



## European Neighbourhood Policy in the Mashreq Countries

### Enhancing Prospects for Reform

**Stephen Jones and Michael Emerson**

#### Final overview report

Two detailed background papers for this project are also part of the CEPS Working Document series:

*[From Barcelona Process to Neighbourhood Policy: Assessments and Open Issues](#)*, CEPS Working Document No. 220, Michael Emerson and Gergana Noutcheva, March 2004

*Services Sector Reform and the Liberalisation of Trade in Services in Jordan*, CEPS Working Document, Daniel Mueller-Jentsch, forthcoming 2005.

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## Abstract

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This report assesses ways in which the Action Plan process that has been launched under the European Neighbourhood Policy (ENP) could become a more effective driver of political and economic change in the Mashreq region (covering Egypt, Jordan, Lebanon, Syria and the Palestinian territories), compared with the modest results from the Barcelona process to date. The development of the ENP has already provided a valuable systemic/institutional advance in Euro-Med relations and has been an important confidence-building measure in an increasingly uncertain political environment. But it has yet to provide momentum for economic, political and social advance in the partner states.

Key elements in making the Action Plan process more effective would be the following:

- The Commission needs to deepen the policy content of the ENP with sketches of different degrees of desirable EU *acquis* compliance as a function of different economic structures and capabilities of the partner states.
- The task of policy-shaping in different sectors of the Action Plans with the partner states needs to be shared by the Commission with other international organisations, most importantly the World Bank, the International Monetary Fund (IMF) and the European Investment Bank (EIB).
- The policy-shaping recommendations in support of the economic parts of the Action Plans should be explicitly linked to financial or market-access incentives (or both) on offer from the EU and international financial institutions.
- The promotion of political reform in the partner states is a more delicate affair. Yet there is still some room for 'positive conditionality' if the Commission were to define more substantively the package of incentives that are offered to partner states.

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# EUROPEAN NEIGHBOURHOOD POLICY IN THE MASHREQ COUNTRIES ENHANCING PROSPECTS FOR REFORM

*CEPS WORKING DOCUMENT NO. 229/SEPTEMBER 2005*

STEPHEN JONES AND MICHAEL EMERSON

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## **Executive Summary**

### *Overview of the study*

This report assesses ways in which the Action Plan process that has been launched under the European Neighbourhood Policy (ENP) could become a more effective driver of political and economic change in the Mashreq region (covering Egypt, Jordan, Lebanon, Syria and the Palestinian territories), compared with the modest results from the Barcelona process to date. The development of the ENP has already provided a valuable systemic/institutional advance in Euro-Med relations and has been an important confidence-building measure in an increasingly uncertain political environment. But it has yet to provide momentum for economic, political and social advance in the partner states.

This study builds on earlier work that has examined the political context in the Mashreq region in terms of the prospects for political and economic change of a kind that Europe would like to promote, and the record of the Barcelona process to date, including ways in which the ENP might provide stronger incentives for partner countries to undertake reforms. This report draws on case studies of specific economic and political reform issues, focusing primarily on Jordan, with a view to examining what initial lessons are emerging from the process of Action Plan negotiation and the first stages of implementation, and how implementation can be strengthened, both in Jordan specifically and more generally.

The purpose of the case studies has been to examine the issues relating to the potential role of the ENP as a driver of change within the region, in specific policy contexts related to both economic and political reform. Two areas covered in the EU-Jordan Action Plan were chosen as case studies: first, reform of the judicial sector in the context of the wider objective of strengthening the rule of law;<sup>1</sup> and second, reform of the services sector, focusing on 'backbone services' of particular importance for encouraging economic growth and employment creation.

### *The changing political context*

A key feature of the region is that (until the recent dramatic events in Lebanon and with some significant exceptions) the political regimes have appeared to be relatively immune to pressures for political change from below. Opposition groups are typically highly fragmented, but their most organised if not largest component is usually Islamic in orientation. Regimes have successfully used a combination of cooption, patronage and repression to prevent the opposition from becoming a serious threat to their hold on power. In the area of economic reform, the

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<sup>1</sup> This case study also provided a comparative overview of the judicial reform issues in Egypt and Lebanon.

processes of economic liberalisation and privatisation have been structured in a way that favours the economic interests of elite groups, and business interests in general have not provided an effective lobby in favour of economic reforms.

These considerations suggest that prospects for reform have depended very largely on the extent to which ruling elites see such reforms as desirable or necessary to protect their position (so that reforms are driven from the top down), in which case external influences may provide the most likely driver of change.

Compared with the pattern of almost monolithic regime stability that has characterised most of the Arab world, however, recent developments mark a substantial change. These have been most dramatic in Iraq and Lebanon, but in terms of moves towards democratisation and political reforms there have been significant developments or prospects of them across the region. The assertive foreign policy of the US towards the region has been a major factor, although events in Lebanon also appear to be strongly influenced by models of popular revolt from Georgia and Ukraine. These developments could be drivers of change on a grand scale, in which the EU (committed to more gradualist and consensual approaches) has so far played only a limited role. The implications of these developments remain deeply uncertain but are potentially extremely profound.

The question is how to make the best use of the new opportunities in the political and economic spheres. The EU enjoys certain advantages because its foreign policy approaches in the region are perceived with less hostility than those of the US, but 'Europe' appears to figure much less in both economic and political considerations than in the Maghreb.

### *The Jordan case studies*

Jordan is an example of the model of personalised (dynastic) authoritarian rule that predominates in the region, although with its own specific characteristics. These are notably the strong role of tribal loyalties in politics among the traditional elite (which provides much of the backbone of support for the Hashemite regime), a population of which the majority is Palestinian and a heavy dependence on external assistance.

Within this context, recent reform efforts in both the economic and political spheres have been initiatives from the palace and have been bounded by the need to contain any threats to the regime. Under King Hussein there were some initiatives towards political liberalisation, especially between 1989 and 1993, but these were limited and subject to reversal in the face of political and perceived security threats. Since 2002, under King Abdullah II, there have been a series of moves towards deepening political reforms (in a context where economic reforms have already been taken further than in most of the region) which, whether taken as a response to external pressure or from personal conviction, may be seen as creating a genuine opportunity for political change. These have culminated in recent government changes that have greatly strengthened the position of reformers and commitment to the 'National Agenda' process, which may provide the basis for a more consensual and longer-term approach to policy-making.

The case study on judicial reform concluded that in relation to the wider reform agenda for the judicial sector, achievement of the overall objectives would require progress in a number of areas additional to those in which the government has been successful in presenting a programme for reform, which has attracted donor support:

- A great deal of current activity revolves around the review of existing legislation and amending it to enshrine the rights of those previously discriminated against, marginalised and restricted. The next stage is to ensure that the protection that has been granted is realised.

- Work to strengthen law-related institutions to make them more competent, efficient and accountable follows logically. Hence reform efforts targeting the police, prosecutors, public defenders and prisons require more consideration.
- Efforts to increase the government's compliance with the law need leadership and a change in the values and attitudes of those in power.
- Discussion with donors suggests that the criminal justice system, the juvenile justice system, human rights and prison reform are areas requiring further attention that could benefit from EU involvement.

The following issues emerge as being particularly significant for the process of implementing the EU-Jordan Action Plan in this area:

- Donors are supporting a government reform agenda of which some elements do not command widespread popular support. This suggests that attempting to build a wider constituency for the reform agenda and seeking areas of consensus with opposition groups may be important for achieving reforms that are politically sustainable.
- The areas of the Action Plan that are related to judicial reform and strengthening the rule of law can be seen (to date) as mainly an extension of the modes of support to government reform programmes and civil society that have been provided under the MEDA programme so far, in support of a well-articulated government reform strategy for the judiciary. What is absent from the Action Plan is a strategic perspective that would attempt to use a wider set of incentives that might potentially be available under the ENP to encourage political reforms and increased respect for human rights.
- The support for reform provided by donors may possibly be seen as too narrow and too focused on issues of capacity and caseload management, which may not address the core issues of judicial independence.

The case study of service sector reforms concludes that in Jordan these are well advanced (at least at the level of their legislative and regulatory basis) and generally in line with international best practices and the principles of the Single Market, although the transport sector is assessed as lagging in the reform process and as a potential source of bottlenecks. The EU-Jordan Action Plan sets out broad policy objectives in this area, but the Action Plan itself does not:

- relate in a clear and comprehensive way to government reform strategies;
- set out a monitorable framework with targets and benchmarks for progress;
- take into account the role of other donors; or
- present a coherent view of the incentives and support that the EU can provide to enable progress to be made and agreed targets to be achieved.

A general concern, however, is that while Jordan has articulated reform strategies in many important areas, and has made significant policy commitments such as that to a free trade area with the EU in the Association Agreement, the level of understanding of the implications of these is limited to a small group of senior policy-makers. Further, the principal motivation for undertaking these commitments, especially in relation to trade, may be linked to foreign policy objectives. Jordan is poorly prepared, both with regard to the capacity to carry through the institutional and policy implications of these commitments, and the understanding that the private sector has of their impact.

### *Strengthening the use of incentives through the ENP: Scope and limits*

The incentives that the EU may offer are in principle wide-ranging: grant aid, investment loans, market access for goods and services, access for the movement of people and migration, and institutional and political links. The broad issue of policy is to define how far these incentives might actually be made available, and if so whether they are offered conditionally or unconditionally.

The Barcelona process tended more towards the ‘socialisation’ model (interaction and confidence-building) than the ‘conditionality’ or ‘incentives’ model. Financial aid has not been modulated according to conditions. Political conditionality by the EU in its relations with ENP partner states has so far been close to nil, as revealed by the fact that the EU has never activated the human rights clause of its Association Agreements.

In addition, the free trade and institutional aspects of Barcelona have been largely standardised if not multilateralised. The ENP marks a certain change of policy by the EU in the direction of bilateralisation, but it is not at all clear from the Action Plans what conditional incentives are on offer. Vague terms such as a possible stake in the internal market are mentioned. By contrast the EU accession process has been a very strong conditionality machine in both economic and political domains. With regard to the ENP partner states, the EU may elaborate differentiated approaches as between the east and south. Given the extreme sensitivity of the question of Islamist politics it is arguable that the ENP should for its southern neighbours choose a modulated policy, substantially strengthening the conditionality model for economic issues, but relying more heavily on the socialisation logic for the political aspects. The report discusses in more detail some possible elements of such an approach.

In the economic domain, the switch from Barcelona to ENP could see the introduction of much more incisive and effective ‘meso-economic’ policy-shaping, backed by specific conditionalities and incentives. One approach to doing this would involve a three-player coordination between the Commission, the European Investment Bank (EIB) and the World Bank. Their leading role could also provide the basis for wider coordination with bilateral donors.

The scope to use Action Plans to strengthen engagement with political Islamic movements (who are arguably a significant potential driver of change) is constrained by the fact that these documents have to be jointly agreed with the partner states. In these circumstances the scope for the EU to support democratic reform will have to rely on such methods as i) the bilateral actions of member states, ii) ‘track 2’ actions supported by the EU but undertaken through NGO, academic and think-tank channels, and iii) technical assistance from the EU to those components of the broad democracy/rule of law/civil society nexus where it is welcome.

There would still appear to be room for the EU to modulate its packages of political and economic incentives linked to broad assessments of the reform process. Such assessments would relate effectively to a ‘positive conditionality’ that would affect whether the EU would be making a special effort to favour the partner state in question. The Commission should now also sketch the possible substance of the announced category of Neighbourhood Agreements for deepening the relationships between the EU and partner states.

### *Conclusions for strengthening the Action Plan process*

Progress is needed in the following areas if the ENP is to become an effective driver of change in Jordan.

- The Jordanian government will need to articulate a vision and strategy for what it seeks to achieve from its engagement with the EU. The National Agenda process presents a critical test and opportunity for this.

- The EU needs to articulate and communicate more clearly how it intends to give substance to the promises of the benefits that are set out in the Action Plan, and to define what Jordan would need to achieve in order to qualify for such benefits. The National Agenda process is an obvious focus for this articulation and communication.
- If progress can be made on articulating a vision of EU-Jordan relations that emerges as having an important place in the National Agenda, both parties will need to make a real prioritisation from the all-embracing agenda of the Action Plans.

Jordan is even more of a service economy than most (70% of GDP), which makes reform of the services sector not just a sector case study, but potentially the strategic key to its economic development prospects. This presents an opportunity for the EU to negotiate a comprehensive services agreement bilaterally with Jordan as a strategic implementation measure of the Action Plan, as well as a possible focus for strengthened cooperation, especially between the European Commission, the World Bank and the EIB.

The judiciary study reveals a situation in which the EU is offering a certain amount of technical assistance, but is not seeking to apply high-level political reform conditionality. The US is occupying a leading place in technical assistance in this domain, while it also appears that the US is strengthening its use of political conditionality. Dialogue between the US and the EU over the content of the expected political reforms is a minimal requirement to be addressed. The EU should seek a convergent discourse, but not probably a particularly high profile.

More generally, the perceived advantages to a partner country of a strengthened relationship with the EU will be the most important determinant of the potential of the ENP to bring about change.

An important strategic question is the extent to which the ENP is seen as *process-driven* (as the Barcelona process has been to date) or *outcome-focused*. Effective use of the ENP's incentive potential would seem to require an outcome focus, which would set benchmarks and targets, ideally in the context of an articulation of the content of Neighbourhood Agreements, and which would provide a clear incentive framework (that would be seen as offering an opportunity, rather than imposing conditionality). This approach would, however, require that both sides see an advantage in setting such benchmarks and that they can in fact be agreed. If this is not the case, then a process-oriented approach to continue confidence-building and establish areas of consensus may be required. The best approach to use may vary among sectors and policy areas.

The Action Plans so far published are only preliminary documents. They are subject to two systematic shortcomings. First, they are not yet specific in policy-operational detail. Second, the Action Plans are not supported by clear indication of the incentives offered to the partner states, and on what conditions.

Key elements in making the Action Plan process more effective would be the following:

- The Commission needs to organise internally the production of a set of sector-specific green or white papers to deepen the policy content of the ENP in general terms. This should include sketches of different degrees of desirable EU *acquis* compliance as a function of different economic structures and capabilities of the partner states, to help guide the process of making the Action Plans operational.
- The task of policy-shaping in different sectors of the Action Plans with the partner states needs to be shared by the Commission with other international organisations, most importantly the World Bank and the International Monetary Fund (IMF), according to more detailed cooperation agreements.

- The policy-shaping recommendations in support of the economic parts of the Action Plans should be explicitly linked to financial or market-access incentives (or both) on offer from the EU and international financial institutions. The investment funds of the EIB would also be steered to support sectors undertaking recommended policy reforms.
- The promotion of political reform in the partner states is a more delicate affair. Overall the process will have to rely more on the paradigm of ‘socialisation’ than that of conditionality. Yet there is still some room for ‘positive conditionality’ if the Commission were to define more substantively the package of incentives that are offered to partner states, including being more explicit about the possible content of future European Neighbourhood Agreements and the broad conditions for moving to this stage.

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## 1. Introduction

The European Neighbourhood Policy (ENP) has become a flagship of the EU's common foreign and security policy. It now embraces a well-identified geographical and political space, namely all the European states of the CIS and all the Mediterranean partners of the Barcelona process. To the south in particular the ENP is intended to 're-invigorate' the Barcelona process, the impact of which has not been decisive and its forthcoming 10<sup>th</sup> anniversary makes an assessment of the potential of the ENP especially pertinent. The Barcelona process has created space for dialogue but has not served as a driver of change in the region.

The key question is whether the ENP can do more, and if so how its impact can be maximised. The most significant feature of the ENP is that its approach (and the structure of the Action Plan, which is its primary instrument) is derived directly from the approaches that have been used by the Commission in structuring relations with accession candidate countries (where the prospect of accession has been an immensely strong driver of change). The ENP holds out the prospect of moving beyond cooperation to a significant degree of economic integration, including a stake in the EU's Internal Market, and the possibility for Jordan to participate progressively in EU policies and programmes. Yet in comparison to the accession process, the benchmarks and ultimate goal are not well-defined.

On the basis of initial work for this study, a phase 1 report was produced and discussed at a workshop in Brussels on 18 January 2005 with Commission staff in Brussels. The phase 1 report provided an overview of potential drivers of change within the region (covering Egypt, Israel, Jordan, Lebanon, Palestine and Syria), and outlined key issues in determining the scope for the EU to act as an effective promoter of change, through the use of either 'incentive-based' or 'socialisation' approaches. The initial work also included a review of the Barcelona process and a comparison of the ENP so far.<sup>2</sup>

A second phase of work has involved case studies of specific economic and political reform issues, focusing primarily on Jordan, with a view to examining what initial lessons are emerging from the process of Action Plan negotiation and the first stages of implementation, and how implementation can be strengthened.

This report therefore assesses ways in which the Action Plan process now launched under the ENP could become a more effective driver of political and economic change, compared with the modest results from the Barcelona process to date. The development of the ENP has already provided a valuable systemic/institutional advance in Euro-Med relations and has been an

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<sup>2</sup> See M. Emerson and G. Noutcheva, *From Barcelona Process to Neighbourhood Policy: Assessments and Open Issues*, CEPS Working Paper No. 220, CEPS, Brussels, March (2005) (retrievable from [www.ceps.be](http://www.ceps.be)).

important confidence-building measure in an increasingly uncertain political environment. But it has yet to provide momentum for economic, political and social advance in the partner states.

This report is structured as follows. Section 2 provides a summarised and updated analysis of reform issues and key elements of the political context in the region. Section 3 presents the findings from the Jordan case studies. Section 4 examines the incentives potentially on offer from the EU that could be used to encourage reforms in the region in the economic and political spheres. Section 5 discusses wider issues for the Action Plan process and specific conclusions in relation to strengthening its prospects for successful implementation.

## **2. Drivers of change – Perspectives**

### **2.1 Characterisation of regimes and prospects for change**

A review of information on the current status and trends in the Mashreq region undertaken for phase 1 of this study concluded that across all the major dimensions where the EU would like to see change (economic, political and social), performance was lagging that of many other regions that had been at similar levels of socioeconomic development, most notably countries in Eastern Europe that have recently joined or are on course to join the EU, and countries in South East and East Asia. The predominant picture was one of economic stagnation and continuing authoritarian rule. While there has been some progress in economic reforms (with the pace of reform varying greatly among countries and being strongly determined by the political leadership's perceptions of the extent to which economic reform can be undertaken without undermining the interests of the ruling elite), political development has been extremely limited. The record has been one of some experiments undertaken by the political leadership in political liberalisation (for instance in Jordan between 1989 and 1993) with reforms being reversed when the regime felt itself coming under threat. The model of highly stable 'personalised authoritarian' rule has been dominant throughout the Arab world.

These regimes have exhibited the following common characteristics, although differing significantly in their ideological base (particularly in relation to whether their character is predominantly secular or Islamic, and the level of state intervention in the economy):

- They are long-lived regimes of a dynastic character (whether the country is formally a monarchy or a republic), which have become increasingly adept at maintaining themselves in power (compared with the 1950s and 1960s).
- The ruling elite typically comprise the top military, security services, the ruler's family or clan and certain sections of business interests. In presidential systems the ruling party has played a prominent and privileged role within what has often been a *de facto* one-party state, where limited political opening has not been permitted to threaten the party's hold on power. In monarchical systems, the role of all political parties has generally been curtailed.
- There is a high level of state intervention in the economy together with an important role for the private sector. There are relatively strong systems of property rights but very limited protection for human rights in general, with women's rights being restricted either legally or through social practice.

- The role of civil society organisations<sup>3</sup> is severely curtailed and there are restrictions on freedom of speech and association, although the regimes cannot be characterised in general as totalitarian.
- Clientelist relations exist with major powers (notably the US) and there is a heavy dependence on rents (in the form of earnings from oil and gas exports, foreign aid or foreign remittances).

There are no Arab countries in the region that have managed to sustain democratic rule, although Lebanon's highly idiosyncratic, confessional democracy survived from independence until the civil war, and Egypt has had a long but interrupted tradition of contested elections and organised political parties stretching back to the 1920s. There is an active debate about the extent to which these characteristics can be ascribed to structural or institutional features of Arab or Islamic society, or whether they are best seen as a manifestation of political patterns that are common across the developing world, particularly where rents play an important role in the economy and fiscal system. Roger Owen argues that the Arab countries have gone through

what might be considered a typical Third World passage...from the colonial state, through nationalism and independence, to the creation of an authoritarian system legitimised by an emphasis on both security and development, and then, finally, to the tempering of this authoritarianism by the opening of space for some independent or even oppositional groups.<sup>4</sup>

Until the recent dramatic events in Lebanon, a key feature of these regimes is that they have appeared to be relatively immune to pressures for political change from below. Despite the continuing lacklustre economic performance, severely disruptive economic crises have been avoided, and even humiliating military defeats (Iraq in 1991 and Jordan, Egypt and Syria in wars with Israel) have not directly led to regime overthrow. Opposition groups are typically highly fragmented but their most organised if not largest component is usually Islamic in orientation and related to the particular national form of the Muslim Brotherhood. Regimes have successfully used a combination of cooption, patronage and repression to prevent the opposition from becoming a serious threat to their hold on power. In the area of economic reform, processes of economic liberalisation and privatisation have been structured in a way that favours the economic interests of elite groups, and business interests in general have not provided an effective lobby in favour of economic reforms.

These considerations suggest that prospects for reform have depended very largely on the extent to which ruling elites see such reforms as desirable or necessary to protect their position (so that reforms are driven from the top down), in which case external influences may provide the most likely driver of change.

Figure 1 highlights the main potential influences on the political leadership in the Mashreq region, and the way in which these combine to determine the incentives for adopting or opposing reforms that the political leadership faces. The regional and geopolitical context is dominated by issues around the Israeli-Palestinian conflict, the direct influence of which varies among countries (obviously being greatest in the Palestinian territories but also the

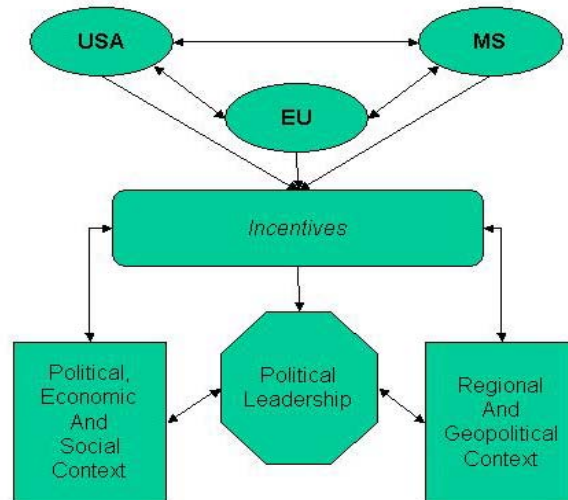
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<sup>3</sup> See R. Owen, *State, Power and Politics in the Making of the Modern Middle East*, third edition, London: Routledge, 2004, p. 231. Owen also argues that in an authoritarian/rentier state there are few individuals who can act independently of the state within the domestic political arena and that the notion of a single "civil society" operating outside the state sphere is not a useful one in this context (p. 200). He asserts that "informal politics" is a better characterisation of the activity of such organisations.

<sup>4</sup> Ibid.

overwhelmingly most important political issue in Jordan with its majority Palestinian population); however, it provides at least a pretext in all the countries for the national security state, as well as for Syria's involvement in Lebanon.

Figure 1. Main potential influences on political leadership in the Mashreq region



## 2.2 A rapidly changing geopolitical context

The ENP, in its southern theatre of operations, seeks to re-energize the Barcelona process, after a decade of experience in which it became clear that the Euro-Mediterranean partnership had not become a decisive driver of economic or political reform in the region. Political structures in the region have remained more or less stuck with authoritarian regimes, which have often been wedded to interest groups that have tended to resist economic liberalisation measures or policies to curb corruption. In the Mashreq region, the collapse of the Middle East peace process was for the Arab regimes at least a continuing distraction from reformist politics, and at worst a political poison, feeding Islamic radicalism and in turn repressive reflexes on the part of the ruling powers. The EU abstained from the active political conditionality that might have been a driving force for reforms. Moreover, its economic instruments of aid and trade policies, while in themselves potentially powerful, were never strongly integrated with economic policy conditions, for which the leading role has been played by the International Monetary Fund (IMF) and the World Bank.

Whatever the ENP does, it is clear that the geo-strategic environment in which it will operate is radically different to that which prevailed during most of the first decade of the Barcelona process.

Underlying the confrontation between the US and al-Qaeda stand two diametrically opposed agendas for the transformation of the Arab world. The main objective of al-Qaeda and associated Islamist ideologies is to achieve fundamentalist Islamist regimes at least throughout the predominantly Muslim world. The more fantastic variant is to achieve radical Islam's domination of the entire world. Nevertheless, a more realistic interpretation of the attack on the US on 11 September is that the real targets were in fact the authoritarian, non-fundamentalist regimes of the Arab world. As argued by some leading Western experts on contemporary

Islam,<sup>5</sup> the attacks on New York and Washington were intended to be so awe-inspiring to the Arab world that it would lead to uprisings against current regimes, prompting their collapse and replacement by fundamentalist Islamist states.

For the US the first objective of its war on terror was to destroy al-Qaeda's base in Afghanistan, protected there by the Taliban regime. As this first war was extended to the second war against Saddam Hussein's regime in Iraq, it was not initially clear what the strategy was, given the confusion over the suspected weapons of mass destruction that could not be found. As matters have evolved, however, US policy has become more broadly focused on achieving a political 'transformation' of the Arab world. According to Washington's neo-conservative view, the attack on Saddam Hussein's regime was to be such an overwhelming demonstration of power that the oppressed people of Iraq first, and then other peoples in the Arab world, would be emboldened to overthrow authoritarianism and demand democracy. Or, in a more plausible scenario, there would be a complex pattern involving some regime collapses alongside other cases of more orderly political reform, in which authoritarian leaders would be persuaded to engage seriously in political reform before it was too late. The current US administration appears to be moving towards the use of enhanced political conditionality in support of such policies.

Compared to the pattern of almost monolithic regime stability that has characterised most of the Arab world, recent developments mark a dramatic change. Specifically:

- While the Iraq war has been much more problematic than the optimistic scenario sketched by neo-conservative advisers in Washington, the worst scenario has not happened either, as elections did take place, even if the outlook is still uncertain for Iraq's progressive normalisation.
- The post-Arafat Palestinian Authority has provided opportunities for a restarting of the Israeli-Palestinian peace process. There are even signs now of Hamas considering entry to the democratic political system.
- Even more unexpected have been the developments in Lebanon, following the assassination of former Prime Minister Rafik Hariri. The street democracy of the Cedar Revolution seems to have connected for inspiration with the Rose and Orange Revolutions of Georgia and Ukraine, which have in turn been partly inspired by the successful political transformations made by the Central and Eastern European states acceding to the EU. Even an optimistic EU policy-maker, in designing the new Neighbourhood Policy and deciding to have a single policy framework for both eastern and southern neighbours, could not have dreamt of this apparent contagion between Eastern Europe and the Arab world. There have also been modest steps in favour of a more genuine electoral democracy in Egypt for the next presidential election, and, very modestly, the holding of municipal elections in Saudi Arabia. Further, there are expectations that events in Lebanon could catalyse political changes in Syria.

These developments are potentially drivers of change on a grand scale, in which the EU (committed to a more gradualist and consensual approach) has so far played only a limited role although individual member states have been more significant. The potential implications of these developments remain deeply uncertain – specifically whether they will strengthen radical Islam and anti-Western feelings, or whether they provide the basis for a burgeoning democratic movement along the lines of those that overthrew the Communist regimes in Central and Eastern Europe.

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<sup>5</sup> G. Kepel, *The War for Muslim Minds – Islam and the West*, Cambridge, MA: Harvard University Press (2004).

A recent set of public opinion surveys<sup>6</sup> using representative sampling methods and covering Jordan, Syria, Lebanon, Egypt and the Palestinian territories provides an interesting insight into underlying political attitudes. Specific findings included the following:

- Hostility towards the West is sharply differentiated among Western countries (to the advantage of France and the disadvantage of the US and the UK) and derives almost entirely from opposition to Western foreign policy in the region and in particular to the discrepancy between the professed ideals of this policy and the perceived reality, rather than any more fundamental perception of cultural or religious conflict. Notably, anti-Western feeling is much deeper among the young and the less educated.
- Compared with the Mashreq region, the West is seen as associated positively with values related to liberalism, individual liberty, democracy, freedom from corruption and technological progress, but negatively in relation to societal problems stemming from weaker traditions, family values and a more limited role for religion.
- Muslim respondents expressed strong support for allowing both more flexible interpretations (*ijtihad*) of Islam and a role for Shari'a law in their countries.

The recently published *Arab Human Development Report 2004*<sup>7</sup> sets out three scenarios for future political development arising from the current increasingly unstable situation:

- “Impending disaster” would involve intensified societal conflict and continuing repression in the absence of effective mechanisms to address injustice and achieve political change, leading to violence and chaotic upheavals that might force a transfer of power but would not guarantee that successor governments would be an improvement on current regimes.
- The “*izdihar* [ideal] alternative” would entail a peaceful and deep process of negotiated change adopted by all pro-reform segments of Arab society, involving the restoration of sovereignty to the people.
- A “half-way house – accommodation of external reform” would be based on measures imposed from the outside according to the vision of foreign powers, where the challenge would be how to harness internal reform initiatives while minimising the adverse impacts of externally imposed models.

The conclusion is that the ENP is now operating in a more fluid political environment than had until recently been thought likely, and one that is more propitious for political change but also fraught with greater uncertainty. The question is how to make the best use of the new opportunities in the political and economic spheres. The EU enjoys certain advantages because its foreign policy approaches in the region are perceived with less hostility than those of the US, but ‘Europe’ appears to figure much less in both economic and political considerations than in the Maghreb.

### 3. Case study: Political and economic reform in Jordan

The purpose of the case studies has been to examine the issues relating to the potential role of the ENP as a driver of change within in the region, in specific policy contexts related to both

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<sup>6</sup> Centre for Strategic Studies, *Revisiting the Arab Street: Research from Within*, University of Jordan, Amman, February (2005). It is interesting that this study did not seek to ascertain attitudes towards the ‘European Union’ but rather towards particular European countries.

<sup>7</sup> United Nations Development Programme, *Arab Human Development Report 2004: Towards Freedom in the Arab World*, UN, New York, April (2005).

economic and political reform. Two areas covered in the EU-Jordan Action Plan were chosen as case studies: first, reform of the judicial sector in the context of the wider objective of strengthening the rule of law;<sup>8</sup> and second, reform of the services sector, focusing on backbone services of particular importance for encouraging economic growth and employment creation. The case studies involved an assessment of the wider context of reforms and a stocktaking of progress. They principally examined issues related to the implementation of the reforms identified in the Action Plan, along with possible implications emerging for the Action Plan process more generally. The case studies can be seen as prototypes for the kind of more detailed analytical work that would be necessary to support a strengthened process of implementation.

### 3.1 Jordan's political context<sup>9</sup>

Jordan is an example of the model of personalised (dynastic) authoritarian rule that predominates in the region, although with its own specific characteristics. The basis for the political support of the regime has been tribal and clan-based, dominated by a conservative East Bank political elite (based in Amman with strong links to rural areas) in a context where Palestinians form the majority of the population. The elected National Assembly has been largely a forum for tribal and local concerns (partly reflecting the over-representation of rural areas) and has generally adopted conservative positions on social reform, while the issue of Palestine dominates popular political concerns. Jordan has been heavily dependent on external support (being one of the most highly aided countries in the world in per capita terms) and has suffered severe economic disruption when foreign support has been withdrawn (as when the US stopped aid in 1991 because of Jordan's perceived cooperation with Iraq).

The regime has taken on the character of a national security state, with the palace, the General Intelligence Directorate and elite formations of the military providing the bedrock of the regime and the guarantors of the Hashemite dynasty. They also embody a pro-Western alliance within Jordan, which cooperates closely with Israel and the US over security issues and the US more broadly over regional, strategic matters. This security cooperation, aimed at Islamists, radical Palestinians and other potentially destabilising threats, helps to maintain political control at home. Elections due in 2001 were delayed until 2003 (so that laws were passed by the government without parliamentary consideration), with the instability resulting from the *intifada* and tensions in advance of the conflict in Iraq being cited as the main reasons.

Thirty-one political parties have been set up or licensed since the promulgation of the Political Parties Law in 1992. The Islamic Action Front is considered to be the foundation of the Islamist movement and is the country's biggest opposition party. Although political parties have existed for a long time, their impact on political life has remained limited. The weakness of political parties in Jordan is largely because they were banned for 30 years and because of existing laws that still reflect the belief that political parties are a threat to the country's security and stability. But apart from the Islamists, there has been no serious attempt to establish a mass-based political party. The leftist and nationalist parties have remained stubbornly Leninist in their approach to party matters. For the more traditional leadership, political parties are seen in narrowly instrumental terms: as uncritical platforms for the adulation of their 'big man'. A good example of this today is Abdul Hadi al-Majali, the speaker of the parliament. Both parliamentary politics and the electoral system are dominated by local and tribal concerns:

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<sup>8</sup> This case study also provided a comparative overview of the judicial reform issues in Egypt and Lebanon.

<sup>9</sup> This section draws on material prepared by Dr Philip Robins.

Among the most important of the beliefs underlying this election culture is that elections are at heart a tribal affair. There is also a prevalent belief that the office of deputy allows its holders to supply services for people and to relay people's demands to government decision makers. However, in the popular consciousness "deputy" also means a lack of credibility and failure to honour commitments and promises. The idea of the deputy as a representative of the entire people, exercising legislative authority and able to hold the government accountable, is far from the minds of citizens.<sup>10</sup>

Civil society is on the whole weak and poorly developed in Jordan (in absolute terms and in comparison with Egypt, for example). Pressure groups in particular tend to be recently created, poorly organised and under-resourced. Moreover, they tend to be led by members of the political and social elite, thereby making them conservative in orientation. They tend to defer to the state and government. They almost always defer to the royal family.

A notable exception to this norm has been the independence of the press, especially the so-called 'tabloid' or weekly press. The weekly press is another example of the emergence of some genuinely independent associations during the liberal period from 1989-93. Once this period passed in the mid-1990s, the state tried to curb the outspoken nature of this sector of the media. It did so by adopting restrictive press laws and bringing a series of actions before the courts.

In an economy that is dominated by the services sector (including government), the private sector has not generally served as a strong driver of change and has not articulated a strong demand for economic reforms. The great majority of private companies are family-owned and run and have generally not been prepared to dilute control in order to attract more capital, which would be required for expansion. As a result, the private sector tends to be risk-averse and has low horizons, uniting for common purposes only defensively (for instance to lobby against reduced protection). The absence of a more aggressive and ambitious private sector has in turn restricted the growth of capital markets, as there tends to be insufficient stock to trade on them.

Under King Hussein there were a number of initiatives towards political liberalisation, especially between 1989 and 1993, in response to financial crisis and the strong mood of popular support for Saddam Hussein during the 1990-91 Gulf war. But these moves were limited and subject to reversal in the face of political and perceived security threats.

There has been more significant progress under King Abdullah II in developing and implementing an economic reform agenda and more tentative (but potentially accelerating) progress in political reforms, including the announcement of plans for directly elected local councils as part of a process of devolution of power from Amman (although it is questionable how far such devolution can proceed until the post of provincial governor becomes an elected one). There has also been an attempt to strengthen the role of parliament and encourage the development of secular political parties. The heavy concentration of power in the hands of the king and his appointed executive has ensured that this economic and political reform agenda has provided the government with its key priorities. How far they are realities on the ground depends on support broader than that by the government.

The opposition is fractious, far from united and has little influence. That being said, the most organised and strongest opposition party is the Islamic Action Front (IAF). The IAF (which is a coalition including moderates, more radical Palestinians and conservative tribal Jordanians) has fairly strong popular support, but the regime has contained its threat by cooption and intimidation. In recent years, the IAF has moderated its stance, largely as a result of heavy-

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<sup>10</sup> Z. Majed (ed.), *Democracy in Jordan: Women's political participation, the development of political party life and democratic elections*, Arab NGO Network for Development (ANND) and IDEA, Stockholm (2005), p. 8.

handed government pressure. The Islamic Action Front does not demand ‘regime change’, but it is often concerned with trying to impose socially repressive traditions and rules, and the IAF’s lack of a clear political or economic agenda (for example on issues like Palestine) has lost them popular support among the middle and professional classes of society.

More importantly, the professional syndicates have recently become very vocal in criticising the government, but they have been faced with harsh repression and are muzzled by the regime. They are against normalisation of relations with Israel and see no benefits to Jordan from the 1994 peace deal and what are seen as excessively close relations with the US, particularly in the context of Iraq. They have popular support and reflect a great deal of disgruntled public opinion, most of which is against normalisation of relations with Israel, as the Israelis are seen to have reneged on key commitments and intensified repression of the Palestinians. The regime has recently enforced a ban on the right of professional associations to hold meetings and make political statements. In February 2005 a new draft Professional Associations Law was presented to parliament that was seen by the Professional Associations Council and international human rights groups as an attempt to silence the voice of associations on political issues, restrict their political activities and limit their influence.

The extent to which the Israeli-Palestinian conflict affects the success of political reforms is substantial, mainly in the sense that what happens there inflames public sentiment, particularly among the 65% or so of Jordan’s population who are of Palestinian origin. The developments in Iraq have also affected civil stability in Jordan. Given Jordan’s close ties with the US, the US-led war on Iraq did lead to some civil unrest, especially among Islamists, and it has resulted in distrust of US-initiated reforms in the domains of democracy and the rule of law.

In 2002 the king announced the ‘Jordan First’ programme, which aims at modernising and democratising political life and focusing on internal concerns rather than regional conflicts. In October 2003, the king set out the four main orientations of the programme: independence of the judiciary, reform of the political parties and election law, equal treatment of women and development of an independent media, followed by a national dialogue on legislation for political parties and elections. A process of developing a ‘National Agenda’ to set out key policy priorities over a 10-year period through a consultative process is due to be completed this year. The recent change of government promoted reformers to positions of greater influence, and is regarded by some well-informed commentators as a direct response to US pressure and financial incentives to deepen the political reform process.

A critical test for the agenda of democratisation and political reform that the king has been pursuing is the point at which changes may seriously impact the balance of power, notably in providing more representation and influence for political groups representing the majority of the population that is of Palestinian origin, and in particular of Islamic groups. Another crucial test is whether the changes that would be implied would be palatable to, or could be imposed upon, the ruling elite, as well as the political agenda that would be pursued by opposition groups if they achieved more influence.

### **3.2 The Action Plan process in Jordan**

On the part of the Commission, it is noted that the process of consultation on the ENP Action Plan led to a changing awareness on the Jordanian side of the potential scope of the relationship that was on offer from the EU, going beyond the donor-recipient relationship of the past. This was reflected in the increasing level and depth of engagement from Jordanian officials during the process. But this awareness only developed as the process went on and remains very incomplete, with many government ministries still viewing relationships with the EU primarily in donor-recipient terms. The mechanism for taking forward the Action Plan, particularly in

areas where the EU offer has been relatively unclear or the Action Plan commitments are vague, is the system of sub-committees. This is embryonic but is regarded as providing a potentially valuable set of forums for more detailed policy discussions and structured engagement on an agreed policy agenda.

Lack of capacity on both sides is nevertheless seen as presenting a potentially major obstacle for implementing reform. The capacity of the Jordanian administration is uneven – both across ministries, with the best human and financial resources concentrated in a few ministries, and within ministries, where there is a large gap in competence between the top and middle management. On the EU’s side, the implementation of the Action Plan will also require a gradual increase in the level of engagement by the European Commission services. At the strategic level, the most effective way to use the ENP to provide support to pro-reformist elements remains to be determined. Well-designed conditionality may provide a means of bolstering reform, although the perception of excessive external influence may prove counterproductive.

### 3.3 The judicial system and the rule of law in Jordan

Despite constitutional guarantees, the extent of freedom of expression and the rule of law in Jordan are limited in several significant ways and protection of human rights is selective (Jordan scored just 0.33 out of 2.5 on the World Bank Rule of Law Index in 2002):

- *Limitations on freedom of expression.* According to a recent survey conducted by the Centre for Strategic Studies at the University of Jordan, 83.2% of participants reported that they cannot criticise the government openly or disagree with the government’s opinions. Amendments to the Penal Code passed as a temporary law by royal decree on 8 October 2001, raised new concerns about freedom of the press, although a new draft law on press and publication has been recently introduced.
- *Lack of equality before the law.* In the above survey, 51.1% of participants believed that the principle of equal opportunities does not apply in Jordan. There are still cases where the right to a fair trial has not been granted. This is especially so within state security courts, where basic international standards for a fair trial are not guaranteed. Palestinian refugees, migrant workers and illegitimate children suffer from discrimination, and restrictions are placed on the right of peaceful assembly.
- *Pervasive gender inequality before the law.* Although there has been some royal sponsorship of increased women’s rights, gender inequality in existing legislation and practices is still widespread. The impunity of ‘honour crimes’ has been guaranteed by Arts. 98 and 380 of the Jordan Penal Code, which excuses men who kill “their wife or a close female relative” if they act out of ‘fury’ or in the case of adultery. Moreover, women are also discriminated against in terms of freedom of movement, inheritance rights, child custody and social benefits.<sup>11</sup>
- *Lack of judicial independence.* In theory, the judiciary is freed from outside control as a result of the legal separation from the executive and legislature. In Jordan’s case, the constitution also explicitly requires that the judiciary be independent. Art. 97 of the constitution states that “Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law”. In practice, however, the judiciary is not seen as independent. Various human rights organisations have claimed

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<sup>11</sup> International Federation for Human Rights (FIDH) and Euro-Mediterranean Human Rights Network (EMHRN), Joint Memorandum on the EU Jordan Association Council, October (2004).

that the judiciary is subject to pressure and interference from the executive branch.<sup>12</sup> The manner in which Jordan regulates or controls the selection, training, tenure and conditions of service of judges directly affects the quality of the judiciary and judicial independence,<sup>13</sup> while lack of training and inadequate staffing also impairs the effectiveness of the judiciary.<sup>14</sup>

The Judicial Upgrading Strategy (JUST) for 2004-06 is the common policy framework proposed by the government for judicial reform and strengthening the rule of law, and is supported by all donors working in this area. The dominant international players in reforming the judicial sector in the Arab region and in Jordan in particular are USAID, the EU, the World Bank, the UNDP, the UK and France. In theory Jordan's democratisation process is supportive of human rights and strengthening the rule of law, but is currently being led from the top. This needs to be accompanied by ownership at the level of the community and for the poor to be part of the process.

Within this context, the ENP EU-Jordan Action Plan identifies seven broad priorities within the realm of democracy and the rule of law. The ENP Action Plan supports the implementation of the JUST by highlighting the desire to push for further enhancement of the independence and impartiality of the judiciary, the upgrade of its quality and the strengthening of its administrative capacity. The EU has identified the need to focus its attention on human rights issues within the JUST while the ministry of justice and USAID are occupied with other aspects of judicial reform. The European Commission will also assist the Judicial Institute of Jordan to develop its curriculum for both sitting and new judges to include human rights issues, changes in the laws to meet the requirements of international commitments and the protection of vulnerable groups, notably juvenile offenders and women.

The MEDA programme has been the principal financial instrument of the EU to support the implementation of the Euro-Mediterranean Partnership. It is a basis for the programmes on human rights and democracy included in the National Indicative Programmes. Most resources are channelled bilaterally to partners. The European Initiative for Democracy and Human Rights (EIDHR) promotes human rights and democratisation through the funding of the activities of non-governmental and international organisations. EIDHR is intended to complement the bilateral assistance programmes of the Commission.

Since 1996, the European Commission has financed 11 bilateral operations (€3 million in total) and several regional operations to strengthen democratisation, human rights and the rule of law in Jordan. These have focused on the rights of women, youth and children, including two operations to promote the participation of women in parliamentary elections. In addition, the Commission co-financed NGO projects in Jordan to complement these activities with a further €1.3 million. These projects concentrate on the capacity-building of NGOs, the promotion of women and the protection of youth.<sup>15</sup>

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<sup>12</sup> M. McDermott, *Countries at the Crossroads 2004: Country Profile of Jordan*, Freedom House, Washington, D.C. (2004).

<sup>13</sup> Arab Judicial Forum, *Judicial Selection, Ethics and Training*, Arab Judicial Forum White Papers, Bahrain, September (2003).

<sup>14</sup> The Judicial Upgrade Plan of 2000-03 targeted investment in human resource development. Implementation of the plan resulted in an increase in the number of judges to 800 by the end of 2003 and a raise in salaries for judges. The number of administrative staff was increased by 1,200 by the end of 2003.

<sup>15</sup> European Commission, *Euro-Med Partnership, Jordan: Country Strategy Paper 2002 – 2006*, DG External Relations, Brussels (2002).

EIDHR micro-project funding has become available in Jordan for the first time in 2005. It has allowed the Commission to direct MEDA funding more to the government side for the development of justice, human rights, free media and an interface between the government and civil society, leaving EIDHR to work directly with the civil society.<sup>16</sup>

The US is the largest provider of aid to Jordan and USAID is the main donor financing judicial sector reform, with a programme of around \$10 million envisaged for the period from the end of 2004 until the period 2007-09. Its activities are aimed at strengthening judicial independence, implementing an automated case-management system, improving human resources in the justice sector, and legal training and education.

While the government is seen as fully committed to the reform agenda set out in the JUST, the parliament and political parties have yet to demonstrate their support. Civil society is weak and fragmented, but there is seen to be some support from its more progressive parts. The Islamic opposition is seen to be hostile to US-led reform activities; however, USAID does not see this as a serious obstacle to implementing reforms. USAID argues that there was a great deal of resistance to change among various groups and institutions (i.e. judges and the bar association) when they began the judicial reform programme, but they have managed to gradually win support. Other factors that complicate the success of implementation are: the deep-rooted tribal culture where access to justice is based on tribal support; disputes resolution working clearly outside the rule of law; poor public perception and lack of awareness of the benefits of a well-functioning independent judiciary and an effective rule of law; and the lack of organised civil-society participation in the reform efforts.

In relation to the wider reform agenda for the justice sector, achievement of the overall objectives of the reform would require progress in a number of additional areas:

- A great deal of current activity revolves around the review of existing legislation and amending it to enshrine the rights of those previously discriminated against, marginalised and restricted. The next stage is to ensure that the protection that has been granted is realised.
- The strengthening of law-related institutions to make them more competent, efficient and accountable follows logically. Hence the reform efforts targeting the police, prosecutors, public defenders and prisons require more consideration.
- Efforts to increase the government's compliance with the law need leadership and a change in the values and attitudes of those in power. Bringing about government obedience to the law is a challenge. Currently, conflicts of interest between the interests of the elites and the rule of law do not always result in victories for the rule of law.
- Discussion with donors suggests that the criminal justice system, the juvenile justice system, human rights and prison reform are areas that require further attention and would benefit from EU involvement.

The following issues emerge as of particular significance for the process of implementing the EU-Jordan Action Plan in this area:

- Donors are supporting a government reform agenda of which some elements are at best not seen as commanding widespread popular support. These could be further undermined by the perception of excessive foreign involvement (particularly by the US but to a lesser extent by

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<sup>16</sup> It is seen as essential that these two programmes complement each other, as good results can only be obtained by addressing both sides simultaneously. In the area of human rights, both instruments are managed within the same section of the delegation, by the same person.

other donors) and could potentially be threatened if political reforms (resulting from other elements of the reform agenda) strengthen the representation of opposition political voices. This might specifically apply to some aspects of legal reform where there may be tensions between the reforms proposed and interpretations of Shari'a, and reforms to the legal status of women that would be likely to encounter conservative opposition. This suggests that attempting to build a wider constituency for the reform agenda and seeking areas of consensus with opposition groups may be important for achieving reforms that are politically sustainable.

- The areas of the Action Plan that are related to judicial reform and strengthening the rule of law can be seen (to date) mainly as envisaging an extension of the modes of support to government reform programmes and civil society that have been provided under the MEDA programme so far, in a context where the Jordanian government has articulated and is carrying through a coherent programme of judicial reform with support from donors. What appears to be absent from the Action Plan is a strategic perspective that would attempt to use a wider set of incentives that might potentially be available under the ENP to encourage political reforms and increased respect for human rights. This might for instance link the granting of forms of market access or other benefits (both economic and political) of an improved relationship with the EU explicitly to the achievement of agreed benchmarks in the area of political reform, strengthening the rule of law and human rights. Discussions with donors in Jordan have shown that in the short-term, financial resources lead to influence. The more forceful approach taken by the US and its close ties with Jordan has ensured that the US has strong influence in the implementation of reforms there. The EU's softer approach has its benefits and in the medium to longer term the incentives it provides are seen as attractive. Yet the question of how to link the implementation of the judicial reform agenda on the ground with broader economic and political incentives needs to be addressed. Officials concerned with implementation are drawn closer to those who can also provide substantial financial backing to their reform programmes. Nevertheless, it is essential that the differing approaches taken by the EU and the US complement rather than compete with each other.
- The support for reform provided by donors could be seen as too narrow and too focused on issues of capacity and caseload management, which may not address the core issues of judicial independence. For instance, a recent review of judicial reform in Arab countries<sup>17</sup> concludes that a well-defined agenda has begun to emerge out of discussions:
  - Judicial councils (which oversee judicial appointments and promotions) need far more autonomy to reduce the powerful influence exerted by heads of state and ministers of justice.
  - Judicial councils need more authority. Budgeting, oversight of support personnel, and the investigation and disciplining of judges should all be transferred from the ministry of justice to judicial councils.
  - Special courts, exceptional courts and emergency rule must be abolished. Civilians should not be tried in military courts.

Nathan Brown argues that these recommendations are deeply political and go to the core issues of judicial independence in the Arab world. The issues on which donors tend to focus, such as caseload management and alternative dispute resolution, receive far less attention. He also argues that there is a distinction between reform-minded judges (who tend to be more cautious),

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<sup>17</sup> N. Brown, "Arab Judicial Reform: Bold Visions, Few Achievements", *Arab Reform Bulletin*, October (2004).

and civil society-based activists (who tend to be confrontational and uncompromising), about approaches to achieving reform. Support provided to both kinds of players needs to be coordinated. Similarly, a recent review of the justice system in the region by the Euro-Mediterranean Human Rights Network notes that:

[T]he international community is increasingly exerting pressure for change on the legal systems in the Arab world making the reform of the judicial systems a condition for cooperation. But the international community has also shown itself to be limited in its actions. Legal reform initiatives prompted by international bodies like the World Bank, are more concerned with technological modernisation (computerisation)...than with the independence or equity of justice. To a large extent, the same might be said of the EU: until now, conditions relating to human rights were placed at the governmental level in the context of [the] EuroMed association. Agreements have remained purely academic – such as the country reports...which are rudimentary when it comes to the analysis of the legal system.<sup>18</sup>

### 3.4 Comparisons on judicial sector reform: Lebanon and Egypt

The judicial reform case study also provides an overview of the progress of judicial reform and human rights in Egypt and Lebanon and develops a framework for comparing judicial reform progress within the context of wider moves towards political reform.

**Lebanon's** political system is characterised by power sharing between religious confessions. This is reflected in the appointment of judges, which influences the extent to which the judiciary can be impartial. Institutions in the judicial sector have suffered as a result of the civil war and the subsequent economic decline, and have yet to fully recover. In 1997, 300 judges signed a petition directed at the Higher Judicial Council complaining about a lack of respect for the independence of the judiciary in Lebanon. According to a UN-commissioned corruption assessment, six out of ten respondents 'strongly agreed' or 'agreed' that the judiciary is not independent in its decision-making. Although the constitution provides for an independent judiciary, in practice it is subject to political pressure. Issues impacting on the independence of the judiciary are the assignment of judges to courts, the executive's control of the judiciary's budget, confessional considerations and a perception of corruption.

Lebanon is currently facing a period of political uncertainty. Up until recently the domestic and foreign political agenda was strongly influenced by the Syrian occupation. In the past year, the continued Syrian presence has been increasingly contested by opposition forces in Lebanon as well as by the international community. This opposition culminated in public protests against Syria's presence in Lebanon in March 2005, following the assassination of the former Prime Minister Rafiq Hariri. As a result of these events, Syria was forced to withdraw its military presence from Lebanon by the end of April 2005. Moreover, the outcome of the planned parliamentary elections in May will be a key test of the desire for greater democracy. Hizbollah, the Islamic resistance movement based in Lebanon, is a firm supporter of Syria, and will play a significant role in mobilising pro-Syrian support.

Despite the separation of powers, the executive in **Egypt**, represented in this context by the minister of justice, exercises considerable authority over the judiciary, especially in the civil, criminal and administrative courts. An obvious means of influencing the judiciary is through the appointment of judges. The judicial appointment power of the minister of justice has been problematic within the Egyptian political context. The minister of justice is allowed to decide

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<sup>18</sup> Euro-Mediterranean Human Rights Network (EMHRN), *Justice in the South-East Mediterranean Region*, EMHRN, Copenhagen, p. 7 (2004).

which judges should be assigned to preside over the First Instance Courts. Additional discretionary powers of the minister of justice involve control over the judiciary's budget, dealing with overtime bonuses, arbitration cycles, the administration and control of illicit profits, the provision of medical care and the financial allotments of the judicial association.

The constitution recognises the freedom of opinion, expression, assembly and association; Egypt has ratified most of the major UN human rights conventions and in general, the provisions of international treaties are part of national legislation. The implementation of the Emergency Law, however, which has been applied continuously since 1981, violates many human rights, for example, by allowing for arbitrary arrests, detention without trial and restrictions on freedom of assembly. Court rulings under the Emergency Law often circumvent constitutional and international safeguards such as a guarantee of a fair and impartial trial. According to Freedom House, the average rating of political rights and civil liberties was 6 in 2003 (5.5 to 7 are considered 'not free').

Some argue that the pressure placed by the US on Egypt to lead the region to democracy has influenced the president to call for contested presidential elections. Others claim this has resulted from civil society demanding a reform agenda. President Hosni Mubarak's intentions in pursuing these reforms would be two-fold: first satisfying the US and second to soften the public's opposition to hereditary succession in order to pave the way for his son Gamal Mubarak. Either way, there is a potentially powerful Islamic opposition whose growth has been restricted by a ban on religious parties. If Egypt is to move towards democratisation, the voice of the opposition will need to be heard.

Although Jordan, Egypt and Lebanon are from the same region and share some similarities in their culture and values, the differences in their historical backgrounds, direction of leadership, political systems and the influence of civil society are important factors that need to be considered in tailoring EU strategies towards them. In Jordan's favour are a stronger political will and commitment driving reform (although these have limits that may yet be tested), greater political stability and more effective suppression of civil unrest than currently is the case in Egypt and Lebanon, along with an established country-owned judicial reform agenda with substantial donor support. In contrast to this top-down approach, Lebanon is currently experiencing a movement for change at a grass-roots level, where civil society appears to be well-organised and increasingly influential. Recent events may provide the opportunity for supporting change. In Egypt political reforms have had limited impact and have been largely in favour of the National Democratic Party. Nevertheless, there are some strong and vocal civil society organisations pushing for democratic change. In all three countries, the leadership and its taskforce, alongside other political groups and civil society, need to all sincerely participate in the reform effort, as they are all directly affected by its outcomes.

### **3.5 The services sector in Jordan**

Services sector reform is a major theme throughout the Action Plan. For instance, the "Priorities for Actions" at the beginning include: i) improving business conditions, enhancing growth and increasing investments; ii) raising Jordan's export potential by liberalising trade and upgrading customs; iii) progressively liberalising trade in services; and iv) developing the transport, energy and information society sectors through liberalisation, investments and interconnections. These priorities are elaborated upon in section 2.2 (economic and social reform), section 2.3. (trade-related issues, market and regulatory reform), section 2.5 (transport, information society and environment) and section 2.6 (education and people-to-people contacts).

The case study examines the main backbone services (telecoms, transport, electricity and water), some other important services sectors (tourism and financial markets), and horizontal

policy areas relevant for reform (privatisation, competition policy and regulation, trade liberalisation and education reform/human capital formation). The analysis in the case study is a country-specific application of a general methodology developed in the recently published report,<sup>19</sup> which notes that whereas the main trade barriers for goods are tariffs and quotas enforced at national borders, trade barriers for services mostly come in the form of behind-the-border regulations. Hence, the liberalisation of trade in services requires comprehensive domestic reforms (e.g. abolition of legal exclusivity rights, effective regulation of natural monopolies, privatisation of state-owned service companies and elimination of red tape).

The stocktaking exercise concludes that reforms of the services sector in Jordan are well advanced (at least at the level of their legislative and regulatory basis) and generally in line with international best practices and the principles of the Single Market, although the transport sector is assessed as lagging in the reform process and as a potential source of bottlenecks.

In most cases, the government has separated regulatory from operational functions; it has created a transparent regulatory framework with independent regulators; has rebalanced tariffs and reduced poorly-targeted subsidies; and it has broadened private sector participation through privatisation (the sale of state-owned assets) and concessions (the tendering of investment projects in sub-sectors with natural monopolies). For most of the sectors and policy areas reviewed, comprehensive reform strategies are in place and donor assistance has been forthcoming. The main challenges in the next three to five years – and thus a suitable focus for the ENP Action Plan – will be to i) complete the ongoing reforms in the services sectors; ii) to anchor them through external liberalisation commitments; iii) to strengthen cross-border integration of service markets; and iv) to enhance Jordan's competitiveness and export potential.

The EU-Jordan Action Plan sets out broad policy objectives in this area, but it does not:

- relate in a clear and comprehensive way to government reform strategies;
- set out a framework that can be monitored, with targets and benchmarks for progress;
- take into account the role of other donors; or
- present a coherent view of the incentives and support that the EU can provide to enable progress to be made and agreed targets to be achieved.

The process of implementing the broad agenda of the Action Plan may be seen to require:

- translating the listed policy objectives into specific reform actions that can be operationalised (What needs to be done?);
- developing an explicit time frame (When will it be done?);
- assigning clear responsibilities for implementation (Who will do it?);
- specifying progress indicators and development goals (How can progress be verified?); and
- defining the implementation and monitoring process.<sup>20</sup>

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<sup>19</sup> D. Müller-Jentsch, *Deeper Integration and Trade in Services in the Euro-Mediterranean Region – Southern Dimensions of the European Neighborhood Policy*, World Bank and the European Commission, Geneva and Brussels (2004). This report presents evidence on the central importance of the performance of “backbone services” in generating growth and employment, and how the performance of these sectors in the eight Arab Mediterranean partners is lagging that of competitors such as those in Eastern Europe.

<sup>20</sup> For example, one option would be to agree on a three- to five-year rolling work programme of specific policy measures to be implemented. Progress could be monitored on an annual basis and the three-year work programme updated accordingly.

**Factoring government reform strategies into the Action Plan.** The government of Jordan has already developed detailed reform strategies for a number of sectors and policy areas. The National Tourism Strategy, for instance, stipulates that the size of the country's tourism industry should double from 2004 to 2010, that tourism receipts should increase from \$800 to \$1,800 million and that tourism-related jobs should grow from 41,000 to 92,000. To achieve these goals, a comprehensive package of reform measures is defined. The ENP Action Plan should be seen as a complement to and external anchor of such an existing reform initiative. For its implementation the strategy should thus explicitly incorporate reform actions and development targets defined in related government programmes and assistance projects.

**Factoring donor activities into the Action Plan.** Jordan has one of the highest levels of development assistance per capita and effective donor coordination is in principle essential. Important players are the World Bank, the IMF, the European Commission, the EIB, the Arab Funds, the Islamic Development Bank, USAID, Japan, Germany, the UK, France and Canada. The division of labour among donors should be guided by comparative advantage, and as part of its ENP strategy to Jordan, the European Commission should explicitly define how it wants to position itself within the donor community, although the current situation where the US is playing an increasingly assertive role may militate against the possibilities for structured collaboration in some areas. Where appropriate, the European Commission should consider co-financing the activities of others to avoid duplication and to enhance the development impact of its financial assistance. Its main comparative advantage seems to be as a political and trade partner, rather than as a provider of aid. It thus might be sensible to focus on the further development of the Association Agreement, on accelerating and deepening the Euro-Med FTA and on the political/social dimension of the ENP. The existing Donor Coordination Group could be an appropriate forum to develop strategies in this regard.

**The ENP incentive regime.** A key element for the implementation of the Action Plan will be a coherent incentive regime that is differentiated and specific to each of the countries. One incentive mechanism would be the increase of financial assistance and improvements to the quality of technical assistance delivered. Another incentive (and external anchor for domestic reforms) would be the negotiation of a new Neighbourhood Agreement or substantial amendments to the Association Agreement. A third incentive could be Jordan's participation in EU internal programmes (e.g. exchange programmes for students or scientists). More highly geared incentives – which would require reciprocal concessions on behalf of the EU – would be increased access to EU markets for agricultural products, more flexibility on mode four of service delivery (temporary movement of people) or an EU-Jordan open skies agreement. One of the deficiencies of the current ENP Action Plan for Jordan is that most items refer to actions to be implemented by Jordan, without the specification of incentives or reciprocal concessions by the EU.

**Participation in the EU Single Market.** The case study considers the desirable extent of Jordan's convergence with EU internal rules and regulations (the *acquis communautaire*). Given the large income gap between the EU and Jordan and the low level of trade integration with the EU, applying most of the detailed regulations of the EU Single Market does not seem desirable. Nevertheless, seeking to establish the four freedoms (goods, services, capital and people) would require the comprehensive removal of tariff and non-tariff barriers and the adoption of many of the underlying principles of the Single Market (e.g. open skies or a liberalisation of network industries), but not necessarily regulatory harmonisation with the EU (where the appropriate regulatory regime would have to be assessed on a sector-by-sector basis).

**Service trade agreements and negotiations.** So far, the EU-Jordan Association Agreement contains virtually no concrete commitments on services trade. In contrast, the Jordan-US Free Trade Agreement covers services, but the respective annex largely mirrors Jordan's GATS

schedule. Its sector coverage is more comprehensive and in some cases, its provisions are more far-reaching than the GATS schedule. Jordan joined the WTO in 2000 and agreed on a GATS schedule that is more comprehensive than those of its neighbours (including Israel), but less ambitious than those of other countries in the EU's neighbourhood (e.g. in Eastern Europe or in the Balkans). One approach would be for the EU to encourage Jordan to deepen its commitments under GATS by binding those sub-sectors not yet included (as it did in the Jordan-US agreement), by raising its trade in service commitments to the level of domestic reforms that are already implemented and by making substantial pre-commitments for reforms that are planned for the coming years. This would, however, amount to a country-specific EU offer and focus on a bilateral approach. If, as is the ultimate goal, the EU is seeking a regional approach, a clear common framework for reform of the services sector to apply across the region would need to be articulated.

A general concern is that while Jordan has articulated reform strategies in many important areas, and has made significant policy commitments such as the commitment it made to a free trade area with the EU in the Association Agreement, the level of understanding of the implications of these commitments is limited to a small group of senior policy-makers. Further, the principal motivation for undertaking them, especially in the area of trade, may relate to foreign policy objectives. Jordan is poorly prepared, both in terms of the capacity to carry through the institutional and policy implications of these commitments and the understanding that the private sector has of their ramifications. The reform commitments have been taken, as with other policy initiatives in Jordan, in a top-down manner with little consultation or attempt to explain their impact. The private sector has not been an active advocate of reforms, and mobilisation of the private sector (through the chamber of commerce, for instance) to engage in policy dialogue has generally been defensive rather than proactive. In other words, it lobbies in cases where the existing interests of members appear to be threatened, for example from liberalisation measures, but does not have a programme of proposed reforms or a wider vision.

## **4. Incentives, conditionality and socialisation**

### **4.1 Concepts**

The incentives that the EU may offer are in principle wide-ranging: grant aid, investment loans, market access for goods and services, access for the movement of people and migration, and institutional and political links.

The broad issue of policy is to define how far these incentives could actually be made available, and if so whether they are offered conditionally or unconditionally. In both cases, however, the EU would be hoping to induce the partner state to make economic or political reforms. The unconditional approach may be viewed more positively as part of a process of 'socialisation', and defined as inducing behavioural change through the interaction with the partner at any or all levels (e.g. government, business, civil society and academia), which results in social learning and model emulation.

The Barcelona process has tended more towards the 'socialisation' model than the 'conditionality' model. The financial aid has not been modulated according to conditions. In addition, the free trade and institutional aspects of Barcelona have been largely standardised if not multilateralised. The ENP marks a certain change of policy by the EU in the direction of bilateralisation, but it is not at all clear from the Action Plans what conditional incentives are on offer. Vague terms such as a possible stake in the internal market are mentioned. It is implied that the results of the monitoring to be done after three years will condition how to further move ahead, for example with a new type of 'Neighbourhood Agreement', but the content of such new model agreements is not elaborated.

By contrast, the EU accession process has been a very strong conditionality machine in both economic and political domains. With regard to the ENP partner states, the EU may elaborate differentiated approaches as between the east and south. The Eastern European neighbours are all members of the Council of Europe and so are explicitly committed to the political Copenhagen criteria, and they have EU membership aspirations, even if the EU is hesitant about acknowledging these. The southern neighbours, however, are still struggling to work out what their paths of political development are to be. Further, given the extreme sensitivity of the question of Islamist politics it is arguable that the ENP for its southern neighbours should choose a modulated policy, substantially strengthening the conditionality model for economic issues, but relying more heavily on the socialisation logic for the political aspects. This broad idea would need to be made more explicit, as the next two sections seek to do.

## 4.2 Economic incentives

The most explicit incentive that has been proposed as part of the ENP process is the Neighbourhood Financial Instrument, which would take over from the existing Meda and Tacis instruments, and for which the Commission has proposed a doubling of expenditures during the course of the period 2007-13. Yet the conditions to determine the allocation of these substantial funds are not yet clear. On the side of trade and market access there are hints at the progressive opening of the EU market, but these are also only vaguely defined, with expressions such as “a stake in the internal market”. More liberal migration policies and visa regimes are among the main desiderata of the partner states, but there is little encouragement found in the Action Plans on this account. Finally, the prospect of deepening political and institutional links with the EU is mentioned in the Action Plans, but the most tangible idea – that of a new category of Neighbourhood Agreement – is not even sketched for its possible content. There is provision for the monitoring of the Action Plans after two or three years, with the implication that positive assessments might lead to some of these incentives being delivered, but that is also left as a matter for speculation.

Uncertainty over the EU’s future budget, opposition from various lobbies towards agricultural trade liberalisation, the reluctance of member states to extend large mandates to the Commission on matters of conditionality and other factors limit the scope for specifying the incentives on offer. But the status quo is not one that permits the EU to use its comprehensive range of assets and instruments to maximum effect.

On the economic side, for both aid and trade instruments there are under-exploited opportunities. There is scope for deploying the combined intellectual and financial resources of the European Commission, the EIB, the World Bank, the IMF and the WTO. One way of doing this would be to build on the partnership arrangements that the European Commission and the World Bank have developed over the last decade for the Balkans, the accession candidate states of Central and Eastern Europe and the Mediterranean. The World Bank has substantial expertise in working out sectoral policy-reform programmes for transition economies. In the context of EU enlargement it has in particular been helping the accession candidate states to design policy reforms compatible with the EU *acquis*. In the case of the Mediterranean partner states the relevance of the EU *acquis* is less strong, but still the Action Plans are proposing a stake in the EU internal market and selective references are made to alignment on EU norms.

The next step would then be to link such policy recommendations to the availability of financial and market-access incentives. The EU already has experience of co-financing programmes with both the World Bank and the IMF. The Commission is able in particular to use its grant funds (for Meda but not for Tacis) effectively to soften the terms of World Bank structural-adjustment loans. The Neighbourhood Financial Instrument could be more explicit in opening a category of action that could be called ‘structural adjustment grants’. This would be little more than

building on existing experience, and exploiting more fully the scope of existing memoranda of understanding between the Commission, the World Bank and the IMF.

The ENP could see a further deepening of these linkages between policy-shaping and funding, given that the EIB is currently debating, for the first time, how to perhaps become more of a development bank, rather than just an investment bank. For the EIB to become a development bank would imply taking a stake in the policy-shaping process most likely through deliberate collaboration with the Commission and the World Bank. The Commission's potential to offer structural adjustment grants would also correspond to a concern of the EIB to achieve a softening of its loan conditions. This could now be done, but a counterpart would logically be for the EIB to clearly support an enhanced policy-conditionality process of the Commission and the World Bank, meaning a constraint on at least some of its investment decisions since they would become more conditional.

In the trade and market integration domains the conditionality process in any case starts with the traditional work of the trade policy negotiator: that of seeking a set of reciprocal market-opening concessions. The Trade and Market Directorates-General of the Commission would need to indicate the range of market-opening possibilities on offer, with an ordered spectrum from simple free trade to complete single market integration (to which Israel, for example, could aspire as the most-advanced partner state). Yet financial incentives such as structural adjustment grants could also be made available to support ambitious policies of market liberalisation on the part of the partner states, given the asymmetry of economic power between the two parties for exchanging trade concessions. All the southern partner states of the Neighbourhood Policy already have free trade agreements negotiated or planned with the EU under the Barcelona process. The Action Plans, however, open up the new perspective of access to the EU single market, with important implications for the services sectors. The Commission (DG Trade) is already engaging in negotiations with neighbourhood partner states. The case study on the services sector in Jordan suggests the need for the Commission to negotiate comprehensive services agreements with the ENP partner states, coupled closely to the GATS norms of the WTO. The US aims at extending its set of free trade agreements with various Middle Eastern states, and there is manifestly a case for EU-US coordination over such issues, including conditions for WTO accession for non-members.

In the economic domain, therefore, the switch from Barcelona to the ENP could see the introduction of much more incisive and effective 'meso-economic' policy-shaping, backed by specific conditionalities and incentives. One approach to doing this would involve a three-player coordination between the Commission, the EIB and the World Bank. Their leading role could also provide the basis for wider coordination with bilateral donors.

### **4.3 Political norms and socialisation**

Political conditionality by the EU in its relations with ENP partner states has so far been close to nil, as revealed by the fact that the EU has never activated the human rights clause of its Association Agreements with either the Mediterranean states of the Barcelona process or the former Soviet Union states of the Partnership and Association Agreements. It is, however, relatively straightforward now to have a more active democracy promotion policy for the neighbours to the north, given the wind of political change that is blowing through the region, as well as their membership of the Council of Europe, implying commitment to the Copenhagen political criteria. Several of these states, such as Ukraine, Moldova and Georgia, are making clear their EU integration ambitions, and while accession candidate status is not on the agenda, it is evident to all that full respect of the Copenhagen political criteria is the priority condition for the relationships to be deepened.

The situation of the Arab partner states is more delicate, partly because matters of political ideology are less settled, more precisely over the inclusion of Islamist parties in elections. So far the member states of the EU most concerned with the region have tacitly accepted the argument of authoritarian leaders – most notably those of Egypt and Tunisia – that opening the door to Islamist parties would lead to undemocratic fundamentalist regimes. But this argument is now contested by most independent scholars of contemporary Islam,<sup>21</sup> who point out that moderate non-jihadist Islamist parties have gained much ground in many Arab states, and that where they are wholly or largely excluded from electoral processes this risks harming the prospects for peaceful democratic evolution. Marina Ottway<sup>22</sup> argues that “Islamist organisations are key to building constituencies for democracy in the Arab world today”. While the Muslim Brotherhood has a certain representation in the weak Jordanian parliament, its counterpart in Egypt is still excluded from parliamentary representation. The implications of this omission may be counterproductive in relation to the objectives of European and Western policies in the region.

EU member states with significant Muslim minorities are also intensely concerned to work out sustainable models or paradigms for the social and political integration of these Euro-Islam communities. The large majority of these communities are not at all supporting radical or violent Islamist tendencies, and their successful integration implies their acceptance of democratic and secular political models. It can be argued further that the maturing of some Euro-Islam paradigms could also connect with the maturing of moderate political Islam in the Arab partner states, through diaspora connections and the globalised dissemination of religious teachings and ideas.

The scope to use Action Plans to intervene in such issues is heavily constrained by the fact that these documents have to be jointly agreed with the partner states. In these circumstances the scope for the EU to support democratic reform will have to rely on such methods as i) the bilateral actions of member states, ii) ‘track 2’ actions supported by the EU but undertaken through NGO, academic and think-tank channels, and iii) technical assistance from the EU to those components of the broad democracy/rule of law/civil society nexus where it is welcome. Nonetheless, the EU is engaged in a strategic interaction with the partner Arab states, less through a policy of conditionality and more through the alternative paradigm of ‘socialisation’ with the multiplicity of personal and official connections.

Yet it would also seem entirely feasible for the EU to engage in a certain political conditionality at a high strategic level. This would surely not be following the EU-Turkish model of very detailed and intrusive demands for political reforms of the type only suitable in the context of accession negotiations. Nevertheless, there would still appear to be room for the EU to make more imaginative descriptions of the ways in which its packages of political and economic incentives could be modulated as a function of broad assessments of the reform process. Such assessments would link effectively to a ‘positive conditionality’ that would affect whether the EU would be making a special effort to favour the partner state in question. The Commission should also now sketch the possible substance of the announced category of Neighbourhood Agreements for deepening the relationships between the EU and partner states.

Discussion on EU policies in this area cannot be divorced from the wider context: first, consideration of the role that the US plays and the extent to which it will in practice enforce the strong political conditionality that appears to be emerging as its dominant form of engagement;

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<sup>21</sup> For a Western view, see O. Roy, *L'Islam mondialisé*, Editions de Seuil (2004); and for an Arab view, see E. El-Din Shahin, *Political Islam: Ready for Engagement?*, Working Paper No. 3, FRIDE, Madrid, February (2005).

<sup>22</sup> M.S. Ottway, *Democracy and Constituencies in the Arab World*, Middle East Series No. 48, Carnegie Endowment for International Peace, Washington, D.C., July (2004), p. 14.

and second, the malign environment for active external involvement in political issues that is created by principally the continuing lack of progress on securing an Israeli-Palestinian settlement along with the continuing violence in Iraq. Progress in each of these areas (particularly the first) would transform the prospects for constructive political engagement.

How might a more nuanced system for the political domain be defined? One approach would be to establish criteria by which partner countries could be classified and to which incentives could be related. One possibility would be to identify three levels. Group 1 would be for partner states that were assessed as making the most impressive progress in terms of generally accepted political norms of democracy, the rule of law and human rights (it would be important that these were norms defined in terms of actual practice and not just the existence of appropriate legal provisions), such as the Copenhagen criteria. This level of achievement would provide access to the maximum level of benefits especially if accompanied by economic, political and institutional reforms. Group 2 would be for perhaps a large category of partner states whose political regimes are not yet achieving these norms, but where demonstrable progress is being made in reducing the abuse of human rights and establishing more democratic and less authoritarian forms of governance. In this broad band there may be only limited rewards linked to political norms, but active engagement in supporting reforms would take place. Group 3 would be for partner states that have failed to show progress in improving human rights or moving towards the defined political norms. The Association Agreements of the Barcelona process already provide for the EU to take action, including suspension of the Agreement, in such circumstances. It is noteworthy, however, that the EU has never activated this provision.<sup>23</sup>

There may be no formal designation of which countries fall into which group, but there are several well-known marking systems available, such as those regularly published by Freedom House for all aspects of democratic practice and by Transparency International for corruption. What is currently lacking on the EU side is a credible description of rewards that could be made available for group 1, and even more so a graduated set of penalties for failure to achieve agreed standards. But as an example of a light touch, the first session of the Euro-Mediterranean Parliamentary Assembly has recently expressed strong criticism of Egypt for the detaining of a journalist, which resulted in his release.

The EU could also enrich its institutional mechanisms for political socialisation of its ENP partners by proposing a role for the Council of Europe. This organisation is quite open to the idea of voluntary association of southern Mediterranean states with its human rights conventions or for these states to avail themselves of the expertise of the Venice Commission for constitutional issues. A link here could be made to the new Euro-Mediterranean Parliamentary Assembly.

## **5. Strengthening the Action Plan process**

### **5.1 Implementing the EU-Jordan Action Plan**

The process of negotiating the EU-Jordan Action Plan has in a number of ways consolidated and gone beyond the limited achievements of the Barcelona process to date:

- It has fostered perceptions of potential benefits available to Jordan from participation in the ENP, and begun to change the nature of the relationship from that of a donor and aid recipient to a potential partner across a wider range of areas. Nevertheless, the level of information and awareness is still very limited.

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<sup>23</sup> Yet one can note the case of sanctions against Libya, which were imposed before the start of the Barcelona process and have recently been removed.

- The Action Plan creates a framework that should facilitate the prioritising of the Commission's policy work and aid activities.
- The system of sub-committees may lead to a deeper and more sustained dialogue with the government across a broad range of reform areas.

Nevertheless, in Jordan the ENP has yet to move beyond the provision of a broad framework of agreed headings and action areas, and the setting up of a structure for dialogue. It may provide a more coherent framework for the Commission's aid projects, but it has still to change the role of the EU from that of being a provider of aid as it has been through the MEDA programme. At the moment neither side has an articulated vision of what an enhanced relationship could provide, or the available capacity to undertake the detailed analysis that would be necessary to specify how to realise a vision. Relations with the EU are currently something of a sideshow in a situation where the US is using political conditionality in a highly assertive way, although this may also create a fruitful environment for less-assertive forms of dialogue.

The main conclusion from the case study on the services sector in Jordan is that there are underexploited opportunities for the EU, together with the international financial institutions, to use their combined resources to promote reformist policies. The Neighbourhood Policy opens up new prospects through the Action Plans, which are comprehensive in addressing the need for reform in virtually all sectors of the economy. The Action Plans aspire to operationalise this vast reform agenda. But they only provide sketches of what needs to be done, with complex agendas for reform in various sectors summarised in the Action Plans in only a few words or lines.

So far the work downstream from adoption of the Action Plans sees the setting up of a number of joint sub-committees between the EU (represented by the Commission with the participation of member states and the partner state). In the case of Jordan, the establishment of the sub-committees is seen as greatly increasing the scope and channels for structured discussion with the government on a wide range of policy issues (hence serving a socialisation role). The system is embryonic, however, and it is far from clear how it will work in practice.

The sub-committees will doubtless get closer to the operational substance than the Action Plans per se. Yet the sub-committees will themselves be quite heavy bureaucratic structures (and will operate at the technocratic rather than the political level), and further methods will have to be found to produce much of the detailed policy work, given the comprehensive and very microeconomic nature of the Action Plan agenda.

It is possible that Jordan represents the most difficult case for the ENP among the southern Mediterranean countries from the point of view of the provision of incentives. It is the only one of these countries without a Mediterranean littoral, it has the lowest level of trade integration with Europe and does not have compelling reasons for redefining or strengthening its political relations with Europe, such as may be important for Syria (to re-enter the international community), Lebanon (to consolidate democracy and attain freedom from outside interference), or Palestine (as part of the process of establishing and guaranteeing its statehood), except as a possible counterbalance to the influence of the US.

The task of making the Action Plan a driving force for reform is all the more difficult in this context. Yet this is a merit for a case study in the ENP context – on how to do it when the links are minimal. On the other hand, Jordan receives large amounts of aid from other donors – the US, international financial institutions and some EU bilaterals. This underlines the need for the EU to define different ENP models, including the case here where it is not the leading external actor, but ENP policy effectiveness is still the aim. For Jordan the EU has to find the formula to

be a valuable team player, but hardly leader, of the international community, as illustrated in different ways by the two case studies. The EU has thus to identify its real comparative advantages in the vast Action Plan panorama.

Progress is needed in the following areas if the ENP is to become an effective driver of change in Jordan.

- The Jordanian government will need to articulate a vision and strategy for what it seeks to achieve from its engagement with the EU. The National Agenda process presents a critical test and opportunity since it holds out the promise of both a more inclusive approach to setting policy priorities than has ever occurred before in Jordan, and the setting of a medium- to long-term agenda that may provide greater stability and coherence to policy-making than has been the case in the past.
- The EU needs to articulate and communicate more clearly how it intends to give substance to the promises of benefits that are set out in the Action Plan, and to define what Jordan would need to achieve in order to qualify for such benefits. This issue is potentially complicated by the likely need for consistency in treatment with other countries so it may not be possible to develop this strategy on an entirely bilateral basis. The National Agenda process, however, is an obvious focus for this articulation and communication. The approach would need to involve dialogue with a wide range of stakeholders (notably the private sector and political parties including the Islamic opposition) with a view to presenting what a strengthened relationship with the EU could provide.
- If progress can be made on articulating a vision of EU-Jordan relations that emerges as having an important place in the National Agenda, both parties will need to make a real prioritisation from the all-embracing agenda of the Action Plans. Taking the prioritised areas to the stage of operational policy recommendations will require a great deal of analytical work and staff capacity (the case studies for this exercise provide a flavour of what such analysis might involve). For this to be feasible, collaboration with others, including member states but also the World Bank and other agencies, is certain to be required. The Commission and the World Bank can build on their prior cooperation to take the lead together in such work, with procedures to link to the work of the sub-committees.

Jordan is even more of a service economy than most (70% of GDP), which makes reform of the services sector not just a sector case study, but potentially the strategic key to its economic development prospects, although the generally fragmented and conservative nature of the private sector, particularly in the services sector, may pose an obstacle to more dynamic change. This presents an opportunity for the EU to negotiate a comprehensive services agreement bilaterally with Jordan as a strategic implementation measure of the Action Plan. This is hinted at in the Action Plan, but ought to be brought to the top of the economic policy priorities, provided that government commitment in this area has clearly developed. A services agreement would go alongside or follow more ambitious multilateral commitments by Jordan in the WTO/GATS framework as part of the Doha round. Jordan is hesitant over this for the moment. It needs to be persuaded through the processes of dialogue and incentives, including the chance here to be the 'first' among ENP partner states, which would be a positive signal to the international investor community.

If this approach is adopted, it could form a focus for the coordination of economic aid. The EU Commission, World Bank and EIB should work together in a structured way.<sup>24</sup> The World Bank can work out structural adjustment loans with strong, sectoral policy-shaping content, which

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<sup>24</sup> It is understood that Jordan is a pilot country for strengthened European Commission-World Bank collaboration.

could relate to the agenda of service sector liberalisation that the EU will be trying to negotiate. These negotiations will draw on elements of the EU *acquis* in some areas, but Jordan is a case where the EU *acquis* content would be relatively low. The study annexed on the services sector offers a guide to the substance here – on desirable reforms with some links to the *acquis*. The EIB could contribute more than it has to date to influencing policy, by adding its considerable investment funding to the policy-conditional aid package (this is a general ENP policy issue for the Commission and the EIB).

In relation to political reform, the Action Plan for Jordan is silent on the issue of political Islam particularly in relation to the prospects for political reform and democratisation, and it is acknowledged that the Commission's civil society programmes in Jordan have not reached Islamic organisations (who have generally been opposed to receiving funding from Western sources). The Action Plan addresses the agenda for political reform in universalist or culturally neutral terms – for example, as provided in the earlier discussion in section 3.3 on the prospects for reform of the Jordanian judiciary. It does not open up questions about the possible place of political Islam in the evolution of Jordanian political structures. This follows from the decision to make the Action Plan a joint document of the EU and the partner state's government; the latter may resist the full entry into political life of Islamist parties, even where these are moderate and non-violent in their approaches.

The judiciary study reveals a situation in which the EU is offering a certain amount of technical assistance, but is not seeking to apply high-level political reform conditionality. It is relevant to understanding the very sensitive issue about how far 'reform' can go without confronting underlying issues of Islamist content. The US is occupying a leading place in technical assistance in this domain, while it also appears that the US is strengthening its use of political conditionality. Dialogue between the US and the EU over the content of the expected political reforms is a minimal requirement to be addressed, with diplomatic discourse to be calibrated accordingly. The EU should seek a convergent discourse, but probably not a particularly high profile.

Nevertheless, the EU could make a specific contribution in the Arab ENP region as a whole by engaging with moderate representatives of political Islam, including Jordanians, but not through the bilateral Action Plan. This engagement would have to use 'track 2' or 'semi-track 2' channels with civil society, and would link to the ongoing multi-cultural dialogue within the EU. The purpose would be to help facilitate the search for forms of democratisation in the Arab world that could enjoy legitimacy and real roots in society, and perhaps link constructively to the evolution of ideas within the EU's Muslim communities.

## 5.2 Wider issues for the Action Plan process

The ENP has the potential to become a driving force for the reform and progressive transformation of the partner states in the direction of modern European values and norms. This potential is of course highly variable depending upon the effective proximity of the partner state to the EU – both objectively in terms of geography and economic links, and subjectively in terms of culture and perceptions of identity. Along the spectrum of proximities represented by the various partner states, Jordan is at the relatively remote and distant end of the spectrum, whereas Ukraine would perhaps be the closest. The perceived advantages to a partner country of a strengthened relationship with the EU will be the overwhelmingly most important determinant of the potential of the ENP to bring about change. In the Mashreq region, with the exception of Israel, such a vision has yet to emerge. The ENP framework is, however, designed to allow a differentiated approach, according to which the offer of specific packages of measures or agreement can be linked to the level of interest and commitment of the partner government.

An important strategic question is the extent to which the ENP is seen as *process-driven* (as the Barcelona process has been to date) or *outcome-focused*. Effective use of the ENP's incentive potential requires an outcome focus, which would set benchmarks and targets of the type that have been discussed earlier in this report, ideally in the context of an articulation of the content of Neighbourhood Agreements, and which would provide a clear incentive framework and would be seen as offering an opportunity, rather than imposing conditionality. For this to work, both sides would need to see an advantage in setting such benchmarks, and partner governments would need to be well prepared to enter detailed negotiations across the whole range of policy areas. If this is not the case, then a process-oriented approach to continue confidence-building and establish areas of consensus may be required. The best approach to use may vary among sectors and policy areas.

The Action Plans published so far are only preliminary documents. They are subject to two systematic shortcomings at this stage, which will need a further important effort of policy definition by the EU as a whole, and by the Commission in particular in view of its prime responsibility for proposing and executing the policy operationally. First, they are not yet specific in policy-operational detail – the action points are little more than headings. Second, the Action Plans are not supported by clear indication of the incentives offered to the partner states, and on what conditions.

Key elements in making the Action Plan process more effective would be the following:

- The Commission needs to organise internally the production a set of sector-specific green or white papers to deepen the policy content of the ENP in general terms. This should include sketches of different degrees of desirable EU *acquis* compliance as a function of different economic structures and capabilities of the partner states, to help guide the process of making the Action Plans operational. These green or white papers could be assembled into an 'ENP Handbook', which would help guide the detailing of the Action Plans.
- The task of policy-shaping in different sectors of the Action Plans with the partner states needs to be shared by the Commission with other international organisations, most importantly the World Bank and the IMF, according to more detailed cooperation agreements to be worked out in the spirit of various memoranda of understanding already made between them.
- The policy-shaping recommendations in support of the economic parts of the Action Plans should be explicitly linked to the financial or market-access incentives (or both) on offer from the EU and international financial institutions. On the side of the EU this might involve using the new financial instrument to make structural adjustment grants available, implying fewer resources for technical assistance projects of the types that have often proved difficult to execute satisfactorily. The investment funds of the EIB would also be steered to support sectors undertaking recommended policy reforms.
- The promotion of political reform in the partner states is a more delicate affair. Overall the process will have to rely more on the paradigm of 'socialisation' than that of conditionality. Yet there is some room still for 'positive conditionality' if the Commission were to define more substantively the package of incentives that it offers to partner states deemed to be making impressive progress in their political and economic reforms, including being more explicit on the possible content of future Neighbourhood Agreements and the broad conditions for moving to this stage.

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Founded in 1983, the Centre for European Policy Studies is an independent policy research institute dedicated to producing sound policy research leading to constructive solutions to the challenges facing Europe today. Funding is obtained from membership fees, contributions from official institutions (European Commission, other international and multilateral institutions, and national bodies), foundation grants, project research, conferences fees and publication sales.

### Goals

- To achieve high standards of academic excellence and maintain unqualified independence.
- To provide a forum for discussion among all stakeholders in the European policy process.
- To build collaborative networks of researchers, policy-makers and business across the whole of Europe.
- To disseminate our findings and views through a regular flow of publications and public events.

### Assets and Achievements

- Complete independence to set its own priorities and freedom from any outside influence.
- Authoritative research by an international staff with a demonstrated capability to analyse policy questions and anticipate trends well before they become topics of general public discussion.
- Formation of seven different research networks, comprising some 140 research institutes from throughout Europe and beyond, to complement and consolidate our research expertise and to greatly extend our reach in a wide range of areas from agricultural and security policy to climate change, JHA and economic analysis.
- An extensive network of external collaborators, including some 35 senior associates with extensive working experience in EU affairs.

### Programme Structure

CEPS is a place where creative and authoritative specialists reflect and comment on the problems and opportunities facing Europe today. This is evidenced by the depth and originality of its publications and the talent and prescience of its expanding research staff. The CEPS research programme is organised under two major headings:

#### Economic Policy

Macroeconomic Policy  
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 Trade Developments & Policy  
 Energy, Environment & Climate Change  
 Agricultural Policy

#### Politics, Institutions and Security

The Future of Europe  
 Justice and Home Affairs  
 The Wider Europe  
 South East Europe  
 Caucasus & Black Sea  
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