



PRESS RELEASE OF WORKING PAPER 5.24

Report on 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 run. 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 European 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 is to offer a typology and an analysis of the various factors that adversely affect or render it more difficult to attain this strategic objective of the ENP. The typology and analysis offered are intended to add to the work of Work Package 5, which is focused 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 perspective of integration theory, external governance theory and the multi-level governance approach. Scholarship indicates that the credibility of positive conditionality, the effectiveness of socialisation processes and the robustness of domestic institutions 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.

This Working Paper addressed this disappointing state of affairs by offering a typology and analysis of the various factors that hindered a 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 those factors that obstruct a more significant 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 aspires to be comprehensive and holistic, thereby attempting to avoid an EU-centric perspective, which is characteristic of much of the scholarship in this area.

The 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 the Working Paper advances more nuanced arguments. First, the ENP's light definitiveness and legalism and weak mechanism of conditionality impair its effectiveness. Second, this light legalism coupled with the lack of EU-NCs “joint ownership” in formulating and implementing the ENP should not be perceived solely

in a negative light, the Working Paper identifies 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, *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 year failure of the ENP to offer alternative meaningful incentives, it will be very difficult for the EU to re-establish the credibility of the ENP's positive conditionality. This difficulty (being accentuated during the current crisis in European leadership, and in economic and monetary matters, and the ensuing rise in Euro-scepticism), only reinforces 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.

Yet as this Working Paper has attempted to establish, the EU continues to surmount challenges in the spheres of social learning and institutional building. 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, which acknowledged that verity 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). The EU together with the NCs should rise to that challenge.
