The 2015 Review of the European Neighbourhood Policy

Opportunities and challenges to enhance neighbourhood relations

LLM Paper

by Arne Cools

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Foreword

After five years as a regular law student and one year in the LLM programme, this thesis serves as an end to my academic track. Therefore, I would like to use the opportunity to express my gratitude to everyone who guided me through this process. Without the assistance of my family, and especially my grandmother, I would’ve never been able to stay focussed on my studies. I also want to thank my friends and girlfriend for the support and the extra-curricular activities that were necessary to maintain a healthy work-life balance.

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Thank you.

Arne Cools
May 2017
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### Abbreviations

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<tbody>
<tr>
<td>AA</td>
<td>Association Agreement</td>
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<td>AP</td>
<td>Action Plan</td>
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<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<td>CoR</td>
<td>Committee of the Regions</td>
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<td>CSDP</td>
<td>Common Security and Defence Policy</td>
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<td>CSO</td>
<td>Civil Society Organisation</td>
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<td>DCFTA</td>
<td>Deep and Comprehensive Free Trade Area</td>
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<td>DCI</td>
<td>Development Cooperation Instrument</td>
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<td>EaP</td>
<td>Eastern Partnership</td>
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<td>EEAS</td>
<td>European External Action Service</td>
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<td>EESC</td>
<td>European Economic and Social Committee</td>
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<td>EFI</td>
<td>External Financial Instrument</td>
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<td>EIDHR</td>
<td>European Instrument for Democracy and Human Rights</td>
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<td>EMAA</td>
<td>Euro-Mediterranean Association Agreements</td>
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<td>EMP</td>
<td>Mediterranean Partnership</td>
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<td>ENI</td>
<td>European Neighbourhood Instrument</td>
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<td>ENP</td>
<td>European Neighbourhood Policy</td>
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<td>ENPI</td>
<td>European Neighbourhood and Partnership Instrument</td>
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<td>EP</td>
<td>European Parliament</td>
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<td>ESS</td>
<td>European Security Strategy</td>
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<td>EUGS</td>
<td>European Union’s Global Strategy</td>
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<td>FAC</td>
<td>Foreign Affairs Council</td>
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<td>FTA</td>
<td>Free Trade Area</td>
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<td>IcSP</td>
<td>Instrument contributing to Stability and Peace</td>
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<td>IPA II</td>
<td>Instrument for Pre-Accession Assistance (2014 – 2020)</td>
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<td>IPA</td>
<td>Instrument for Pre-Accession Assistance (2007 – 2013)</td>
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<td>LRA</td>
<td>Local and Regional Authorities</td>
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<td>MFF</td>
<td>Multi-Financial Framework</td>
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<td>NEC</td>
<td>Neighbourhood Economic Community</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>NIS</td>
<td>Newly Independent States</td>
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<td>PCA</td>
<td>Partnership and Cooperation Agreement</td>
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<td>TEU</td>
<td>Treaty on the European Union</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>UfM</td>
<td>Union for the Mediterranean</td>
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Introduction

The European Union suffers from both an internal as external crisis. Internally, the euroscepticism in the different Member States is increasing as is shown by several Eurobarometer surveys. The clearest example to that extent is the previously unseen departure of the United Kingdom out of the Union, the Brexit. Those internal problems also affect the outlook and responsiveness of the Union towards the rest of the world. The reluctance of intervening in the Arab Spring or after the annexation of Crimea was therefore not surprising.

In the light of those events, this LLM Paper will assess the legal characteristics of the European Neighbourhood Policy from its conception in 2004 until the latest review of 2015. After a historical overview of the early relations between the Union and its neighbourhood and the political process towards the conduction of the ENP, the main objectives and instruments of the first version of the ENP will be examined. There will also a comparison be drawn with the pre-accession methodology together with an analysis of the shortcomings.

In addition, the 2011 Revision will be evaluated, including an analysis of how effective the new response to a changing neighbourhood was. This is of the utmost importance to understand the next chapter concerning the 2015 Review as the core of this LLM Paper.

This 2015 Review makes a significant shift from the approach that was proposed by the 2011 Revision and implemented in the European Neighbourhood Instrument, the financial regulation, in 2014. It thus seems that potential discrepancies could occur between the new approach focussing on stabilisation and the former emphasis on deep and sustainable democracy.

The question is however to what extent the 2015 Review could be implemented in the view of the 2017 mid-term review of the ENI while dealing with several obstacles. Those obstacles and potential solutions will be scrutinized in the last chapter after which a conclusion shall be made.
Chapter 1. General Overview

1.1. **Conception of the European Neighbourhood Policy**

1.1.1. **Historical overview**

The European Union gradually became an increasingly big institutional actor in a globalizing world. Therefore, it needed to shift their focus from solely internal policies to a more outward-looking approach with comprehensive foreign policy instruments in order to have a firmer voice in the world.

In the eastern neighbourhood, the EU concluded Partnership and Cooperation Agreements (PCA) with the Newly Independent States (NIS) that arose from the aftermath of the collapse of the Soviet Union, concerning trade and political dialogue elements but without perspective on neither membership nor accession to the Union. Those PCAs replaced the earlier 1989 trade agreements with the USSR as bilateral agreements with every individual newly emerged state.

In the southern or Mediterranean neighbourhood, a number of largely declaratory policies and several legally binding agreements already existed for a long time when in 1995 the Barcelona Process created a new and more holistic Mediterranean Partnership (EMP). Contrary to the approach with the eastern neighbourhood, there was originally a stronger emphasis on the regional dimension that complemented the bilateral Association Agreements (AAs). Both the PCAs and the AAs are still in force as bilateral agreements and play a role as a monitoring system for the Action Plans (APs) in the actual European Neighbourhood Policy (ENP), which will be dealt with later. The flaws and modest contributions

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4 The PCAs with Ukraine, Moldova and Georgia were replaced by AAs including a DCFTA.
to the area’s stability and economy that were recognised for both the east and south, despite
the ambitious outset, led to the rethinking of the Union’s neighbourhood policy.

Subsequently, the process towards the ENP as we know it today started with a joint letter of
the High Representative for the Common Foreign and Security Policy Solana and the
Commissioner for External Relations Patten which confirmed the urging need for a new and
more holistic approach to neighbourhood relations, based on creating stability, prosperity and
security in the region. Later, two speeches of former President of the European Commission
Romano Prodi in 2002, before the Copenhagen European Council, showed that a
comprehensive approach should entail ‘everything but institutions’, combining a stake in the
internal market with far-reaching cooperation on common political challenges of the EU and
the neighbourhood. The joint letter and the two speeches were again followed by some
proposals, mainly by Sweden and the United Kingdom, in order to initiate a debate on a
horizontal approach leading to the ENP, focusing on how to integrate the Union’s new
immediate neighbours into a European economic and social partnership based on existing and
future free trade agreements and/or adaptation of partner countries to selected parts of the
internal market.

On the European Council in Copenhagen of December 2002, the Council formally gave a
mandate to the European Commission and the High Representative to start elaborating a new
policy towards the neighbours. They decided to take forward the relations with neighbouring
countries in order to avoid creating new dividing lines while promoting stability and
prosperity. It also renamed the upcoming policy from ‘a Wider Europe’ to ‘European
Neighbourhood Policy’, which implies that the southern partners will be included, as they
cannot be considered as European states.

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6 R.A. Del Sarto and T. Schumacher, “From EMP to ENP: What’s at Stake with the European Neighbourhood
Policy towards the Southern Mediterranean?”, European Foreign Affairs Review, 10, 2005, p. 17
7 B. Van Vooren, “EU External Relations Law and the European Neighbourhood Policy: a paradigm for
8 R. Prodi, A Wider Europe: A Proximity Policy as the Key to Stability, speech, Brussels, 2002
9 A.N. Christensen, “The Making of European Neighbourhood Policy”, Baden-Baden, Nomos Verlagsgesellschaft,
2011, p. 65
la politique européenne de voisinage, Brussels, Peter Lang, 2012, p. 17 – 20
11 M. Reiterer, “From the (French) Mediterranean Union to the (European) Barcelona Process: The 'Union for
the Mediterranean' as Part of the European Neighbourhood Policy”, European Foreign Affairs Review, 14, 2009,
p. 315
After some months of negotiating among different EU institutions and Member States, the Commission came with a first Communication on what the ENP’s objectives should look like\textsuperscript{12}. From that moment on, it was clear that this new EU approach could not become a one-size-fits-all policy, but should be based on differentiation among the partners\textsuperscript{13}. The Commission also realised that such a comprehensive policy should be well funded in a structural way, thus it decided to pave the way to create a new neighbourhood instrument that implements and replaces all the different assisting programs already existing at that time to fund neighbourhood relations\textsuperscript{14}. The Commission also set out a timeframe for two phases that are necessary to create a workable neighbourhood policy. The first neighbourhood programmes should be introduced in the period 2004-2006 and will be funded through the existing structures\textsuperscript{15}, while after 2006 those existing mechanisms should be merged into a new neighbourhood instrument\textsuperscript{16}.

After its 2003 Communication\textsuperscript{17}, the Commission adopted the long-awaited Strategy Paper on the European Neighbourhood Policy\textsuperscript{18} only a few days after the “big bang” enlargement\textsuperscript{19}. This in fact clearly shows that the ENP was conducted as a strategic policy to reinforce relationships with the new neighbours due to the redrawn boundaries made by the enlargement and thus to create a zone of stability at the borders of the enlarged European Union\textsuperscript{20}. It was built to prevent the emergence of new dividing lines between the enlarged EU

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\textsuperscript{13} Ibid, p. 6

\textsuperscript{14} Commission of the European Communities, Paving the way for a New Neighbourhood Instrument, Communication from the Commission, Brussels, 1 July 2003, COM (2003) 393 final

\textsuperscript{15} INTERREG, Tacis, CARDS, Meda and PHARE CBC

\textsuperscript{16} COM (2003) 393 final, p. 7-11


\textsuperscript{19} A. Primatarova, “In Search of Two Distinct Tracks for Non-EU Europe and the European Neighbourhood”, in N. Hayoz, L. Jesien and W. van Meurs (eds.), Enlarged EU- Enlarged Neighbourhood: Perspectives of the European Neighbourhood Policy, Bern, Peter Lang, 2005, p. 20

and its neighbours and to offer neighbours the opportunity to participate in various EU activities through greater political, security, economic and cultural cooperation\textsuperscript{21}.

It is therefore not surprising that in the same period former High Representative for the Common Foreign and Security Policy Solana launched the European Security Strategy\textsuperscript{22}, which is also emphasising on the urging need for the EU to create jointly a ring of well-governed States around Europe through regional cooperation and effective multilateralism. Both the ESS and the ENP are multi-pillar policy approaches that are trying to give new answers to the current globalized situation, whereas the old standard approach of concluding mainly bilateral agreements is not capable anymore of satisfying the current needs\textsuperscript{23}.

In the early days of the functioning of the ENP, with the first Action Plans emerging in 2004, the policy was financed through the existing funding structures. The need of a comprehensive and simplified structure was acknowledged from the outset and the Commission thereby launched its proposal to establish a European Neighbourhood and Partnership Instrument in September 2004\textsuperscript{24}. The Commission here stated that developing an area of “good neighbourliness” requires resources to promote cross-border cooperation between partner countries and the Member States so as to promote integrated regional development among border regions and avoid the creation of new dividing lines\textsuperscript{25}. The aim of establishing the ENPI was to harmonize the different existing assistance schemes in the EU’s external policies in a single regulation and create a ‘structural funds approach’ based on multi-annual programming, partnership and co-financing\textsuperscript{26}. As was earlier scheduled by the Commission, the proposal was formalized into the ENPI Regulation\textsuperscript{27} in 2006 and went into force on the 1\textsuperscript{st} of January 2007, regulating the period 2007-2013.

\textsuperscript{22} J. Solana, A Secure Europe in a better world: European Security Strategy, Brussels, 12 December 2003
\textsuperscript{25} Ibid., p. 3
\textsuperscript{26} A.N. Christensen, “The Making of European Neighbourhood Policy”, Baden-Baden, Nomos Verlagsgesellschaft, 2011, p. 71
1.1.2. Characteristics of the European Neighbourhood Policy

1.1.2.1. Main principles and objectives

During the first part, a brief overview of the process towards the ENP was given through the major events and documents that led to a new approach in neighbourhood relations. In this part, the different elements of the ENP will be analysed in the light of their objectives and legal structure.

First of all, it has to be borne in mind that the ENP is only a part of a comprehensive set of tools to enhance neighbourhood relations as a whole. It is thus not the only policy that is working with neighbouring countries but has to be seen as complementary to the enlargement policy with potential candidates, the framework of stabilisation and association processes in the Western Balkan and the distinct relations with Russia, but lies nevertheless at the core of EU’s foreign policy.

The overall objective of the ENP, which is in line with the strategy put forward in the ESS, is to share the benefits of the EU’s 2004 enlargement with neighbouring countries in strengthening stability, security and well-being for all concerned. Subsequently, it is in the interest of both the Union and the neighbouring countries to encounter the deeper roots of the insecurity and instability in the region through both democratic and economic reforms. The EU, therefore, has a structuring function vis-à-vis its neighbourhood if they want to create a “ring of friends”. In order to obtain that aim, the ENP was conducted as an all-comprising and integrated EU policy covering components of all three of the former ‘pillars’, which is visible in the extensive enumeration of supported measures in art. 2 of the ENPI Regulation.

Furthermore, it seems clear that the ENP as a policy is not merely technical but has a value-driven nature where one can identify three major cornerstones on which the framework is

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built: differentiation, joint ownership and conditionality. The 2004 Strategy Paper therefore declares that joint ownership of the process, based on the awareness of shared values and common interests, is essential and that the EU does not seek to impose priorities or conditions on its partners. This implies a differentiated assessment of the challenges and opportunities in the partner countries concerned through their own individual Action Plans. In essence, the EU shall have to negotiate with the participants in the ENP framework what to prioritize on and both EU and partner state are thus contributing to shaping and implementing the policy.

But first and foremost, an incentive is necessary for those partner countries to engage effectively in the policy. Although it only was explicitly mentioned once in the 2004 Strategy Paper that conducted the ENP, conditionality is the common thread throughout the policy and is inherent to its nature. One could distinguish two modes of conditionality, a positive and a negative one. The ENP made almost only use of the positive dimension of conditionality in the period before the 2011 Revision, which means that still all partnering countries do receive support based on objective criteria and needs ex art. 7(2) ENPI Regulation and that additional support could be made available for countries that do particularly well in implementing the Action Plans. The additional support is better known as Governance Facility and allocates a specific budget of 300 million euros for rewarding the most progressing partner countries, which in itself should be an incentive to engage to the fullest when it comes to their internal reforms. The negative conditionality implies the suspension of assistance in art. 28 ENPI Regulation. This specific emergency mechanism, however, was in practice difficult to apply.

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34 COM(2004) 373 final, p. 8
39 Art. 28 ENPI Regulation: 1. Without prejudice to the provisions on the suspension of aid in partnership and cooperation agreements and association agreements with partner countries and regions, where a partner country fails to observe the principles referred to in Article 1, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps in respect of any Community assistance granted to the partner country under this Regulation. 2. In such cases, Community assistance shall primarily be used to support non-state actors for measures aimed at promoting human rights and fundamental freedoms and supporting the democratisation process in partner countries.
and therefore never used\textsuperscript{40}. Hence, it could be seen as fulfilling a mere deterring function to enforce the positive conditionality\textsuperscript{41}. The emanation of conditionality also reflects the differentiation throughout the policy\textsuperscript{42} and was sometimes called ‘soft conditionality’ by some authors\textsuperscript{43}.

Another incentive can be found in the economic and trade dimension of the ENP. The economically most attractive offer for the partner countries is “a stake in the internal market” and thus also a closer connection with the four freedoms\textsuperscript{44}. This, in essence, means that in ensuring partner countries to come closer to the approximation of international and EU regulatory standards, they become less vulnerable to non-tariff barriers in the trade relations with the Union\textsuperscript{45}.

In combination with financial rewards in case the political dimension of the Action Plans is progressing positively, the offer made in the ENP and funded through the ENPI could be argued as an extensive, well-reasoned and financed programme of modernisation and integration\textsuperscript{46}. “The more a country conforms to EU values, the closer it can co-operate with the EU”\textsuperscript{47} sounds rather negative and neo-imperialistic\textsuperscript{48}, but mainly covers the principle. Albeit the inherent tension between joint ownership, which implies a bilateral engagement and conditionality as a unilateral rewarding system, both concepts remain at the heart of the European Neighbourhood Policy\textsuperscript{49}.

\textsuperscript{40} Directorate-General for External Policies of the Union – Directorate B – Policy Department, “Briefing Paper: Improving the EU’s Aid to its Neighbours: Lessons learned from the ENPI, Recommendations for the ENI”, 2012, p. 12 – 13
\textsuperscript{44} Ibid.
1.1.2.2. Main instruments

In order to make such an ambitious framework policy work, different instruments or tools are created and used in the different stages of the ENP. Here, the main instruments are chronologically analysed and an assessment will be made on whether they are unilateral, bilateral or multilateral in nature.

1.1.2.2.1. Country Reports

First of all, Country Reports are elaborated by the Commission as Staff Working Documents and contain highly detailed information both on the state of the bilateral relations with the prospected partner country, including the progress they made under those agreements and on several internal topics such as the economic and social situation, the compliance with human rights and the democratic developments. While conducting these Country Reports, the Commission also consults NGOs and organisations of the civil society of the reported country in order to have a more precise view on all the reported issues. The Country Reports are subsequently forwarded to the Council in order to serve as the basis for the adoption of an Action Plan with and on the partnering country. It is clear that such a Country Report is unilateral in nature, as the report is a mere working document for the EU institutions without any emanation of the principle of joint ownership. Those Country Reports are under the European Neighbourhood Instrument merged with the Country Strategy Reports and the National Indicative Programmes into the new Single Support Framework.

1.1.2.2.2. Action Plans

Subsequently, an Action Plan will be elaborated for and with every single partnering country, based on the Country Report, which means that it is bilateral in its nature. Those APs are meant to update and enhance the existing agreements and are thus complementing the PCAs and AAs with respectively the eastern and southern neighbours. This implies that there

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52 Ibid.

53 Under the ENI, for the period of 2014 – 2017, some countries have an Action Plan with and Advanced Status (Morocco, Tunisia and Jordan) and some eastern partners (Ukraine, Moldova and Georgia) have an Association Agenda to work towards their AA with DCFTA.

already has to be a negotiated PCA or AA with the partnering country to elaborate an AP and thus to participate in the ENP. Whereas the PCAs and AAs contain legally binding provisions, the APs are flexible political documents setting the priorities for a country, without any binding provisions\textsuperscript{55}.

In this respect, it is easier to include elements from different areas of EU policies and to give it a broader perspective on strengthening the existing agreements in order to develop a more far-reaching policy\textsuperscript{56}. The priorities put forward by the Commission are covering a number of key areas for specific action: political dialogue and reform; trade and measures preparing partners for gradually obtaining a stake in the EU’s Internal Market; justice and home affairs; energy, transport, information society, environment and research and innovation; and social policy and people-to-people contacts\textsuperscript{57}.

At first, there was no formal mandate given to the Commission by the Council to conduct negotiations on an AP with a given country, and thus the Commission was the only EU institution that led the negotiations in close cooperation with the High Representative for CFSP. This was objected by some Member States, which led to joint consultations with a Commission official, a representative of the Council Secretariat General and a representative of the EU Presidency\textsuperscript{58}. After finishing the negotiations, the Commission sends the proposal to the Council for approval after which the formal adoption of the AP is done by the Association Council or Cooperation Council, the pre-existing bodies ensuring the implementation of respectively the AAs and PCAs\textsuperscript{59}. They adopt those APs as recommendations, which imply that no legally binding power is given to the provisions in the


APs. It will also be in those bodies that the APs and the functioning of the ENP as such will be monitored, including reviews two or three years after the adoption of the AP.

Consequently, the APs are rather political documents including general objectives providing the priorities for the next three to five years in order to be implemented on the most appropriate level. It thus consists rather of a framework of jointly agreed priorities than a precise roadmap of measures that need to be implemented. Again, joint ownership is one of the main principles in order to have a widely supported plan on both sides of the partnership. It is, however, doubtful that it can consist of a genuine joint ownership because the APs mainly reflect the view of the EU, using its soft power of persuasion. Differentiation is also key again, as each and every AP is unique because the assessment is based on the different Country Reports, despite the similar structure of every AP.

In a multi-level framework as the ENP, the APs could also be seen as political reorientations of the PCAs and AAs, leading towards a new generation of agreements since the objectives of those agreements are refined and deepened in the APs. This process could therefore lead to the future adoption of a new kind of ‘European Neighbourhood Agreements’ with both the eastern and southern neighbours.

1.1.2.2.3. Progress Reports

The monitoring of the progress made by the given country will be assessed through a joint monitoring exercise within the bodies set up by the PCAs and AAs and with periodic, preferably annual, Progress Reports elaborated by the Commission. The first one will reinforce the sense of joint ownership of the APs, while the latter is a unilateral assessment by

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63 Ibid., p. 36
the Commission with the possibility to consult the civil society in the reported country.\textsuperscript{67} The Commission is not only elaborating Progress Reports on the level of the whole country’s compliance with the jointly agreed priorities but also on the sectorial level more detailed reports are being made.\textsuperscript{68} The Progress Reports will also be the basis for the Council to decide on the further bilateral relations with each partner country.\textsuperscript{69}

1.1.2.3. Similarities and differences with the Pre-Accession Strategy

As mentioned before, the creation of the European Neighbourhood Policy is deeply interconnected with the other external policies of the Union and is, in fact, a consequence of the big bang enlargement of 2004. It is therefore not surprising that some mechanisms from the pre-accession strategy are being copied into the framework that the ENP is providing. Albeit the similarities, there are also differences to be recognized.

In particular, the Country Reports, Action Plans and Progress Reports have their counterpart in the pre-accession framework as respectively Screening Reports, Accession Partnerships and Progress/Regular Reports.\textsuperscript{70} Even on a more complex level, the PCAs and AAs have a similar structure as the European Agreements as well as the European Neighbourhood and Partnership Instrument (ENPI) serves the same means as the Instrument for Pre-Accession Assistance (IPA).\textsuperscript{71} Both policies are also working with an atypical institutional set-up with interplays that are not foreseen in the Treaties.\textsuperscript{72}

The main differences are lying in the two of the three core principles of the ENP: joint ownership and conditionality. The pre-accession strategy was a unilaterally defined strategy that was imposed on the candidate countries, whereas the ENP is built upon joint ownership

\textsuperscript{68} E. Lannon, “Instruments, principes et méthodologie de la Politique européenne de voisinage”, in E. Lannon (ed.), The European Neighbourhood Policy’s Challenges – Les défis de la politique européenne de voisinage, Brussels, Peter Lang, 2012, p. 31
\textsuperscript{70} E. Lannon, “Instruments, principes et méthodologie de la Politique européenne de voisinage”, in E. Lannon (ed.), The European Neighbourhood Policy’s Challenges – Les défis de la politique européenne de voisinage, Brussels, Peter Lang, 2012, p. 28
\textsuperscript{71} Ibid.
to overcome the idea of a Union that is merely transposing its own vision, which would be counterproductive to its objectives.\footnote{P. Van Elsuwege, “Variable Geometry in the European Neighbourhood Policy: the Principle of Differentiation and its Consequences”, in E. Lannon (ed.), The European Neighbourhood Policy’s Challenges – Les défis de la politique européenne de voisinage, Brussels, Peter Lang, 2012, p. 73 – 77}

On the other hand, the approach on conditionality is even more remarkable. The conditionality in the ENP is not built on a future membership of the Union, but around a long-term plan on extending the internal market _acquis_ to the partnering countries.\footnote{A. Ott and R. Wessel, “The EU’s External Relations Regime: Multilevel Complexity in an Expanding union”, in S. Blockmans and A. Lazowski (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, p. 49} This means that the outcome is different, but also the objectives to comply with are structured differently. The countries applying for membership have to meet the Copenhagen criteria in order to be able to accede to the Union, but those criteria are more precise and thus easier to comply with than the broad and vague objectives put forward in the Action Plans, even though the outcome in the ENP is less rewarding.\footnote{T. Casier, “European Neighborhood Policy: Living up to Regional Ambitions”, in F. BINDI and I. Angelescu (eds.), _The Foreign Policy of the European Union: Assessing Europe’s Role in the World_, Washington D.C., Brookings Institution Press, 2012, p. 111} This is why some authors render the conditionality in the ENP more a _conditionality-lite_ because of its ineffectiveness due to the higher burden and the lower reward than in the pre-accession framework.\footnote{G. Sasse, “The European Neighbourhood Policy: Conditionality Revisited for the EU’s Eastern Neighbours”, Europe-Asia Studies, 2008, p. 296} As the return on investment is rather low, this approach could lead to a loss of legitimacy of the ENP as such in the eyes of the partnering countries.\footnote{N. Bobitski, “Do Ut Des? The Need for True Reciprocity in the European Neighbourhood Policy”, _European Foreign Affairs Review_ 13, 2008, p. 449}

1.1.2.4. Geographic coverage of the ENP

At the outset of the ENP, the geographic coverage was limited to only the eastern countries that would become direct neighbours after the big bang enlargement. The southern member states of the EU, with historical ties with the southern neighbourhood, together with former President of the Commission Prodi advocated involving the southern countries as well.\footnote{R. Prodi, _A Wider Europe: A Proximity Policy as the Key to Stability_, speech, Brussels, 2002} This was approved in the Wider Europe Communication, still including Russia and explicitly excluding the Southern Caucasus.\footnote{Commission of the European Communities, _Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours_, Communication from the Commission to the Council and the European Parliament, Brussels, 11 March 2003, COM(2003) 104 final, p. 4} This changed with the official launch of the ENP in
2004\(^{80}\), involving the Southern Caucasus as well based on their strategic importance according to the ESS\(^{81}\). Nevertheless, not every neighbouring country is involved in the ENP. Three countries have their specific issues leading to their absence in the framework.

Russia is the largest and most important country in that regard. As a substantial influence and major power in the region, it could not accept the provisions on conditionality and refused this on their part\(^{82}\). Therefore, the EU and Russia jointly decided to pursue further relations through bilateral agreements instead of involving in the ENP. It is nevertheless eligible for funding through the ENPI\(^{83}\) and its successor the ENI.

Belarus is the second country in the eastern neighbourhood not participating in the ENP. Notoriously known as “the last dictatorship in Europe”, the Union suspended the signed PCA in 1996 due to democratic irregularities and subsequently decided that it could not offer the full benefits of the ENP under those circumstances\(^{84}\).

Unless substantial democratic progress is initiated, Belarus will not be able to be involved in the ENP. For the time being, this seems improbable regarding the current developments in Minsk.

Libya could be considered as in the same situation as Belarus. Due to numerous human rights violations, it does not have bilateral agreements with the Union nor has it fully participated in the Barcelona Process. Therefore, it does not have an AA, which is the first stage to be involved in the ENP. Libya shall first have to fully accept the Barcelona *acquis*, only afterwards participation in the ENP can be allowed\(^{85}\).

The case of Syria is different compared to those three countries. Syria was involved in the ENP from the outset, but due to the political situation and civil war, it was suspended from the

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\(^{81}\) J. Solana, *A Secure Europe in a better world: European Security Strategy*, Brussels, 12 December 2003; i.e. strategic regarding the proximity of Russia and the energy resources


\(^{85}\) Ibid., p. 12
ENP. It is nevertheless still eligible for cooperation under the European Neighbourhood Instrument, the successor of the ENPI\textsuperscript{86}.

Another particular situation occurs with Algeria. It is not formally excluded from the ENP as Libya, Syria or Belarus but has no Action Plan negotiated with the EU due to their reluctance on accepting the conditionality, partly founded on their vast income out of oil and gas\textsuperscript{87}.

The Western Balkans as potential candidate members of the Union are not involved in the ENP, but benefit from other programmes such as the framework of the Stabilisation and Association Process (SAP)\textsuperscript{88}. The same applies to Turkey, although they are not involved in the SAP.

This means that Armenia, Azerbaijan, Egypt, Georgia, Israel, Jordan, Lebanon, Moldova, Morocco, the Palestinian Authorities, Tunisia and Ukraine are the current active members in the European Neighbourhood Policy.

1.2. The 2011 Mid-Term Review

In the meantime, things have changed in the neighbourhood. This chapter will briefly analyse both the major events that led to the revision(s) of the ENP in 2011 and what in fact differed from the ENP as conducted in 2004, all in function of a better understanding of the 2015 Review as the main topic of this LL.M. Paper.

1.2.1. The path towards 2011

First of all, new multilateral initiatives arose in the neighbourhood policy. The Union for the Mediterranean, established under the influence of Sarkozy in 2008, is an intergovernmental organisation aiming at reinforcing the Euromed relations. It mainly sidelines the ambitious political questions on democracy and the rule of law and focuses on economic cooperation instead, by promoting specific joint projects\textsuperscript{89}. It therefore constitutes a break in the tradition

\textsuperscript{86} EU Neighbours: a project funded by the European Union, available at http://www.euneighbours.eu/ (accessed on 24/02/'17)

\textsuperscript{87} M. Emerson, G. Noutcheva and N. Popescu, “European Neighbourhood Policy Two Years on: Time indeed for an ‘ENP plus’”, CEPS Policy Brief, 2007, p. 11


\textsuperscript{89} N. Tocci and J-P. Cassarino, “Rethinking the EU’s Mediterranean Policies Post-1/11”, Istituto Affari Internazionali Working Papers, 2011, p. 6
of the ENP and EMP\textsuperscript{90}. Nonetheless, the aim is still to improve the welfare on both sides of the Mediterranean but has a more pragmatic approach to it. The Eastern Partnership, created in 2008 to enhance neighbourhood relations through a multilateral forum, on the other hand, is still pursuing the same objectives with the same means as the ENP and has thus a value-based dimension\textsuperscript{91}. Such a regional initiative complementing the ENP can also be found in the Southern Caucasus with the Black Sea Synergy. Those initiatives are also signs of further diversification of the ENP\textsuperscript{92}.

Another reason for the urging need to revise the neighbourhood policy is to be found in internal changes within the EU. The Lisbon Treaty that came into force on the 1st of December 2009 has some implications for the ENP. First, it extended the competences of the European Parliament, which became co-decider on the external action expenditure, including on the budget allocated to the neighbourhood policy\textsuperscript{93}. In addition, the creation of the European External Action Service led to a more intergovernmental approach in dealing with a supranational project such as the ENP since the EEAS’s staff contains about one-third national diplomats. It is also clear that this new institution together with the conception of the High Representative – Vice President in the Lisbon Treaty serves to an even more complex institutional system. The Lisbon Treaty also gave birth to a new provision aimed at concluding a new generation of neighbourhood agreements through art. 8 TEU, which will be dealt with later\textsuperscript{94}.

But far and foremost, the Arab Spring starting December 2010 was a major influence on the 2011 Revision of the ENP. The revolts in some of the southern neighbourhood countries call the EU’s neighbourhood policies into question, going to the very heart of the democratisation agenda of the ENP by showing its weaknesses in preserving stability in the region\textsuperscript{95}.

The speech of Commissioner Füle impersonates the tensions within the EU on the reluctance of intervening in the region and on the weaknesses in the ENP: “Europe was not vocal enough in defending human rights and local democratic forces in the region. Too many of us

\textsuperscript{90} M. Comelli, “The impact of the changes in the Arab world on the Southern dimension of the ENP,” International Issues & Slovak Foreign Policy Affairs, 2011, p. 66
\textsuperscript{91} Ibid., p. 67
\textsuperscript{92} Ibid., p. 60
\textsuperscript{94} See 1.2.2.3. Differentiation
\textsuperscript{95} N. Tocci and J-P. Cassarino, “Rethinking the EU’s Mediterranean Policies Post-1/11”, Istituto Affari Internazionali Working Papers, 2011, p. 9
fell prey to the assumption that authoritarian regimes were a guarantee of stability in the region. This was not even Realpolitik. It was, at best, short-termism.96

The Commission and the HR/VP dedicated a special joint communication to the instability in the southern neighbourhood calling for a “A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean”97, acknowledging that the ENP was not sufficient in its democratisation objectives and thus needed to be adjusted. In turn, the Arab Spring and the subsequent joint communication paved the way to deepen the consultations on the planned 2011 Revision in May, which has to be seen as the actual revision of the ENP for both the eastern and southern neighbourhood whereas the March communication is to be seen as complementary to the latter98.

1.2.2. A New Response to a Changing Neighbourhood

The actual 2011 Revision, called “A New Response to a Changing Neighbourhood”99 should be thus the start of a new approach towards the neighbourhood, acknowledging that the results of the former 2004 Strategy Paper were only limited. The new approach should entail a higher level of differentiation among the partnering countries and should be based on mutual accountability and a shared commitment to the universal values of human rights, democracy and the rule of law100. In general, four “new” elements are introduced or reinforced in the 2011 Revision: deep and sustainable democracy, conditionality, differentiation and conflict resolution.

1.2.2.1. Deep and Sustainable Democracy

Whereas the focus in 2004 was on political stability, it shifted in 2011 towards deep and sustainable democracy. The Arab revolts showed that the former objective of political stability sometimes even reinforced authoritarian regimes rather than it led to progressive democratic reforms. Therefore, it was necessary to break with this principle and putting

97 Joint Communication to 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, 8 March 2011, Brussels, COM(2011) 200 final
100 Ibid., p. 2
democracy up front again with free and fair elections as the cornerstone of the so-called deep democracy\textsuperscript{101}. Together with elements such as freedom of association, free media, an independent judiciary, the fight against corruption and a democratic control over armed and security forces, this would not only lead to a strengthening of democracy but will also help to create the conditions for sustainable and inclusive economic growth, stimulating trade and investment\textsuperscript{102}. It is, however, unclear how those criteria will be consistently monitored as they are rather vague and potentially ambiguous.

In order to achieve those goals, two new bodies shall be established: the European Endowment for Democracy (EED) and the Civil Society Facility (CSF). The EED should bring together civil society organisations in the particular countries to support democracy, whereas the CSF could be used as the funding mechanism to those co-operations. It is however problematic that no specific steps are taken towards their implementation in the revision\textsuperscript{103}.

1.2.2.2. Conditionality

The Revision states that the more and the faster a country progresses in its internal reforms, the more support it will get from the EU\textsuperscript{104}. This “more-for-more” principle was already part of the ENP from the outset. The negative conditionality, however, has been eschewed in favour of the positive enforcement\textsuperscript{105}. This changes in 2011 with the introduction of the “less for less” principle stating that the EU could reconsider or even reduce funding to those who stall or retrench on agreed reform plans\textsuperscript{106}. The renewed incentive-based approach shows that


\textsuperscript{102} Joint Communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A New Response to a Changing Neighbourhood, 25 May 2011, Brussels, COM(2011) 303 final, p. 3 – 4

\textsuperscript{103} M. Emerson, “Review of the Review of the European Neighbourhood Policy”, CEPS Commentaries, 2011, p. 2

\textsuperscript{104} Joint Communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A New Response to a Changing Neighbourhood, 25 May 2011, Brussels, COM(2011) 303 final, p. 2


the 2004 positive conditionality was rather political, did not serve its purpose and was thus insufficient\textsuperscript{107}.

This new approach should lead to a more value-based ENP in general while being more flexible but stricter in the application of its conditionality\textsuperscript{108}, which in turn characterizes the strengthening of the bilateral dimension of the ENP\textsuperscript{109}. The rewards for the progress in the jointly agreed reform plans will stay the same: money, market and mobility. On the other hand, the deepening of the conditionality and the bilateral relations could lead to more fragmentation in the region in case of an inconsistent use of the negative conditionality\textsuperscript{110}. It is a tendency within the EU to be reluctant to intervene in authoritarian regimes, and thus to apply the negative dimension of the conditionality, which could create adverse effects towards other, more progressive countries\textsuperscript{111}. This is actually already the fact as the strengthening of conditionality towards countries in a democratic transition after the Arab Spring could be harmful in the sense that sensitive progress will be evaluated more stringent, compared to less democratic leaders before the transition and the adoption of the 2011 Revision. In addition, the sense of impunity should be effectively prevented by reinforcing the monitoring mechanisms in the ENP, otherwise any reform of conditionality would render useless\textsuperscript{112}.

1.2.2.3. Differentiation

As pointed out in the previous paragraph, the renewed approach on conditionality has its implication on how differentiation is interpreted. The strengthening of the bilateral dimension in the ENP, due to the stricter conditionality has a greater differentiation as a consequence because rewards are now based on differentiation and thus rather on the own performance of a country than on geographic criteria\textsuperscript{113}. The 2011 Revision also recognizes that a new approach based on mutual accountability leads to a greater differentiation, giving the

\textsuperscript{108} M. Comelli, “The impact of the changes in the Arab world on the Southern dimension of the ENP,” International Issues & Slovak Foreign Policy Affairs, 2011, p. 64
\textsuperscript{112} N. Tocci and J-P. Cassarino, “Rethinking the EU’s Mediterranean Policies Post-1/11”, Istituto Affari Internazionali Working Papers, 2011, p. 19
opportunity to every single country involved in the ENP to pursue relations with the EU as far as they are able or willing to.

The enhancing of the bilateral relations also implies the offer of Deep and Comprehensive Free Trade Areas (DCFTAs) to the south, in order to develop closer trade ties, as a part of the pre-existing Euro-Mediterranean Association Agreements (EMAs)\textsuperscript{114}. As those DCFTAs were already offered to the eastern neighbourhood, they are now offered renewed AAs in order to replace the former PCAs which is, in fact, a mere copy-paste process in offering the same to both neighbourhoods\textsuperscript{115}. The DCFTAs has to be seen as a first step in the long-term vision to establish a Neighbourhood Economic Community (NEC) as they contain a higher level of integration and approximation of regulatory standards than a regular FTA, which can be conceived as ‘shadow integration’\textsuperscript{116}.

This process should also be interpreted in the light of the in the Lisbon Treaty adopted art. 8 TEU, the so-called neighbourhood clause. The first paragraph of this article states that: “The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.”. The aim is thus to establish privileged relationships with the neighbouring countries, also including those not participating in the ENP. To obtain this goal, the second paragraph provides a way to do so: “For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.”.

The Union offers in art. 8 TEU a more advanced relationship than the traditional AAs in the form of a new generation of neighbourhood agreements as it acknowledged the marginalisation of AAs by conducting them all over the world, for example with Chile\textsuperscript{117}. The neighbourhood agreements also faces several obstacles in order to be used effectively: there is


\textsuperscript{117} Agreement establishing an association agreement between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, signed in 2002
no clear procedure in conducting those agreements, it lacks exclusivity and due to the references to conditionality and monitoring it is not very attractive either. Albeit the good intentions to intensify neighbourhood relations on a new legal basis, art. 8 TEU remains a rather programmatic and political provision trying to constitutionalize the concept of “integration without membership”. After all, the Union decided to negotiate fully-fledged AAs with its Eastern partners as it did with the Southern partners, which leaves the agreements envisaged in art. 8 TEU virtually redundant. It was therefore unclear if the new neighbourhood clause in the Lisbon Treaty would have any practical value as the long-used art. 217 TEU seems to fit the purpose better. Some even argued that there was no potential in concluding agreements with art. 8 TEU as legal basis with other neighbours, but it turned out that in December 2014, the Council adopted a mandate to launch negotiations to conclude association agreements, or neighbourhood agreements, with Andorra, San Marino and Monaco based on art. 8 TEU.

1.2.2.4. Conflict resolution

As a reaction to several crises rooting from the Arab Spring, the 2011 Revision seeks an answer for the Union to have a greater influence on stability in the region. “**Business as usual is no longer an option if we want to make our neighbourhood a safer place and protect our interests**” is the key sentence to that purpose. From 2011 on, the ENP will therefore put more focus on conflict resolution as the emphasis in the original ENP strategy was rather on the prevention and management of conflicts. It is however doubtful if this objective can be achieved in the future as the same insufficient sticks and carrots will be used, along with the

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119 D. Hanf, “The European Neighbourhood Policy in the Light of the New “Neighbourhood Clause” (Article 8 TEU)”, in E. Lannon (ed.), *The European Neighbourhood Policy’s Challenges – Les defies de la politique européenne de voisinnage*, Brussels, Peter Lang, 2012, p. 113
121 G. Van der Loo, “The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: a new legal instrument for EU integration without membership?”, Ghent University, 2014, p. 175
122 Press Release, ST 16972/14, PRESSE 659, Brussels, 16 December 2014
long-known difficulties for the Union to tackle jointly and effectively such conflicts in its neighbourhood.\textsuperscript{124}

1.3. Conclusion

Although the ambitious outset of the ENP in 2004, practical developments could hardly be perceived as successful. The Union proved to be insufficient in addressing the vital interests of the neighbouring countries and itself in a satisfying way. The conditionality was not applied consistently\textsuperscript{125} and the ‘return on investment’ for the partnering countries was excessively little to actually influence those countries for the good. This again shows that the transposition of enlargement mechanisms to the ENP has not worked out equally beneficial for the partnering countries than in the actual enlargement process. The path dependency of the ENP thus turned out as one of the major flaws.\textsuperscript{126}

Another crucial deficiency of the original ENP was the overly complex system and its vagueness. The 2011 Revision therefore tried to simplify the structure and to provide concrete steps towards a greater coherence and consistency of the policy. By offering the same AAs with prospects to DCFTAs for the willing countries, it also tries to rebalance the eastern and southern neighbourhood as equally important.\textsuperscript{127} At the same time, the heterogeneity within both regions is tried to be assessed. This is done by enhancing bilateral relations following the renewed conditionality, without losing sight of the newly reinforced regional dimension through the Union for the Mediterranean, the Eastern Partnership and the Black Sea Synergy.

Nevertheless, the Union seems to fall short to tackle effectively both the pre-existing problems and the instability of both regions after the Arab Spring. Two main reasons could be recognized on this part. First, the Union has been struggling to understand what is really happening in its neighbourhood and how to align its internal and external policies to it, while secondly, the ENP remains an EU-policy that is mostly driven by its own interests, structures


\textsuperscript{126} P. Van Elsuwege and G. Van der Loo, “Continuity and Change in the Legal Relations Between the EU and Its Neighbours: A Result of Path Dependency and Spill-over Effects”, in D. Bouris and T. Schumacher, “The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy”, London, Palgrave Macmillan, 2017, 111

and practices\textsuperscript{128}. In other words, the EU remains in the centre of its own policy with a rather give-and-take relation instead of establishing genuine neighbourhood relations\textsuperscript{129}.

The next chapter will analyse whether the 2015 Review is able to provide tailor-made solutions to the problems that arose in 2004 and 2011. Nevertheless, the European Neighbourhood Instrument as the successor of the ENPI as the financial framework for 2014-2020 does involve changes by implementing the 2011 Revision\textsuperscript{130}. The characteristics of the ENI will be analysed in the light of the 2015 Review and the implications for both the ENI and the Review.

The rising tension within and outside the EU urges to create a more effective policy towards its neighbourhood. For now, some authors advocate that the biggest problem of the ENP is that it rather conceals the actual problems than it solves well-defined questions\textsuperscript{131}.

Chapter 2. The 2015 Joint Paper and Consultation Process

As pointed out in the previous chapter, the ENP suffered from several major and minor deficiencies since its conception in 2004 and even after the 2011 Revision. The ambitions of changing the ENP fundamentally in 2015 were therefore higher than in the previous revision. The first part of this chapter will deal with the launch of the Joint Consultation Paper\textsuperscript{132}, which set out the framework for the debate with some proposals and several questions that could be addressed by a broad range of stakeholders in- and outside the EU. It is however impossible to examine every single consulting paper. Therefore, only the main tendencies in the answers will be discussed in this first part. In the second part of this chapter, the Council Conclusions of April 2015\textsuperscript{133} will be examined and compared to the Joint Consultation Paper.

2.1. The Launching of the Review

2.1.1. Purpose and Problems

It was apparent to all that an adjustment was necessary to overcome the problems of the ENP. Already four years after the 2011 Revision, a new process towards a review was initiated. This early review of a revision was facilitated by two elements. On the one hand, the tensions in both the eastern and southern neighbourhood and on the other hand the newly appointed Commission under the presidency of Juncker\textsuperscript{134}. The neighbourhood in both the East as South changed rapidly over those four years, with a striking migratory crisis and precarious situations, particularly in Ukraine, Armenia, Syria and Libya. Partly as a consequence, Juncker wanted to create a more political Commission. This explains why he made the review of the ENP one of his priorities to tackle in the first year of his mandate, as his Commission seemed eager on engaging in ambitious political projects.

The process towards a new strategy on the ENP will be different from the one in 2011. Three dimensions will lead to the adoption of a reviewed framework\textsuperscript{135}. First of all, a consultation will be organised with every willing stakeholder, including NGOs, national governments and even citizens. Secondly, the committee dealing with foreign affairs in the European

\textsuperscript{132} Joint Consultation Paper, Towards a new European Neighbourhood Policy, Brussels, 4 March 2015, JOIN(2015) 6 final
\textsuperscript{133} Council conclusions on the Review of the European Neighbourhood Policy, Brussels, 20 April 2015, Appendix 8087/15
\textsuperscript{135} Ibid., p. 2 – 3
Parliament will elaborate a position paper on their view of the ENP. Finally, the Riga Summit and the Barcelona Informal Ministerial meeting will function as a forum for ministerial input on the process. Nevertheless, the public consultation shall be in the centre of the reviewing process.

Subsequently, the Commission and the High Representative launched a Joint Consultation Paper, titled “Towards a new European Neighbourhood Policy” on the 4th of March 2015. The purpose was to consult all the stakeholders within the EU and in the region to have a clear view on the existing problems after the 2011 Revision and measure the level of ambition the 2015 Review should uphold. This method was already used on a small scale in 2011, but was formalized and intensified during the 2015 process136. Around 250 papers were delivered to the Commission, from position papers of EU Member States to several NGOs that are working in the region, giving their point of view.

This broad method aims at providing a more comprehensive insight into the present deficiencies and the state of play on the ground. It also displays an increased willingness towards inclusiveness in EU’s foreign policy, bypassing the long-standing critique of EU-centrism in those policy areas137. It could also potentially lead to a greater mutual ownership of the ENP, again one of the main gaps in the policy. However, the overload of perspectives can even hinder the long-term objectives of the review, as stakeholders might prefer concrete actions on the ground, leading to a rather short-term approach.

With this ambitious outset of the review, the Commission gives the impression that fundamental and necessary steps shall be taken. The question is however if this is even possible in the current legal framework. The ENI that was adopted for the timeframe 2014 – 2020, implements the 2011 Revision and lays down the rules of funding in order to “advance further towards an area of shared prosperity and good neighbourliness involving the Union and the countries and territories listed in Annex I (‘the partner countries’)”138. The legally binding provisions of the ENI, based on the 2011 Revision, could render the margin of manoeuvres rather limited in the present review, as one of the only options could be the

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137 Ibid., p. 2

reallocation of some financial envelopes in a mid-term review. This major issue will be analysed more deeply in the last chapter.

2.1.2. Joint Consultation Paper and the Four Priorities

Albeit the potential problems that can occur, the atmosphere is still positive and ambitious. This can be noticed in a speech of Commissioner Hahn on the day of the launch of the Joint Consultation Paper. He declares that: “It’s in the EU’s own interests to develop peace, stability and prosperity on its borders. The review will help us work more effectively to achieve these goals. I want to see a more equal partnership and one that brings results”.

The Joint Consultation Paper itself also acknowledges that a review is necessary since the ENP was not always able to sufficiently resolve the occurring problems in the neighbourhood. The instability in the region led to the fact that also the EU’s own interests were not fully served. In order to restore the ENP to an effective policy, the 2015 Review aims both at more clearly defining the interests of all stakeholders and at conceiving a more concretized and simplified toolbox. This means that an effective ENP needs to be closely integrated into an overall EU foreign policy with a comprehensive approach, using all instruments of both the EU and of Member States.

After recognizing the shortcomings and the developments over the last ten years, the Joint Consultation Paper was built around 74 questions on every single part of the ENP. Some might say that it does not go into the core of the ENP and it disregards a realistic understanding of the neighbourhood while leaving most of the definitions too vague. It seems however clear that this opinion is far-fetched as the first question of this Joint Consultation Paper is whether the ENP should be maintained or not.

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141 Joint Consultation Paper, Towards a new European Neighbourhood Policy, Brussels, 4 March 2015, JOIN(2015) 6 final, p. 3
The main topics covered by the Joint Consultation Paper could be roughly divided into three categories: political, socio-economical and technical in nature.

A first question in the rather political category concerns the concept of differentiation and asks if a single framework for both of the regions is still needed. This opens to some extent the scope of eventually including the neighbours of the neighbours, or at least a way of dealing with them and aligning the ENP with other foreign policies for the sake of coherence. The roots of some problems the region is facing are directly linked with their neighbours, so the EU should take them also into account when it concerns the ENP. The last, somewhat political question is whether the Member States should take a greater role in a policy that is driven by the institutions. Inasmuch as the contribution of Member States is concerned, another question raises on CFSP and CSDP challenging the idea of a better integration of activities of those policies into the ENP framework in order to restore the stability in the region. In this category, also the regional cooperation and its implied added value are examined.

The second category concerns the socio-economic dimension of the ENP, including trade elements. It includes questions on how to enhance prosperity in the region along strengthening the civil society and the effects of the framework of sector cooperation. However, the most important topic in relation to socio-economic issues is the trade dimension. It is questioned if the offer of AAs with DCFTAs as far-reaching mechanisms of integration is acceptable to all partners. It should be debated whether more tailor-made options could be elaborated, regarding the different ambitions and capacities of the partners.

The last category of topics is rather technical in nature and related to the framework and tools used in the ENP. It questions if the Action Plans are the appropriate tool to broaden and deepen the relationship with the partners and whether a greater focus on fewer priorities would be beneficial. On the other hand, the Progress Reports are also part of the debate. It should be examined whether such a monitoring mechanism could be lighter to some of the partnering countries in order to avoid counterproductive effects.

The Commission and the High Representative also tried to frame the debate by putting forward four new priorities for the 2015 Review, based on experience and initial comments by a number of EU Member States and ENP partner countries. In 2015, the priorities

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144 Joint Consultation Paper, Towards a new European Neighbourhood Policy, Brussels, 4 March 2015, JOIN(2015) 6 final, p. 6
throughout the entire policy in that respect will be differentiation, focus, flexibility and ownership & visibility.

The first priority of differentiation was also in the 2011 Revision a key theme. The purpose was to negotiate AAs with the eastern neighbours as they already did with the southern, including the offer of DCFTAs for all partners\(^\text{145}\). In the present Joint Consultation Paper however, a more pragmatic approach is adopted. The development in the recent years revealed that it was almost impossible to conclude far-reaching DCFTAs with every partner. Therefore, the Union should examine whether it could offer new, more tailor-made formats that are realistic and beneficial for both parties since not every partner is capable of engaging in such a far-reaching integration with the Union. This applies especially to the south, whereas some eastern partners already concluded a DCFTA\(^\text{146}\). On the other hand, it should also be examined which new prospects could be given towards countries after the conclusion of an AA with a DCFTA\(^\text{147}\).

The second priority concerns the concept of focus, which is in some way connected to the first priority of differentiation. It examines whether the scope of the Action Plans, used to set out the priorities for the partnering country, has been too broad while suggesting that the EU should focus more on issues with a genuine shared interest. Those areas are to be found within trade, economic development, connectivity, security, governance, youth, migration, mobility and other common cross-border challenges. The key question is how to refine those Action Plans in order to establish a firmer common ground to build a stronger partnership upon.

Flexibility was put forward as the third priority, combining elements of the differentiation and focus, while also referring to the 2011 priority of conflict resolution and how to deal with external pressure on the partnering countries such as migratory crises and armed conflicts. However, the main objective of this priority goes back to the renewed conditionality since 2011. One of the questions is thus: “How can the EU adapt the ‘more for more’ principle to a context in which certain partners do not choose closer integration, in order to create


\(^{146}\) Georgia and Moldova have a fully-fledged and implemented AA including a DCFTA, while Ukraine suffers from some ratification problems due to a Dutch referendum. Armenia was about to sign the AA including a DCFTA but refrained from doing so under Russian pressure, entering the Eurasian Customs Union afterwards. Concerning the southern partners: after the 2011 Revision negotiations with Morocco started in 2013 and after the 2015 Review negotiations with Tunisia were launched in 2016.

\(^{147}\) Even though the step from a PCA to an AA with a DCFTA was already precarious.
incentives for the respect of fundamental values and further key reforms?". It also suggests adjusting allocations through the ENI during its 2017 scheduled review in order to have the capacity to be more flexible in the funding of partnering countries. This controversial topic will be dealt with later on in this paper.

The last priority deals with the ownership and the visibility of the ENP. As already pointed out, the joint ownership in the ENP and the lack thereof was already a major issue since the conception of the policy. Therefore, the Union shall have to enforce the visibility of the programme in the region and seek for more widely supported projects and interests to engage in if it wants to create a genuine joint ownership of the ENP. This objective goes into the core of the policy, as the joint ownership is one of the fundamental principles that need to be upheld in order to create an effective policy.

It is however remarkable that another fundamental principle is not mentioned in the Joint Consultation Paper. During the 2011 Revision, deep and sustainable democracy was still one of the priorities for the Union in its approach towards the partnering countries. This shows that the value-based ENP in 2004 and 2011 is shifting towards a rather pragmatic policy with the long-term goals sidelined by short-term objectives moving away from the fundamental values since the conception of the ENP.

2.1.3. Tendencies in the Consultations

As already mentioned, alongside several civil society organisations (CSOs) consisting of non-governmental organisations (NGOs), think tanks and others, also the European Parliament and the two advisory bodies in the institutional framework of the EU, the Committee of the Regions (CoR) and the European Economic and Social Committee (EESC), provided their insights on the elements the 2015 Review should focus on.

It is not surprising that the CoR in its opinion will focus on the importance of local and regional authorities (LRAs) combined with an enhanced dialogue within the regional

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dimension of the ENP. Also the EESC defends its prerogatives in their opinion\textsuperscript{152}, emphasizing the vital role of CSOs in the functioning of the ENP.

However more controversial is the resolution adopted by the European Parliament\textsuperscript{153}. The main objective is to establish a renewed ENP as a stronger, more political and more effective policy. Notwithstanding some concrete proposals, the resolution remains too broad and focusses on the traditional framework of the ENP while proposing some adjustments, without any perspective on a fundamental change. Some authors argue that the EP is going back to basics with its proposal\textsuperscript{154}. In order to create a change in the effectiveness of the ENP, existing elements should not only be reinforced but also new proposals should be made. A business as usual approach is in this case not sufficient\textsuperscript{155}.

To the same extent, this could also be applicable for the input of CSOs in the consultation process. The tendency within this process seems to be led by short-term aspirations of the CSOs, proposing non-controversial minor changes in their own interest, without rethinking the whole concept of the ENP. It is therefore not surprising that most of the consultation papers of CSOs will argue to reinforce their own role within the ENP\textsuperscript{156}. However, some proposals are going into the core of the policy such as separating the ENP into two distinct policies towards the east and the south\textsuperscript{157}.

Nevertheless, it could be useful to seek for the greatest common denominators in the proposals put forward by the CSOs. Except for the enhanced role for themselves, they also favour an increase of the funding with a better monitoring of the financial assistance\textsuperscript{158}, a greater awareness and alignment of the policies towards the neighbours of the neighbours whereas the problems in the region are interconnected with others neighbouring countries\textsuperscript{159}.

\textsuperscript{155} Ibid.
\textsuperscript{157} S. Florensa, “Reviewing the European Neighbourhood Policy”, \textit{Papers iEMed} 18, 2015, p. 30
\textsuperscript{158} A. Valmorbida, “Contribution to the consultation on the ENP Revision from the Enlargement, Pre-accession and neighbourhood (EPAN) with contributions from European partnership for democracy, Oxfm, INCL, Brot fuer die welt, Terres des homes International federation, ILGA-Europe”, \textit{CONCORD}, 2015
and a higher degree of flexibility and differentiation in order to be able to respond more quickly and adequately to developments in the region\textsuperscript{160}.

However, the main tendency in most of the contributions is the enforcement of the human rights and democracy dimension. The 2004 and 2011 ENP was highly value-driven\textsuperscript{161}, but this dimension is not explicitly highlighted anymore in the Joint Consultation Paper. This could be problematic if the Commission in its actual 2015 Review would pay no attention to the main proposals and complaints by civil society in this regard.

It was rightly pointed out by Carp and Schumacher\textsuperscript{162} that going back to the basics, relying on the principles of the enlargement policy, would not be a sufficient game changer in order to enforce the ENP and neighbourhood relations in globo. They propose therefore to further focus on the political dimension with a more pragmatic and realistic view of what is happening in the region. Subsequently, there should be a greater focus on conflict reconciliation while following a structured roadmap towards reforms. It will also be necessary to improve citizen’s views on the EU, as it is shown by the EU Neighbourhood Barometers that the perception towards the EU is rather negative in both regions\textsuperscript{163}. Therefore, migration and mobility with a reinforced role within the ENP could be changing this negative image.

The Union could also enforce reforms in several sectors by using its leverage on trade issues and monitor the implementation of the negotiated DCFTAs with some of the partnering countries in a more coherent way\textsuperscript{164}. The high degree of legislative approximation in the context of the DCFTAs will subsequently establish a more homogeneous level playing field, even in areas not covered by the DCFTAs. This approach seems to fit better in the more pragmatic atmosphere of the ENP than the inconsistent application of the conditionality provisions since the 2011 Revision.

\textsuperscript{160} G. Galeazzi, “ECDPM contribution to the EU consultation: Towards a new European Neighbourhood Policy”, European Centre for Development Policy Management, 2015

\textsuperscript{161} M. Comelli, “The impact of the changes in the Arab world on the Southern dimension of the ENP,” International Issues & Slovak Foreign Policy Affairs, 2011, p. 67


\textsuperscript{164} Ibid.
2.2. Council Conclusions April 2015

The Council, in the constellation of the Foreign Affairs Council (FAC), welcomed the Joint Consultation Paper and provided their views on the review of the ENP in their conclusions of April 20th 2015\textsuperscript{165}. Several elements in this conclusion were also to be found in other position papers, such as the urging need of creating a more political and responsive ENP.

There were nevertheless some proposals specific to the April Conclusions due to the intergovernmental nature of the Council. They advocate a closer coordination between ENP and wider CFSP/CSDP activities in a comprehensive manner, for example. This could however be problematic to increase intergovernmental-driven activities in a supranational framework policy such as the ENP\textsuperscript{166}. Interconnected with those CFSP/CSDP aspirations, ENP instruments should focus more on the capacity-building of the partnering countries with regard to the security threats in the region \textit{via} security sector reforms.

Rather in general, the Council favours a more demand- and interest-driven approach in order to restore and reinforce the co-ownership objective. To that extent, it is vital improving the central role of the EaP and UfM as facilitators of an equal partnership.

\textsuperscript{165} Council conclusions on the Review of the European Neighbourhood Policy, Brussels, 20 April 2015, p. 1 – 4

\textsuperscript{166} This issue will be examined more profoundly in Chapter 3. The November 2015 Joint Communication.
Chapter 3. The November 2015 Joint Communication

As was pointed out in the previous chapter, the neighbourhood changed dramatically over the last years. The broad consultation process shed a light on the deficiencies the previous versions of the ENP were facing and put forward several proposals to restore the effectiveness of the policy. This led to the adoption of a Joint Communication Paper in November 2015 where the HR/VP and the Commission elaborated a ‘renewed’ ENP, taking into account the whole consultation process and the Council Conclusions of April 2015.

This chapter will examine to which extent the 2015 Review could be perceived as a fundamental change in the neighbourhood relations of the Union. First, it will therefore be necessary to compare the principles that were key to the 2011 Revision and 2015 Review in order to have a general understanding of the atmosphere of the renewed ENP.

3.1. The old European Neighbourhood Policy at stake

3.1.1. General Approach

This paragraph shall seek whether the general spirit of the policy has changed and to which extent this new approach has any consequences compared to the previous approach. Together with the four priorities, they will form the major guidelines setting out the approach in the specific policy areas the 2015 Review is focussing on. Those four priorities that were highlighted during the Joint Consultation Paper will be discussed in the next paragraph.

The first principle that is decisive for the new approach is stabilisation, as the main political priority in the 2015 Review and one of the most urging challenges in the neighbourhood. Stabilisation was already at the core of the ENP since its conception, but the emphasis will be different now.

167 Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Review of the European Neighbourhood, Brussels, 18 November 2015, JOIN(2015) 50 final
168 Ibid., p. 2 – 3
At first sight, one could argue that stabilisation mainly has to do with security. This is indeed one element, rooting from social inequality in the region, which is one of the main causes to instability.\(^{170}\)

It is therefore vital to the 2015 Review to acknowledge that social and economic inequality is one of the main sources of instability, which it does recognize.\(^{171}\) The stronger emphasis on stability will consequently be underlined in all the specific policy proposals that will be analysed in the next chapter. To that respect, it will be key to have sufficient funding and the political will to implement those proposals in line with the objective of stabilisation.\(^{172}\)

Some authors state that this short- or medium-term objective, which is firmly put forward in the 2015 Review, complements the overall and long-term aim of art. 8 TEU to create an area of good neighbourliness\(^{173}\), whereas others recognize a total shift from the art. 8 TEU-aim to a more pragmatic reasoning. This is also clear following the disconnection or alleviation of conditionality regarding the aim of stabilisation, rendering the ENP *de facto* less value-based.\(^{175}\)

In order to gain effective results from the stabilisation in the ENP, the Union shall have to work to this objective in line with the comprehensive approach\(^{176}\) and other external dimensions of EU policies in the area of Freedom, Security and Justice, which in fact means that the room to manoeuvre is rather limited.\(^{177}\) Nevertheless, stabilisation remains a key component of the 2015 Review whereas there is a reference to this objective in almost every policy proposal.

Another new component in the 2015 Review is the connection of the ENP with the neighbours of the neighbours, a concept that was already mentioned in 2006, but now has an

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\(^{175}\) T. Schumacher, “Back to the Future: The ‘New’ ENP towards the Southern Neighbourhood and the End of Ambition”, *College of Europe Brief* 1.16, 2016, p. 1 – 4


explicit reference in the Review. Many problems in the region are interconnected to the situation beyond the ENP regions. It is therefore crucial to take the neighbours of the neighbours into account when dealing with broader regional challenges, such as migration or security issues. Albeit the explicit reference, some argue that the review is falling short concerning the neighbours of neighbours, providing no sufficient strategic vision towards them. Others declare that there is a vision, but no coherence between the ENP and the vision towards the neighbours of the neighbours. This seems to have changed with the adoption of the Global Strategy for the European Union’s Foreign and Security Policy (EUGS) in 2016. It will nevertheless be crucial to keep on enhancing the coherence between both policies in the future implementation of the renewed ENP and the EUGS, as previous failures on trans-regional issues have shown that external factors are of the utmost importance.

Concerning this issue, the newly proposed Thematic Frameworks could be useful in order to offer cooperation on regional issues and shared challenges in the wider region, beyond the neighbours but eventually also other partners, even those with accession aspirations. These Thematic Frameworks will function as a forum for discussions on joint policy approaches, but those ad hoc meetings will need to have a precise agenda including deadlines, otherwise, it could remain a dead letter. It is therefore necessary that the Member States provide roadmaps and a timetable to ensure an effective use of the Thematic Frameworks as complementary to other regional cooperation structures. More trans-regional cooperation is in this case improving the effectiveness of the ENP as such, where it is able to address the external trans-regional factors that were potentially harmful to this purpose. The particular priorities in those Thematic Frameworks will be migration, energy and security.

180 L. Delcour, “The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy”, College of Europe Policy Brief 1.15, 2015, p. 1 – 4
183 N. Koenig, “Taking the ENP beyond the Conception-Performance Gap”, Jacques Delors Institut Policy Paper, 2016, p. 15 – 16
185 JOIN(2015) 50 final, p. 18
Next to the broadening through Thematic Frameworks, the existing regional cooperation formats will also be strengthened. Both the EaP and UfM are key in the regional integration process and should therefore be invigorated together with sub-regional cooperation.\footnote{JOIN(2015) 50 final, p. 18}

The 2015 Review also seeks to establish a deeper involvement of the EU Member States in the ENP framework.\footnote{Ibid., p. 3} First of all, it is key on a communication level in order to speak with a more coherent and single EU voice.\footnote{Ibid., p. 21} This also has its implications on the level of the joint ownership, preserving a greater degree of accountability.\footnote{J. Hahn, “Guest editorial: Stronger Neighbourhood, Stronger Partnerships: A Revised European Neighbourhood Policy”, \textit{European Foreign Affairs Review} 21, 2016, p. 1 – 4} It is also important for the EU to align the bilateral policies of the MS better with its own policy regarding the neighbourhood, otherwise it could render the ENP a merely technocratic project.\footnote{H. Kostanyan, “The European Neighbourhood Policy reviewed: Shifting from value-driven to classical foreign policy", in A. Hug (ed.), “Institutionally blind? International organisations and human rights abuses in the former Soviet Union”, Brussels, Foreign Policy Centre, 2016, p. 17 – 20} On the other hand, creating a greater engagement of MS in a supranational project could lead to a more intergovernmental approach of the lowest common denominator, which needs to be avoided when trying to establish more coherence with the alignment of MS bilateral relations.\footnote{E. Lannon, “Reappraisal of the European Neighbourhood Policy”, \textit{IEMed. Mediterranean Yearbook 2016}, 2016, p. 233 – 236}

### 3.1.2. Four Priorities

As was already pointed out in the previous chapter, the Joint Consultation Paper suggested four priorities to focus on in the 2015 Review. Those principles will also be key in the general understanding of the concrete proposals and serve as a guideline in the different policy areas the ENP is covering. The same four priorities are upheld as in the consultation process: differentiation, focus, flexibility and ownership & visibility.

Far and foremost, the 2015 Review is characterized by an increased differentiation. In fact, differentiation was already a principle emerging in the original ENP, but was not implemented to the same extent as it is put forward in the 2015 Review.\footnote{L. Delcour, “The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy”, \textit{College of Europe Policy Brief} 1.15, 2015, p. 1 – 4} Differentiation implies that the Union will seek to offer different partnerships, from deeper integration such as DCFTAs to other more limited forms of cooperation. This seems to come forth out of a sense of realism towards the situation in the different partnering countries, with different
aspirations towards cooperation with the EU\textsuperscript{193}. With this approach, the Union breaks more or less with its take-it-or-leave-it approach for the sake of effectiveness\textsuperscript{194}. This also means that the ENP will become more tailor-made to the expectations of the partnering countries from the starting point onwards and therefore will improve the joint ownership\textsuperscript{195}. This has very recently come forward with the conclusion of negotiations with Armenia on a new type of agreement, an Enhanced and Comprehensive Partnership Agreement\textsuperscript{196}. It thus tries to abandon the rather EU-centric approach\textsuperscript{197}.

Albeit the promising signals, there is a crucial \textit{caveat} considering the application of the principle of differentiation. It has, for example, its limits when it comes to the human rights agenda, whereas one partner could misuse differentiation by not complying with those rights with less or no repercussions\textsuperscript{198}. It could also lead to cherry-picking or an ENP \textit{à la carte}\textsuperscript{199}, while undermining the normative agenda of the Union\textsuperscript{200}. A comprehensive strategy on how to apply differentiation will be necessary to avoid those perverse effects\textsuperscript{201}.

One of the concrete proposals on the application of differentiation is the abolition of the annual packages of country reports and the creation of new tailor-made and more flexible progress reports on the pace of the partner\textsuperscript{202}. Those reports will subsequently be used in the Association/Partnership Councils. This also means a shift from the enlargement toolbox towards a more flexible, focused and political foreign policy instrument\textsuperscript{203}, as they were

\begin{thebibliography}{99}
\bibitem{195} L. Delcour, “The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy”, \textit{College of Europe Policy Brief 1.15}, 2015, p. 1 – 4
\bibitem{197} T. Schumacher, “Back to the Future: The ‘New’ ENP towards the Southern Neighbourhood and the End of Ambition”, \textit{College of Europe Brief 1.16}, 2016, p. 1 – 4
\bibitem{198} H. Kostanyan, “The European Neighbourhood Policy reviewed: Will pragmatism trump normative values?”, \textit{European Neighbourhood Watch} 121, 2015, p. 2
\bibitem{199} L. Delcour, “The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy”, \textit{College of Europe Policy Brief 1.15}, 2015, p. 1 – 4
\bibitem{201} \textit{Ibid.}
\end{thebibliography}
before perceived as too heavy and one-sided\textsuperscript{204}. There is however a possibility that a double standard could arise when bilateral evaluations and the agreed priorities would diverge dramatically and would not be assessed at the same time, which is not in line with the ENI\textsuperscript{205}. On the other hand, regular thematic reports will track the developments in the region, for example on the rule of law or gender\textsuperscript{206} but this seems not sufficient under the ENI Regulation.

Overall, it seems that the new focus on differentiation could be an added value to the ENP, only if it would offer also something new and more to the leaders of the ENP\textsuperscript{207} and could avoid the abuse of unwilling partners concerning the democratic agenda of the Union. Otherwise, differentiation could lead to inconsistencies and potentially to creating new dividing lines.

The next priority is the one of focus. The neighbouring countries pointed out in the consultation process that they favoured a more political and more focused ENP\textsuperscript{208}. Therefore, the 2015 Review focusses broadly on four topics that will be discussed more thoroughly in the next chapter: security, economic development and trade, migration and mobility and ownership & visibility.

The third principle that is applicable to the whole review is flexibility. This means, following the Joint Staff Working Document accompanying the 2015 Review, that the ENP should be able to respond rapidly to changing circumstances and crises, including in relation to the use of the EU’s financial instruments\textsuperscript{209}. This also implies a certain degree of differentiation, the first priority of the Review. Commissioner Hahn declared that it is of the utmost importance to deal more flexible with changes in the neighbourhood and that the ENI is meant to allocate funding for long-term reform\textsuperscript{210}. The Review also states that new, more effective ways should be examined concerning fundamental reforms because due to a lack of political will the

\begin{itemize}
\item \textsuperscript{204} Joint Staff Working Document: Towards a new European Neighbourhood Policy, SWD(2015) 500 final, p. 2
\item \textsuperscript{205} E. Lannon, “Reappraisal of the European Neighbourhood Policy”, IEMed. Mediterranean Yearbook 2016, 2016, p. 233 – 236
\item \textsuperscript{206} JOIN(2015) 50 final, p. 5
\item \textsuperscript{207} H. Kostanyan, “The European Neighbourhood Policy reviewed: Shifting from value-driven to classical foreign policy”, in A. Hug (ed.), “Institutionally blind? International organisations and human rights abuses in the former Soviet Union”, Brussels, Foreign Policy Centre, 2016, p. 17 – 20; i.e. Morocco, Tunisia, Ukraine, Georgia, Moldova and to some extent Armenia
\item \textsuperscript{209} Joint Staff Working Document: Towards a new European Neighbourhood Policy, SWD(2015) 500 final, p. 19
\item \textsuperscript{210} J. Hahn, “Guest editorial: Stronger Neighbourhood, Stronger Partnerships: A Revised European Neighbourhood Policy”, European Foreign Affairs Review 21, 2016, p. 4
\end{itemize}
former approach was not always sufficiently strong\textsuperscript{211}. Some even stipulate that the 2015 Review totally abolished the conditionality mechanism as the counterpart of flexibility\textsuperscript{212}. This could lead to a perverse effect of ‘more for less’ instead of the previous mantra of ‘more for more’ and ‘less for less’, rewarding autocratic regimes for violations to fundamental rights\textsuperscript{213}.

This would be anything but consistent with the in 2014 renewed deep democracy criteria under the ENI\textsuperscript{214}. Therefore, it seems that conditionality will be more adjusted and differentiated to the degree of engagement with the partner country in the bilateral relations and applied in the progress reports\textsuperscript{215}, meaning a \textit{de facto} abandoning of the conditionality as the motor of democracy and human rights support. In this constellation, the new flexibility does not seem to be in line with the ENI Regulation and thus will need to be amended in order for the Union to comply with their own rules\textsuperscript{216}. This problematic issue will be analysed in the last chapter, tackling the ENI mid-term review in 2017.

This flexibility in the 2015 Review seems to arise out a sense of realism towards the neighbourhood. The Union is not the only player anymore who is investing and granting financial assistance, whereas others such as the Gulf Cooperation Council members, Russia or China are not requesting any conditionality in return\textsuperscript{217}.

The real new novelty in the 2015 Review regarding flexibility is that the Union shall examine a ‘flexibility cushion’ within the ENI that will be used ‘\textit{to set aside resources until used for urgent programming of unforeseen needs, particularly for conflict and post-conflict needs; refugee support; crises and disaster response; and for security and stabilisation programmes}’\textsuperscript{218}.

\textsuperscript{211} JOIN(2015) 50 final, p. 5
\textsuperscript{212} T. Schumacher, “Back to the Future: The ‘New’ ENP towards the Southern Neighbourhood and the End of Ambition”, College of Europe Brief 1.16, 2016, p. 2
\textsuperscript{213} \textit{Ibid.}
\textsuperscript{216} \textit{Ibid.}
\textsuperscript{217} H. Kostanyan, “The European Neighbourhood Policy reviewed: Will pragmatism trump normative values?”, \textit{European Neighbourhood Watch} 121, 2015, p. 1
\textsuperscript{218} JOIN(2015) 50 final, p. 20
The last priority the Union put forward in the Review is twofold: ownership and visibility. As already mentioned, greater differentiation should lead to a greater sense of joint ownership. This reinforced joint ownership is crucial to the ENP, as one of the major deficiencies in the previous versions was the lack of it. Throughout the consultation process, one could recognize the aversion against the EU-centric approach and the rather unilateral way of shaping Action Plans.

This, however, could also bring a major cost for the Union as it could lead to an ENP à la carte by letting the partners shape the ENP merely to their interests. In that case, it is highly problematic for the Union as foreign policy actor, losing its credibility as an influencer in fundamental reforms in the region. The 2015 Review not only proposes to enhance the ownership of the partners but also from the EU Member States. This could be again problematic as enhancing the role of MS in a supranational project could lead to a more intergovernmental approach with its specific dynamics, risking to slip off to the lowest common denominator.

Nevertheless, it remains important to restore the sense of co-ownership as experience has proven that the most fundamental reforms were taken by partners with the highest political will and feeling of joint ownership. Greater joint ownership will therefore lead to a better implementation of the ENP. It only needs to avoid that the ENP becomes a policy where only the partners decide. A shift to a greater inclusiveness of the partners is therefore welcome, but only to a certain extent.

The 2015 Review also reaches out to the civil society when it comes to joint ownership. In this respect, visibility is key in giving a positive image on concrete steps of the Union in its cooperation. The Staff Working Document also shows that most of the parties involved in the consultation process ‘recommended the EU to develop a real strategic communication, capable of influencing the debate within partner countries on topics such as extremism, corruption, human rights and governance’.

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219 L. Delcour, “The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy”, College of Europe Policy Brief 1.15, 2015, p. 1 – 4
221 JOIN(2015) 50 final, p. 3
223 L. Delcour, “The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy”, College of Europe Policy Brief 1.15, 2015, p. 1
224 JOIN(2015) 50 final, p. 7
3.2. The Main Proposals made to Review

In this part, the four main areas of focus and joint priorities of the 2015 Review will be analysed. Even though it also dedicates a paragraph on good governance, democracy, rule of law and human rights, the Review is characterized by a shift from a value-driven policy towards a more interest-based approach\textsuperscript{225}. This chapter shall thus only examine the four priorities and not the references to democracy, the rule of law and human rights.

3.2.1. The Security Dimension

As was already pointed out, stabilisation is the leitmotif of the 2015 Review of the ENP. The security dimension might not be the sole overarching theme but remains crucial to restore stability in the region. This focus on stability and security does not only try to make partners more resilient against threats, it also serves as a first guard against contamination of insecurity to the Union itself.

This establishes a security interdependence, meaning that both regions will have to cooperate and rely on each other for their own security\textsuperscript{226}. Therefore, security is one of the concrete and increasingly important joint interests for both the EU and its neighbourhood\textsuperscript{227}.

The 2015 Review mainly focusses on six priorities in the security dimension, namely security sector reform, tackling terrorism and preventing radicalisation, disrupting organised crime, fighting cybercrime, actions in the field of CSDP and crisis management\textsuperscript{228}. However, one could argue that the Review only gives a superficial overview without providing an in-depth analysis of the issue\textsuperscript{229}.


\textsuperscript{228} JOIN(2015) 50 final, p. 13 – 14

\textsuperscript{229} H. Kostanyan, “The European Neighbourhood Policy reviewed: Will pragmatism trump normative values?”, European Neighbourhood Watch 121, 2015, p. 2
It seems to ignore the trans-regional threats related to the neighbours of the neighbours, which was already one of the main reasons the security dimension of the previous ENP became a failure\(^{230}\).

Overall, the Review does not provide clear answers on how the implementation of the security proposals will be\(^{231}\). In order to establish an effective policy towards security, the implementation will need to take into account a close coordination with the EUGS, adopted in 2016\(^{232}\). To the same extent, alignment with the bilateral policies of the EU MS will be crucial\(^{233}\). The security dimension of the ENP would otherwise turn out into a ‘paper tiger’ if there is no coordination with the leading actors in the classic foreign policy: the Member States. It therefore also constitutes a test for the ‘comprehensive approach’, which aims to bring together all available tools and policies; security, diplomacy, technical support and financial instruments\(^{234}\).

It remains however surprising that the ENP Review stresses the linkages with CFSP\(^{235}\). In some way, it is necessary to align and connect different policies for the sake of coherence and effectiveness\(^ {236}\). But one has still to bear in mind that the ENP and CFSP are two distinct policies with different dynamics, methodology and financial rules\(^ {237}\). Strengthening an intergovernmental approach, based on the lowest common denominator in the ENP would lead to the contamination of a supranational policy\(^ {238}\). There were nevertheless already connections between CFSP and the ENP, for example with the alignment of partner countries with CFSP declarations or cooperation in CSDP missions\(^ {239}\), which the 2015 Review also

\(^{230}\) L. Delcour, “The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy”, College of Europe Policy Brief 1.15, 2015, p. 1 – 4

\(^{231}\) T. Schumacher, “Back to the Future: The ‘New’ ENP towards the Southern Neighbourhood and the End of Ambition”, College of Europe Brief 1.16, 2016, p. 1 – 4

\(^{232}\) L. Delcour, “The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy”, College of Europe Policy Brief 1.15, 2015, p. 4


\(^{234}\) Ibid., p. 19


\(^{238}\) Ibid.

envisages. A better coherence is thus a good initiative as long as it considers the different dynamics.

3.2.2. Economic Development and Trade

Cooperation in the field of security is not the only solution to stability. The root causes of the instability are also to be found in the social and economic inequality. It will therefore be key to enhance economic cooperation, and in particular, the trade relations, in order to restore stability in the region. This is also one of the main objectives of art. 8 TEU: to establish an area of prosperity.

Some authors argue however that only a few partners gained minor improvements due to the economic development programmes and economic integration prospect within the ENP\textsuperscript{240}. The 2015 Review therefore aims at ‘enhancing economic governance, strengthening fiscal stability and supporting structural reforms for improved competitiveness and inclusive growth and social development’\textsuperscript{241}. Alongside these aims, it shall also support the partners to modernise their economies and help them focus on the employment of youth.

Two main facilitators are put forward in order to fulfil those goals. First of all, the EU shall need more funding through cooperation with International Financial Institutions, such as the European Investment Bank, the European Bank for Reconstruction and Development, the World Bank and the International Monetary Fund. Funding through those institutions does not consist of grants but of loans with a negligible interest, useful for specific capacity-building such as the construction of roads. Another new proposal is a deeper involvement of the private sector and civil society to engage directly in the partnering countries, for example through economic diplomacy missions\textsuperscript{242}.

But far and foremost, trade relations will remain of the greatest importance in the neighbourhood relations, as the EU is the main trading partner for most of the ENP countries\textsuperscript{243}. The economic integration through DCFTAs that are concluded with Ukraine, Moldova and Georgia will lead to a broader access to the internal market and will thus be beneficial for those partnering countries. However, not every neighbour wants to pursue such a deep trade connection with the Union. Therefore, bearing the principle of differentiation in

\textsuperscript{240} P. Seeberg, “Partnership and Security – Towards European Neighbourhood Policy 2.0”, News Analysis Centre for Mellemstuder, 2015, p. 1 – 5

\textsuperscript{241} JOIN(2015) 50 final, p. 7

\textsuperscript{242} Ibid., p. 10

\textsuperscript{243} SWD(2015) 500 final, p. 6
mind, the Union shall need to offer realistic alternatives for the unwilling or unable neighbours.

One proposal is to conduct Agreements on Conformity Assessment and Acceptance (ACAAs), which allow free movement of industrial products in specific sectors. This aims at a more flexible and less comprehensive relationship than the whole set of legal approximations within an AA including a DCFTA. However, such an ACAA is not a genuinely flexible tool: despite the fact that partnering countries could decide on the scope of the industrial products, the Union shall make those agreements conditional upon the approximation to the EU standards covering the specific goods. Accordingly, the Union will have to seek different and more tailor-made agreements, aiming at different degrees of integration and cooperation. On the other hand, next to the differentiation, the Union shall also have to monitor and support the full and effective implementation of the DCFTAs it already concluded.

3.2.3. Migration and mobility

Due to the recent migratory crisis, migration and mobility became also an area of focus of the renewed ENP since it is also central to the stabilisation purpose in the region. The Review therefore aims at developing a partnership that is based on an integrated approach, including also non-ENP countries such as in the Western Balkans, Turkey, the Middle East, the Sahel and the Horn of Africa.

Four themes concerning migration and mobility are tackled in the 2015 Review: mutually-beneficial migration and mobility, ensuring protection for those in need, irregular migration and cooperation on border management.

The emphasis in the part on a mutually-beneficial cooperation is on labour market opportunities. By promoting a skilled labour migration scheme and a revision of the EU Bleu Card Directive, labour market needs in the Union could play a vital role in migration. This

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244 JOIN(2015) 50 final, p. 8
246 JOIN(2015) 50 final, p. 15
247 Ibid.
248 Ibid., p. 16
should also lead to a more tolerant attitude towards other cultures, excluding racism and discrimination.

However, mobility in a labour context will not be sufficient to solve a migratory crisis. Acknowledging that close to 40% of the world’s refugees are coming from the EU’s wider neighbourhood, the Union shall need to seek a more comprehensive response while assisting partner countries in developing their own asylum and protection systems for those who are in need. The Union should not close its eyes to inhuman situations caused by conflicts in its neighbourhood.

It will therefore also need to mitigate the root causes of migration, which is in fact an aim throughout the whole ENP. Concerning irregular migration, the Union shall work on readmission of those without the right to stay in the EU. It shall also have to help the neighbouring countries to develop their own return policy.

The last proposal is to step up cooperation on border management. Through the relevant agencies of the Union, such as FRONTEX and EUROPOL, the EU should intensify information exchange, capacity-building and operational cooperation with the willing ENP countries as part of the solution.

In sum, the migration dimension of the ENP is reactive in nature. With the objective of creating an area of stability and prosperity in the neighbourhood, migration should ideally become less and less important. Unfortunately, the situation in the neighbourhood and beyond does not seem to improve dramatically in the following years in order to render migration redundant.

3.2.4. Energy security and climate action

The aim to focus more on energy security falls down in two components. On the one hand, it is crucial to increase energy sovereignty as the overdependence of some partner countries on some supplier-states creates vulnerability and insecurity. Energy security as a security measure is thus one dimension. The other one has the objective to establish a more sustainable economic development through a better efficiency and reduced emissions.

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249 JOIN(2015) 50 final, p. 16
250 Ibid., p. 17
251 Ibid.
This is also connected to the importance of the full implementation of the Paris Climate Agreement. Climate action is unavoidable, thus also the ENP will have to focus on new, renewable sources of energy.

3.3. General appraisal of the Review

After examining the different proposals in the 2015 Review, a general appraisal of the whole process will point out the main advantages and disadvantages, together with the potential effects of the Review. The effects on the 2017 mid-term review of the ENI will be discussed in the following concluding chapter.

First of all, the 2015 Review suffers from a lack of vision and details towards the implementation of the proposals. It consists rather of stocktaking, adequately clarifying the flaws of previous versions but without concrete proposals to do away with them\(^\text{252}\). Notwithstanding the many proposals made, they are mostly about enhancing already existing projects and the refocusing of priorities\(^\text{253}\). This could be problematic, as the old projects already have proven that they were not capable of genuinely enhancing the situation in the neighbourhood.

To that extent, it is also paradoxical that the review was concluded in 2015 with the new ENI, consisting of the regulations on financial cooperation, concluded for the period 2014 – 2020 and based on the 2011 Review\(^\text{254}\). This is the main reason why the 2017 mid-term review of the ENI will be of the utmost importance in trying to implement the changes made by the 2015 Review.

The most significant shift of the 2015 Review in comparison with the 2011 Revision and the conception of the ENP in 2004 is the downgrading of the value dimension. It is striking how the promotion of values as one of the core principles has slowed down, partly due to the resistance of some partners in engaging on that level, but also due to the inconsistency of the Union in condemning human rights violations\(^\text{255}\). Albeit some remaining references to human

\(^{252}\) L. Delcour, “The 2015 ENP Review: Beyond Stocktaking, the Need for a Political Strategy”, College of Europe Policy Brief 1.15, 2015, p. 1 – 4


rights and the value element, the ENP is drifting away from a value-driven policy towards an interest based project.\(^{256}\)

The Review does neither provide an answer in how the Union should try to increase its leverage on the partners in order to have a more positive and efficient narrative in democracy support\(^{257}\). This is also noticeable in the new approach towards conditionality whereas the Review does not refer to this principle, even though the ENI had just renewed the deep democracy criteria and thus the criteria of conditionality. Some even argue that this Review led to the end of a period of democracy promotion in the neighbourhood\(^{258}\). It is however clear that the promotion of those values decreased and was undermined by the weakness the Union showed in responding to crises in the region\(^{259}\).

This also entails that the new ENP became less ambitious, not only on democratic support but on several issues. This new pragmatism is the common theme in the 2015 Review. Commissioner Hahn, in charge of the ENP, also acknowledged the limits to the leverage of the Union in the neighbourhood, declaring that one could not expect the ENP to resolve all the complex challenges\(^{260}\). Combined with the flexibility as new priority, this could bring us to a less ideological and more transactional relationship that will be favoured by some autocratic regimes in the neighbourhood\(^{261}\).

To the same extent, the Review engages in capacity-building, for example in security reforms, through enhancing the horizontal coherence in order to make the partnering countries more resilient to external pressures. There is however a *caveat* in that regard. It could also lead to the consolidation of those autocratic regimes if no conditions are made regarding the rule of law and democracy, which would be a perverse side effect to the capacity-building\(^{262}\).

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\(^{258}\) T. Schumacher, “Back to the Future: The ‘New’ ENP towards the Southern Neighbourhood and the End of Ambition”, *College of Europe Brief* 1.16, 2016, p. 1 – 4


Another characteristic of the new ENP is the increased political and thus intergovernmental approach, leading to the contamination of the lowest common denominator in the ENP. This greater intergovernmental influence could on the other hand also reinforce the ownership in the ENP.

Even though such a Review is to be seen as a work in progress, mainly with declarations of intent depending on the implementation of the proposals, it is doubtful whether the Review and subsequently the ENP has enough influence to enhance the situation in the neighbourhood. Therefore, it shall have to close the conception-performance gap, meaning that the ENP was unable to deliver what it wanted to deliver. It is however the question if the renewed ENP, while almost abandoning the idealistic goals to a rather Realpolitik and without significant funding, can achieve its objectives this time.

Another striking element can be found, not in the 2015 Review itself, but in one of the declarations of Commissioner Hahn. He mentions that the ENP will focus on the security dimension “for now”. This could mean that a new review is already scheduled or the implementation will differ from what was intended as the situation might change. Again, this is why the 2017 mid-term review of the ENI is of great importance to effectively implement the 2015 Review of the ENP. In this regard, a long-standing critique is that the ENP is not built as a crisis mechanism, but should be used to overcome broader problems in order to achieve the long-term goal of art. 8 TEU: creating an area of prosperity.

Overall, no real innovative solutions are found to the lasting issues in the neighbourhood, neither does it provide a clear way on how to implement the proposals. This could be a consequence of the increased pragmatism and political dimension within the ENP, trying to create more room for manoeuvres in the implementation in order to resolve issues on a more tailor-made basis.

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In the end, one thing is clear: the internal and institutional crisis of the Union infected the ENP, considering the lack of vision in the Review that is most of all problematic for the most willing countries in the neighbourhood\textsuperscript{269}. Consequently, the new pragmatic semi-Realpolitik approach of the ENP seems to come at the expense of the initial normative agenda\textsuperscript{270}. This could undermine the position of the Union even more than it already was.

\textsuperscript{269} T. Schumacher, “Back to the Future: The ‘New’ ENP towards the Southern Neighbourhood and the End of Ambition”, College of Europe Brief 1.16, 2016, p. 1 – 4

\textsuperscript{270} H. Kostanyan, “The European Neighbourhood Policy reviewed: Will pragmatism trump normative values?”, European Neighbourhood Watch 121, 2015, p. 2
Chapter 4. The 2017 Mid-Term Review of the ENI

Since the conception and the first Action Plans of the ENP in 2004, it was obvious that a financial instrument was indispensable to create a well-working policy. This led to the creation of the European Neighbourhood and Partnership Instrument for the period of 2007 – 2013, which is for some the real starting point of the ENP as such. The aim of establishing the ENPI was to harmonize the different existing assistance schemes in the EU’s external policies in a single regulation and create a ‘structural funds approach’ based on multi-annual programming, partnership and co-financing. For the period 2014 – 2020, the European Neighbourhood Instrument will be the successor of the ENPI within the Multinational Financial Framework (MFF) for the same period in time. The mid-term review of the ENI will be done parallel with the other external financial instruments (EFIs) under the MFF whereas all evaluations will have to be concluded by the end of December 2017, regarding art. 17 of the Common Implementing Regulation, better known as the Horizontal Regulation. This Horizontal Regulation also applies for the period 2014 – 2020 according to its art. 18.

4.1. The ENI and inconsistencies with the 2015 Review

Major developments in the region have shown that the first ENP and the assisting financial instrument of the ENPI were not able to tackle the existing and newly emerging issues in an effective manner. Therefore, the 2011 Revision tried to shift the approach from political stability to deep and sustainable democracy. In this context, together with the entry into force of the Lisbon Treaty and subsequently of art. 8 TEU providing a neighbourhood clause and its objectives, the successor of the ENPI should make the Union’s response more effective and in line with the principles that were put forward in the 2011 Revision.

This was pointed out for the first time in the proposal to establish the ENI. In its explanatory memorandum, the Commission stipulates that a better application of the ‘more for more’ principle should be upheld and the complexity and length of the programming

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process decreased. The coherence of external financing instruments should also be enhanced as the new Horizontal Regulation also covers the ENI. It should also provide for strengthened linkages to the internal instruments and policies of the Union with regard to the optional participation of partner countries in EU agencies or programmes.

The ENI as established in 2014 is in fact the concrete implementation of the 2011 Revision of the ENP. It is therefore useful to examine from which inconsistencies with the new 2015 Review the ENI is suffering in order to have a clear view on the 2017 mid-term review of the ENI.

As was already pointed out, the 2011 Revision consisted of four main themes: deep and sustainable democracy, conditionality, differentiation and conflict resolution. The 2011 Revision was thus a shift to a more value-based policy, regarding the adjustment of the ambiguous reference to values where the Union is founded upon, to a reference to the shared commitment to the universal values of democracy, the rule of law and respect for human rights.

The first objective in the ENI Regulation ex art. 2 is consequently the promotion of deep and sustainable democracy that has to be monitored using periodic reports on the implementation of those objectives in the jointly agreed Action Plans. Those reports shall thus also include a monitoring of democratic elections, respect for human rights and fundamental freedoms, an independent judiciary, cooperation on issues of justice, freedom and security, the level of corruption, trade flows, gender equality and indicators enabling internal economic disparities, including employment measures. This was even an ambiguous extension of the deep and sustainable democracy criteria as put forward in the 2011 Revision.

Subsequently, art. 4 of the Regulation states that the bilateral programmes within the ENP shall be incentive-based and differentiated, taking into account the needs of the partnering country, the commitment to and progress in implementing mutually agreed political, economic and social reform objectives, the commitment and progress in building a deep and sustainable democracy, the level of ambition of the partnership and the absorption capacity. However, when it comes to building a deep and sustainable democracy and political,

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274 Art. 1 ENPI Regulation  
275 Art. 1 ENI Regulation  
276 Art. 2,3 ENI Regulation  
economic and social reforms, resources for the partners shall be adapted primarily according to the progress in those areas. This means that the ‘more for more’ and differentiation are enforced in legally binding provisions in the ENI, especially with the application of art. 7(6) providing a supplement to the country’s financial envelope to facilitate the implementation of the incentive-based approach of art. 4(2) of the ENI Regulation. This article also includes a ‘less for less’ conditionality, meaning that support could be reconsidered if the progress reports show serious or persistent regression.

This approach was however abandoned in the 2015 Review, leading to inconsistencies that the 2017 mid-term review of the ENI will have to do away with.

The 2015 Review is characterized by two major shifts in comparison to the 2011 Revision: the focus on building a deep and sustainable democracy changed into an emphasis on stabilisation and the ‘more for more’ conditionality was de facto abandoned as the motor of reforms under the ENP in favour of a more flexible approach. Those two modifications are in line with the new pragmatic approach that is to be found throughout the 2015 Review.

Firstly, by focussing on stabilisation, the ENP seems to abolish its value-driven path. This is clearly not in line with the general objectives ex art. 1 of the ENI Regulation. It is also stated in the specific objectives under art. 2 of this Regulation that every report on the implementation of the ENP shall have to take into account the progress on the deep and sustainable democracy criteria. To that extent, the abandoning of simultaneous progress reports while making them more differentiated does not fit into the current ENI framework, even though the Review stipulates that the required criteria of the ENI Regulation will be included in regular reports tracking the developments in the whole neighbourhood.

Secondly, the request for more flexibility is not compatible with the incentive-based approach of art. 4 ENI Regulation. This provision displays the ‘more for more’ principle, declaring that the share of available resources shall be adapted primarily to the progress in building and consolidating deep and sustainable democracy and to the implementation of the agreed reforms. This means that within the current ENI, flexibility and an enhanced differentiation should not be able to disregard the deep and sustainable democracy criteria.

In sum, combining the abandoning of the simultaneous progress reports with less focus on the value elements and a weakened conditionality in favour of flexibility could lead to a double

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278 JOIN(2015) 50 final, p. 5
standard approach\textsuperscript{279}. Applying the deep and sustainable democracy criteria of the ENI towards the most willing countries to reform in the bilateral evaluations and another, more limited one for others is thus not in line with the ENI Regulation\textsuperscript{280}. It is moreover anything but desirable to reduce or even discard those criteria as it was previously shown that this could lead to a consolidation of autocratic regimes when the Union closes its eyes towards human rights violations and a decline of implementing the value-dimension\textsuperscript{281}.

### 4.2. The Implementation of the 2015 Review

In order to implement the changes made in the 2015 Review, a mid-term review of the ENI will be necessary. This review was according to art. 17 Horizontal Regulation already scheduled and had to be concluded no later than 31 December 2017. Not only the ENI will be reviewed at that time, also the other financial instruments for external action such as the Development Cooperation Instrument (DCI), the European Instrument for Democracy and Human Rights (EIDHR), the Instrument contributing to Stability and Peace (IcSP), the Instrument for Pre-Accession Assistance (IPA II) and the Partnership Instruments for cooperation with third countries as covered by art. 1 of the same Regulation, will be reviewed. In addition, the Horizontal Regulation itself shall be reviewed at the same time.

Similar to the process of concluding the 2015 Review, a consultation process is held between 7 February 2017 and 3 May 2017 in order to gather feedback on the provided draft report of the review and to collect insights of all stakeholders concerning the future development of the ENI and all other financial instruments\textsuperscript{282}.

The Draft Report on the ENI provided some recommendations in order to enhance the effectiveness of the financial support in the ENP\textsuperscript{283}. One of the major conclusions is that the ENI does not have a sufficient amount of flexibility to face the most urging challenges in the neighbourhood. Therefore, two recommendations are made to that respect. The first concerns the creation of a flexibility cushion, which was also proposed in the 2015 Review. Alongside this flexibility cushion to be built into the ENI, the Commission should examine the

\textsuperscript{280} Art. 2 j° 4 ENI Regulation
possibility of pooling resources between the different EFIs\textsuperscript{284}. The second recommendation is to establish a specific dimension in the ENI on crisis prevention strategies and subsequently develop further the operational synergies with IcSP\textsuperscript{285}.

Despite the many recommendations on how to implement the 2015 Review throughout the consultation process, –or not to implement it due to the lack of value-based conditionality– the implementation itself seems to suffer from some major obstacles. The first one is the paradox of the 2015 Review itself, altering the approach of the 2011 Revision that was only fully implemented by the ENI Regulation in 2014\textsuperscript{286}.

As was already pointed out, the ENI Regulation consists of several references to the incentive-based approach or ‘more for more’ conditionality including the deep and sustainable democracy criteria. In order to align the flexibility aspirations of the 2015 Review, those provisions shall have to be amended, together with the other inconsistencies put forward in the previous chapter.

Nevertheless, not only the ENI Regulation mentions those 2011 principles. In addition, the Horizontal Regulation as the overarching framework for the Union’s financial instruments for external action contains several references to the approach in the 2011 Revision. Art. 1(2) states that the general or sector budget support is based on mutual accountability and shared commitments to universal values. Subsequently, the progress with regard to democracy, human rights and the rule of law shall be assessed before the decision of granting the support. The general or sector support is thus conditional on the progress made in those areas and towards the mutually agreed objectives.

Art. 12 of the Horizontal Regulation also mentions that the Commission shall have to monitor the progress towards the expected results on a regular basis, which again is against the 2015 intention of abandoning the simultaneous progress reports\textsuperscript{287}. In sum, not only the ENI Regulation shall have to be amended during the mid-term review in 2017, but also the


\textsuperscript{285} Ibid.


\textsuperscript{287} JOIN(2015) 50 final, p. 5
Horizontal Regulation shall need modifications in order to comply with the approach put forward in the 2015 Review288.

Another obstacle is the enhanced competence for the European Parliament regarding the Union’s budget since the Lisbon Treaty, according to art. 14 TEU. The EP will now act as the co-legislator on budget matters. This also has implications on the financial instruments for external action. In a statement annexed to the ENI Regulation, the European Parliament declares that it is entitled to fully exercise its prerogatives when a decision has to be taken on the suspension of the granted assistance if a country does not comply with the principles put forward in the ENI and especially the principles of democracy, the rule of law and the respect for human rights. It derives this right from the fact that such a decision would alter the overall financial scheme that was agreed on under the ordinary legislative procedure.

However, the most important consequence of the reinforced role of the EP for the review of the ENI is that the Commission shall have to conduct a strategic dialogue with the European Parliament prior to the review, according to a declaration annexed to the ENI. This strategic dialogue gives the EP the opportunity to express their concerns regarding the mid-term review as the co-legislator on budget matters. On the one hand, this could render the ENP a more politicised policy with all the possible consequences289, on the other hand could the enhanced role of the EP also lead to positive effects. The EP was always in favour of rewarding the best progressing partners while insisting on clear benchmarks for assessment and for the distribution of financial support290, which could mitigate the pragmatic approach in the 2015 Review.

However, no specific reference is made on how this strategic dialogue is going to be conducted. It moreover seems that even the Commission and the EP themselves do not know how this dialogue is going to be conducted. This is problematic because the Commission is not bound by the opinion of the EP but shall take it into account while drafting the mid-term

review. This means that the EP shall have to use its democratic legitimacy to provide political pressure in order to gain effect from the strategic dialogue.\footnote{E. Lannon, “Entry into Force of the New European Neighbourhood Policy and Negotiation of “Deep and Comprehensive” Free Trade Areas: A European Neighbourhood Policy Running at Different Speeds”, IEMed. Mediterranean Yearbook 2014, p. 230}

This strategic dialogue shall therefore be an attempt to align the views of both parties on the mid-term review itself and subsequently on the implementation of the 2015 Review of the ENP. It remains however doubtful, even improbable that this strategic dialogue will lead to a renegotiation of both the ENI as such and the Horizontal Regulation by the EP and the Council in an ordinary legislative procedure, in order to implement the 2015 Review. It thus seems that the margin of manoeuvre is limited.\footnote{E. Lannon, “More for More and Less for Less: from the Rhetoric to the Implementation of the European Neighbourhood Instrument in the Context of the 2015 ENP Review”, IEMed Mediterranean Yearbook, 2015, p. 221}

A possible solution could be found in art. 13 of the ENI Regulation. This provision states that the Commission is empowered to adopt delegated acts to amend Annex II of the Regulation, especially in the light of the publication of the mid-term review report. This annex lists the priorities for the support at bilateral level, multi-country level and for cross-border cooperation programmes. It also includes the financial allocations per type of programme, which is, for the moment, up to 80% for bilateral programmes, up to 35% for multi-country programmes and up to 5% for cross-border cooperation.

Such a delegated act gives Commission the power to adopt non-legislative acts of general application that supplement or amend certain non-essential elements of a legislative act. Following the ‘Biocides case’\footnote{C-427/12 - Commission v Parliament and Council, ECLI:EU:C:2014:170}, the Commission has no other choice than using art. 290 TFEU when a basic act has to be formally amended, for example revising an annex whereas it is free to use delegated or implementing acts in other circumstances.\footnote{A. Allemano, “The Biocides Judgment: In search of a new chemistry for the principle of EU institutional balance”, available at http://europeanlawblog.eu/2014/05/01/the-biocides-judgment-in-search-of-a-new-chemistry-for-the-principle-of-eu-institutional-balance/ (accessed on 02/05/’17)}

As mentioned above, such delegated acts can only amend non-essential elements. Subsequently, no real changes regarding the new approach in the 2015 Review could be implemented in the ENI after the mid-term review, as most of them are fundamental in nature.
Subsequently, it seems that only potential reallocations of financial envelopes will be done during the mid-term review\textsuperscript{295}.

Chapter 5. Conclusion

Albeit the good intentions, the European Neighbourhood Policy did not effectively meet the ambitious objectives. Especially regarding the promotion of fundamental rights, the Union only saw minor improvements in the most willing countries but even an aggravation in others. While in 2004 the ENP was still too dependent on the structure and techniques of the pre-accession with insufficient funding\textsuperscript{296}, the timing in 2011 was debatable with the uprisings in the southern neighbourhood regarding the absence of understanding of what was really happening in the region whereas reinforcing conditionality in a sensitive process of democratic transition is highly precarious. The shift towards pragmatism in 2015 was therefore not surprising, but also not preferable. Three major challenges occurred due to the new pragmatic approach.

First of all, major obstacles were recognized in order to implement the 2015 Review in the ENI. It seems doubtful that the Commission shall find an agreement with the Parliament during the strategic dialogue to revise the ENI and the Horizontal Regulation, in order to overcome the inconsistencies between the value-driven conditionality of 2011 and the flexibility of 2015. Minor financial reallocations are more likely to happen. This leaves room for three possible scenarios.

On the one hand, it is possible that the 2015 Review remains a dead letter when the Union shall further apply the 2011 approach in compliance with the ENI and the Horizontal Regulation. On the other hand, the 2015 Review could be of influence regarding the adoption of the new MFF and subsequently a new financial regulation concerning the ENP, starting in 2021. As a third option, the Commission could persevere in implementing the 2015 approach while, basically, ignoring the provisions on conditionality in both regulations. It is however unimaginable and unacceptable for a Union, based on the rule of law, to embrace this third option.

Secondly, pragmatism and flexibility as put forward in the 2015 Review are inherently leading towards an effusive differentiation and even discrimination. Especially when it comes to the promotion and protection of fundamental rights, this could be potentially harmful. It would mean that countries, willing to reform on the level of human rights and the rule of law,

\textsuperscript{296} Total funding under the ENPI was EUR 11 181 000 000, under the ENI: EUR 15 432 634 000. This is not a significant increase because the remnants under the ENPI were added in the ENI. Regarding the flexibility on the budget under the ENI, art. 7(2): [...] Indicative financial allocations for each single support framework shall be given in the form of a range of not more than 20 % of those allocations [...]
could be evaluated worse than countries without any aspiration on improving those standards, with all due consequences on a financial level and the perception of a double standards approach. This would even lower the leverage of the Union towards the partners regarding those rights. To boost this leverage on democratic reforms, funding should increase dramatically. Other stakeholders in the region are now able to offer more, but without any reference to conditionality and efforts on the level of improving fundamental rights protection.

As always in external affairs and in policy-making in globo, it is all about finding the right balance. Both regions are fragmented with each their particular issues. On the one hand, some partners are more dependent on the Union when it comes to their incomes through export and tourism, whereas others are more independent through their own resources, notably in energy matters\(^\text{297}\). This also serves to the extent partners are willing to comply with suggested reforms and to align their regulatory standards. It is therefore possible to enhance the joint ownership by focussing more on the particular issues one partner has which implies a certain degree of flexibility and differentiation. On the other hand, it would be unacceptable to justify a flexible and differentiated approach to the compliance with human rights because of the fragmentation and the unwillingness of certain partners to engage in this area.

It could nevertheless be justifiable to apply some flexibility on fundamental rights in special occasions. This was for example the case during the democratic transition in Tunisia where a stringent application of the deep and sustainable democracy criteria would potentially harm the on-going developments\(^\text{298}\). Here, the Commission made use of a flexible approach by adopting a special implementing decision in order to support the sensitive progress\(^\text{299}\). Positive discrimination or ‘flexibility for the good’ can thus be a possible and favourable solution in unique situations, but is on the other hand again inconsistent.

It will also be key to enhance consistency in condemning human rights violations, which was already problematic throughout the ENP for years. If this will not be the case, some partners could perceive a double standard approach, rendering them less ambitious in that area. In sum,

\(^{297}\) See Annex; i.e. situation in 2007


\(^{299}\) Commission implementing Decision of 18.7.2013 on the special measure, support for Partnership, Reform and Inclusive Growth (SPRING) 2013 in favour of the southern Neighbourhood region to be financed from the general budget of the European Union, Brussels, 18.7.2013, C(2013) 4452 final, point 3.3.
it is of the utmost importance that the focus remains on implementing the deep and sustainable democracy criteria in order to create a ring of well-governed friends regarding the objective in the ESS and subsequently to fulfil the long-term purpose of art. 8 TEU: *aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.*

Those two major challenges boil down to the underlying third challenge: the Union’s credibility. Both internal and external, the Union is losing leverage and credibility due to the time-consuming decision-making process and, subsequently, the inherent reluctance to intervene quick and efficient. In order to reinforce its credibility, the Union should be more consistent in promoting and coercing fundamental rights together with a better alignment of the Member States’ external policies, because the different interests of the Member States in the partnering countries could lead to an inconsistent sanctioning. It should also be reluctant to intertwine the ENP as a supranational policy with CFSP matters, in avoidance of making the framework even more complex and intergovernmental.

In sum, the entire Union and its underlying ideas are at a crossroad. With elections in several key Member States, the start of the Brexit negotiations, the on-going refugee crisis and the remaining security challenges within and outside the Union, 2017 will be of the utmost importance to avoid a further disintegration and to reconnect the Union’s citizens with the core principles of the EU, averse from the current populism and euroscepticism. The answer to those issues should be a stronger, more unified and, above all, more responsive Union, but fundamental changes are unavoidable to live up to that objective.

It is however unlikely that the 2017 mid-term review of the ENI will bring fundamental changes to the ENP due to the mentioned obstacles. It thus seems that fundamental changes will only be implemented in 2020, after the expiry of the MFF\(^{300}\) and subsequently the Horizontal Regulation and the ENI.

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\(^{300}\) Ex. art. 25 Regulation No 1311/2013, there is the possibility of an extension of the MFF in case no new multiannual financial framework is adopted before 31 December 2020.
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* “Don’t take ‘no’ for an answer” means that the partner state considers the EU’s refusal of membership perspective to be unsustainable in the long run if it sticks to its European ambitions, and therefore considers the EU’s lack of incentive itself to lack credibility.

Source: M. Emerson, G. Noutcheva and N. Popescu, “European Neighbourhood Policy Two Years on: Time indeed for an ‘ENP plus’”, *CEPS Policy Brief*, 2007, p. 11
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