

EU Policy Comments

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CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.

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CEE Bankwatch Network position on the review of the European Neighbourhood Policy

Introduction

The European Neighbourhood Policy (ENP) was introduced by the European Commission in March 2003 as "... a new framework for relations with our eastern and southern neighbours." The Commission proposed that "the European Union should aim to develop a zone of prosperity and a friendly neighbourhood ... with whom the European Union enjoys close, peaceful and co-operative relations".

We welcome the fact that the ENP is built on "mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, promotion of good neighbourly relations, and the principles of market economy and sustainable development".

The implementation of the ENP gives countries the perspective and opportunity to move beyond cooperation to a significant degree of integration, including the provision of a stake for partner countries in the EU's Internal Market. Therefore, partner countries should develop and realise greater commitments towards the protection of human rights, seek to establish democratic institutions and the introduction of good governance practices, as well as promote the early integration of environmental concerns into policy planning.

Concerns related to ENP policy content

The ENP should more clearly reflect both the EU's and neighbourhood countries' shared values and commitments to move towards more democratisation and prosperity, to ensure energy security as part of the development of a framework for the sustainable supply of energy, to establish safeguards against environmental hazards and pandemic diseases both for the EU and the neighbourhood countries, and to decrease illegal migration and ethnic conflicts in the EU's neighbourhood area.

The primary goal of integration into the EU's economic area should insist on increased democracy through public participation in decision-making processes, the establishment 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.

It should be noted that the ENP policy document itself underlines that the promotion of security, stability, democracy, gender, environment, human rights and social dialogue are part of the EU's general policy approach. However, the policy itself and its instrument, the ENPI, provide few details on how to address and deliver the real promotion and establishment of these issues. In practice there is a lack of evidence to show that the economic dimension will be followed by social and environmental measures without any clear objectives, indicators and desired results governing how these latter measures ought to look.

When it comes to the eastern European neighbourhood partner countries, the assumption that political and social rights will flow and develop as an automatic consequence of economic liberalisation is only that – an assumption. The Action Plans, indeed, are more concerned with addressing the issues of economic transformation and the establishment of EU economic models than they are with achieving the establishment of social and environmental safeguards¹.

For example, the fast pace of economic liberalisation taking place simultaneously across almost all of Georgia's economic sectors is having a negative impact on the country's economy in a number of cases and is even preventing Georgia from enjoying its Most Favoured Nation² status, including the preferential system in the EU and GSP+³.

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- 1 Moreover, the Action Plans have a pronounced tendency to stress the importance of privatisation, including the privatisation of public services, something which is far from being widely accepted among the EU countries.
 - 2 The Most Favoured Nation status is a status awarded by one nation to another in international trade. It means that the receiving nation will be granted all trade advantages that any other nation also receives. The EU–Georgia Partnership agreement grants Georgia Most Favoured Nation status.
 - 3 The EU's Generalised System of Preferences (GSP) grants products imported from GSP beneficiary countries either duty-free access or a tariff reduction, depending on which of the GSP arrangements a country enjoys. In addition, a country can receive the special incentive arrangement for sustainable development and good

The legislative changes made in Georgia since joining the ENP and signing the Action Plan comply only with the economic liberalisation priority. New state policies were directed at the minimisation of state intervention through complete liberalisation and deregulation: roughly 85 percent of licensing legislation has been abolished, including in the food, industry and vehicle safety spheres. Thus, a number of controlling bodies have been abolished or have had their functions transferred to other organisations – as a result, a number of issues have been left without regulation.

The EU institutions have taken a critical attitude towards some of Georgia's reforms, principally those concerning environmental, labour, anti-monopoly and consumer rights issues. However, the Georgian government appears not to be in a hurry to change its course of rapid economic liberalisation, with both the environmental and social agendas continuing to be compromised by the economic agenda.

In general, the said economic reforms have largely failed to encourage political reform. The Partnership has failed to seriously address political issues, not only in the realm of security but also in terms of human rights, not least because of the aforementioned assumption of a causal sequential link with economic reform.

The ENP underlines the importance of sustainable development, yet in almost all of the Action Plans of the eastern ENP countries the development and implementation of National Sustainable Development Strategies is a long standing exercise rather than a

governance (the "GSP+") which provides additional benefits for countries implementing certain international standards in human and labour rights, environmental protection, and good governance. Georgia has enjoyed the GSP+ status from January 2006 up to the end of 2010. The duty free access covers around 7200 products, including products mostly in the agriculture and fishery sectors. In order to continue the GSP+ the Georgian government is required to comprehensively alter the national labour code that is discriminatory in terms of gender, significantly restricts the rights of employees, and is contrary to the ILO's core conventions.

specific framework that can provide the foundations for the overall development of the respective countries. The ENP countries' policy integration and reform processes should be addressing the real needs and aspirations of ordinary citizens rather than serving the so-called strategic interests of the EU and the ENP countries. Notably, in the majority of the ENP countries' Action Plans, agriculture, the eradication of poverty, the development of a reliable social security net and health services are completely lacking.

The ENP itself must mainstream environmental sustainability, through the conservation of ecosystems, natural resources and biological diversity, and explicitly address the issues of climate change and freshwater security in plans, programmes, policies and sectoral and regional priorities. Global public goods are a precondition for development and the ENP and related funding should further enhance the capacity of developing countries to mainstream environment and climate mitigation and adaptation across sectors and economic development plans.

ENP implementation methodology – The pros and cons of the Action Plans

According to the ENP policy document, “The method proposed is, together with partner countries, to define a set of priorities, whose fulfillment will bring them closer to the European Union. These priorities will be incorporated in jointly agreed Action Plans, covering a number of key areas for specific action: political dialogue and reform; trade and measures preparing partners for gradually obtaining a stake in the EU's Internal Market; justice and home affairs; energy, transport, information society, environment and research and innovation; and social policy and people-to-people contacts.” (Commission, 2004: 3)

It is further intended that the Action Plans (APs) are tailored to each individual country and their situation. One of the major advantages of the ENP APs is that the goals therein are defined quite broadly, giving governments opportunities to involve different mechanisms for their achievement. However, this becomes disadvantageous when indicators for the implementation of ENP APs are not defined; this

makes it difficult to measure the real success of implemented activities and to assess the effectiveness of the governmental strategy. Clear indicators, such as the requirement of compliance with EU law and/or International law and best practices, should be established in a participatory approach in each area, in order to measure annually, as well as overall, progress in implementing ENP APs. Increased public scrutiny would also give more incentives to governments to achieve concrete results.

The EU's conditionality in the case of the ENP is mainly “positive”. In this respect the EU does not punish the non-compliant state but withholds the reward⁴ and sometimes even grants extra money through the Governance Facility when good governance is seen to be taking place. However, while this “positive conditionality” has the potential to stimulate and deepen EU integration processes, it is important that ENP APs have a clear, measurable, time specific list of indicators related to the development of democratic institutions, human rights protection and environmental sustainability. The achievement of these indicators should be a pre-requisite in the performance review and planning of annual allocations for particular countries.

On a more practical level, ENP APs also lack concrete timetables, specific objectives and the identification of financial and human resources needed to implement the agreed-upon measures. They are often formulated in rather broad terms, lacking the precision and rigour with which gaps were identified in the initial country reports prepared by the Commission⁵. The objectives of APs, including those related to governance and the fight against corruption, are generally neither specific nor quantified and can not be easily monitored and compared.

The Commission issues the annual progress reports that assess the ENP partners' Action Plan

⁴ There are some exceptions, e.g. Belarus, where the EU has applied travel restraints on Belarus leaders, withdrawn access to the GSP7 (European Commission 2009) and some other restrictive measures that can be categorised as negative conditionality.

⁵ <http://www.ugbs.org/weru/eper/no7/bosse.pdf>

implementation. In general, annual reports are quite good, as the Commission staff tries to rely on all different available information, as well as on the input of local NGOs. However, the absence of a clear measurement and indicators system makes the reports less objective and handicaps the option of a targeted and specific follow-up on the report.

It should be mentioned that in each Action Plan the elaboration of national sustainable development strategy is described as a priority. However, this is in fact recognised as a formality by governments, and even in cases where such strategies exist, they represent stand alone documents rather than being integrated into key policy sectors.

Environmental protection and sustainable development should be incorporated as major priorities for the East ENP countries at both the national and regional levels, and they should be addressed by all new agreements (Association Agreements) and ENPI regulation. Currently, the Strategy Paper underscores the importance of sustainable development, yet the ENPI lists it among one of 25 priorities.

The Partnership Principle in ENPI

The ENPI regulation stresses that the Partnership Principle is applicable to any ENPI activities: "The partnership shall involve, as appropriate, national, regional and local authorities, economic and social partners, civil society and other relevant bodies". Furthermore, it requires that: "The beneficiary countries shall involve, as appropriate, the relevant partners at the appropriate territorial level, in particular at regional and local level, in the preparation, implementation and monitoring of programmes and projects." However, the regulation provides neither the basis for ensuring the implementation of the Partnership Principle in practical terms nor for setting up clear and common minimum standards for participation.

While the detailed design of partnership structures should be left to the neighbour countries themselves, the European Commission should publish guidelines on partnerships in order to ensure universal standards for the involvement of NGOs in all stages of ENP and ENPI programming and disbursement. NGO participation must be compulsory in all recipient countries, and clear and common minimum standards for participation must be developed.

The European Commission should also facilitate the

establishment and promotion of the TRIALOG process between the Commission itself, governments and civil society to discuss and assess different reforms under the ENP AP.

Transparency, accountability and public participation

The ENPI is the new instrument for East ENP countries. However, the low level of CSO involvement in ENPI programming, implementation and monitoring is partially based on CSOs having low awareness about the instrument, about the decision-making structure, etc.

One of the problematic issues is the non-availability of the documents even for consultation in national languages; instead they appear only in English, significantly reducing the circle of CSOs interested in and capable of addressing the issue. This is the case, for example, with the National Indicative Program (NIP) mid-term review for East ENP countries.

In general, all relevant documentation at national level, including the Action Fiche, are available in English. It turns out that contracts based on that Action Fiche are available for the public in some countries, but may not be accessible in other countries.

Independent verification and monitoring of the funds is crucial. Therefore the Supervisory/Monitoring Committees of projects and programs funded by ENPI should include civil society representatives. This practice is widely accepted under the European structural and pre-accession funds, and should apply also to ENPI funds.

Transparency and Public Participation in the Neighborhood Investment Facility

Transparency and Public Participation is also insufficient in the decision-making process of the Neighborhood Investment Facility (NIF). Within NIF, all decision-making power is shifted towards governments, the international financial institutions and relevant staff of the European Commission. There is no information disclosure policy that would enable the routine disclosure of NIF documentation, its functioning and the decision-making process. The only available documents are lists of already approved projects on NIF's website and annual reports.

At the same time, there are already a few cases where CSO organisations have expressed concerns regarding projects

funded by NIF due to their controversial nature, including harsh social and environmental implications (e.g. the Tbilisi Bypass railway project, Ukraine's Second Backbone high voltage corridor). CSOs have attempted to find out information about the processes of selection and preparation of projects to be financed through NIF, but have so far failed. Up to now, in the majority of cases the NIF money is invested in environmental, social and technical studies, and it is essential that NIF (and therefore the EU) acknowledges full responsibility and accountability for the implementation of controversial projects.

Anti-corruption measures and Budget support

It should be mentioned that although the fight against corruption remains high on the agenda of the European Neighbourhood Policy, the ENPI does not have any specific anti-corruption mechanisms. In general there is very little information available regarding the European Commission's anti-corruption measures and activities.

The two major weaknesses of the ENP as a policy instrument against corruption include the lack of corruption monitoring and benchmarking, and the insufficient involvement of civil society in the process. No specific anti-corruption mechanism has been put in place to ensure that European Commission assistance under the ENPI is protected from corruption.⁶ The European Commission relies mainly on such existing mechanisms and institutions as the European Anti-Fraud Office (OLAF) to minimise corruption risks in the ENPI.

According to ENPI regulation, in accordance with relevant EU regulations every agreement "*shall contain provisions ensuring the protection of the Community's financial interests, in particular with respect to irregularities, fraud, corruption and any other illegal activity*"⁷.

While in the case of project funding instruments the EU can ensure audits, in the case of General Budget Support (GBS) the possibilities of direct auditing is quite limited. On the one

⁶ <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=161>.

⁷ In accordance with Council Regulations (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Community's financial interests, and (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Community's financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

hand the GBS is presumed a best aid delivery tool that gives more opportunity to recipient governments to ensure THE implementation of national driven policy. On the other hand, it is assumed that budget support is more vulnerable to corruption than other forms of aid, as in the absence of effective domestic accountability mechanisms there is a substantial risk that budget support resources are captured by the political elite or allocated in partisan ways to specific ethnic groups or cronies⁸.

In general, in almost all of the East ENP countries the NGOs have access to information regarding budget processes, but there are difficulties concerning its monitoring and often NGOs are not consulted on budget support priorities.⁹ In spite of the fact that the EU budget support in practice mainly focuses on the public financial management system, in order to build financial integrity and prevent corruption there are still lots of problematic areas. For example, Georgia is far from achieving full budget transparency, at revenue source, sectoral and at every expenditure level. Even most of the information regarding budget incomes has been declared as confidential, not to mention the fact that budget information is not provided in an easily accessible format for citizens. Problems related to national procurement standards and practice is also one of the most vulnerable issues in Georgia's public policy sphere today.

Therefore, there is a need for the strengthening of anti-corruption propositions in ENPI regulation, related budget support mechanisms, including the routine access to relevant documentation and final agreements by CSOs in country, as well as increased public participation in setting priorities; and the participation of self-selected NGO representatives in Joint Monitoring/Steering committees should be obligatory.¹⁰

Given that 90 percent of the ENPI funds goes directly as budgetary support, it is important that general or sector budget support preparation, implementation, monitoring and evaluation is participatory. CSOs and, even more importantly, national parliaments should have an increased role in budget preparation and implementation. European Commission delegation staff should have clear procedures on public participation when it comes to Budgetary support.

To date, the experiences differ substantially, even within one country. In the case of Ukraine, during the preparation of the

⁸ UNCAC and the Introduction of Budget Support, U4 expert support, www.U4.no

⁹ Assessment for ENPI funding in Moldova, www.viitorul.org

¹⁰ Following the example of monitoring committees in pre-accession funds. In the case of Moldova, one NGO is represented in an external budget monitoring committee, however, according to research neither NGOs nor think tanks know either about the selection procedure or the existence of the NGO representative in the Committee.

Budget support for the environmental sector, the relevant European Commission delegation staff recognised that consultation with CSO actors was necessary. However, in the case of Budget support for the transport sector there was a clear lack of such recognition, which resulted in the blanket exclusion of environmental NGOs from the process of preparation and a lack of consideration being given to environmental and health issues in the strategy itself.

The ongoing issues and information during the preparation for budgetary support should also be widely disseminated by local European Commission delegations to provide the opportunity for wide public involvement. It should also be ensured that within the national bodies responsible for the public consultations there is proper understanding of the importance of wider public involvement in the process of preparing sectoral strategies and/or projects to be supported through budget support. Attention should also be given to the capacities (both technical and human resources) of these bodies to properly organise public consultations. The European Commission's technical assistance can be used as one of the tools to ensure both general understanding and the efficient capacities that national bodies need to conduct effective public consultations.

In addition, to ensure sustained funding over a longer period of time, it is important that budget adjustments should be made conditional on conformity with good governance indices, human rights indices and sustainability principles and predefined results.

ENPI, safeguard measures and compliance issues

It is important that environmental conditionality is integrated into the ENPI. The regulation must stipulate that any programme funded under the ENPI must be compatible with EU standards, norms and principles, not to mention all of the EU's global sustainability commitments. However, applying EU standards should not lead to the undermining or downgrading of applicable national standards (in other words, the higher and more rigorous standards should always take precedence).

Strategic Environmental Impact Assessments (SEA) must be carried out for all ENPI funding programs and major projects, not to mention the Action Plans, as well as the Country Strategy papers. Human rights as well as social impacts assessments have to become an integral component of SEA while no funds should be allocated for projects violating the EU's guidelines on SEA/EIA procedures.

In order to increase transparency and accountability specifically for major projects and programs, it is important to establish simple and easily accessible compliance

mechanisms to assess their compliance with EU and national (especially environmental) legislation. Building from the experience of the international financial institutions that are active in region, such mechanisms ought to cover large infrastructure projects and "major projects" as defined in the current EU funds regulation EC No 1260/1999, that is projects whose total cost exceeds EUR 50 million. Opportunity should be given to address some independent body and/or Ombudsman that can be used by the citizens of the neighbourhood countries to appeal in cases where their rights have been violated by ENPI financed projects and programs.

CEE Bankwatch Network considers that, in order to increase the sustainability of ENP/ENPI and its overall impact on the neighborhood area, the European Commission should undertake the following steps:

- Ensure that the European Neighbourhood Policy allocates equal importance to social and environmental aspects as it does to economic aspects. Sustainable development has to be mainstreamed through all ENP plans, actions and instruments. Global public goods are a precondition for development and the ENP and related funding should further enhance the capacity of developing countries to mainstream environment and climate mitigation and adaptation across sectors and economic development plans.
- The European Neighbourhood Policy's "positive conditionality" should have a clear, measurable, time-specific list of AP indicators related to the development of democratic institutions, human rights protection and environmental sustainability. The achievement of these indicators should be a prerequisite in performance review and the planning of annual allocations for particular countries.
- The European Neighbourhood Policy implementation methodology should include the establishment of a system for establishing smart objectives in the AP and a system of monitoring and evaluating the achievement of such objectives.
- The European Neighbourhood Policy and ENPI regulation should define minimum standards for the implementation of the Partnership Principle

and facilitate the establishment and promotion of the TRIALOG process between the European Commission, government and civil society.

- Therefore all ENPI agreements, including in General Budget Support, Sectoral Budget support program and Technical Assistance projects, should include appropriate paragraphs to ensure the involvement of civil society in the preparation and monitoring of ENPI programmes.
- The European Commission should further develop monitoring mechanisms and secure the invitation of NGOs to join ENPI monitoring committees. Furthermore, it is crucial to ensure independent monitoring through a team of European Commission, government and CSO representatives for the implementation of ENPI programs at the national level.
- The ENPI regulation should include provisions on protection mechanisms that prevent corrupt spending by governments, including elements of the EU's anti-corruption policy which requires that emphasis needs to be put on anti-corruption matters in dialogue with the ENPI countries and that these anti-corruption measures become an integral part of foreign and trade policy.
- Strategic Environmental Impacts assessments must be carried out for all ENPI funded programs and major projects, not to mention the Action Plans and Country Strategy Papers.
- The ENPI regulation should establish simple and easily accessible mechanisms to assess the compliance of major projects and programs with EU and national (especially environmental) legislation, through some independent body and/or the EU ombudsman. Such mechanisms can be used by neighbourhood country citizens to appeal in cases where their rights have been violated by ENPI financed projects and programs.
- The Neighbourhood Investment Fund should become transparent through the routine disclosure of information, as well as the defining of procedures for the involvement of CSO organisations in its decision-making processes.