

CEE Bankwatch submission to the ENP review process

I. Introduction

The Neighbourhood policy of the Union is driven by Art. 8 (1) of the Treaty of the European Union specifically targeting at special relationships with the neighbouring countries should be considered in conjunction with the art 21.

According to article 21 of the Lisbon Treaty, that defines general provisions for the Union's external action, the Union must "pursue common policies and actions", and support objectives such as "consolidate and support democracy, the rule of law, human rights and the principles of international law, preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter; foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development".

While the art. 21 has been less emphasized in EC documents on the ENP its relevance and the need of compliance with its provisions have been confirmed by the European Court of Justice judgements¹ and confirmed by the political and economic developments in the neighbouring countries in last 10 years. Building relations with the neighbours were the main focus is the economic interests of the EU and its members states could only strengthen inequality, which is among the driving forces for the conflict in the area. Since introduction of the ENP policy in 2004 the political, economic and social developments in the neighborhood region is not encouraging. Literally speaking, with 12 out of 16 of them now directly exposed to unresolved conflicts, territorial occupation or even war, and in some cases with the re-emergence or even consolidation of authoritarianism. It's quite far from the ring of neighbours that share and promote the the values of liberty, democracy, respect for human rights and fundamental freedoms, principles of equality and the rule of law.

To show a new approach and learn from the past the the new ENP policy should add value to EU objectives reduction of poverty, gender equality, sustainable employment growth, social and environmental investments. It should prioritise respect of socio-economic rights, the green and low carbon economic development with significant improvement of quality of life, with a specific measures for areas like energy efficiency, new renewables, resource efficiency, public transport development schemes, green infrastructure policies development and

¹ Refer to the EU Court of Justice judgement of 6 November 2008 Case C-155/07, where it is stated that the generally used definition of 'developing countries' is that used by OECD DAC, in absence of an EU official definition. The EU financing operations should foster the sustainable economic and social development of these countries, and more particularly the most disadvantaged amongst them; their smooth and gradual integration into the world economy; the campaign against poverty; the general objective of developing and consolidating democracy and the rule of law; the general objective of respecting human rights and fundamental freedoms; as well as compliance with objectives approved by the EU in the context of the UN and other competent international organisations. "Union policy in the field of development cooperation shall be conducted within the framework of the

implementation. It should be stressed the strong link between socio-economic and environmental misery in the MENA region and security concerns for the EU. Therefore the actions on priority “Addressing the security threats that arise from conflict situations, from organised crime and from terrorism, and developing the ability to jointly manage crises and disasters. “”, should be reconsidered and linked with the objectives to ensure sustainable development, rule of law and the respect of International Humanitarian Law and Universal Declaration of Human Rights

No development without democracy

The communication “Towards a new Neighborhood Policy” is launched in difficult times for the EU neighbouring countries both in East or West that includes escalating conflicts, treats for peace and increased economic and social stagnation, on the background of increased natural disasters caused by Climate Change.

The reviewed ENP and follow up actions in neighborhood region should ensure to eradication of poverty and protection of people’s socio-economic and cultural rights, the gender equality and sustainable employment growth, promotion of social and environmental security. All of that is not possible to achieve without building deep and sustainable democracy, that goes beyond of “well done” elections and includes the respect of Human Rights, fair and transparent accountable governance and zero-tolerance on corruption (including high-level governance actions to distort functioning of the state enabling leaders to benefits at the expense of public good²).

The basis for new ENP should be the protection of Human Rights and democracy and its should serve the starting point for EU Neighbors relation. The concept “More for more” that stands for a meritocratic ENP, that was supposed to lay foundation for a proper differentiation between neighbours, based on their performance rather than the geopolitical interests of the EU, simply does not work.

Long term sustainability of the neighbouring countries should not be undermined by short term economic gains. EU’s should start to use it’s all existing leverages, especially in Trade, to be taken seriously by reform-reluctant neighbours. The neighbours have in common is that they are more dependent on preferential EU market access than vice versa. This applies even to energy suppliers like Algeria and Azerbaijan, whose downstream networks are directed towards Europe and which desperately need the oil and gas sales if their governing regimes are to survive. The deterioration of Human Rights in Azerbaijan has been increased since signature of EU Azerbaijan Energy Memorandum in 2005 and by 2009 President Ilham Aliyev consolidated his authoritarian rule through referendum that eliminated presidential term limits. Meanwhile, the EU continues to be Azerbaijan's biggest export and import market with respective 48.3 % and 27.7% share in total Azerbaijan's exports and imports.

In the revised ENP there is need for clear proposal for the EU approach in relation to the countries with documented violations of the human and fundamental rights to avoid giving the impression that the EU values energy more than human lives. As for example in that case of Azerbaijan we would have expected that EU gives a clear sign of condemning the against human rights and CSO activists in the last two years by:

2 https://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/

- follow up on the instances harassment by Azeri authorities of human rights and CSO activists in order to ensure their legal protection;
- suspend any type of funding to the Azeri government, whether via the European Neighbourhood Instrument, European Investment Bank or the European Bank for Reconstruction and Development, until the situation with respect to human rights has improved and those arrested due to political motivations are released;
- ensure that any visa facilitation agreement includes measures to ban from entering the EU those directly involved in the harassment of CSOs; and
- introduce trade and economic conditionalities in dealings with the Azeri government to ensure the fundamental rights of Azeris are protected;

EU should ensure introduction of economic and trade conditionalities in order to protect fundamental rights as absolute must for enforcement of the coherence between the EU trade and energy policy with its development objectives as outlined in art.21 of the Treaty.

The EU should learn on the mistakes of the past. The European Court of Auditors report from June 2013 about the EU assistance to Egypt concludes that “The main human rights programme was largely unsuccessful. It was slow to commence and was hindered by the negative attitude of the Egyptian authorities. The Commission and the EEAS did not use the financial and political leverage at their disposal to counteract this intransigence. Some elements of the programme had to be dropped completely. Funds channelled through Civil Society Organisations (CSOs) were not sufficient to make desirable difference.” Therefore, there is a need to ensure that EU political and financial support is given based on Human Rights Agenda, rather than EU’s cognitive interests in trade and/or energy.

Public Participation and support for civil societies

Open and participatory process for defining the economic and social development objectives of the ENP countries with special focus on long term sustainability could be a key for addressing needs of younger generations and small scale business, poverty, inequality in the region and enforcement of civil rights. EU currently do not use all the its instruments to promote such approach in the neighbouring countries. We have observed improvements in transparency and partnerships requirements as regard to the European Neighbourhood Policy Instrument programming process, however the priorities, objectives, results and budget allocations are largely decided by the the EU and ENP official.

The preparation of Annual Action Plans also considers involvement of country stakeholders in the identification phase, while defining the specific priorities in Country Strategic Papers (CSP) and Neighbourhood Investment Plan (NIP) for ground actions and identifying the projects to be financed. However, involvement in the real project elaboration, implementation and monitoring process is still limited. Each project under the AAP receives a specific action fiche that describes almost all related aspects of the projects, including the performance criteria, the supervisory committee obligations, monitoring and etc. It is essential that CSOs largely participate not only in the preparation of programming documents in order to ensure that priorities and the response strategy are adequate, but also in the development of the particular programs/projects including the defining of performance criteria, participating in supervisory and monitoring committees, etc.

Usually, government advocates for priorities for which it has already prepared and approved sectoral strategy or a national program. However, those strategies may not be fitting the

sustainable development paths for particular sectors and/or may not be taking into account some marginalised groups, or may not address the needed real changes.

Therefore, the CSO representatives' involvement is essential for ensuring the effective dialogue between public and private sectors, to not only generate consensus on priorities, but also to identify who is best qualified to deliver the services.

There are a number of reasons that make NGO involvement in the monitoring of the ENP implementation important. Among other things, NGOs can:

- Promote increased transparency and the prevention of corruption and fraud;
- Prevent the lobbying of cognitive interests on the part of the private sector;
- Facilitate the elaboration of high-quality projects and absorption of funds;
- Promote the improvement of limited administrative potential;
- Facilitate the involvement of independent experts in designing and implementing the project in order to improve social integration, gender equality, environmental protection, and quality of life;
- Ensure effective use of European taxpayers' money;
- Promote the culture of inclusive democracy;
- Increase the sense of ownership among the public in order to legitimise projects as well as the European Neighbourhood Policy;
- Respond to increased demand for assistance on the part of the EU.

The 2009 report by the European Parliament calls on the European Commission, together with the partner governments "to further develop mechanisms for consultation with civil society and local authorities, in order to better involve them in the design and monitoring of the implementation of the ENPI and of the national reform programs; asks the Commission to speed up publication of the AAPs on its website and to persuade the partner governments to make their national programming documents regularly available to the public³".[\[1\]](#)

Last but not least on that point in majority of ENP countries there is a process of shrinking of closing of political space for CSOs, however, current capacities in majority of EU delegations remains limited and underdeveloped. With shrunked political space and increased amount of so called GONGOs in some of the ENP countries, its important that EU delegations not only develop the CSO road map, but ensure that support really address the independent CSOs. (as. an example, we can bring Azerbaijan, where in last july when the arrests of HR defenders started, EU local delegation announced the consultations for development of CSO road maps)

Accountability

The Action Plans have no clear timelines and benchmarks, either to assess country progress or overall ENP progress successes and failures. Further on as the policy covers a wide geographical dimension, with diverse countries and a wide range of policy areas including economic cooperation, political dialogue, democracy and energy the Action Plans are not specific enough for the countries needs, political, economic and social situation.

Reporting - Commission should enhance the process of the reporting of the achievements and failures by countries, based on indicators that would be elaborated during the formulation of Country Strategies and Action Plans. For countries, that signed the Association Agreement and DCFTAs, the implementation of the parts of the AA should be reported in annual progress reports. The quality report should be increased to reach the standards of the EU progress

reports in accession countries as EU reports proved to be a power tool for keeping the countries commitments to reform process .

In order to ensure the joint ownership, its important that EU become more proactively transparent both in its decisions, as well as publication of relevant documentation , including the ones related to ENI (like e.g. feasibility studies financed by EU's Neighbourhood Investment Facility (NIF) for the major projects funded by EIB or EBRD.

Therefore access to information and participation in decision making by CSOs and citizens is the key for increased visibility and ownership.

The regular joint scrutiny of ongoing programs and promotion of lessons learned and recognising the mistake will help to increase the overall ownership within the countries. Transparent, participatory and democratic process for decision making in the implementation and evaluation of the country programs should be made as legally binding requirements for use of the EU assistance similar to the European Code of Conduct on Partnership applicable for EU Structural and Cohesion funds.

Recognize the right to appeal of the non-EU citizens affected by the EU assistance and develop the mechanisms for its implementation. e.g. It can be done through the widening the mandate of European Ombudsman to review the cases of mal-administration also from non EU citizens as it already the practice with European Investment Bank's investments outside EU⁴.

Donor coordination

Its important that all EU member states increase their involvement in design and implementation of the new ENP policy and ensure that all its actions are undergoes under the agreed framework. Despite the fact that ENI regulation introduce the joint programming and increased the donor coordination among the Member States, there is still problems in enforcement of donor coordination and we witness a cases of conflicting projects financed by international financial institutions. There is need for EU leading on donor coordination between EU Member states and between EU, Member states financial institutions and International Financial Institutions.

Special attention should be played to the coherence of the the EU policy objectives and European Investment Bank (EIB) and European Banks for Reconstruction and Development (EBRD). The EIB is an the European Investment Bank is the in-house bank of the European Community. As a body of the European Union, the EIB states that its mission is to further the objectives of the EU by 'making long-term finance available for sound investment'. Therefore, the EIB should meet EU objectives through its loans, and thus promote sustainable development inside the EU and out. In addition, the EIB should ensure the additionality of its loans, the use its resources to arrange loans for projects that although financially and socially viable, have associated risks that make them unappealing to more commercial lenders. In other words, the EIB should be able to make worthy projects happen that otherwise would not happen. However, the EIB constantly fails to deliver on either of these obligations.

The new external lending mandate for the EIB, adopted in May 2013, envisage that he Neighbourhood and Partnership countries will receive €12 400 000 000, with the following indicative sub-ceilings:

(i) Mediterranean countries: €8 400 000 000;

⁴ MoU between European Ombudsman and European Investment Bank
http://www.eib.org/attachments/strategies/complaints_mou_eo_eib_en.pdf

(ii) Eastern Europe, Southern Caucasus and Russia: €4 000 000 000 57 .

The EC is asked to give opinion any single project considered by the EIB through the art.19 of EIB Statute procedure. The EC should ensure consistency between the EIB operation and the EU objectives through this inter-service consultation procedure and also through the role of the EC Director in the EIB Board of Directors.

The European Bank for Reconstruction and Development (EBRD) was established in 1991, in response to the major changes in the political and economic context in central and eastern European countries 58 . Today it has 65 shareholders, of which 63 are countries, and the other two are the European Union and the European Investment Bank. The EU itself owns three per cent of the capital of the EBRD. The EU, the European Investment Bank (EIB) and EU Member States collectively own 62.8 per cent of the capital of the EBRD. Since 2011 it has extended its operations to the Southern and Eastern Mediterranean (SEMED) countries. For now this includes Egypt, Jordan, Morocco and Tunisia.

According to its mandate, the EBRD must “foster the transition towards open market- oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economics.” It is also obliged “to promote in the full range of its activities environmentally sound and sustainable development” 5 .

However the results of the bank’s operations, even on its own terms, have been mixed. After 20 years of operations, only one out of the EBRD’s 30 countries of operation – the Czech Republic – has graduated. Many of the bank’s eastern countries of operation are far from being democracies and some cannot even be called market economies. Moreover, the structural weaknesses in western economies that served as models for the former eastern Bloc have become all too apparent during the financial and economic crisis⁶.

Concerns about human development impacts have long been asked of the EBRD, but the institution is not well-equipped to deal with these, either in terms of expertise or its systems for measuring its success. The bank does not take poverty eradication as its primary focus in its developing country operations, although this is required for EU action under Article 21.2 of the Treaty of the European Union. Instead, it hopes that economic transition will have positive impacts, without proof that this is actually what is happening. As the UK Department for International Development’s Multilateral Aid Review in March 2011 put it, “The link between the impact of EBRD’s programmes on transition, and their impact on people’s lives is not always well articulated”⁷.

The EC should seek to ensure consistency between the EBRD operation and the EU objectives through through the role of the EC Director in the EIBRD Board of Directors.

Need of coherence in EU approach on building sustainable economic development in the neighbouring countries

There is direct link between the respect of the social and economic rights and political stability in the region. The EC’s own assessment of ENP implementation in 2007 underlines that

5 EBRD: Basic documents of the EBRD, p.5

6 For a more detailed look at the issues raises here, see our 2011 report Are We Nearly There Yet? Dilemmas of Transition after 20 Years of EBRD Operations, <http://bankwatch.org/publications/are-we-nearly-there-yet-dilemmas-transition-after-20-years-ebdrds-operations>

7 DFID: Multilateral Aid Review summary - European Bank for Reconstruction and Development (EBRD), March 2011, <http://www.dfid.gov.uk/What-we-do/Who-we-work-with/Multilateral-agencies/Multilateral-Aid-Review-summary---European-Bank-for-Reconstruction-and-Development-EBRD/>

“poverty and unemployment, mixed economic performance, corruption and weak governance remain major challenges”⁸ for almost all partner countries. Furthermore, the reports also underline the fact that if the ENP cannot contribute to addressing conflicts in the region, then it will have failed in one of its key purposes.

In the same time the EU assumes that trade liberalisation as key to creating jobs and economic growth. Deep and Comprehensive Free Trade Agreements (DCFTAs) – covering all trade in goods and services – and measures to reduce non-tariff barriers through regulatory convergence is promoted as vital for increased economic integration with ENP partners. The DCFTAs process development and content are examples theme-self for lack of transparency and public involvement of the citizens and small scale business (both in EU and neighbouring countries) that will be directly impacted by their application. The provisions for of Trade Sustainability assessment of the impact of the DCFTAs on the social and environmental as regard is not used for development of the mitigation measures and adjustments of the DCFTAs. Sustainability assessment would have real impact on the improving of the DCFTAs sustainability only if the assessment is made in parallel with the DCFTAs development and is subject to transparent and inclusive public participation process similar to the EU Strategic Impact Assessment procedure. This approach could put DCFTAs on the path of compliance with sustainable development and other objectives of art.21.

The link between the different policy areas is not assessed – for example energy security objectives aiming at increasing the EU access to fossil fuel resources of neighbouring countries or neighbours of the neighbours has direct impacts on the Union objectives and obligations as relation to the human right, climate change and environment protection. Specific examples we could point about the conflict between EU Development objectives and energy policies are discribed in case studies about the Baku-Tbilisi-Ceyhan oil pipeline (Boom the blues: Big oil’s geneder impacts on Azerbedjam Georgia and Sakhalin <http://bankwatch.org/sites/default/files/boomtimeblues.pdf>) and Souther gas corridor (Pipe dreams: why public subsidies for Lukoil in Azerbaijan will not reduce EU dependency on Russia <http://bankwatch.org/sites/default/files/PipeDreams-LukOil-21Jan2015.pdf>) .

Development of measures to ensure concentration of the EU support for strategic priorities in plans, programmes, policies and sectoral and regional priorities and introduce ex-ante conditionalities to mainstream environmental sustainability, the conservation of ecosystems, natural resources and biological diversity, a 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 see necessary at least 25% are committed.

Increase alignment with the EU Treaty and Europe 2020 objectives, through “ 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 job creation sustainable and economic growth and job creation”, through real implementation of The EU 2020 Initiative “Resource efficient Europe” , that highlights the need to cooperate closely with key partners including those in neighbourhood in order to achieve the higher level of environmental protection.