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Summary of Working Package 12 – Bilateral Institutions

Relations of Mediterranean Countries with the EU have been already institutionalized for some time through the Barcelona Process and recently through European Neighbourhood Policy. Bilateral Institutions and instruments established within either EMP or ENP play an important role as they help to coordinate cooperation between the Mediterranean and European partners. The European Union within institutionalized relations established certain bilateral instruments that are supposed to influence development of Euro-Med Partnership and enhance cooperation between the EU and certain Mediterranean Partner Countries (MPCs). Moreover bilateral institutions concentrate more on needs and comply more with the specificity of individual MPC and thus it can be assumed that the fact that Bilateral Institutions and instruments are tailor-made for each Mediterranean Partner they are as well more effective and bring better results. The most crucial bilateral instruments in the EU-MED relations are Euro-Mediterranean Association Agreements and bilateral Action Plans established in the frames of European Neighbourhood Policy. These instruments consider more economic issues and improvement of economic cooperation between the EU and MPCs as well as improvement of economic situation of certain MPCs and their integration into the global economy.

The working package of Go-EuroMed stage 3, coordinated by the Polish team of Warsaw School of Economics, deals with the issue of Bilateral Institutions. The conducted study within this working package was aimed at answering following questions: what should be changed in order to make Euro-Med agreement work and bring desired results?; How can bilateral institutions influence trade strengthening?; What is the role of European Union in Managing Illegal Migration in the Mediterranean Basin?; How to improve bilateral management strategies in the building of EMFTA?

The studies concerning Bilateral Institutions were conducted by three Go-EuroMed teams German Jean Monnet Centre of Excellence (Freie Universitat Berlin), Jordanian Centre for Strategic Studies (University of Jordan) and Polish International Security Department (Warsaw School of Economics). The report consists of these three teams' papers that deal with the questions and issues listed above. The Working Papers' Drafts are following:

1. *Making the Euro-Med Agreement Work: Strengthening Trade Through Bilateral Institutions* - written by the University of Jordan team.
2. *Defining the Role of the European Union in Managing Illegal Migration in the Mediterranean Basin: Policy, Operations and Oversight* - written by the Jean Monnet Centre team.
3. *Building Euro-Med FTA. How to Improve the Bilateral Management Strategies?* - written by the Warsaw School of Economics team.

The Jordanian analysis deals mainly with the issue of trade and influence of bilateral Euro-Med Institutions on the improvement of trade. It states that formal and informal institutions can affect trade both directly and indirectly and some of the studies (Makdisi et al 2005) show that trade openness in case of MENA countries is less beneficial to the economic growth due to quality of the institutions. Also the fact that the Region is unstable as regards socio-political situation, sensitive to external shocks, has modest stock in human capital and its educational systems are focused on public sector employment influences its trade openness. Thus the Jordanian text argues whether trade can be strengthened through bilateral institutions. Jordanian paper describes the role of Market Institutions and Institutionalization of the Euro-Med Agreement. Quality of institutions is important especially for the manufactured goods as defective institutions can have a negative impact on country's capacity to export these goods (e.g. bureaucratic measures can work as non-tariff barriers etc.) and are one of responsible for low performance of manufactured goods export and FDI attractiveness. The text focuses mainly on bilateral market institutions established for implementation of Euro-Med Agreements. Such institutions include the Association Councils, the Association Committees and the Sub-Committees etc. What is more the paper provides with the detailed case of Jordan in relevance to trade relations with the EU and overcoming obstacles (i.e. technical assistance). The paper deals with rules of origin as an obstacle to increased trade with EU and other non-tariff market barriers. As the authors state a breakthrough in the EU market will require meeting by the MPCs technical barriers to trade (TBT) and the sanitary and phytosanitary measures (SPS) as well as change in legislation in order to be up to standards and regulations and make them enforceable under law. However the text argues that different MPCs have different levels of incentives for compliance with EU standards regarding trade in goods and ENP allows MPC in terms of integration degree choose between the "soft law" of loose economic cooperation and "hard law" of binding treaties. As to overcoming these obstacles the paper refers to technical assistance programmes which focused mainly on

private sector and development of SME in the MPCs. These programs focused mainly at firm level what has also proved to be insufficient as the paper states more action was required at industrial and national macro-policy level. Finally the paper compares the Euro-Med solutions with QIZ and USFTA. Due to the QIZ agreement there has been a dramatic rise in Jordanian export to the US. When it comes to compare of institutional setup of Euro-Med and USFTA and QIZ the paper states that effectiveness of EMAA is hampered by an unclear set of procedures and certification methods whereas QIZ case was successful due to approve of better institutional solutions. From this comparison a basic conclusion can be drawn that Euro-Med agreement supports to a bigger extent diversification of exports to the EU, but entering the EU market by Jordanian products due to complicated institutional set up is much more difficult than in case of QIZ and USFTA.

The Polish analysis concentrates on trade issues as well, however it analyses the recent developments of EU policy towards the region viewed from the perspective of the situation both in the EU itself (Union for the Mediterranean, the global agenda of the EU and its links with the internal goals of the Community) and in the wider area (current WTO negotiations). It starts with a short review of the recent data concerning the process of elimination of non-tariff barriers (among them exchange rate uncertainty) which is not satisfactory. According to the World Bank estimates trade non-tariff barriers are more substantial in the MENA region than in any other region of the world. Thus, as the Polish text concludes that opening the market in terms of tariff-elimination, which is the main goal of the bilateral negotiations between the EU and MPCs (limited to industry, less to agriculture and even less services) is not enough. In order to profit from the EMFTA in industry or agriculture, MPCs need to push for more liberalization in services – with the EU or within the WTO and introduce more domestic reforms. The EU has always declared that these will be the most important element in its initiatives – both the EMP and the ENP.

In its first part, the Polish article analyses the opportunities and threats for the future EU-Med relations which can be observed in 2008 and will have more profound and long-lasting impact on the Barcelona Process. Among the recognized trends the most important are: greater influence of internal competitiveness agenda (Lisbon Strategy) on more and more external policies (trade, development) and a tendency within the EU for strengthening Member States against the European institutions. They both, according to the paper, can lead towards more

defensive and inward looking EU external strategies – both at such multilateral forum like the WTO or bilateral agreements negotiations with its Partners. The text touches upon issues connected to the recently established Union for the Mediterranean. The list of priorities indicates that measures aimed at fostering the EMFTA will not be addressed by the Union in the first place. It means that bilateral dimension of the Barcelona Process and the ENP might have crucial importance for negotiating trade liberalization. However, the initiative of the Union carries new challenges for development of the ENP as well as the EU external relations with other countries and regions.

A changing situation in other external arenas – such as the unsuccessful WTO negotiations – also determines the strength of the MPCs position against the EU. If MPCs want to play a role of a partner in the Barcelona Process, they should deeper involve in liberalization of trade on a global level – within the WTO. So far however, as the Polish experts state the MPCs they are lagging behind the commitments made within the GATS. Not only is a number of sectors subjected to GATS disciplines limited, but also the commitments made are very shallow - Tunisia has bound only 3 out of 11 possible sectors, Egypt 4, Morocco 7, and Jordan 11. Generally, binding a greater number of sectors and deeper commitments on the side of MPCs could be treated as “an important signal to investors, it can externally anchor domestic reforms, and it discourages vested interests to lobby for trade protection”.

In the second chapter of the Polish paper the negotiations between the EU and MPCs are analyzed according to three criteria: bargaining outcomes, the actors’ bargaining power, and the choice of bargaining issues. The paper concentrates on two sectors: agricultural and services. In the first case, it is argued that further reducing the EU's agricultural tariffs, tariff quotas, farm subsidies and other Common Agriculture Policy (“CAP”) instruments is highly dependent on the EU hot debate over the CAP reform, EU agricultural commitments and the WTO rising food prices. The EU agriculture regime is, however not the only factor that leads to food prices increases. The second one is the target of EU energy and climate package which is increasing biofuels use by 10% by 2020. These two processes are a great challenge for the whole EU and they announce a very bitter negotiations among not only the EU member states but also between the EU and its Partners.

At the moment it is hard to predict if the MPCs would become winners or losers of those developments in the EU agriculture policy. On the one hand if the proposal of French Minister of Agriculture Barnier would gain more support and regional models of protecting farmers from different external shocks would be introduced, some parts of MPCs' societies would gain and be strengthened – so would be the farmers in the EU. Increasing protectionism in agriculture could reduce the “zone of agreements” on both sides in this sector making negotiation of any further concessions more difficult. This would have an impact on the negotiations in services sector and lessening the “issue-linkage” tactics.

In the second case - the liberalization of trade in services it is argued that it could bring substantial gains, as services usually account for a large share of GDP and are important inputs into the production of most goods. However, when looking at the declared interests of the EU and MPCs as far as the services liberalization is concerned, there seems to be more divergence than convergence. Among the services sectors that are considered as possibly bringing more positive results that the WTO could do are air transport and electricity, electricity regulators, customs authorities, the mutual recognition of professional qualifications, IT-enabled services. Some of them should be developed more on a regional basis (within the Union for Mediterranean) – e.g. transport, electricity. However, IT enabled services are an example for possible bilateral agreements preceded by the reforms that could be introduced and supported via the ENP Action Plans and by ENPI financial means. Only through deeper inclusion of services into the liberalization agenda between the EU and MPCs, the two sides will be able to move with the liberalization agenda. However, the linkage between issues that encourage trade liberalization occurs only when veto players in each issue-area are band-wagon into it. In the case of EMFTA, it is rather hardly to see e.g. farmers or financial services providers on both shores of Mediterranean supporting deeper liberalization at the same time, Polish authors conclude.

The German analysis by Alina Khasabova and Mark Furness from the Free University of Berlin deals with the issue of illegal migration and the role of the EU in managing the increasingly important problem for the whole Community. Due to the fact that the concerns of the individual member states about illegal migration are related to those about terrorism and transnational organized crime the common EU dimension of its management has become more accepted in recent years.

There are three main objectives of the EU role in managing the illegal migration:

- (1) improving policy efficiency through encouraging conformity of the member states legislation;
- (2) helping to reduce the security threat by providing common assets to support member state border control operations and
- (3) ensuring controversial policies and practices are conducted legitimately.

These three aims can be realized as the EU operates on three levels such as policy, operations and oversight. While the EU has achieved reasonable results acting on the policy and operational level, a number of concerns can be raised with regard to the oversight level. The authors state that “the oversight of illegal migration would, therefore, be best addressed within an institutional framework that enables all interested countries [...] to participate in the formulation and implementation of policies and practices”. It is suggested that the proposal of the president Sarkozy (Union for Mediterranean) could provide overarching institutional framework for overseeing the management of illegal migration in the Mediterranean basin.

1. Policy level

As the authors of the paper indicate, there is an increasing number of researchers noting the inability of national administrations to effectively control their external borders and arguing that the migration policy should be decided at the EU level and implemented by common European border control agencies instead of national ones. Therefore the major role of the EU at the policy level is the coordination of member state policies.

The first task of the Commission is to help with the common understanding of the issue of migration and working out the solution that all members states can accept. The authors argue that the EU is a “clearing house” for member state’s preferences for migration policy responses. As it is put in the text “The EU is designed to improve policy efficiency by providing an environment in which member states can coordinate their bargaining”. The successes of the Commission in this field might be seen in the common EU position on migration, defined in a few documents, e.g. Global Approach to Migration (2005), Commission Memorandum (5 December 2007), Barcelona Declaration “fourth chapter” (2005). Due to all these activities the EU member states not affected directly by the issue illegal migration have not raised objection to the southern EU member states’ approach.

2. Operational level

The major aim of the EU acting on the operational level is to improve the efficiency of the integrated management of the member states' physical borders by facilitating information-sharing and border control. The major achievement of the EU operational actions was establishing communal agencies and institutions whose main objective is to support the endeavors of the most affected member states. While FRONTEX was created to support national governments in circumstances requiring increased technical and operational assistance, the central function of the EUROSUR is to facilitate voluntary cooperation based on the existing member state instruments where the EU engagement could improve the effectiveness and efficiency of border management activities. Both institutions, although relatively young, have already succeeded in many cases of illegal migration management by diminishing the number of immigrants crossing the Canaries and southern member states or detecting false documents. Such activities are accompanied by established systems of data and information sharing such as SIS II or VIS.

3. Oversight level

The paper describes the EU's role within this level as ensuring that the responses of the member states to the illegal migration are legitimate and comply with the European and international human rights conventions. As the authors emphasize, the compliance of the oversight of the member state border enforcement is unproblematic and although the European Convention on Human Rights and Fundamental Freedoms does not include direct regulations concerning illegal migration, it does protect people who are either expelled or prevented from arriving in Europe. As an example of bilateral cooperation between the member state of the EU and the Mediterranean Partner Country in the frame of the illegal migration management Italy-Libya case is given. The cooperation in the form of different bilateral agreements started in 2000, although criticized by Human Rights Watch for not measuring up to international human rights standards in border management, have brought about substantial successes, such as the prevention of approximately 40,000 undocumented people leaving from Libya in 2005 and 2006.

The bilateral agreements, such as this between Italy and Libya, potentially breach the European and international human rights law and due to this fact Brussels has started to pay closer attention to setting common standards which must be obeyed by all the parties. The

oversight issues were addressed by creating working groups (e.g. High Level Working Group on Migration and Asylum in 1998), regulations and funds designed to monitor compliance with the human rights standards (e.g. proposal for a directive on common standards and procedures for member states returning people staying illegally in the EU to their “country of origin, transit or another third country, whether voluntary or enforced” – September 2005).

As the authors point out, further problem with bilateral agreements arises from the fact that Brussels has no jurisdiction over the MPCs. Therefore, as the authors suggest, in order to improve the oversight level the bilateral agreements need to be incorporated into a framework specifying acceptable policies and best practices. This framework is seen in the recent proposal of the Union for the Mediterranean. As it was highlighted, the new project could “assist the oversight of illegal migration policy and operations by hosting a body task with defining best practices for European and Mediterranean border control agencies and with monitoring adherence to these standards”. Due to its independent character, the body would provide an independent oversight and due to its Mediterranean character it would be accepted to larger degree by all Mediterranean governments as their own project.

When it comes to major findings, the Polish team recommend following issues: bringing more issues (such as agriculture development schemes supported by the EU in place of liberalization of agriculture on the side of MPCs or energy and environment policies) to the negotiation table on trade what could strengthen the bargaining power of MPCs against the EU; guaranteeing more coordination and consistency in liberalization policies of the MPCs (a larger number of initiatives is not necessarily advantageous, especially from the point of view of consistency and coherence of EU actions in the region); better prioritization of liberalization areas within EMFTA and recognizing services by the European Union as the most important sector of the Euro-Med trade relations (the European agricultural lobby would have to adhere to strong pressures from the other sectors such as industry and finance to more commitments in agriculture in exchange for more commitments in services on the side of MPCs).

The German analysis concludes with a number of findings regarding the EU-Med relations in the field of illegal migration. Firstly, illegal migrants do not usually get to the EU illegally – by sea or land – which mostly attracts media. Most of the illegal migrants enter the EU legally and overstay their visas (Italy – 75%). Illegal migrants constitute 1% of the EU population,

whereas 4% in the southern EU member states (total around 4.5 million). In the recent years an increasing number of the refused entries to the EU has been noticed – most of them Moroccan wishing to enter Spain. The main irregular migratory flows originate however in Eastern Europe. No direct relation between migration and transnational organized crime is evident from available data, despite this connection commonly being drawn by media and other commentators. However in many cases the illegal migrants are themselves the victims of organized crimes: low-paid menial labor and prostitution. The EU seems to be quite successful on both policy and operational levels; however there are still concerns about the oversight level. The German authors see in the Union for the Mediterranean as a potential solution for overseeing the compliance of bilateral cooperation agreements with international human rights standards.

As the Jordanian paper states that there is a substantial correlation between trade and bilateral institutions settlement. Bad institutions affect country's integration into international trade and its capacity to develop. Strengthening bilateral institutions may have positive impact on the activity and results of Euro-Med agreements. The institutional role of the EU in complementing the establishment of trade promoting institutions is undeniable. However so far results are not fully satisfactory and they require improvements. More focus should be paid on anchoring regulations and market reforms through the Euro-Med Agreements. Institutions should influence the enhancement of transparency level and ensure enforceability of export related laws, procedures etc. The bilateral institutions must assist local producers in enhancing the quality of their products to meet the rules of origin criteria, as well as standards and other behind-the-border impediments to the EU Internal Market. Thus, the text recommends enhancement of the export-promoting institutions' role through fostering networks between MPC producers and the private sector in the EU. Moreover institutions should provide MPC producers with information on EU Internal Market demands (Market Observatory function) as well as institutions should help MPC SMEs integrate into global commodity chains (once standards have been met). It is also recommended to modify institutional efforts according to the different needs and levels of MPCs. It is also recommended not to underemphasize the developmental role of national macroeconomic policy.

Three texts which concentrate on one general issue which is bilateral institutions are different in their thematic approach. Polish and Jordanian texts touch the subject of trade whereas German paper deals with the issues of illegal migration. Jordanian text is a study that concentrates on the issue how bilateral institutions within Euro-Med Agreement can influence strengthening of trade between the MPCs and the EU. The text brings the example of Jordan; however policy implications are applicable for the MPCs in general. Polish paper on the other hand deals with the issue of bilateral management strategies regarding the Euro-Med Free Trade Agreement and it gives a general point of view on European bilateral strategies toward all the MPCs. Polish paper considers opportunities and threats for future Euro-Med relations as regards European policy and strategy planned for the Southern Mediterranean region. It deals also with the negotiation process and its outcomes.

Another difference in the thematic scope of the research is that the Polish text concentrates mainly on improving the negotiation strategies on both sides that would help shaping the Euro-Med agenda in a more efficient way. The German and Jordanian texts on the other hand analyze the existing institutions responsible for Euro-Med trade and illegal migration management and focus their recommendations on how to improve their work and what new institutions can be set up in order to upgrade the Barcelona Process.