governments. The Council calls for effective promotion of good governance, democracy, rule of law and human rights, which are important for long-term stability. These topics will be discussed with all partners in mutually agreed formats, as well as in the partnership with the wider society. This should include enhanced support to civil society and a renewed focus on the importance of gender equality. The European

Endowment for Democracy can play an important role in this regard¹⁸"

This should be interpreted in the new ENI regulation through the establishment of specific standards of the partnership principle for deeper and more comprehensive involvement of various stakeholders in planning, implementation, monitoring and evaluation of EU funds' investments. It could be established with the legislative framework and norms described in the "European Code of Conduct on Partnership" (ECCP), that aims to guide Member States and promote best practices in the field of partnership.

While the ECCP is not legally enforceable, it establishes the minimum requirements for high quality partnership, defining which partners need be involved, the selection process and consideration of partners opinion, while providing flexibility on specific procedures and ensuring a transparent and participatory process.

It is important that the ENI regulation sets some core minimum requirements on partnership standards at least from neighbours that "have chosen a path of close economic integration with the EU" and, as is the case of Member States, the Commission should check the implementation of the partnership principle to approve country programmes for EU funds.

The implementation of core minimum standards for CSO participation must first be established across the ENP spectrum while subsequent approaches will vary depending on each country's situation.

For some countries that already signed Association Agreement and Deep and Comprehensive Trade Agreements (DCFTA), the implementation of core minimum standards of the partnership principle would not be highly problematic, but will increase civil society involvement in programing, policy dialogue and reform implementation. In those countries, the deeper involvement of CSOs in EU budget support programmes will ensure budget transparency in terms of planning, spending and implementation. The role of EU delegations in partner countries therefore becomes crucial and

¹⁸ <http://www.consilium.europa.eu/en/press/press-releases/2015/12/14-conclusions-european-neighbourhood/>

should have adequate human and financial resources to follow the processes and organise consultations, follow-up and feedback.

For countries with problematic stances on human rights and democracy, the EU should ensure direct dialogue with truly legitimate and credible CSOs on sensitive issues and broaden its delegation's and the Commission's engagement.

One practical tool could be the establishment of a web portal to ensure that CSOs and the public from countries participate in EU projects and programmes.

It should be stressed that the Commission already has made significant achievements. It is successfully running the ENPI info (<http://www.enpi-info.eu/>) news service, which provides information and a database of EU activities both in MENA and the EaP region.

In Tunisia, the EU co-funded the creation of the Jamaity.org platform in 2014, bringing together more than 1600 Tunisian civil society organisations. The online platform provides information and geo-localization of projects, resources, events, funding opportunities, documents and tools. It also gives the possibility for CSOs to submit their contributions in the preparation of the EU-Tunisia subcommittee, annual progress report and other relevant programming documents and policy papers, maintaining a close dialogue on all issues of common interest.¹⁹

The establishment of an online consultation mechanism that would be based on the 2002 communication establishing "General principles and minimum standards for consultation of interested parties by the Commission²⁰" could be an important step forward for countries where CSO activities are limited and/or suppressed. It should ensure that consultation materials are translated to relevant languages, within a time frame that is sufficient and where feedback is available.

It also should give the possibility to CSOs from

¹⁹ www.enpi-info.eu/ENI

²⁰ Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission, http://ec.europa.eu/governance/docs/comm_standards_en.pdf

Neighbouring countries to submit relevant consideration to Commission staff in charge of a particular project and programme, provide feedback and monitoring results, as well as comments to annual progress reports and other relevant documentation. Such a mechanism should allow the confidential submission of views in order to increase the possibilities for public participation in particular countries.

Conclusion

The application of good governance standards, particularly the partnership principle and public participation in decision-making, is one of the biggest challenges for countries in the neighbouring region. The shrinking space for CSOs and the strengthening of authoritarian regimes in a number of countries, coupled with a lack of legislation and best practices in the so-called 'advanced countries', means that the EU must establish basic standards for the partnership principle and legally-binding standards²¹ in the ENI regulation. This should be the major lesson learned from the last few years experiences across the region.

The promotion of the triad (European Commission, Government and CSOs) in different formats, including human rights dialogue and EU-Country Association CSO Platforms would raise the bar in advanced neighbouring countries

Meanwhile, for non-advanced countries, the application of the partnership principle through direct dialogue between the Commission and national CSOs should be binding. It should include issues related both to the development of the ENP and other political issues like budget support and single framework priorities.

In order to ensure the proper implementation of the common rules and ENI regulation regarding public participation and the partnership principle in all Neighbourhood countries, the Commission should :

- Develop the mechanisms for dialogue with CSOs in countries with authoritarian

²¹ For example, having independent CSO representatives in steering committees, ensuring policy dialogue through agreed benchmarks and etc.

regimes regarding the ENP and political and development issues, including consultations in budget support priorities and implementation

- Provide the technical means and procedures (online consultations, anonymity) to ensure the participation of neighbouring country CSOs on country priorities.
- Develop a strategy and action plan to support countries in developing national EIA systems, especially in the MENA region, that target country-specific needs, including the mitigation of social impacts and controls for effective and timely public participation and access to EIA reports by affected groups, academic institutes and NGOs for projects and programmes implemented through EU support.
- Ensure effective public participation in EIA both on the country and the project/programme levels, through the establishment of best practices for procedural democracy.
- For any project funded with ENI funds, either directly or indirectly (NIF, financial institutions) in order to comply with Common rules regulation, the contact details of Commission staff, country delegation or those in Brussels should be available for the public;
- Recognize the right to appeal by non-EU citizens affected by EU assistance and develop a specific mechanism for such cases (in cases other than EBRD and EIB funding).