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Summary of Working Package 11 - Domestic Institutions

1. Introduction

In an era of ever increasing interaction between the EU member states and the MPCs under the so-called Barcelona Process and especially with the ambitious goal of the French Presidency, “Union for the Mediterranean” (UMP), the structure of domestic institutions in these southern countries becomes the focus of a politically and economically powerful Euro Mediterranean Partnership (EMP). A sufficient examination of the persistent nature and structure of domestic institutions in these countries is highly necessary due to the fact that certain deficiencies in the institutional governance system have been one of the major impediments to progress in EMP. A cumbersome domestic institutional structure in these southern countries not only effects the political economic development of the country but also obstructs relations between the EU and its southern neighbours. It is for this reason that Working Package 11 basically aimed to outline measures which would enable MPCs to approximate domestic legislation to EU standards so that various means which would strengthen domestic economic and political institutions in the MPCs can be determined.

The road to effective EMP lies in the sufficient identification of conditions and challenges faced by MPCs through the building of domestic institutional models. All three papers of Working Package 11 pursued this goal for their respective countries i.e. Turkey, Morocco and Lebanon. These papers have aimed to analyse the nature of domestic institutional governance in Turkey, Morocco and Lebanon so that key domestic actors and their impacts in aggregating national preferences in these countries are understood to the fullest. To realize this goal, each team that took part in this Working Package engaged in a study of institutional deficiencies and bottlenecks that impede the essential functions of these institutions through conducting theoretical and empirical analysis of efficiency standards for domestic legal and regulatory frameworks. Determination of such frameworks is a significant step not only for strengthening the basis of domestic institutions in MPCs but also for drawing these countries closer to the EU sphere of influence, a prerequisite in the case of a “Union for the Mediterranean”. Therefore, a mutual understanding between the MPCs and the EU and the compatibility of the institutional structure in Mediterranean countries with the EU norms is the recipe for a sufficient partnership process that reflects the interests of both EU member

states and Mediterranean countries.

To this day, one of the main obstacles in front of the EMP has been the institutional gap between the EU and the MPCs. The EU has aimed at tackling this lack mainly through the Barcelona Process with various financial projects that are devised at drawing MPCs closer to the institutional notion of the EU. Nevertheless in the absence of an internal drive for domestic reforms in the Mediterranean countries, these projects supported by the EU remain only as a sign of good will. Consequently, the malfunctioning institutional systems hinder attempts in setting up of multilateral regional cooperation schemes that aim to combat illegal migration, terrorism, climate change or strengthen measures in energy cooperation. The establishment of such partnerships requires the co-existence of sufficient management strategies at all three levels of institutional design; domestic, bilateral and multilateral. Taking into consideration the impact of domestic institutions in shaping national bargaining positions in multilateral partnerships such as EMP, Working Package 11 has employed a critical and a rather technical approach towards domestic institutions. To provide empirical basis for critically assessing the institutional design, papers have dealt with areas such as competition law and policy, banking systems, investor protection laws, anti-corruption practices, fiscal policy and labour laws.

2. Major Findings of Individual Reports

All three reports have aimed at deeply assessing the nature of domestic institutional structure as a reference point for convergence towards European political and economic model. Main bottlenecks and the reasons have been identified and practical policy advice to assist EU and MPC policy makers in domestic economic institutional design and management has been provided.

Paper 1, Turkey: “Impacts of the EU Negotiation Process on Turkish Domestic Institutional Reforms”

The paper examines the Turkish experience of adapting the Copenhagen criteria with various political, economic and judicial reforms pursued in light of the EU accession process. Conditionality, a very effective tool used as a part of EU enlargement policy stands out in the Turkish case with major domestic impediments preventing sufficient enforcement. The main questions addressed in this paper are; how successful Turkey has been in implementing domestic reforms and what are the major bottlenecks that stand in the way of implementation process.

Paper 2, Morocco: “Domestic Institutions, Intellectual Property Rights and Development in the EU-Mediterranean Partner Countries”

The Moroccan team looks at the role of domestic institutions related to the protection of intellectual property rights in the context of Mediterranean Partner Countries. Their analyses of the correlation between intellectual property rights and economic growth draws attention to the importance of integration of informal economy into the formal economy for the prevention of major economic losses in south Mediterranean countries. The paper looks at the case of software piracy to examine the dimension and impact of informal economy.

Paper 3, Lebanon: “Domestic Institutions for the Enforcement of Contracts: the Case of Lebanon”

The purpose of this research has been to illustrate the importance of legal bottlenecks as institutional impediments to economic development in Lebanon. The main argument is that regardless of the fact that the Barcelona process insufficiently ameliorated business climate, the nature of project formulation does not answer to the core demands of the markets. The cases of contract enforcement and corporate governance have been taken as illustrative examples to prove the point of the research.

3. Contribution of Each Team to Working Package 11

Turkish Team

The existence of a well-functioning market economy requires both domestic market and foreign trade to be liberalised and an enforceable legal system, including property rights, to be introduced. Macroeconomic stability and well-developed financial markets are basic conditions for the positive performance of a market economy. Turkey has achieved significant legislative progress in many areas, through further reform packages, constitutional changes and the adaptation of new regulations. This thrust for change has been initiated by the EU membership carrot and most importantly through the use of conditionality, an effective part of EU enlargement policy. In this context, Turkey has made considerable progress towards fulfilling the basic requirements of the so-called Copenhagen Criteria which demand “the guaranteeing of democracy, rule of law, human rights and respect for and protection of minorities”, “the existence of a functioning economy” and “the capacity to cope with competitive pressure and market forces within the Union”.

With the candidacy status in 1999 Turkey began its reform journey. At first a coalition and then later on a single-party government pursued the sweeping reform process that the country has been going under since the Helsinki Summit. A total of 9 Constitutional Packages and numerous legislative amendments have been passed by the Parliament. However, there have been serious concerns over how much Turkey has been able to implement and enforce these comprehensive reforms that it followed ranging from various human right laws to the establishment of independent regulatory agencies. Therefore, the Turkish team has analysed the political, juridical and economic reforms, which have been introduced by various governments, in particular after the 2002 elections in Turkey. The paper basically outlines the extent to which the Turkish government has been successful in putting these EU stimulated reforms into practice and why there are still some areas which stand against reforms¹. Therefore, it examines the success and shortcomings of conditionality in the Turkish case. Major obstacles in the implementation of these reforms and areas in which the government stays reluctant to take action are explored with respect to three sections of the Copenhagen criteria; political, economic and ability to implement

¹ Areas that have been stated by the Turkish team include; equal legal protection of social, cultural and political rights for all citizens irrespective of religious and ethnic origin, the role of the military in politics, freedom of expression, freedom of association and peaceful assembly, privatization of state enterprises, problems in public procurement, current account deficit, cumbersome state aid policies, non-banking financial sector.

the acquis. For such analysis, it first of all puts forward the political and economic reforms that have been adopted since 1999. After that it examines major bottlenecks which are frequently mentioned in the Progress Reports of the Commission and the underlying reasons such as certain pressure groups that oppose the reform process.

Main Arguments of the Paper

The paper advocates that the failure of the enforcement of specific domestic reforms stem from the absence of “separation of powers” in a political environment of lack of transparency, corruption and populism coupled with deficiency of rule of law which eventually places collective interests of the state above the individual’s.

The analysis of Turkey’s reform process is an important case when the region and the Union’s relations with the region as a part of the Barcelona process, are taken into consideration. Therefore, the paper finally provides policy advice to MPCs which are in close relation with the EU- from the Turkish reform experience showing the difficulties that the country has been facing from time to time with respect to the sweeping reform process.

Conclusions

The Turkish team states two key problematic areas which hinder the success of EU initiated reforms; political power and the state structure. The political power has been stirred by four main factors which are dealt further in the Turkish paper. These factors include lack of transparency, corruption, clientelist approaches which hinder enforcement capacity, the need for consensus among all state institutions, lack of adequate drive on the government's side for implementing the reforms and the necessity to amend the Constitution. In addition to these, the integral state structure and pro status quo groups have been put forward as obstacles in front of Turkey's successful domestic institutional reforms.

Moroccan Team

With their study our Moroccan partners looks at the nature of domestic institutions in the MPCs from the notion of Intellectual Property Rights (IPRs) which explain an important aspect of the competitiveness of these southern countries. There is a high correlation between the development of sufficient domestic institutions and IPRs. This correlation has also been perceived as an indicator of economic growth in south Mediterranean countries. Due to the fact that each countries approach to IPR differs from one another with regard to national and

international regulations and agreements, the Moroccan team follows a country analysis when dealing with the case of IPR. Previous GO-Euromed studies have been utilized to show that successive waves of reforms have been undertaken in the MPCs.

Since knowledge stands as the main drive for technological and institutional change, the IPR policies of these countries indicate a significant deal on their domestic structure with respect to free markets and trade. As the Moroccan team states, enforcement of IPR is sine qua non for the establishment of highly competitive markets. Today, every competitive economy in the world has established sufficient measures for enforcing and monitoring IPRs. The development of these measures and domestic institutions that enforce them have been an integral part of European market since its formation. As the economic interdependency of the EU and the MPCs increase sufficiently, it is for this very reason that these countries should pay particular attention to the enforcement of IPR to be able to overcome economic losses due to informal economy. It is only if these south Mediterranean countries can establish effective domestic institutions that monitor the enforcement of IPR that they can show the adequately compete in international markets. In this context, the Moroccan team answers five major questions when analysing the impact of domestic institutions in IPR enforcement;

- ➔ What domestic institutions have been created so far to protect the IPRs?
- ➔ What levels of efficiencies have been observed?
- ➔ What types of strengthening is needed in order to ensure the convergence between the EU and the MPCs.
- ➔ What are the relationships between formal and informal economies that are useful in coping with IPRs?
- ➔ What are the new prospects and the new domestic institutional mechanisms needed to promote IPRs and development in south Mediterranean countries?

Main arguments of the Paper:

The paper examines the role of domestic institutions in enforcing IPRs in south Mediterranean countries. Such an analysis, with the help of trade and foreign direct investment movements (FDI) movements that can capture the levels of IPRs enforcement, has been employed to assess the role of domestic institutions in enforcing IPRs in these countries. This is crucial in understanding how innovation and technologies are adopted and how local and international agreements have been fulfilled.

An analysis of previous GO-Euromed results reveals that the strengthening of specific domestic institutions might not necessarily mean only applying “the law” and pursuing legally the non-complaint. In the context of IPRs enforcement, institutional development signifies the involvement of all institutions and parties, a critical point in overcoming economic losses that result from such informal activities.

The case of software piracy has been analysed to show the size of economic losses implied by the practices of non-compliance regardless of the fact that further institutional strengthening has been pursued. Regression analysis has been a tool that points out to links between piracy and economic losses due to informal economy.

Conclusions

The establishment and development of further functions for these domestic institutions require sufficient research and transparent, real commitment of all players. According to the Moroccan team the solution lies within the framework of formalization and inclusion of all players in order to provide a win-win situation. For this reason, accumulation of knowledge on the protection and ownership of IPRs is highly required among informal producers and traders. Currently, reforms that have been pursued in the region have promoted market mechanisms in favour of IPRs but led to the rise of informal economies.

The role of trade with internationally developed partners has been underlined as a factor that strengthens the need and importance of such domestic institutions. Cooperation with such enhanced economies, mainly with the EU, stands as useful experiences.

Lebanese Team

The improvement of business climate for the sake of sustainable economic development through the identification of major obstacles in front of relevant domestic institutions have been at the core of the Lebanese paper. The success of economic development depends on certain factors and “good governance” and “healthy investment climate” are two essential features for smaller and vulnerable economies like the Lebanese one. The attractiveness of a country for foreign investors is the result of a few combined factors like adequate legal environment, predictable economic process and efficient domestic institutions that encourage and assist investors.

In this context, the Lebanese paper takes a look at contract enforcement and corporate

governance as illustrative examples for analysing the nature of domestic institutions and their effectiveness in the creation of a favourable investment climate for businesses. Issues such as contract enforcement and the attractiveness of investment are inter-related. Usually, laws that do not sufficiently protect contracts are the same laws that hinder investment. A case in point is the issue with minority rights. Weak minority right provision makes contract enforcement difficult (in terms of the firm living up to the expectations of the minority shareholder) and also makes investment unattractive. People will be reluctant to take a minority share in a company if their rights are not adequately protected.

The Lebanese paper projects three primary objectives with its examination; to illustrate the importance of legal bottle necks as institutional impediments to economic development in Lebanon, taking the case of contract enforcement and corporate governance as illustrative examples; to review the EU procedures and programme formulation and see if they would be currently adequate to treat this problem, or indeed, any other generic problem in Lebanon, and finally, to produce recommendations that apply to improving the conditions nationally and improving the effectiveness of EU implemented programmes in the country. In this paper the issues being dealt with are investment protection, viewed more globally as corporate governance issues and the problem of non-payment, which in turn are a reflection of lost trust in the system and an exaggeration of the free-rider problem in it.

Main arguments of the paper:

The study claims that the Barcelona process has helped, but in an insufficient matter, to ameliorate the situation for companies within the MEDA region though efforts aimed at improving the legal infrastructure in the region. The gap between the core demands of businesses and current project formulation has been provided as the main reason behind such failure.

The paper looks at contract enforcement and investment promotion as potential areas of intervention and undertakes a brief review of EU regional effort in legal reform. These two areas of legal enquiry are essential ingredients for the normal operation of the private sector in any given economy and the existing set up in Lebanon forces the companies to assume higher risks and loss and forces investors to withdraw from in-company investment, promulgating the segregation of the economy into more and more small scale enterprises.

Conclusions:

More work needs to be done to support private sector institutions in order to lower the cost of doing business and enhance economic activity in general. Several reform initiatives have been provided which can be efficiently enacted, within the support of the EU Neighbourhood Policy, to help establish better contract enforcement institutions, both in the formal judicial system and the mediation sector. Reforms must be carried out in the judicial system, for mediation and arbitration and most importantly for the EU. These reform proposals range from amendment of bankruptcy law, establishment of factoring organizations and transaction guarantee bodies, increasing of the teaching of mediation for commercial disputes in law schools to more involvement of the private sector and civil society in formulating the EU projects.