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THE ENP AND 'MORE FOR MORE' CONDITIONALITY: PLUS QUE ÇA CHANGE ...

Steven Blockmans

1. ... PLUS QUE ÇA RESTE LA MÊME CHOSE?

The revolutionary upheaval in the southern Mediterranean and the disparate reforms in Eastern Partnership (EaP) countries have pushed the EU to revise its approach to the European Neighbourhood Policy (ENP). While EU institutions and Member States were caught by complete surprise by the so-called 'Arab Spring', a comprehensive discussion on the future of the ENP by the Council had – coincidentally – already been planned for the first half of 2011.¹ In March 2011, the European Commission and the High Representative presented some ideas on a new 'partnership for democracy and shared prosperity' with the southern Mediterranean.² In May 2011, they presented a full review of the ENP.³ Whereas these documents were presented as a strategic response to the sea change brought about by the revolts in the southern neighbourhood, the priority areas of the revised ENP are essentially the same as those of the 'old' ENP, which was launched in 2003, revised at different intervals since, and widely regarded as unsuccessful by analysts.⁴

With an emphasis on the promotion of democracy and the support for democratisation processes, reinforcing the rule of law, improving the respect of

¹ See Foreign Affairs Council conclusions, 27 July 2010, para 1.

² Joint Communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean*, COM(2011) 200 final of 8 March 2011, Brussels.

³ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A New Response to a Changing Neighbourhood*, COM(2011) 303 final of 25 May 2011, Brussels.

⁴ See J. Kelly, 'New Wine in Old Wineskins: Policy Adaptation in the European Neighbourhood Policy', 44 *JCMS* (2006), 29-55; S. Blockmans and A. Łazowski, 'Conclusions: Squaring the Ring of Friends', in S. Blockmans and A. Łazowski (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration* (The Hague, T.M.C. Asser Press 2006), 613-639; M. Cremona and C. Hillion, 'L'Union fait la force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy', *EUI Working Papers LAW* 2006/39; M. Cremona and G. Meloni, 'The European Neighbourhood Policy: A Framework for Modernisation?', *EUI Working Papers LAW* 2007/21 (2007); G. Noutcheva, N. Popescu and M. Emerson, 'European Neighbourhood Policy Two Years on: Time indeed for an 'ENP Plus'', *CEPS Policy Brief* No. 126, March 2007; G. Edwards, 'The Construction of Ambiguity and the Limits of Attraction: Europe and its Neighbourhood Policy', 30 *Journal of European Integration* (2008), 45-62; B. Van Vooren, 'The European Union as an International Actor and Progressive Experimentation in its Neighbourhood', in P. Koutrakos (ed.), *European Foreign Policy: Legal and Political Perspectives* (Cheltenham, Edward Elgar Publishing 2011), 147-171.

human rights, judicial reform, administrative capacity-building, fighting corruption, and economic modernisation, the revised ENP is *again* based on the principle of positive conditionality: the more governments in neighbouring countries implement reforms in the sectors outlined in the EU strategy paper, the more assistance the EU will offer. Rebranding the incentive-based principle of conditionality as ‘more for more’ cannot disguise the fact that the EU is essentially promising more of the same, thus reincarnating a weak pledge that has still not been reciprocated by commitments of the region’s leaders to democracy, the rule of law and political reforms.

In real terms, the EU has allocated €700 million in new grants for the Southern neighbourhood, in particular through the SPRING programme (Support for Partnership, Reform and Inclusive Growth) which provides additional funding to southern partners showing commitment to, and progress in, democratic reform: e.g., €90 million for Egypt to support the government’s socio-economic reform programme; €70 million to Jordan (to support the electoral process, to assist in reforming the justice system, to support efforts targeting public finance management, education and social security, and to help develop the private sector and foster job creation), in tranches of 30 and 40 million, with the second tranche linked to progress achieved in terms of democratic reform.⁵ Arguably, the sums mustered on top of the existing envelopes under the European Neighbourhood and Partnership Instrument are too small an incentive to bolster the change needed to secure a successful transition from authoritarianism to democratic rule in the southern Mediterranean.⁶

The revised ENP does offer one major innovation by indicating more clearly than ever before that the EU will restructure or even reduce financial aid and sectoral support for those governments of neighbouring countries which delay, impede or abandon reform plans. With the categorical reference to the principle of ‘less for less’, the EU has implicitly declared an end to the days that it would simply acquiesce to a retreat on reforms by ENP partners. However, while the introduction of negative conditionality cannot be dismissed out of hand, the problem with the less for less principle rests with its implementation of ‘other political measures’ ‘and targeted sanctions’. Two years on, the EU has unfortunately not a whole lot to show for in terms of implementing the ‘less for less’ principle, neither with regard to the eastern neighbourhood (e.g. Belarus, Azerbaijan),⁷ nor for the southern Mediterranean (with the exception of cutting

⁵ For these and other details, see European Union, ‘EU’s response to the “Arab Spring”: The State-of-Play after Two Years’, Press release A 70/13, Brussels, 8 February 2013. Towards the eastern neighbourhood “more for more” has been applied in the visa liberalisation process, allowing the EaP’s poster child Moldova to progress faster than the Ukraine of Victor Yanukovich.

⁶ This observation takes account of the sums generated through the EU-induced Task Forces for Tunisia, Jordan and Egypt, preferential loans granted by the EIB, and other collateral funding mechanisms. See J. Teorell, *Determinants of Democratization: Explaining Regime Change in the World, 1972-2006* (Cambridge, Cambridge University Press 2010).

⁷ See P. Pawlak and X. Kurowska, ‘EU foreign policy: more for more, or more of the same?’, *EU observer*, 5 October 2011: The results of the Eastern Partnership Summit in Warsaw on 29 and 30 September 2011 “clearly show that while the EU is taking a strong stance in its mid-Arab-Spring southern neighbourhood, it is repeating its old mistake in the post-Soviet east. Rather than paying respect to ‘more for more’ the EU has again turned a blind eye to lack of reform in the

EU support to war-torn Syria, the 'less for less' principle has not been used to signal the EU's dissatisfaction with, e.g., the ongoing abuse of human rights resulting from continued *de facto* rule by the military in Egypt and the lack of reform of a mistrusted police force and justice system in Tunisia).⁸ In its application, the revised ENP must therefore be seen as a continuation of the EU's inability and lack of political will to exert effective influence on (quasi-)authoritarian regimes to establish and maintain democratic reforms.

Politics aside, design is partly to blame for this. Both the joint communication of 8 March 2011 and the May 2011 strategy paper read more like blueprints for an assistance programme than strategic documents which offer a coherent approach to a clearly defined reform agenda designed to foster 'deep democracy' (yet another new label to distinguish the 'new' approach from the EU's hapless efforts at promoting democracy before the Arab revolts erupted). Going by its path dependency in the formulation of external relations,⁹ it is hardly surprising that in the revised ENP the Union again proceeds from the assumption that governments in the southern Mediterranean are ready to embark on a path of reform accompanied by EU assistance.¹⁰ The 'new' ENP fails to acknowledge the complexity of the transition processes in the Arab Mediterranean, the impact of the simmering conflicts between secular and religious movements, as well as the wide variety of other drivers for change in each of the countries concerned. This lesson took a while to sink in. Whereas the 2011 strategy paper still contained an unjustified assumption that the Tunisian development model could be projected to the other countries in the region, the 2012 ENP strategy paper's references to the changed internal power structures in Tunisia, Morocco, Egypt and Libya show that the Commission and EEAS have learned to distinguish the countries' different transition pathways.

Another structural shortcoming of the revised neighbourhood framework relates to what has already been noted in passing, i.e. that the EU's key documents still pack the diplomatic *langue de bois* which characterised the 'old' ENP. Ill-defined terms (e.g. 'deep democracy',¹¹ 'rule of law', 'governance re-

region by promising more financial support and deeper political co-operation. The EU's \$9 billion offer to Belarusian President, Alexander Lukashenko, in exchange for freeing political prisoners and holding free and fair elections (which do not require him to step down) is surprising, to say the least, and is an unfortunate reminder of the mistakes the EU has made in the southern Mediterranean. This suggests that the EU has not learnt from the Arab Spring and will continue to repeat the same mistakes it has made in the past." Another case worthy of the application of "less for less" concerns Azerbaijan. See J. Kobzova and L. Alieva, 'The EU and Azerbaijan: Beyond Oil', *ECFR Policy Memo* No. 57, May 2012.

⁸ There is a total absence of references to "less for less" in European Union, 'EU's response to the "Arab Spring": The State-of-Play after Two Years', Press release A 70/13, Brussels, 8 February 2013.

⁹ See, e.g., T. Risse, S. Ropp and K. Sikkink (eds.), *The Power of Human Rights. International Norms and Domestic Change* (Cambridge, Cambridge University Press 1999).

¹⁰ See E. Adler and B. Crawford, 'Normative Power: The European Practice of Region Building and the Case of the Euro-Mediterranean Partnership', in E. Adler, F. Bicchieri, B. Crawford and R. Del Sarto (eds.), *The Convergence of Civilizations; Constructing the Mediterranean Region* (Toronto, University of Toronto Press 2006).

¹¹ According to the May 2011 Joint Communication, the notion includes "free and fair elections; freedom of association, expression and assembly and a free press and media; the rule of

form') are sometimes used interchangeably (e.g. 'democratisation', 'democratic transformation', 'transition'). Moreover, the EU's mechanisms to assess whether the situation in neighbouring countries matches the revised terminology, or is apt for the application thereof represent a return to the *status quo ante* of donor-driven aid policies based on programmatic priorities and levels of absorption capacity.¹² Thus, the 'new' ENP stands in the tradition of 'old' bilateral action plans, representing nothing more than a vague and incomplete catalogue of reforms.

2. VISION IMPOSSIBLE?

Whether the 'more for more' and 'less for less' conditionality can produce a leveraging effect and inspire wholesale reform as desired by the EU is, to a considerable extent, dependent on the prospects offered by the Union to neighbouring states. Whereas the eastern neighbours have reason to be hopeful that they may be offered a membership perspective (perhaps as early as November 2013, at the EaP Summit in Vilnius),¹³ the southern neighbours have no such prospect as they are not considered 'European' in the sense of the EU membership clause in Article 49 TEU. Thus, the EU has to develop its strategic commitment to the South if it wants the ENP to steer the revolutionary momentum in the direction of what is spelled out in Article 8 TEU, i.e. the creation of 'an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation'.

Whereas extending economic integration has been the EU's method to beef up the ENP, slogans like 'close relations', 'everything but the institutions' and 'a stake in the internal market' have in the past ten years proven to be too vague and bureaucratic to rally support from the people on the streets of Cairo, Tunis and Amman, or to inspire governing elites to engage in difficult and politically costly legal, administrative and economic reform.¹⁴ One way of resolving this

law administered by an independent judiciary and right to a fair trial; fighting against corruption; security and law enforcement sector reform (including the police) and the establishment of democratic control over armed and security forces". In February 2012, High Representative Ashton and European Commissioner Füle sent an unpublished letter to EU Foreign Ministers on the operation of conditionality that added "the respect of other human rights" to this shopping list.

¹² N. Gros-Verheyde, 'Quand le «more and more» devient un «peu plus» c'est tout!', *Bruxelles2*, 8 July 2012 : "Sous couvert de préciser quelques termes et déplacer quelques mots, on place en fait la barre «démocratique» beaucoup plus bas. L'incitation différenciée liée aux critères d'avancée dans les réformes, en particulier à l'approfondissement de la construction démocratique, fait ainsi place aux seuls critères, classiques, d'absorption et aux priorités «définies d'un commun accord». L'incitation démocratique est renvoyée à un soutien «additionnel». Un petit plus, simplement... En quelque sorte, on revient à la situation *quo ante*. L'aide européenne – pourtant fixée au titre de l'Instrument pour la démocratie – ne sera pas évaluée et conditionnée aux avancées démocratiques mais à des seuls critères techniques (l'absorption) ou programmatiques (les priorités)."

¹³ See R. Sadowski, 'Commissioner Fule wants prospective EU membership to be offered to Eastern European countries', *Eastweek*, 7 November 2012.

¹⁴ For a legal analysis, see K. Pieters, *The Mediterranean Neighbours and the EU Internal Market: A Legal Perspective* (The Hague, T.M.C. Asser Press 2010).

lack of incentive is by offering neighbouring countries a real prospect of regional integration. Inspired by projects such as the Energy Community Treaty, the European Common Aviation Area and the draft Transport Community Treaty, the EU could explicitly inject 'legally binding sectoral multilateralism' into the ENP as a means to provide a tangible perspective of real long-term benefits from EU cooperation to Mediterranean partners and to reinvigorate the ENP for the next decade.¹⁵ The strong symbolism of such a well-defined project would enhance the political profile of EU relations with the southern neighbourhood where the Union for the Mediterranean (UfM) has faltered. While there is no silver bullet for EU engagement with the post-Arab Spring Mediterranean, the accession of Ukraine and Moldova to the Energy Community Treaty has already illustrated the potential of this approach in the Eastern Partnership.¹⁶

Another way to achieve those goals would be to increase the level of differentiation between individual ENP partners. The 'more for more' and 'less for less' conditionality approaches lay the basis for a stronger differentiation between neighbouring countries, one not based on geographic criteria but on merit in individual performances. Ironically, the success of the revised approach would steer the EU further away from its constitutional obligation to create 'an' (i.e. a single) area of peace and prosperity that Article 8 TEU calls for.¹⁷ However, the revised strategy does not set out which precise cooperation and association prospects might provide to the agents of reform in return for legal adaptation, administrative shake-ups and tightening belts. As said before, the EU continues to rely on the same instrument regardless of whether they are attractive to the recipient country. This applies to the bilateral ENP action plans, which may call for partly differentiated reform efforts at the micro level but which, due to their vagueness and the EU's path dependency, fail to offer a framework for the implementation of fundamentally different policies. The same applies to the offer of Deep and Comprehensive Free Trade Agreements (DCFTAs), the central component of the 'more for more' approach, whose structural distinctions between EaP countries (compare the templates for, e.g., Ukraine and Moldova) and among southern Mediterranean countries (Morocco, Jordan, Egypt and Tunisia) remain to be explained by the European Commission. The fact that the EU claims to differentiate between neighbouring countries through a merits-based approach, but is instead pushing model characteristics in the DCFTAs, irrespective of different conditions in partner countries, serves to confirm accusations of duplicity levelled against the ENP over the years.¹⁸

¹⁵ See S. Blockmans and B. Van Vooren, 'Revitalizing the European 'Neighbourhood Economic Community': The Case for Legally Binding Sectoral Multilateralism', *17 European Foreign Affairs Review* (2012), 577–604.

¹⁶ See S. Blockmans and B. Van Vooren, 'Strengthening the Strategic Choice Offered to the EU's Southern Mediterranean Neighbours', *CEPS Commentary*, 7 February 2013.

¹⁷ For a legal commentary on the EU's mandate under Article 8 TEU, see the contribution of Christophe Hillion to his working paper.

¹⁸ See T. Schumacher, 'New Neighbors, Old Formulas? The ENP One Year After the Start of the Arab Spring', in A. Garcia Schmidt and J. Fritz-Vannahme (eds.), *The Arab Spring: One Year After Transformation Dynamics, Prospects for Democratization and the Future of Arab-European Cooperation* (Gütersloh, Bertelsmann Stiftung 2012), 87–104, at 92–3.

Despite declarations to the contrary, the EU has continued its ‘one size fits all’ policy since the outbreak of revolutionary upheaval in the southern Mediterranean. Arguably, prevailing conflicts of interest between Member States, among themselves and with the Commission, EEAS and EP, only lead to the continuation of the lowest common denominator and affect the effectiveness and credibility of the revised ENP. Thus, much like earlier editions of the ENP strategy paper, the implementation of the revised neighbourhood policy is hampered by a variety of inherent structural weaknesses and contradictions. These are especially evident in the area of political transformation and also apply upstream, when considering the binding language of Article 8 TEU.

3. MITIGATING THE POTENTIALLY COUNTERPRODUCTIVE IMPACT OF “LESS FOR LESS”

The success of political reforms and democratic transformation in neighbouring countries is inextricably linked to improving the micro- and macro-economic situation, i.e. people’s living conditions. In the light of the prevailing socio-economic problems in almost all Arab Mediterranean states, a concern about the implementation of the revised ENP therefore pertains to the potential application of a “less for less” approach. Given that the reduction or cancellation of external support negatively impacts societal welfare, it is worth considering the option of partially detaching the application of negative ENP conditionality from those economic and social sectors that are most affected by structural (e.g. urban vs. rural; touristic coastal regions vs. agrarian interior) discrepancies: transport, energy, communication, distribution of water, health care, and others.¹⁹ Arguably, negative conditionality does not have to apply to all policy fields. The logic of “more for more” and “less for less” could be more deftly evoked in those non-negotiable sectors in which reforms primarily affect the (abuse of the) power monopoly of the ruling authoritarian regime: political accountability, independence of the judiciary and freedom of expression. Excluding certain socio-economic and humanitarian areas from the application of “less for less” may prevent potential veto players from exploiting socio-economic hardship to block those transformation processes already underway.²⁰ Although the ENP is – in all but in constitutional vocation – based on the principle of differentiation, the application of negative conditionality is expendable in the above-mentioned areas, not only because it would generate more socio-economic problems and contradictions without necessarily generating greater political and societal influence over local transition processes, but also because the basic socio-economic deficiencies are comparable in all Arab Mediterranean neighbouring states.

In sum, the revised ENP seems unsuitable as the sole agent for the implementation or support of democratic and socio-economic reforms and carries

¹⁹ Ibid.

²⁰ See N. Witney and A. Dworkin, ‘A Power Audit of EU-North Africa Relations’, *ECFR*, September 2012, at 58.

the risk of counteracting the normative objective which the EU has pursued for the last decade, that of transforming the outer periphery into one area of peace and prosperity built on democratic principles. A bolder revision is needed if the EU is to make good on its own promises, as indeed the expectations from both neighbouring countries and strategic partners.