

Does the ENP Respond to the EU's Post-Enlargement Challenges?

Nathalie Tocci*

Finding new ways to engage the southern and eastern neighbourhoods has become one of the major challenges facing the European Union today. The challenge derives from the wish to capitalise on the EU's most evident foreign policy success – enlargement and the political and economic transformation that came with it. The EU also wishes to prevent the exclusion effects that could emerge from new dividing lines in Europe. If badly managed, these could deprive countries further to the south and to the east of the peace, stability and prosperity dividends of European integration. Finally EU actors increasingly appreciate the global nature of threats, which cannot be adequately tackled through insulation. Hence, the need to find alternative ways of inclusion, by separating the concept of the "EU" from that of "Europe" at large.¹

* *Nathalie Tocci* is Marie Curie Fellow at the Robert Schuman Centre for Advanced Studies, European University Institute, Florence. This is a revised version of a paper presented at the conference, "The Challenges of European Neighbourhood Policy", organised in Rome, 26-27 November 2004, by the IAI, the Istituto per le relazioni tra l'Italia, e paesi dell'Africa, America Latina e Medio Oriente (IPALMO) and the Polish Institute of International Affairs, with the support of the Italian Ministry of Foreign Affairs, the Polish Ministry of Foreign Affairs and the Representation of the EU in Italy, and in cooperation with Compagnia di San Paolo, Centro Studi di Politica Internazionale (CeSPI), Friedrich Ebert Stiftung and Unipol Assicurazioni.

¹ J. Batt, D. Lynch, A. Missiroli, M. Ortega and D. Triantaphyllou, *Partners and Neighbours: a CFSP for a Wider Europe*, Chaillot Papers 64, (Paris: EU-ISS, September 2003).

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The need to face this challenge has been made explicit both in the Constitutional Treaty and in the EU Security Strategy.² In March 2003, the European Commission published its first official proposals for a Wider Europe Neighbourhood Policy. A year later, on the Council's request, it further revised its ideas, giving birth to the European Neighbourhood Policy (ENP). Having been developed concurrently, the European Security Strategy and the Neighbourhood Policy seem to dovetail neatly. While the former provides the general objectives based on an assessment of the EU's interests, the latter provides the strategy and the means to address them.

The ENP could provide an important part of the answer to the challenges facing the enlarged EU. In a post-enlargement context, the question of the Union's final borders has become a key strategic issue. Despite the success of enlargement, the EU cannot rely on this instrument indefinitely as a way to induce transformation beyond its borders. Doing so would ultimately make it unable to provide the very benefits that have inspired its neighbours to join.³

This article provides an assessment of the ENP, its promises and its potential deficiencies. While appreciating the potential value of the initiative and in deference to that value, the article raises several questions, concluding on a sombre note. The current policy, as it is being developed on paper, does not appear to draw sufficiently from the lessons of past and present external policies, particularly when it comes to the Union's contractual ties with third states. As such, it may well replicate many of the structural and practical defects of past experiences, without meeting the high expectations it has raised in the neighbourhood.

The promise: exporting peace, stability and prosperity to the neighbourhood

The objectives

If pursued coherently, the ENP is eventually intended to generate a whole set of new bilateral contracts: the European Neighbourhood Agreements. The ENP thus follows a well-trodden path in EU foreign policy, that of conducting external relations through different forms of contractual agreements. These agreements foresee varying degrees of integration in the EU, ranging from the accession process itself to weaker forms of association and partnership.

At the same time, this form of EU foreign policy is intended to foster long-

² European Council, "A Secure Europe in a Better World. European Security Strategy", Brussels, 12 December 2003 <<http://ue.eu.int/pressdata/EN/reports/78367.pdf>>

³ W. Wallace, *Looking after the Neighbourhood: Responsibilities for EU-25*, Notre Europe Policy Papers, no. 4 (Paris: Notre Europe, July 2003) <www.notre-europe.asso.fr>.

term structural change in the economic, political, legal and institutional spheres within and between third states. The ENP Strategy document explicitly mentions these goals. They include supporting regional cooperation, good neighbourly relations and conflict resolution; strengthening democracy, the rule of law, civil society; respecting international law, human rights and fundamental freedoms; and fighting corruption, organised crime, terrorism and weapons proliferation. The ENP, like other EU external policies, aims to establish closer relations with third states as both an end in itself and a means to contribute to structural change within and between these countries.

The geography

In principle the ENP also has a clear geographic scope and logic. It is intended for all the neighbouring countries that have been excluded from current and expected future rounds of EU enlargement. As such, Bulgaria, Romania and Turkey, currently in the accession process, have been excluded. Also excluded are the five Western Balkan countries currently in the Stabilisation and Association Process which, since the June 2003 Thessaloniki European Council, is expected to evolve into a full accession process.

Formally included in the ENP are Moldova and Ukraine and all the countries of the Euro-Mediterranean Partnership, apart from the two new EU member states (Malta and Cyprus) and EU candidate Turkey. The ENP is also on offer to Russia, if Moscow wishes to accept it, to Belarus, if progress is made towards democratisation, and to Libya, as the EU embargo is lifted and Libya enters the Barcelona Process. In light of the "Rose Revolution" in Georgia, the Union belatedly also included the three South Caucasus countries (Georgia, Armenia and Azerbaijan) in June 2004. This leaves out only Iraq and Iran, two neighbours of candidate Turkey. Commission officials informally explain that Iran and Iraq have been excluded because Turkey's membership is only expected in the long-term and will be preceded by a thorough reconsideration of the EU's external borders and border policy.

The instruments

The ENP is not intended to supersede the bilateral and multilateral ties that the Union currently enjoys with its neighbours. Its rationale is rather to provide value added to the existing panorama of relations by contributing new instruments and potential benefits to the neighbouring states. All this could in turn facilitate the Union's pursuit of its objectives in these regions, including the ones set out in existing multilateral fora such as the Barcelona Process. Indeed, lessons from the first Stability Pact for Central and Eastern

Europe, as well as from the second Stability Pact for the Western Balkans, teach that the EU is most successful in promoting sub-regional cooperation when it commits itself to enhanced bilateral relations with third countries.

The new ENP instruments have been summarised as "all but membership" or "sharing everything but institutions". In other words, the Union is offering extremely deep forms of integration, but not membership itself (and thus voting rights and representation in EU institutions). Ideas of this kind have been developing within the Commission since the 1999 Kosovo war and have been defined by former Commission President Prodi as forms of "virtual membership".

The thinking behind the ENP conceptualises the gains on offer as 'membership-minus' and at the same time foresees a policy process that emulates the method of formal accession. While common rules are to guide the EU's relations with all neighbours, the approach is bilateral and based on the neighbours' specific capability and willingness to move forward. While working towards European Neighbourhood Agreements, all neighbours will have an Action Plan with the EU that includes a selection of the various instruments on offer. The first batch of Action Plans (for Israel, Jordan, Moldova, Morocco, the Palestinian Authority, Tunisia and Ukraine) was published in December 2004. The next batch will include countries that are due to ratify their existing association agreements, that is, Egypt and Lebanon, as well as the three South Caucasus countries.

By far the most appetising carrots available through the ENP are trade liberalisation and measures preparing countries to join the EU internal market. The Action Plans also include reinforced political dialogue, participation in EU programmes, visa facilitation, and cooperation in infrastructure, energy, information, environment, research and social policy.

The ENP is also expected to include a European Neighbourhood and Partnership Instrument (ENPI). This financial instrument is intended to become operational by 2007 and to replace existing MEDA (for the Mediterranean partners) and TACIS (for the post-Soviet states) funding. The ENPI is to assist harmonisation with the EU *acquis* and support cross-border cooperation between the enlarged EU and its new and old neighbours. The assistance proposed by the Commission for 2007-13, if approved by the Council and Parliament, could also represent an important step forward with respect to present levels of funding. While the ENPI should amount to the total of TACIS and MEDA funds combined in 2007, by 2013 it is expected to rise progressively to double that sum.⁴

⁴ M. Emerson, "Beyond EU-25: Europe's Existential Dilemma", paper presented at the Conference of the Calouste Gulbenkian Foundation, Lisbon, 26-27 October 2004.

The pitfalls: a closer look at the ENP

Conditionality or partnership?

The dilemma. Drawing on the lessons of enlargement, the ENP aims to support long-term domestic reform, regional cooperation and peacebuilding in its proximity by providing new incentives to its neighbours. Underlying the language of incentives is the logic of conditionality. Yet with the ENP, the Union is faced with a dilemma. During the accession process, conditionality, despite its limits and highly intrusive nature, was a pivotal element in the successful transformation of the eastern European countries. It was the necessary and accepted means for fulfilling the goal of full membership. This was not only because of the legally binding nature of the accession process, but also because the process retained an ultimate element of democratic legitimacy through popular referenda.

In the case of the ENP countries, hardly any of the above conditions apply. Reforms induced or imposed by EU conditionality would have no democratic accountability. Nor would the people be called upon to ratify the process, nor would their elected leaders be represented in EU institutions in future. Furthermore, particularly in the political realm, many of the reforms called for by EU conditionality are viewed as existentially threatening to the domestic elites of third countries. Despite its specificities, the case of Turkey is particularly instructive in this respect. Throughout the 1990s, many of the reforms called upon by EU institutions on human, cultural and minority rights were viewed by some domestic actors in Turkey as too costly to enact for the "sake of" the EU. It was only when Turkey's accession process was launched that the country began to embark slowly upon a genuine process of reform. While underlying mistrust of European attitudes has been slow to disappear, Turkey's candidacy has symbolically demonstrated a European readiness to contribute, through inclusion, to Turkey's stability and security.⁵

Aware of the limits of strict conditionality applied outside of an accession process, EU rhetoric has emphasised other key principles: those of partnership and shared values. The discourse on partnership maintains that the Union shares the same values as its partners, and as such engages in cooperative and mutually beneficial relations with them. Yet partnership and interdependence, rather than describing the EU's relations with its neighbours, seem to derive more from an appreciation that strict forms of conditionality cannot or should not be applied to non-candidate countries.

⁵ N. Tocci, "Europeanization in Turkey: Trigger or Anchor for Reform?", *South East European Politics and Society*, Special Issue, vol. 10, no. 1, Spring 2005.

The same lack of clarity exists when it comes to shared values. The idea of shared values is mentioned in the EU Constitutional Treaty. Article III-193.1 states that the Union should develop relations with third countries which share its values. However, the same Article adds that the EU's external action should be designed to promote those values beyond its borders. As Marise Cremona aptly points out, if third countries already share the Union's values, what need is there for the EU to promote them?⁶

These internal contradictions have hindered effective action. The "human rights clause" included in all association agreements between the Community and its southern neighbours is a clear example of this. The clause contains two components. The first, "essential elements" component establishes human rights and democratic principles as essential elements of the agreements. No obligations are specified in this clause, suggesting that the parties already share and comply with these provisions. The second is the non-execution component, calling for "appropriate measures" to be taken in the event of a material breach of the agreement. In principle, the non-execution clause could justify the partial suspension of an agreement on the grounds of human rights violations. But in practice, no agreement, in whole or in part, has ever been suspended within the Barcelona Process. In line with the notion of partnership and not that of conditionality, the human rights clause has been used mainly as a justification to raise human rights issues within political dialogue and to propose financial assistance in support of political reform. These instruments' effectiveness in fostering democracy and human rights within the southern Mediterranean countries has been well below their potential.⁷

The tilt towards partnership. In its early stages, the ENP contained elements of conditionality. The 2003 Wider Europe Communication explicitly stated that: "in return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms ... the EU's neighbourhood should benefit from the prospect of closer integration with the EU".⁸ However, by 2004, this approach had been weakened significantly. In its strategy paper, the Commission continued to

⁶ M. Cremona, *The European Neighbourhood Policy: Legal and Institutional Issues*, paper presented at a Workshop on Democracy and Rule of Law Promotion organised by Stanford University, 4-5 October 2004.

⁷ I. Byrne and C. Shamas, "The Human Rights Implications of the MEDA Programmes", *Euro-Mediterranean Human Rights Network*, Copenhagen, 2002.

⁸ European Commission, "Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours", COM(2003) 104 Final, Brussels, 11 March 2003 (author's italics).

state that the ENP's objective would be to strengthen the commitment to democracy, human rights, the rule of law and good neighbourly relations. It also argued that the Action Plans would "*take into account* the extent to which these values are effectively shared".⁹ But the prevalent line of reasoning tilted towards partnership. The explicit (and questionable) premise of the ENP is the "mutual commitment to common values" between the EU and its neighbours, even if the Commission concedes that "the extent to which neighbouring countries implement commitments in practice varies and there is considerable scope for improvement".¹⁰ The Commission also made its stance on conditionality in the ENP clear: "the EU does not seek to impose priorities or conditions on its partners ... these will be defined by common consent and will thus vary from country to country".¹¹

As a result, the Action Plans have been negotiated by the EU and its neighbours, defining a set of priorities whose fulfilment should bring the neighbours closer to the Union. Reform priorities have been identified (for some countries more than for others) for the first group of Action Plans and, while the option is not precluded, there is no attempt to link potential benefits directly to accompanying obligations.

This approach is laudable in many respects. It is both less patronising than strict forms of conditionality and may well be more realistic. However, as the practice from other initiatives teaches, vague statements about shared political values without clear enforcement mechanisms could amount to little more than a set of lofty ideals. Without clear rules for how violations should be punished and progressive change rewarded, the EU's likely inaction will result at best in a diplomatic forum in which language is far removed from realities on the ground. At worst, it could damage the Union's credibility in these regions.

This is not to say that the Union should specify in minute detail how economic, institutional and social benefits are conditioned to unrelated political obligations. But the opposite – abandoning the option of conditionality and merely discussing democracy and human rights within political dialogue – is not an effective way forward either. There is ample room for manoeuvre between these two extremes, in which the Union could, both formally and informally, condition economic, social and institutional benefits to political and legal factors.

⁹ European Commission, "Communication from the Commission to the Council, European Neighbourhood Policy Strategy Paper", COM(2004) 373 Final, Brussels, 12 May 2004, p. 3 (author's italics).

¹⁰ *Ibid.*, p. 12.

¹¹ *Ibid.*, p. 8.

A Cost/Benefit Assessment

The decision on whether to engage in conditionality or to emphasise exclusively the notion of partnership depends pivotally on the costs of compliance with ENP obligations and the benefits on offer. Only if the potential gains are perceived to be sufficiently high relative to the costs, can the Union, if it so wishes, meaningfully attempt to exert some form of influence on its neighbours through conditionality.

Inclusion versus exclusion. In the early days, to increase the initiative's appeal, the architects of the ENP seemed to appreciate the importance of fudging the question of EU inclusion versus exclusion. In his speech in December 2002, former Commission President Prodi stated with typical EU 'constructive ambiguity' that the neighbourhood policy would not start with the promise of membership but would not exclude eventual membership either.¹² The mixed institutional set-up at the time reinforced this point: the ENP was initially dealt with by a Task Force which responded directly to former Enlargement Commissioner Verheugen, but which was led by the Deputy Director General of DG External Relations.

Since then, the Commission has become increasingly clear in stating that there are currently no membership prospects for the neighbours.¹³ And current institutional changes flank this logic: the ENP countries are being transferred entirely to DG External Relations, while the Western Balkans, excluded from the ENP in view of their membership prospects, are being moved from DG External Relations to DG Enlargement, joining Turkey, Romania and Bulgaria. By making these changes, the Commission has effectively drawn the EU's final frontiers (for the foreseeable future). The ENP's geographic scope reinforces this point. By grouping Moldova and Ukraine together with the southern Mediterranean countries which have no prospect of joining the Union, the Union has sent clear signals concerning its final borders.

When it comes to the Mediterranean, this is not necessarily a problem. Apart from the 1987 Moroccan application for membership and minority voices in Israel calling for full EU accession, no southern Mediterranean country realistically aspires to entering the Union. The same can be said for Russia and Belarus. For the time being, the South Caucasus countries, while

¹² Quoted in Wallace, *Looking after the Neighbourhood*.

¹³ Enlargement Commissioner Günther Verheugen's speech at the Prime Ministerial Conference of the Vilnius and Visegrad Democracies, Bratislava, 19 March 2004 (SPEECH/04/141).

aspiring to membership in principle, are aware that the time is not ripe and are content with their long-sought inclusion in the ENP. However when it comes to Moldova and Ukraine, denying the prospect of membership, while rightfully lowering expectations there, acts as a major disincentive. No matter how valuable the ENP instruments may be (and some such as visa facilitation could indeed be very valuable), to the extent that they are viewed as a second-class substitute to full membership, they are not appreciated. While joining the EU is perceived as highly desirable by these neighbours, joining the neighbourhood, irrespective of its gains, is simply not.

The value of the gains. But even in the case of neighbours with no intention of joining the Union, the ENP may come up against limits deriving from insufficiently valuable gains. In the case of Belarus, President Alexander Lukashenko does not appear interested in establishing closer ties with Brussels. His foreign policy remains firmly anchored to Russia, on which Belarus is highly dependent. In the case of Russia, Moscow has already made its underlying lack of interest in the ENP explicit. Rather than negotiate an Action Plan with the Commission that would entail a whole array of domestic reform priorities, Moscow is happier to pursue the agenda outlined at the 2003 St. Petersburg summit.

With all the other countries, the Commission has begun to set out long lists of tailor-made benefits on offer in the Action Plans. Yet several questions arise when looking at these promises. Some countries, like Israel, already enjoy highly developed ties with the Union. The Israel Action Plan foresees numerous measures to strengthen and deepen the relationship. But in the light of the existing relationship, are the additional benefits sufficiently valuable to Israel to allow the EU to gain significantly more political influence? Isn't the issue rather that the Union has been unwilling to use its already high potential influence on Israel?

Other countries of the south and southeast would greatly value the liberalisation of the four freedoms. In particular, the liberalisation of agriculture markets, free movement of persons and visa facilitation into the EU could offer important benefits. It seems highly unlikely though that the Union will be willing to extend these internal market freedoms to them. The fear of terrorism, organised crime and illegal migration has induced most Europeans, leaders and publics alike, to retain a "fortress Europe" mentality when it comes to the south. The member states have already clarified that the ENP can, at the most, offer three of the "four freedoms" (excluding the free movement of persons). It is also highly debatable whether the Union would consider full liberalisation of its protectionist agriculture markets to the south. Thus, what is it exactly that the ENP offers, above and beyond

the current association agreements that many of these countries already enjoy and are hardly used to full potential?

The costs of compliance. Last but not least are the costs of compliance with the provisions of the ENP. The policy offers the neighbours a "stake in the single market". Yet such a stake requires costly harmonisation with thousands of pages of minute laws, rules and regulations of the *acquis communautaire*. In areas such as Justice and Home Affairs, harmonisation would also be politically (as well as administratively and financially) costly, given that it often entails hindering free access to kin-communities in neighbouring states. To top it all off, harmonisation would not culminate in accession and thus with voting rights and representation in EU institutions. As such, without significant financial and technical EU support, it appears unlikely that most neighbouring countries will have either the administrative capability or the political will to undertake this arduous legal and administrative revolution. Moreover, given that the prospect of accession is excluded, it remains unclear whether the "Europeanisation" of the neighbourhood ought to take this precise "EUisation" form.

The danger of political discretion

An effective neighbourhood policy would call for the automatic entitlement to rights when obligations are fulfilled and the automatic withdrawal of benefits when they are not. Yet such automaticity is never present in practice. Beyond the contract lie the political imperatives of EU actors. The eastern enlargement occurred despite the fact that some conditions were not fulfilled. The importance of the fifth enlargement went far beyond the minutiae of compliance with the *acquis communautaire*. The same is true for the withdrawal of a benefit. Suspending EMP association agreements would eliminate the contractual links between the EU and Mediterranean states, and thus reduce both the gains the Union derives from these countries and the potential source of influence over them.

Some degree of political discretion in bilateral relations is inevitable. However, when blatant violations persist without consequences or when benefits are not granted despite the general fulfilment of contractual obligations, then the EU's own credibility is damaged. When other conditions unspecified in the contract govern the Union's relations with third states, then EU policy loses its effectiveness.

The specificity of EU-Israel relations. The dangers of political discretion exist with each and every neighbour. However, the danger becomes critical

when a third country has influence over the Union itself. The case of EU-Israel relations is particularly important in this respect. Despite the current mood of Euroscepticism prevalent in Israel, most Israelis greeted the ENP with enthusiasm. The ENP makes it possible to engage in deeper socio-economic integration while pursuing bilateral relations beyond the Israeli-perceived straightjacket of the multilateral Barcelona Process.

From a European perspective, however, the risks of proceeding on this track are two-fold. First, there is the consistency of Europe's political message. In October 2004, the Commission in Brussels was working on finalising the Israel Action Plan the same week as the Council of Ministers in Luxembourg strongly condemned the Israeli incursions in Gaza. While the EU is reluctant to sanction any state (not only Israel), the non-conditional extension of additional benefits to a country the EU harshly condemns in its declaratory diplomacy is paradoxical to say the least.

Second and most important, there are the legal repercussions of extending additional benefits to Israel. To date, the EU has been aware of but has failed to rectify Israel's material breach of its association agreement, a breach deriving from the fact that Israel has applied its preferential trade agreements to the territories it has occupied since 1967. In order to rectify this problem without antagonising Israel, the Commission has sought a "technical arrangement" to lighten the administrative burdens on the customs authorities of both sides, without requiring Israel to end its malpractice. However, accepting this arrangement and proceeding on this basis to upgrade the bilateral relationship, particularly on trade-related matters (for example by including Israel in the system of pan-Euro-Mediterranean cumulation) could entail the Union's legal acceptance of Israel's current breach. This would, in turn, make EC law and practice incompatible with both international humanitarian law and the stated objectives of the ENP and the European Security Strategy.

Conclusions

In principle, the ENP could offer an important response to challenges stemming from the EU's troubled neighbourhood. Based on the awareness that enlargement cannot continue indefinitely and that accession has proven to be the most tangible success of European foreign policy, the architects of the ENP have drawn key lessons from past EU experiences. They have sought carrots alternative to full membership but still valuable enough to induce progressive reform within the neighbourhood while allowing for deeper levels of integration

The ENP could also serve to rectify an important structural defect that

has afflicted the enlargement process, that is, "time inconsistency".¹⁴ There are two important aspects to this. The first is the disincentive to reform in the short term. In the accession process, expected reforms are demanded in the short and medium run, but the actual delivery of the benefit (membership) occurs in the long run. At the same time, the unpredictability of the long term reduces the value of the carrot and in turn the incentives for short-term reform. Time inconsistency may also induce domestic policymakers to delay reforms until delivery of the benefit draws closer. This is particularly true when reforms are viewed as risky or costly. Second, separating the question of long-term membership from the gains of integration could serve to address the immediate challenges that arise from the creation of new dividing lines in Europe. The ENP could to some extent rectify these problems in so far as the benefits on offer – far more varied and graduated than the ultimate carrot of membership – are delivered gradually over time.

In its current form, however, the ENP has absorbed several of the defects that affected past EU policies, from enlargement to the EMP. More systematic thinking about the incentives, the benefits and the costs, as well as the potential dangers of political discretion would be desirable at this early stage. Without it, the policy's value added could be well below its potential. This would be a lost opportunity for an initiative that holds the promise of becoming one of the major elements of the EU's future foreign policy agenda.

¹⁴ See G. Noutcheva and N. Tocci, "Europeanization and Secessionist Conflicts: Concepts and Theories" in Coppeters, B., M. Emerson *et al.*, *Europeanization and Conflict Resolution* (Ghent: Academia Press, 2004) pp. 13-62, p. 43.