



POLICY NOTE OF WORKING PAPER 5.24

Approximation of Laws under the European Neighbourhood Policy: A Typology of the Challenges and Obstacles that Lie Ahead

May 2013

OBJECTIVE

The completion of the two waves of enlargement of 2004 and 2007 obliged the EU to redefine its relations with those neighbours who will not join it as Member States, at least in the short and medium term. This vision underlies the basic objective of the European Neighbourhood Policy (ENP). In return for enhanced trade and investment relations, with resultant improved access to the Internal Market, the ENP requires, *inter alia*, the EU's neighbouring countries (NCs) to align their legislation and regulatory regimes, to an extent to be negotiated, with the EU's *acquis communautaire*. The purpose of this Working Paper and its accompanied Policy Note is to offer a typology and an analysis of the various factors that adversely affect this strategic objective of the ENP or render it more difficult to attain, with a view to rendering the ENP a more effective transformative instrument. The typology and analysis offered are meant to add to the work of Work Package 5, which is focuses on the socio-cultural and institutional environment in the NCs and the manner in which such environment affects the transformative role of the ENP.

MAIN RESULTS AND POLICY IMPLICATIONS

The ENP is designed to upgrade bilateral and regional relations between the EU and its NCs in the Middle East, North Africa and Eastern Europe, integrating their economies, to an extent yet to be determined, with the enlarged EU, in order to contribute to increased stability, security and prosperity for the EU and those neighbours.

Approximation of laws is a prominent feature of that vision. In return for enhanced trade and investment relations, with resultant improved access to the Internal Market, the ENP requires, *inter alia*, the NCs to align their legislation, standards and regulatory schemes, to an extent to be negotiated, with its *acquis*. Thus the EU attempts to use the ENP, in general, and the concept of approximation of laws, in particular, as a transformative instrument to promote economic and resultant socio-political reforms in the NCs.

The extensive reach and usage of the *acquis* by the EU in its external relations has been researched, mainly from the perspectives of integration theory and external governance. Scholarship indicates that the credibility of positive conditionality, the effectiveness of socialisation processes and the robustness of domestic institutions in the NCs are the main factors that may determine the effectiveness of the transformative impact of the ENP.

The ENP's ambitious agenda, coupled with its ten years of operation, when examined in the light of its potential benefits analysed in this Working Paper, raised expectations for comprehensive alignment of legislation by the NCs with resultant significant socio-economic reforms. Yet the results of the ENP on the eve of its tenth anniversary are much less impressive and the initial high hopes for a comprehensive and systematic legislative alignment process with resultant economic and political transformative consequences were not realized. The findings of the Working Paper, corroborated by scholarship conducted by other members of the SEARCH

Consortium, indicate that such alignment is limited, partial, selective and uneven. In that respect the ENP, which was modelled on the institutional and procedural experience of the successful Enlargement Policy and which adopted the enlargement's ethos, instruments, procedural and institutional aspects, bears more resemblance to the unsuccessful European Mediterranean Policy.

The fear raised by Bartlett, Čučković, Jurlin, Nojković and Popovski of the SEARCH Consortium, that if the EU fails to pursue a more active and robust role, the ENP's promise of legislative regulatory and institutional reforms may stagnate, run out of steam, or even backfire, appears to be more daunting than ever. Such eventuality may have severe repercussions for the EU, a verity that was acknowledged by it in May 2013: "...the EU's credibility as a global player will depend to a great extent on its capacity to act decisively in its neighbourhood". (JOIN(2012) 14 final, at 21).

This Working Paper addressed this disappointing state of affairs by offering a typology and analysis of the various factors that hinder the more meaningful realization of the approximation of laws agenda embodied in the ENP. Drawing on scholarship that examines the effectiveness of "accession Europeanisation" and relying on the work conducted in the spheres of external governance and Europeanisation, it analyses the various factors that hinder the more meaningful realization of "neighbourhood Europeanisation", classifying them according to whether they pertain to the ENP itself (*e.g.*, lack of meaningful incentives, lack of definitiveness and weak mechanisms of conditionality), to the EU (*e.g.*, expectation-capacity gap, weakening trade prominence), to the NCs (*e.g.*, local perceptions, veto players, institutional weakness and high adaptation costs) or to the interface between the EU and its NCs (institutional and normative mismatch). The analysis was intended to be conducted in a comprehensive and holistic manner, thereby attempting to avoid an EU-centric perspective, which is characteristic of much of the scholarship in this area.

This Working Paper does not purport to establish which factor most hinders the transformative agenda of the ENP; whether it is the deficiencies of the rationalist

logic of consequentialism (in accordance with which instrumental calculations and strategic adaption are prejudiced by lack of credible positive conditionality) or the weakness of the cognitive-sociological, identity-forming logic of appropriateness (in accordance with which the social learning processes of engagement, argumentation and persuasion are less effective in the ENP context). Instead it attempts to advance more nuanced arguments.

First, the ENP's light definitiveness and legalism and weak mechanism of conditionality adversely affect its effectiveness. Second, this light legalism coupled with the lack of "joint ownership" between the EU and the NCs in formulating and implementing the ENP should not be perceived solely in a negative light, the Working Paper identifying some of the positive repercussions of these features. Third, the EU should offer a much more comprehensive and generous set of incentives in order to reinforce the mechanisms of positive conditionality and overcome veto players in the NCs. Fourth, positive conditionality should be re-oriented more towards trade and regulatory expectations as opposed to political expectations. This reorientation is especially warranted *vis-à-vis* NCs such as Israel, where strong veto players exist. Yet, given that the NCs have no prospect of becoming EU Member States in the short and medium term and in light of the (almost ten years) failure of the ENP to offer alternative meaningful incentives, it will be very difficult for the EU to re-establish, at least in the short-term, the credibility of the ENP's positive conditionality. This difficulty (being accentuated during the current crisis in European leadership, in economic and monetary matters, and the ensuing rise in Euro-scepticism), only underscores the importance of instruments of social learning and institutional building in order to enable the ENP to serve as a robust, comprehensive, consistent and long-lasting (economic and political) reform anchor. The EU should thus do more to establish enhanced cooperative, closer institutional linkages and networks between the EU technocracy and the technocracies of the various NCs, linkages and networks that may better succeed in advancing, on an *ad hoc* basis, specific-issue, trade-related, less politicized regulatory and legislative alignment. The EU's Twinning programmes and the full or partial opening of other EU programmes and institutions to the membership of the NC's may prove to be highly instrumental in that regard. Yet as this Working Paper has attempted to establish, the EU is continuing to surmount challenges in the

spheres of social learning and institutional building. The EU together with the NCs should rise to these challenges.
