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MISSING OUT:
CIVIL SOCIETY AND ENPI

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Missing out: Civil Society and ENPI

The ENPI (the European Neighbourhood and Partnership Instrument) has the potential to have a significant transformational impact in the EU's eastern neighborhood and the entry into force of the Lisbon Treaty has only increased its promise. However, the ENPI is currently not living up to its potential. A major reason for this is the lack of adequate monitoring by non-state actors (NSAs). Research in Azerbaijan, Georgia, Moldova, and Ukraine shows that deficient NSA monitoring is due to three factors: the lack of quality NSA entry points into various ENPI processes; the insufficient use of existing entry points by local NSAs; and unreformed public policy institutions in these countries.

While the task of involving NSAs mainly rests with national authorities, it is the EC's responsibility to provide a framework conducive to NSA participation, and to compensate for shortcomings at the national level. Here, the EC's record is mixed, yet the nature of the ENPI (with its reliance on budget support) makes it imperative that NSA stakeholders be invited to consult and monitor the entire process. Put simply, to offer policy-driven assistance to countries with closed and unreformed policymaking institutions without input from NSAs is to build on quicksand. An approach explicitly facilitating entry points for NSAs will send a strong political signal that transparency, aid effectiveness and political reform are at the heart of the ENPI.

1. Introduction: New Thinking in Foreign Aid

Launched in 2007, the European Neighbourhood and Partnership Instrument (ENPI), the financial arm of the European Neighbourhood Policy, signals a strengthening of the EU's commitment to improving governance in the region. This has meant adopting a policy-driven strategy to support the national development priorities of partner countries, as well as increasing national ownership of aid. With the launching of the Eastern Partnership (EaP), EU assistance to neighboring countries for 2007-2013 will exceed €12 bn — a 35% increase over the previous seven-year period.

Still, the essential value of the ENPI derives not from quantitative factors, but from qualitative ones. With the entry into force of the Lisbon Treaty, funding and policy have been tied together. This is an unprecedented opportunity for the EU to translate its neighborhood policies into realities. In addition, the ENPI represents a major simplification of the EU's assistance management system: it has replaced most of the more than 30 instruments that existed pre-2007 and is now the conduit for practically all aid to the Union's neighbors. In addition, it includes a number of tools untel now only accessible to pre-accession countries. ENPI assistance is designed to match each partner country's national development strategy. As such, it comprises new instruments designed to support good governance, as well as to increase the responsibility of national authorities in the management of EU funding. These include budget support, in which EU funds are transferred directly to national authorities to support national and/or sectoral reform.

This brief answers two simple questions: to what extent are local non-state actors (NSAs) involved in ENPI processes? And how can they become more and better involved? It presents the findings of studies carried out by local think-tanks in Azerbaijan, Georgia, Moldova, and Ukraine.[1] Today, this paper and the reports on which it is based represent the only consolidated overview of ENPI in these countries, and the only multifaceted assessment of NSA monitoring. Whereas the individual national reports are intended for national audiences (including local EC delegations), this paper is designed to give policymakers in Brussels an understanding of the wider picture. It finds that despite efforts to involve civil society, ENPI falls short of allowing meaningful participation. Entry points are few and far between, and those that do exist are too often underexploited by NSAs.

Despite efforts to involve civil society, ENPI falls short of allowing meaningful participation. Responsibility for this rests with both national authorities and the European Commission

Responsibility for this situation rests with both national authorities and the European Commission. The former are nominally responsible for involving NSAs, but have demonstrated little interest and ability to do so; the latter have entrusted them with this responsibility in full knowledge of this problem. As a result, the EC has been forced to maintain a separate track for NSA participation, and this system itself is highly imperfect.

[1] The partners were the following. Azerbaijan: Azerbaijan National Committee for European Integration. Georgia: Caucasus Institute for Peace, Democracy and Development. Moldova: IDIS Viitorul. Ukraine: International Centre for Policy Studies. The project was initially also to cover Armenia, but the institution responsible for drafting the Armenian report was unsuccessful.

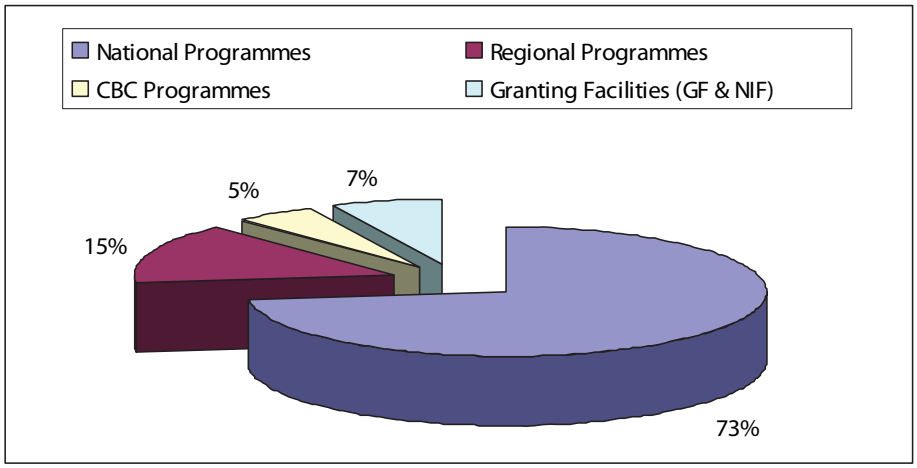
2. ENPI at a Glance

The ENPI is a complicated instrument. It is the financial arm of the European Neighbourhood Policy, but has its own structure and is governed by its own set of programming documents. It is divided into three types of programs:

- 16 national programs (one for each participating country)[2];
- three regional programs (one each for the East and the South, and one trans-regional program covering both);
- 15 Cross-Border-Cooperation (CBC) programs.

National programs account for €4.1 bn (73%) of the €5.6 bn available for the period 2007-2010. Next come regional cooperation (828 mn, 15%) and cross-border cooperation (227 mn, 5%). The remainder (€400 mn, 7%), is to be used to support new granting facilities, namely the Governance Facility and the Neighbourhood Investment Fund.

Diagram 1: Distribution of ENPI Funding, 2007-2010



Given their financial importance and their policy-driven nature, national programs constitute the most important component of ENPI, and as such are the main focus of this brief. Their priorities and activities are defined in three essential documents:

- *Country Strategy Papers* (CSPs) constitute the principal reference framework for ENPI. They cover the entire seven-year span of the EC's Financial Perspective (though they are reviewed at mid-term) and set out priority areas for action. Current SPs cover the period 2007-2013, and the mid-term review of most national programs was completed in March 2010;

[2] Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Moldova, Morocco, the Palestinian Authority, Russia, Syria, Tunisia, and Ukraine. Libya has observer status and is also eligible for ENPI funding.

- *National Indicative Programmes* (NIPs) are drafted twice per Financial Perspective (at the outset and at the three- or four-year mark) and set the funding allocations for each priority contained in the Strategy Paper. Analysed IPs cover the period 2007-2010;
- The operational aspects of national program implementation are defined in *Annual Action Programmes* (AAPs), which identify the projects to be financed and set their allocation; as such, they are the key document for the actual commitment of EU funds.

In theory, NSAs can participate in the elaboration of all of these documents. A study of actual practice, however, shows a different picture.

3. A Story of Missed Opportunities

3.1 ENPI Involvement: Not a Luxury

NSAs have a crucial role to play in ENPI planning, implementation, monitoring, and evaluation. True, the ENPI being a policy-driven instrument, it is primarily government-based. But the nature of the ENPI itself makes NSA monitoring imperative. Indeed, the introduction of budget support and other mechanisms intended to enhance local ownership has meant a major transfer of responsibility from the EC to national governments, and the capacity of largely unreformed state institutions to adequately absorb these millions is questionable.

> The nature of ENPI makes NSA monitoring imperative

NSAs enjoy greater operational flexibility than the state or the European Commission (EC). They represent groups and interests generally excluded from the policy process, and they can provide external oversight. And perhaps most importantly, the very fact of NSA involvement increases earnestly national (as opposed to governmental) ownership of ENPI.

Thus if ENPI is to get its priorities right — and if its assistance is to be properly used — it is essential that NSAs take their place at the table.

3.2 An Unsatisfactory Status Quo

ENPI planning, implementation, monitoring, and evaluation can be divided into two levels: the programming level, where priorities are defined, and the operational level, where they are translated into measures. The programming level includes the elaboration of CSPs, NIPs and AAPs, while the operational level pertains to the implementation of specific measures and projects. The two main types of measures are technical assistance and budget support. As the EC has made budget support a priority under the ENPI, it is the only project-level measure examined here.

The EC has made significant efforts to involve NSAs in various ENPI processes, but major gaps remain. Paradoxically, this problem is partly due to two of the instrument's main strengths: its policy-driven nature and its emphasis on national ownership. By delegating responsibility the Commission has largely left national authorities in charge of soliciting and incorporating policy input from NSAs. However, the political cultures of many former Soviet states are not conducive to NSA participation in policymaking, and in any case their unreformed institutions are generally unable to translate civil society involvement into effective policy inputs.

> While responsibility for involving NSAs rests mainly with national governments, it is the EC that has made the clearest effort. But these good intentions have not translated into a workable system of entry points for non-state actors

Still, while responsibility for involving NSAs rests mainly with national governments, it is the EC that has made the clearest effort to ensure that the voice of civil society is heard. These good

intentions, however, have generally not translated into a workable system of entry points for non-state actors.

3.2.1 Little Awareness, Little Impact

The ENPI website contains suggestions on how NSAs can get involved in the programming phase, but these are general and, rather than clearly indicating entry points, leave the initiative up to NSAs. Recommendations include contacting local EC delegations to request information, soliciting meetings with the delegation, and formulating proposals for long-term involvement in monitoring.[3] These are all essential, but they are of little use to NSAs looking for concrete ways to get involved. In addition, information on the ENPI is highly scattered, making it difficult to get a clear picture of the nature and importance of the instrument. As a result, even the existing entry points, however limited they may be, are not used to their full extent.

3.2.2 The Program Level: Too Many Brief Encounters

NSA monitoring of the ENPI must begin well before the project implementation phase. Engagement in the programming phase is a *sine qua non* condition of success, as no amount of project monitoring can make up for misplaced priorities. Institutions such as think-tanks, business associations, trade unions and advocacy groups must be given an opportunity to contribute to the priority-setting process, while sector-specific NGOs must be able to provide input in their areas of expertise at the project level.

The diagrams below illustrate civil society entry points into the planning, implementation, monitoring, and evaluation of the ENPI programs. Today, they represent the only comprehensive picture of civil society participation in the ENPI. They show current opportunities for involvement, but also phases where NSA participation is desirable but absent. More specifically, they illustrate that too often initial civil society input does not lead to a lasting impact on policy.

NSAs and Country Strategy Paper Preparation: Too Little, Too Early

NSAs can get involved from the very outset of the CSP drafting process, in the course of consultations between DG RELEX, national authorities, and EU Member States. This represents the key NSA entry point into CSP preparation, as input is necessarily more potent upstream than downstream. The earlier NSAs get involved, the greater their impact on priority-setting will be.

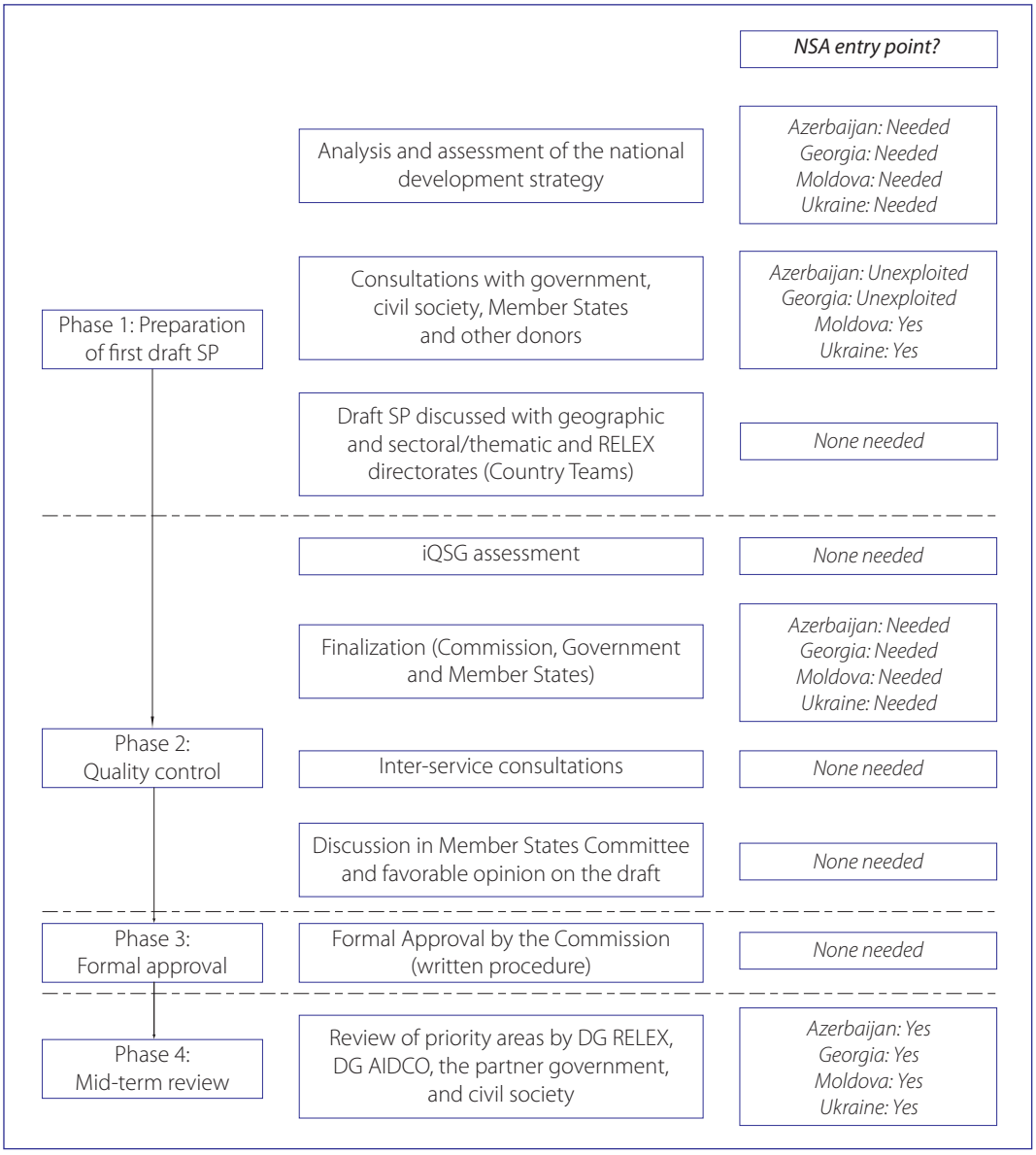
However, after these initial consultations NSAs are simply cut out of the CSP elaboration process: there is no entry point for them to comment on the draft CSP elaborated later on. This is critical. For NSAs to have a real impact, they must be able to directly affect the final version of the document. The current system does not allow NSAs to ensure that their input has been understood, or to provide comments on specific components of the draft CSP. In other words, the most NSAs can do is make general recommendations at the very beginning of the process.

It is significant that even this entry point is underexploited. Only in Moldova and Ukraine did NSAs actually participate in these consultations: in Azerbaijan and Georgia, no NSAs were involved in the 2007-2013 CSP elaboration process.

[3] http://www.enpi-programming.eu/wcm/en/how-to-get-engaged/concrete-actions-to-take/enpi-civil-society.html

The mid-term review, however, is a different story. NSAs in all countries participated in this process, which also includes the drafting of new NIPs (see below).

Diagram 2. NSA entry points into Country Strategy Paper Preparation



NSA entry points into National Indicative Programme Preparation: Too Little, Too Late

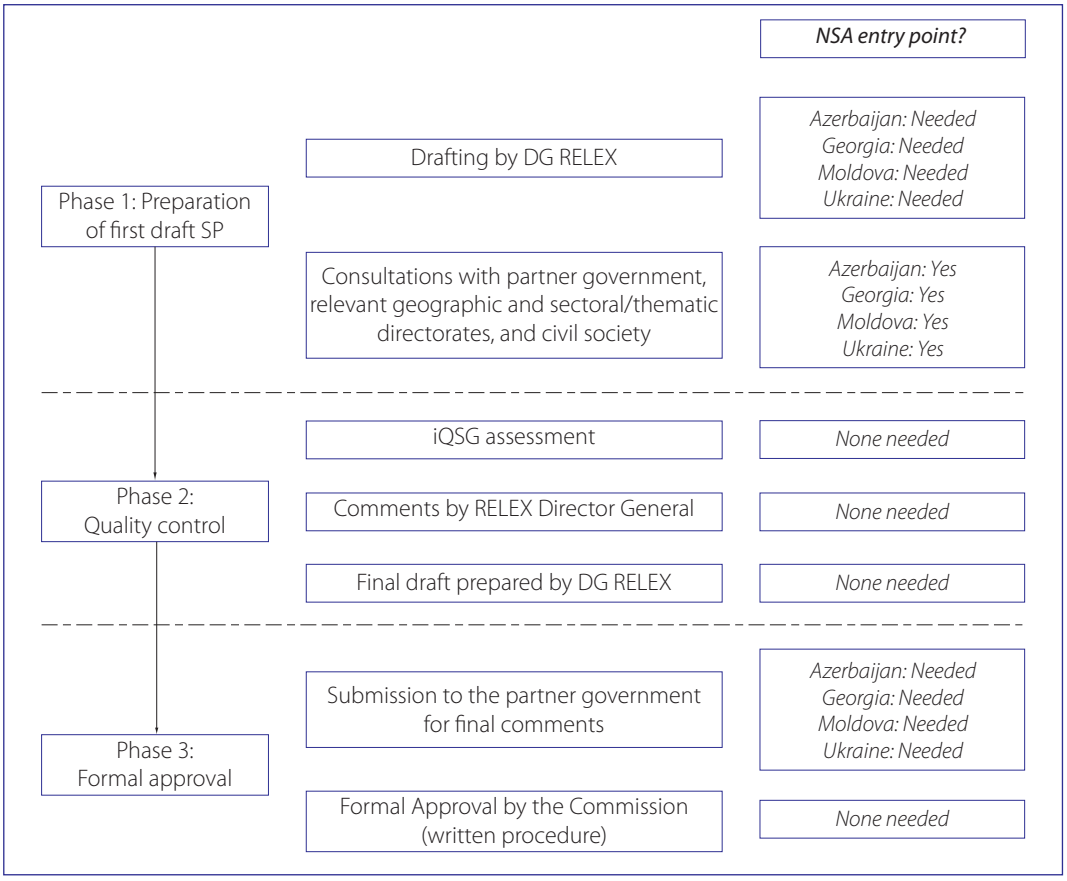
The NIP preparation procedure allows non-state actors to participate at the beginning of the process through consultations during which they can comment on the draft NIP (known as a "Concept Note") put forward by DG RELEX.

This is important. But unfortunately, NIP elaboration exhibits exactly the opposite flaw as CSP preparation, and one just as fundamental. NSAs are not consulted before the drafting phase, and can therefore only comment on the existing Concept Note. In other words, they only enter the process once the main priorities have been identified. As a result, it is unlikely that their input can do much more than tweak the existing document — especially since they are also excluded from the finalization phase.

NSA consultations should take place as part of the initial drafting process by DG RELEX. This should not be a major challenge, as they already participate in CSP preliminary consultations. As in CSP preparation, NSAs should also be involved in the finalization phase in order to ensure that their input has been adequately digested and integrated into the final draft.

Significantly, Azerbaijani, Georgian, Moldovan, and Ukrainian NSAs all used the existing NIP entry point and attended the consultations organized by the Commission.

Diagram 3. NSA entry points into National Indicative Programme Preparation



NSA entry points into Annual Action Programme Preparation: More of the Same

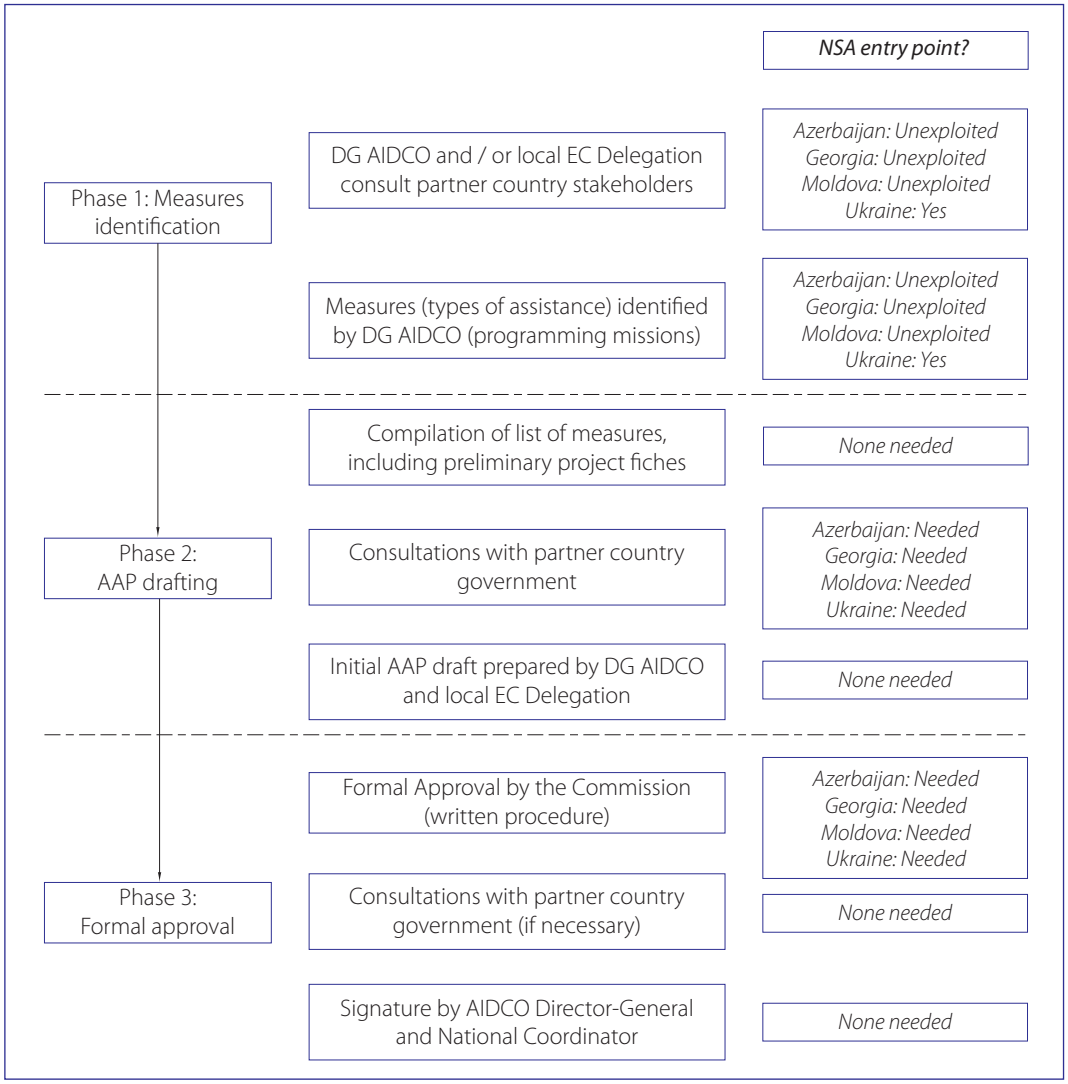
The AAP preparation process allows NSAs to make their voices heard before any drafts are prepared: they participate in both the initial consultations and the measures identification phase led by DG AIDCO and the local EC delegation. As it is in the AAP that projects are selected and funds allocated, this is significant in that it allows for the possibility of NSA impact going beyond priority-setting to affect the more operational aspects of ENPI.

But AAP preparation suffers from the same fundamental flaws as the rest of the programming level. Here again, NSAs are left out of the consultations held between the EC and national authorities prior to the actual drafting of the AAP. And here again, NSAs are excluded from the formal approval procedure, which can include consultations between the EC and the partner government when necessary. While these consultations deal more with troubleshooting than with priority-set-

ting and project selection, NSA input could provide a useful external perspective on the issues raised by either party.

Only Ukrainian NSAs have become involved in AAP preparation, while Azerbaijani, Georgian and Moldovan NSAs have stayed on the sidelines.

Diagram 4. NSA entry points into Annual Action Programme Preparation



3.2.3 The Operational Level: All But Shut Out

NSA entry points into Budget Support: Eyes Wide Shut

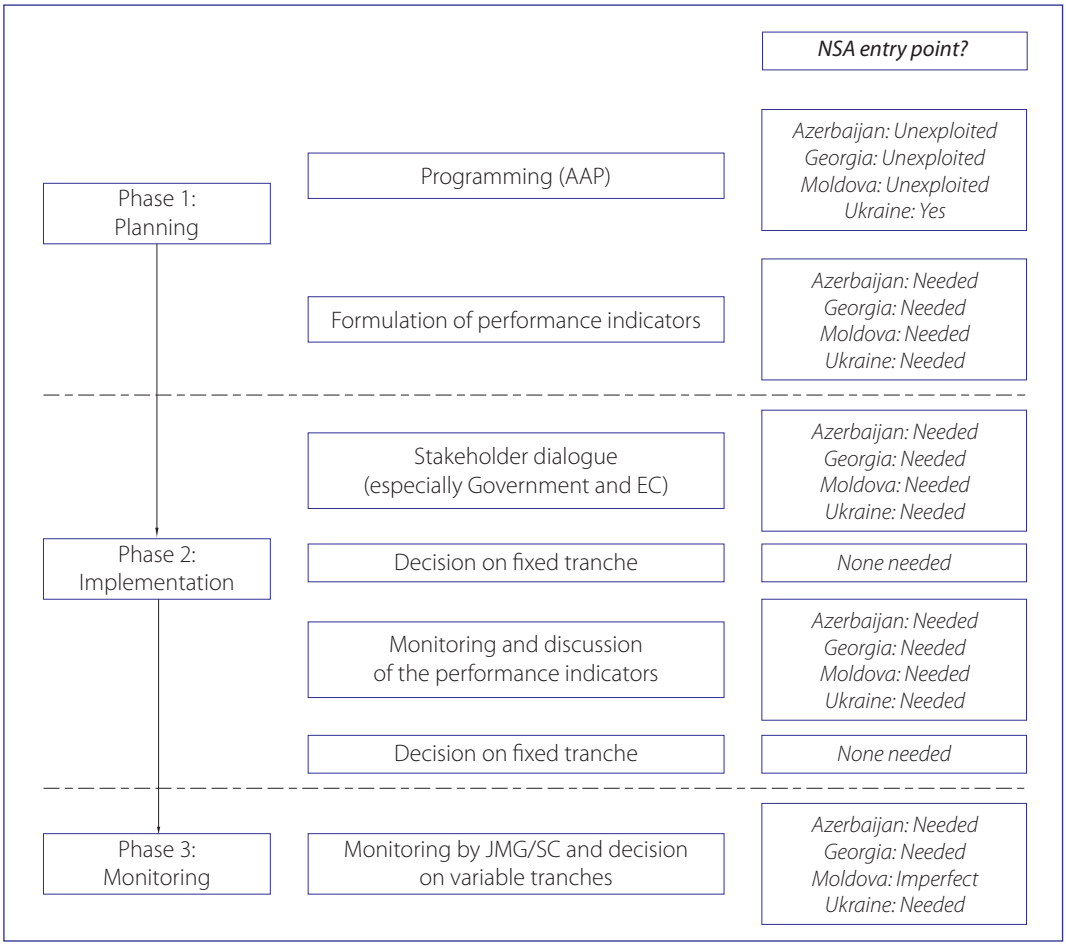
While BS sectors and allocations are laid out in Annual Action Programmes, these decisions are the result of negotiations between the EC and national authorities – without NSA participation. As a result, NSA involvement in AAP elaboration does not influence the choice of budget support sectors or the setting of the corresponding allocations. Neither do NSAs participate in the elaboration of the performance indicators used to assess the implementing authorities' respect of the conditions set out for the disbursement of the variable tranches. While most NSAs do not have the

expertise necessary to engage in such technical work, some — namely think-tanks and sector-specific NGOs — do, and should be involved in this process.

Despite its importance, NSA presence in Joint Monitoring Groups/Steering Committees (JMG/SC) is patchy at best, with significant differences between countries. Significantly, the presence of NSAs is neither prescribed nor proscribed, and the issue can be raised by either the EC or national authorities. In Azerbaijan, Georgia and Ukraine, NSAs are simply excluded. In Moldova civil society is represented by only one NSA, and the selection process is seen by many as flawed.

In other words, NSAs are by and large locked out of budget support monitoring in all ENPI countries. This represents a critical failure, for two reasons. First, the lack of external monitoring has had demonstrably grave repercussions. Due to red tape, for example, Ukraine has proven unable to properly use its energy-sector budget support. And second, NSA exclusion from both national development strategy elaboration and budget support monitoring has cut civil society out of the most policy-driven tool in the ENPI arsenal, and its most important.

Diagram 5. NSA entry points into Budget Support



4. Moving Forward: Getting It Right

The European Commission has made an effort to involve NSAs in ENPI planning and monitoring, but the result has been disappointing. By and large, national authorities have failed to take their responsibilities in this regard, and the EC's efforts to compensate have not filled the gap. The "national" ownership ENPI was designed to foster is thus more governmental than national.

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The lack of an institutional setup conducive to NSA involvement is made worse by the dearth of accessible and concrete information on the ENPI, and on how civil society can become actively involved.

On the EC side the problem is not one of bad intentions, or even of insufficient resources. The changes required to improve NSA participation in the ENPI do not entail an overhaul of the system, nor do they require significant investment.

The EC has not recognized that its ENPI partners are not completely ready for the type of aid it wishes to offer. To offer policy-driven assistance to countries with closed and unreformed policymaking institutions is to build on quicksand. ENPI will not bring about real transformation until these truths are accepted, and their implications taken into account.

> ENPI countries are not ready for policy-driven assistance

Selected Recommendations

For the European Parliament:

The ENPI is not directly managed by the European Parliament, but the EP does have a role to play in priority-setting and monitoring. If it is to spearhead transparency and accountability in EU assistance, the Parliament must:

1. Push for the EC to make the reform and democratization of public institutions in partner countries the priority for the ENPI. Only open institutions can to adequately consult NSAs and assimilate their input, and only sound procedures can ensure that aid is not wasted;

2. Push for the Commission to follow the General principles and minimum standards for consultation of interested parties by the Commission, set out in EC COM(2002) 704.

For the European Commission:

1. Make the democratization of public policy institutions the priority of ENPI aid, and lead by exampleby actively encouraging NSA stakeholdre participation at the entry points identified here. Only open and sound institutions can adequately consult NSAs and assimilate their input into the ENPI;

2. Follow the General principles and minimum standards for consultation of interested parties by the Commission, set out in EC COM(2002) 704.4 There is a significant gap between the principles contained therein and the actual process of ENPI planning and monitoring;

3. Make clear to national authorities that NSA participation in ENPI planning and monitoring is mandatory, potentially by tying funding to adequate NSA consultation;

4. Assist national governments in identifying potential NSA participants in ENPI processes;

5. Given the lack of a strong tradition of NSA participation in policymaking in EaP countries, maintain a separate track for NSA consultation by the EC. NSAs should be consulted by both the EC and the national authorities before any drafts are put forward;

6. Create new NSA entry points into the drafting of new CSPs, NIPs and AAPs, and the formation and functioning of budget support JMGs/SCs, as identified in the diagrams above;

7. Provide trainings for NSAs on ENPI monitoring at both the programming and operational levels;

8. Enhance public information efforts to raise awareness about the ENPI;

9. Make key ENPI documents (including criteria, indicators, benchmarks, etc.) easily accessible to non-state actors, and translate all documents into local languages;

[4] EC COM(2002) 704 final Brussels, 11.12.2002 "Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission". Source: http://eur-ex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0704:EN:NOT

10. Make the presence of NSAs in budget support JMGs/SCs mandatory. NSAs could be selected on the basis of their sectoral expertise and their previous involvement in the planning and monitoring of ENPI.

For the National Governments:

1. Make the democratization of public policy institutions the priority for foreign aid;
2. Make NSA consultation in the development of the national development strategy mandatory, drawing on foreign experience (e.g. the EU's "minimum rules for consultation");
3. Formalize NSA participation in the attraction and utilization of foreign aid in general, and ENPI funding in particular, in normative acts;
4. Develop procedures for the analysis and implementation of NSA input (including into ENPI processes);
5. Include NSAs in budget support JMGs/SCs.

For NSAs:

1. Identify and use existing entry points;
2. Establish close relations with local European Commission delegations and remain up-to-date on opportunities for involvement in ENPI processes;
3. Focus on capacity-building to ensure that NSAs fully understand the ENPI and can assume their "watchdog" function;
4. When necessary, form NSA coalitions to create new entry points;
5. Raise awareness about the ENPI by holding formal information sessions and informal roundtables with other NSAs, both in capitals and in the regions;
6. Be proactive by anticipating upcoming policy initiatives and seeking to influence the policy-making process from the outset.

For other donors:

1. Support the democratization of public institutions in ENPI countries;
2. Support NSA efforts to identify and utilize ENPI entry points;
3. Support capacity-building among NSAs, including initiatives to build coalitions to create new entry points;
4. Assist ENPI partner governments in formally integrating NSAs into the development of national development strategies;
5. Coordinate donor activity to avoid the duplication of efforts;
6. Contribute to raising awareness of all foreign aid programs.