

CSOs statement on ENP and forthcoming European Neighborhood Instrument

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Introduction

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The primary goal of the EU's neighbourhood policy should be based on insisting on increased democracy through public participation in decision-making processes, the establishment of good governance and sustainable development practices, increased environmental protection and climate change mitigation and adaptation, as well as increased welfare and social security across the neighbourhood countries.

The new European Budget perspective for 2014–2020¹ is supposed to increase support for ENP countries from EUR 10 billion to 16 billion through the European Neighborhood Instrument. This does not include the bilateral funds flowing from individual member states nor International Financial Institutions such as the EIB and EBRD, that should also fit into the framework proposed by the EC.

The EC's recent Communications "*A new response to a changing neighbourhood*" and "*Budget for Europe 2020*" could serve as a good starting point to ensure the implementation of this primary goal. "*A new response to a changing neighbourhood*" widens the scope of positive conditionality to stimulate and deepen EU integration processes. It delivers the new concept of "*More for more*" that stands for a meritocratic ENP, that should lay the basis for a proper differentiation between neighbours, based on their performance rather than the geopolitical interests of the EU.

The concept is supposed to change the way EU disbursements in the neighbourhood area are carried out and engage economic growth in the region. There are though three main issues that might seriously undermine the proposal for change in the approach:

¹ Budget for Europe 2020

1. Further development of a comprehensive system to ensure result-oriented use of EU assistance. The negatives for the countries that are not performing are not clearly expressed in the concept of “More for more”. A performance framework (system of objectives, targets, priorities and indicators) that is considered in the context of a policy life cycle and specific governance structures should be developed in the future regulations to enhance enforcement of the EU policy objectives. Last but not least provisions for a transparent, participatory and democratic process for decision making, implementation and evaluation of the country programs should be made as legally binding requirements for use of the EU assistance.

2. No proposal for coherent and consistent external policy actions when it comes to EU instruments, EU banks² involvement and bilateral assistance. There is a clear tendency among the different member states to encourage particular neighborhood countries based on their geographical positions and historical links (e.g. France, Spain, Italy– Mediterranean region, Germany, Poland– Eastern Neigborhood), that has the potential to undermine the “More for more” and subsequently the “Less for less” principles. Additionally, the lack of a coherent approach between different instruments goes against the principle for simplification of the financial instruments and in-country harmonization required by the new Multiannual Financial Framework³ and the Aid effectiveness principles⁴. Last but not least the right to appeal of non-EU citizens affected by the EU assistance should be ensured.

3. Insufficient alignment with the EU Treaty and Europe 2020 objectives. An overarching framework for the EU’s external activities in the neighborhood area is set out in Article 21 of the Treaty on the European Union, which broadly asserts that in its external actions the EU will be promoting and consolidating democracy and the rule of law, human rights and fundamental freedoms, as well as the implementation of international environmental agreements to which the EU is a party. The new communication new response to a changing neighborhood itself stressed the importance to “support partner countries' adoption of policies conducive to stronger, sustainable and more inclusive growth, to the development of micro, small and medium-sized companies and to sustainable and economic growth and job creation”. The EU 2020 Initiative “Resource efficient Europe” , highlights the need to cooperate closely with key partners including those in the neighbourhood in order to achieve a higher level of environmental protection³.

Therefore, the EU should ensure that economic growth within the area is inclusive, sustainable and green growth is in line Europe 2020 targets, including climate change and energy, education and poverty reduction.

2 European Investment Bank (EIB) and European Bank for Reconstruction and Development (EBRD)

3 A budget for Europe 2020 Communication Part I COM(2011) 500 final “Simplification: current funding rules have evolved not only in response to the need for accountability on how public money is spent but also to take account of previous problems. The result is a diversity and complexity that is difficult to implement and control. This complexity imposes a heavy administrative burden on beneficiaries as well as on the Commission and Member States, which can have the unintended effect of discouraging participation and delaying implementation. Work is currently underway to simplify both the general rules (Financial Regulation) and the sector specific rules.

Strategic approach for ENP Action Plan – thematic priorities and concentration of the EU support for strategic priorities

According to the recent EC Memo “A new and ambitious European Neighborhood Policy⁴”, ENP Action Plans⁵ will remain the framework of general cooperation. However, the EC will “*Focus ENP Action Plans and EU assistance on a smaller number of priorities, backed with more precise benchmarks.*”

Furthermore, the Joint Communication from the High Representative of The Union For Foreign Affairs And Security Policy and the European Commission of 25 May 2011⁶ has stated that:

“While ENP Action Plans remain the framework for our general cooperation, the EU will suggest to partners that they focus on a limited number of short and medium-term priorities, incorporating more precise benchmarks and a clearer sequencing of actions. The EU will adapt the priorities for its financial assistance accordingly. This list of priorities will set the political pace and help both the EU and each neighbour to produce key deliverables, within a mutually agreed timeframe. This will also allow better linking of policy objectives and assistance programming. Building on that basis programming documents can be simplified and focus on identifying Action Plan priorities requiring particular EU assistance.”

According to the **A Budget for Europe 2020**⁷ “*The European Neighbourhood Instrument (ENI) will benefit the EU's neighbouring countries supporting deeper political cooperation, closer economic integration with the EU and support to effective and sustainable transition to democracy.*” The Communication highlights the importance of the EU's environmental policy in contributing to “*the Europe 2020 objectives of smart, sustainable and inclusive growth. Investments in environmental protection are investments in the modernization of our societies and will help to transform Europe into a knowledge-based, resource-efficient economy*” and mainstreaming support to climate change prevention and environmental protection under the ENI. This approach should be applaudable, however, so far both governments and the EU have been more concerned with addressing the issues of economic transformation and the establishment of EU economic models in the Action Plans than they have been with the establishment of social and environmental safeguards. Therefore, there is a strong suspicion that some country governments will push back almost all social and environmental priorities, while economic priorities will be emphasized.

4 European Commission: A new and ambitious European Neighbourhood Policy, 25 May 2011, MEMO/11/342

5 Or substituting documents

6 Joint Communication from the High Representative of The Union For Foreign Affairs And Security Policy and the European Commission: A new response to a changing neighborhood: A review of European Neighborhood Policy, 25 May 2011

7 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: A Budget for Europe 2020 - Part II: Policy fiches, COM(2011) 500/II final.

Therefore, in order to address the aforementioned problems of prioritization and the threat of failing to meet the EU's own objectives envisaged in A Budget for Europe 2020, ENI regulations should contain measures to ensure concentration of the EU support for strategic priorities in plans, programmes, policies and sectoral and regional priorities and introduce ex-ante conventionalities to mainstream environmental sustainability, the conservation of ecosystems, natural resources and biological diversity, climate change measures and freshwater security... The EU Cohesion Policy approach of ring-fencing a certain amount of EU support should be considered for environmental protection and climate change mitigation and adaptation where we deem it necessary that at least 25% be committed.

2.ENI – result oriented approach and performance framework

The ENI is supposed to make it easier to shift EU assistance from one neighborhood state to another depending on a country's performance, based on the "more for more" concept.

According to then new budget proposal⁸ *"While all partner countries will benefit from activities aimed at strengthening the "partnership with societies" (component 2), funding under the other two components will be allocated to partner countries based on a more for more approach based on mutual accountability.*

Increased EU support will depend on progress in building and consolidating democracy and respect for the rule of law. The more and the faster a country progresses in its internal reforms, the more support it will receive from the EU. This enhanced support will come in various forms, including increased funding for social and economic development, larger programmes for institution-building (CIB), greater market access, increased EIB financing in support of investments; and greater facilitation of mobility. These preferential commitments will be tailored to the needs of each country and to the regional context. They will recognize that meaningful reform comes with significant upfront costs. For countries where reform has not taken place, the EU will reconsider or even reduce funding."

There is a need for a more precisely defined **system of enforcement of the result-oriented approach** and safeguards in terms of **transparency and public participation** to be developed in future ENI regulations.

In the first instance this will mean the development of the concept behind a performance framework (system of objectives, targets, priorities and indicators) that is considered in the context of a policy life cycle and specific governance structures. The performance framework should help gear national programmes and agreements between the EC and specific countries to the established policy objectives and targets (and milestones).

A system of major indicators should be developed to assess the human rights and democracy situation, development of democratic institutions and freedom of media, protection of socio-

⁸ AMENDING LETTER No 1 TO THE DRAFT GENERAL BUDGET 2012 [STATEMENT OF EXPENDITURE BY SECTION, Section III – Commission, Brussels, 17.6.2011, COM(2011) 372 final,

economic rights, environmental and climate change protection efforts as well as progress towards sustainable development. Moreover, there is a need for explicit indication that economic and social policy conditionality will not be used as criteria or benchmarks.

The economic reform agenda could be considered as one of the indicators, but not a major one. In some cases, a country's economic reform agenda has been applauded by major donors without looking at the human rights and democracy situation⁹. The "modernisation" of states that some ENP countries are pushing for must not be a substitute for or be mixed with democratisation processes.

Support for economic growth should be rooted in support of people's rights to development and justice through a revised economic model, where productive capacities, redistribution mechanisms, employment and wages are at the forefront.

Therefore, there is a need for an explicit indication that economic and social policy conditionality will not be used as criteria or benchmarks. Any benchmarking should be the result of a well established participatory and open consultation process, undertaken both at the national as well as regional levels, where civil-society groups have adequate space to contribute to the process.

There is a need to consider that the long-term economic and development transition necessitated a vision for re-establishing the economic and development models in each of these countries in order to prioritise peoples' right to development and justice. The urgency of the current situation should not be used as a reason to re-stabilise the model pushed for by previous regimes, which clearly did not serve the development rights and needs of the people, and under which poverty, unemployment, and inequalities continued and deepened in many areas.

It should be also mentioned that in 2006, the EC came out with a set of indicators¹⁰ to assess a country's performance and engage countries through a "Governance Facility" fund that "*constitutes an additional recognition for efforts undertaken in this area.*" The Governance facility has not been used in a wider way (just in Ukraine in 2007 and in Morocco), and it continues to remain unclear, including on the issue of the basis for selecting recipients.

Secondly, the process of elaboration of objectives, targets, country-specific priorities and indicators as well as deciding who should assess performance or non-performance and how the assessment should take place needs to be carried out through a participatory process that would further strengthen the partnership with societies. This should represent an obligatory part of the ENI regulation.

⁹ e.g. often the Action Plans prioritize privatization of public services, which country governments implement without any delay and receive compliments from the International Financial Institutions. However this model is far from being widely accepted among the EU countries and its advantages are still heavily disputed.

¹⁰ Principles for the implementation of a governance facility under ENPI

The process itself of the development of the country specific performance framework and indicators for progress should also be transparent, participatory and fair and include all stakeholders, while all relevant documents for the process of development of country programs and agreements with the EU should be accessible to the wider public (nationally and internationally) for comments. The staff involved in assessments should respond to the comments and provide clear arguments if they choose not to take them on board.

3. ENI should specifically set provisions for the implementation of the partnership principle and public participation

According to the ENPI Regulation¹¹ “Community assistance under this Regulation shall normally be established in partnership between the Commission and the beneficiaries. The partnership shall involve, as appropriate, national, regional and local authorities, economic and social partners, civil society and other relevant bodies”.

For the post-2013 period the EC is planning to make the successor of ENPI – ENI – more flexible and simpler (page 19–20), which should be welcomed.

However, with potentially increased funding post-2013¹² and simplification of the Instrument, more responsibility for the funds' management and control will be shifted to the neighboring countries.

This increases the need for partnership with NGOs who can play the role of watchdogs intent on securing the correct use of the funds. Without opening the ENI funds to more public scrutiny and participation, control of them may become too concentrated in the hands of the national managing authorities.

The experience of ENPI planning, programming and implementation shows that the national authorities are either not able or simply not willing to develop transparent mechanisms for public participation, holding national dialogues etc.

Therefore the new ENI should provide clear and obligatory rules for CSO involvement in all stages of the programming, rather than communicating with CSOs on an ad-hoc basis.

The Communication “New Response to a changing Neighborhood” itself speaks about a partnership with societies, and emphasises support for CSOs through Civil Society Facilities in the countries, establishment of a European Endowment for Democracy, promotion of media freedom and reinforcing human rights dialogues. We acknowledge the importance of these issues; however experience has shown that CSO participation should be not be limited to

¹¹ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument

¹² For 2011-2013 the increase in the ENPI is 1.242 billion EUR additional to the allocated 5.700 billion EUR. The new budget proposed by the EC is EURO 16.1 billion for the ENI.

political matters but should also include so-called technical matters, in order to ensure real public participation.

The consultation framework should be defined through the ENI in order to set clear standards and mechanisms for the application of the partnership principle, especially with respect to access to documents and information as well as the involvement of civil society in planning, programming and implementation.

4. Budget Support

Taking into account the fact that Budget Support (general and sectoral) is acknowledged to represent the best way to engage partner countries' ownership, the expectation is that the bulk of support through the ENI instrument on the country level will be conducted through this mechanism.

However, the majority of EAST ENP countries are not part of the Paris Declaration and even in cases where countries have signed on, implementation is rather formal than genuine.

While Budget Support is typically assumed to be the best way to ensure aid delivery and gives the most opportunity to recipient governments to ensure implementation of nationally driven policies, it is also more vulnerable to corruption and misuse than other forms of aid. This issue is all the more acute when there is an absence of effective domestic accountability mechanisms.

Despite the fact that EU Budget Support in practice mainly focuses on public financial management systems, in order to build financial integrity and prevent corruption, there are still many problematic areas and in a number of cases so-called parliamentary control has simply approved budget overspending, misuse of funds and cancellation of funding programmes for social welfare and health. The lack of transparency over budget spending represents a major concern in almost all ENP countries.

In most cases irregularities are even unknown to donors with the existing monitoring mechanisms being too superficial. There is a need to ensure and strengthen anti-corruption measures within ENI support through regulation.

The budget support mechanisms should ensure obligations for:

- routine access to relevant documentation and final agreements by civil society organisations in the country, in the national language;
- increased public participation in setting priorities; and
- participation of NGO representatives in joint Monitoring/Steering committees.

These need to be selected by the NGO community.

- The results of monitoring and evaluation should be open to the public without reservation to highlight existing shortcomings within institutional, legal and political frameworks to ensure increased responsibility and operational effectiveness.

5. The Neighborhood Investment Facility

According to the Communication¹³ *“EU Member States, third countries and International Financial Institutions (IFIs) have shown interest in furthering the goals of the Eastern Partnership and supporting projects of strategic importance.*

Additional resources are being mobilised from the Neighbourhood Investment Facility (NIF), bilateral partners and IFIs, in particular the EIB, the EBRD and the World Bank. Such co-operation should be pursued dynamically, building on the establishment of the SME Facility, the EIB's Eastern Partners Facility and its Eastern Partnership Technical Assistance Trust Fund to which the EU and Member States are invited to contribute¹⁴.”

For the Mediterranean region, the EC argues for the need to revitalise the Union for the Mediterranean (UFM), by switching to a more pragmatic and project-based approach. *“The UfM Secretariat must operate as a catalyst to bring states, the EIB, International Financial Institutions and the private sector together around concrete economic projects of strategic importance and generating jobs, innovation and growth throughout the region. Partner countries' participation in these projects could follow the principle of variable geometry depending on their needs and interests. Co-financing for specific infrastructure projects from the EU budget could be provided through the Neighborhood Investment Facility”.*

The Neighborhood Investment Facility represents one of the key concerns for Eastern neighbourhood CSOs. All decision-making processes in the facility are concentrated on governments, international financial institutions and the relevant staff of the European Commission. There is no information disclosure policy to enable the routine disclosure of NIF documentation, its functioning and decision-making process. The only available documents are lists of already approved projects on NIF's website and in their annual reports.

CSOs have attempted to find out information about the processes for selection and preparation of projects to be financed through NIF, however this has not been successful, despite the recent communication with EC staff dealing with NIF.

Despite the fact that so far in most cases the NIF funds are invested in environmental, social and technical studies, this opens the possibility for governments, IFIs and state owned organisations to go forward with highly controversial projects, like the Second Backbone Transmission Line in Ukraine that leads to indirect support for ageing nuclear power plants, or supporting commercially unviable projects, like the Tbilisi railway bypass project that poses a threat to the drinking water supply for Tbilisi residents.

¹³ A New Response to a Changing Neighbourhood, Joint communication by the High Representative of The Union For Foreign Affairs And Security Policy and the European Commission, http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf

¹⁴ A New Response to a Changing Neighbourhood, Joint communication by the High Representative of The Union For Foreign Affairs And Security Policy and the European Commission, http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf

Energy, transport and environmental infrastructure are the major areas of interest for NIF and the involved IFIs, and there is a need to establish a CSO feedback mechanisms for the proposed projects from the EC's side. Despite the fact that all involved IFIs have their own disclosure policy, the decisions for projects that come through NIF are already taken before they are submitted for approval to the relevant board of directors because the project preparation has been done with the IFI, which then has an implicit stake in the project's realisation.

Therefore **the EC/EU should:**

- Acknowledge full responsibility and accountability regarding NIF funded projects by setting up clear and transparent procedures of assessment, selection, monitoring and evaluation of projects.
- Ensure added value of the NIF projects to the ENAP principles and objectives
- Set up early warning mechanisms/proactive disclosure mechanisms to ensure the public participation in the decision making stage through detailed procedures.
- Opportunities for recourse should be set up through the European Ombudsman or other mechanisms.¹⁵

6. Involving the EIB and EBRD

The Communication specifies that the involvement of the EIB and EBRD should help to “*support large infrastructure projects that can help connect the EU with its neighborhood, boost development and address key energy, environment and transport challenges.*” In addition, the EC supports “*the increase in the external mandate of the EIB for both eastern and southern neighbors as well as the extension of the EBRD's mandate to selected southern Mediterranean countries*”.

Both the EBRD and EIB have so far failed to ensure transparency and increased quality of life in Neighbourhood regions through the projects and programmes supported.

In addition the EBRD is failing to achieve significant results on its own mandate in the countries of former Soviet Union. The bank is supposed to assist the transition to market economies and multiparty democracy and pluralism, while promoting sustainable development throughout its activities, but none of these elements of transition are progressing well in the former Soviet Union countries. While the EBRD is undecided on whether it considers itself a development bank, right now the bank's mandate is being changed to start investments in the Southern Mediterranean, thus potentially spreading it to the whole neighbourhood. This raises concerns about how exactly the EU considers the EBRD's role in the neighborhood.

Therefore increasing funding for the EIB and extending the mandate for the EBRD would not automatically increase the capacity of the Banks to ensure the funding of truly environmentally and socially sustainable projects, which would support the political objectives described in the Communication.

¹⁵ In case of the EIB the European Ombudsman can be approached, while in the case of EBRD there is an internal Project Complaint Mechanism, which cannot address issues out of the scope of the EBRD's Environmental and Social Policy e.g. compliance with relevant EU environmental policies.

Both the EBRD and the EIB should be considered parts of EU development aid according to the Lisbon treaty. However, while the EIB is supposed to «*make a difference to the future of Europe and its partners by supporting sound investments which further EU policy goals*», many investments undertaken by the EIB so far do not serve this purpose. Among numerous examples are the 2005 EUR 500 million loan for the modernization of Beijing airport for the 2008 Olympics. It is not clear how such loans help to achieve EU policy goals, whereas lending half a billion Euros to develop real economies in the neighbourhood and developing countries could make a much larger difference.

Therefore the EC/EU should ensure that :

EIB and EBRD funding will respond to the local needs and challenges in given countries and EU overall objectives of the external actions, rather than addressing just specific challenges such as security of supply of energy for the EU, etc. For this the IFIs should carry out wide and in-depth consultations with CSOs and other interested parties in the process of developing (the EBRD) and up-dating (EIB) their policies and strategies for the Neighbouring countries. Public involvement in transparent and inclusive planning and decision making processes will be an important measure to prevent further corrupt misuse of public funds and increased indebtedness of these countries.

- Funding add value to EU objectives on reduction of poverty, gender equality, sustainable employment growth, social and environmental investments. Funding should prioritise green and low carbon economic development with significant improvement of quality of life, with specific measures for areas like energy efficiency, new renewables, resource efficiency, public transport development schemes, green infrastructure while steering away from fossil-fuelled power stations, airports etc.
- Concerning EU funds, citizens outside the EU should have access to recourse mechanisms that would address the concerns citizens would raise during the implementation of country and regional programs funded by ENI funds and/or EIB and EBRD
- The role and functions of OLAF should be widely promoted by local EU delegations in order to ensure that citizens outside the EU have sufficient knowledge on how to address this institution.