



**THE ANALYSIS OF THE EU LEGISLATION AND EURO-
MEDITERRANEAN AGREEMENTS AND PARTNERSHIPS
UNDER THE BARCELONA PROCESS.**

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1 Introduction

1.1 Objectives and approach

This study aims to analyse the main elements of the regulatory system of the Euro-Mediterranean partnership in the energy sector, set up by the European Union and the South-East Mediterranean Countries in more than ten years starting from the Barcelona process.

In so doing, an attempt will be made to illustrate the evolution of the energy policy co-operation in the Euro-Mediterranean partnership process by reviewing all the legislations and the agreements adopted by the partners involved.

In reviewing the key facets of the Euro-Mediterranean regulatory energy system, it will be outlined the evolution of the relationships among the European Union and the Mediterranean Countries by a critical re-evaluation of the main stages in which can be divided more than ten-years of energy cooperation process.

It also will be analysed the role and the functions of the bodies that are involved in the energy partnership, focusing on the regulatory tools adopted by them and on the different typologies of legislative bills of which some appear to be endowed with the fact of being obligatory (e.g. the Association Agreements) while others appear to be of soft law (e.g. Ministerial Conferences).

Finally, a further attempt will be made in making an assessment of a ten-years energy cooperation, highlighting the peculiar characteristics of it and trying to foresee the future development of the energy partnership among EU and the Mediterranean Countries.

2. The evolution of the energy sector among the Euro-Mediterranean partnership

Long time ignored, energy appeared in recent years as a crucial element of sustainable development, in particular under three main dimensions: environmental (as a source of environmental stress), economic (as a principal motor of macroeconomic growth) and social (as a prerequisite for meeting basic human needs).

At the 2002 Earth Summit in Johannesburg, the European Union had highlighted as a restricted access to energy sources, a prominent utilisation of traditional biomass and a

reliance on imported energy sources, were notably delayed the social and the economic development of many Third Countries.

The reliance on energy of Mediterranean countries (but also of that Europeans) has had, therefore, great consequences on the evolution of the Euro-Mediterranean co-operation process, representing a strong benefit in organising the energy policies of the countries involved in the partnership. The co-operation relationships can be divided in three stages.

The first stage starts in Barcelona¹ in 1995 and ceases five years later. During this period of time the main Bodies of the partnership are created, the energy situation of the Mediterranean countries is assessed, and projects and actions for a common sectorial policies are conceived.

The second stage is characterised by a perspective of an enlargement of the Eastern Europe and by the creation of an Euro-Mediterranean market of electricity and gas.

Finally, the last and third stage shows the effective implementation of a new co-operation policy which deeply transforms the tools of foreign co-operation with neighbour countries, both old and new.

2.1. The first stage: from Barcelona Declaration to the Ministerial conference on Energy forum in Brussels

The meeting of Euro-Mediterranean Foreign Ministers in Barcelona on November 1995 marked a turning-point in relations between the European Union and its neighbours on the southern and eastern shores of the Mediterranean.

A partnership was launched which is comprehensive, both in its geographical coverage and in its sectorial scope, and forward-looking in its political, economic and social ambitions.

¹ For further information on the Barcelona process see also the following papers: F. Attinà e S. Stavridis, *“The Barcelona Process and Euro-Mediterranean Issues from Stuttgart to Marseille”*, Milano, 2001; Marchisio, *“Aspetti giuridici del partenariato euromediterraneo”*, Milano, 2001; Joffé, *“European Union and the Mediterranean”*, in M. Telo (ed.); Hakura, *“The Euro-Mediterranean Policy: the implication of the Barcelona Declaration”*, in *Common Market Law Review*, 1997, 337 ss.; Philippart, *“The Euro-Mediterranean Partnership: a Critical Evaluation of an Ambitious Scheme”*, in *European Foreign Affairs Review*, 2003, p. 201 ss.

All countries negotiated Association Agreements with the EU² and adopted a work programme launching a partnership in three spheres: a) political and security, b) economic and financial, and c) social and cultural³.

In particular, in the economic and financial chapter was listed a number of specific energy topics and was assigned to the energy a “*pivotal role...in the implementation of the Partnership*” through a “*strengthen cooperation*” and the intensification of the “*dialogue in the field of the energy policies, as well as the encouragement of appropriate framework conditions for investments and the activities of the energy companies*”⁴, including energy networks extensions and interconnections.

The significance of energy has been endorsed in subsequent Euro-Mediterranean conference of foreign ministers held in Trieste⁵ one year later. In there, the importance of the energy dimension in the Euro-Mediterranean cooperation was recalled and the creation of an Energy Forum was agreed with the aim to “*ensure the continuity of the dialogue between all the partners*” on the common management of the energy problems.

The Energy Forum, which was held in Brussels⁶ on 1997, identified the priority objectives of security of supply, competitiveness of the energy industry and protection of the environment. Thus, a medium-term Action Plan (1998-2002) for the Euro-Mediterranean Energy Partnership was prepared comprising two main axes:

- Co-operation at political and administrative level, aiming to strengthen the institutional and legislative framework of the Mediterranean Partners and to draw up policy guidelines

² Agreements are in force with Morocco, Tunisia, Egypt, Jordan, Israel, Palestinian Authority, Lebanon. With Algeria the agreement has been signed and is awaiting ratification. With Syria an agreement has been initialled.

³ E. Philippart, *The Euro-Mediterranean Partnership: Unique features, first results and forthcoming challenges*, CEPS Middle East Working Paper No. 10, CEPS, Brussels, April 2003.

⁴ Declaration of the Barcelona, Euro-Mediterranean Conference of 27 and 28 November 1995. http://ec.europa.eu/comm/external_relations/euromed/bd.htm

⁵ Conclusion for a Euro-Mediterranean Partnership on energy adopted at the Trieste Conference, 7-9 JUNE 1996. http://ec.europa.eu/comm/external_relations/euromed/conf/sect/energy.htm

⁶ First Meeting of the Euro-Mediterranean Energy Forum, Brussels, 13th May, 1997.

- Industrial co-operation, aiming to adapt energy companies to developments in demand, to increase energy efficiency in industry, and to facilitate co-operation among business across the Mediterranean⁷.

The Action Plan (AP) has represented the most important document of the first stage of the Euro-Mediterranean Energy Partnership by which all the actors involved were exhorted to take all the appropriate measures to realise the goals of the Action Plan.

By this document, it was also agreed to accord the Euro-Mediterranean label "*action of regional interest*" to project and programme proposals which should have contributed significantly to the implementation of the Action Plan itself and the Secretariat of the Energy Forum was in charge to promote the implementation of the AP by regular contacts with industry and various donors, and to prepare annually a report on the implementation and to make proposals to update and develop the Action Plan.

The first stage of the Euro-Mediterranean energy co-operation is characterised by an atmosphere of enthusiasm and confidence, even if it has not completely fulfilled the high expectations. Nonetheless the process has inaugurated a period of political, social and economic dialogue and has created important new institutional structures.

Progress is being achieved in all three fields covered by the Declaration (political and security, economic and financial, social and cultural). The results of the EU's Mediterranean policy will only be apparent in the longer term, but it is already clear that in some areas significant progress has been made. However the political and security dimension remains the weakest. Here only a regular political dialogue has been created.

Further problems have arisen with the negotiation and ratification of the individual Association Agreements. The Euro-Med partners by signing the Final Act of the Conference realized an international agreement – even if without adopting the solemn form - which produced legal effects, namely it posed international duties on contracting Parties.

The legal nature of the Barcelona Declaration- which was legally binding ⁸- has implied that the States involved in the process were internationally bound to take concrete

⁷ Statement of the Euro-Mediterranean Conference of energy ministers, 11 MAY 1998. http://ec.europa.eu/comm/external_relations/euromed/conf/sect/energy2.htm

⁸ R.Sapienza, "*Il Partenariato Euro-mediterraneo. A due anni dalla Conferenza di Barcellona*", *Aggiornamenti Sociali*, pag. 150, n.2/1998.

actions in order to implement the targets contained into the tree “baskets” (political, economic and social).

However the fact that, on the EU side, the Agreements had to be ratified by the 15 Member States complicated things further. It lacked explicit country strategies and insufficient attention was given to trade and other external economic relations.

2.2. The second phase: from Granada to Naples

The second stage of the co-operation process on energy started in 2000 in Granada with a meeting of the Energy Forum and with the subsequent communication entitled "*Reinvigorating the Barcelona Process*" aimed to prepare the fourth Conference of Euro-Mediterranean Foreign Ministers.

Emphasis was placed on the need to adopt a gradual approach: the creation of an Euro-Mediterranean market of electricity and gas, integrated in the internal market of the EU, should be realised through the prior opening of the Mediterranean countries at sub-national level, with special regard to the Maghreb e Mashrek areas.

In order to create a sub-national markets, the Energy Forum identified new priorities centred on the re-organisation of the energy industries in the Mediterranean countries and on the quick development of the interconnections among them.

This latter goal would be reached also thanks to the experience gained from the European networks of transports, energy and telecommunications, extending to the Mediterranean countries the financing of the BEI and the European programmes in that sectors. Therefore, it was needed that the Mediterranean countries launching a reform of the legal and regulatory framework, complying with the international criteria on investments and with the European liberalisation policy on this field.

The beginning of the second stage of co-operation was also characterised by a reform of the MEDA financing program (with MEDA II) and by the creation of the FEMIP (Facility for Euro-Mediterranean Investment & Partnership) in 2002 in order to develop the Euro-Mediterranean Partnership.

The renewal cooperation partnership found its consecration with the Valencia Action Plan⁹ which included several short and medium-term initiatives aimed at strengthening the three pillars of the Euro-Mediterranean co-operation.

With special regard to the energy sector, however, the Action Plan invited “*the Commission and the EIB to identify priority projects with the southern Mediterranean partners which will help to develop connections between them and with the Trans-European energy networks*”; and requested “*the Commission to make proposals for reinforcing co-operation regarding the security and safety of energy infrastructures...*”.

The cooperation in the field of energy - which lies at the heart of the economic partnership- has been somewhat reinvigorated one year later with the Euro-Mediterranean Energy Forum, held in Athens¹⁰, in which energy priorities for the period 2003-2006 were set down. As for electricity, priorities are:

- accelerate reform in South Mediterranean countries with a view to gradual integration of the Euro-Mediterranean electricity and gas markets;
- increase security and safety of Euro-Mediterranean energy supplies and infrastructure;
- develop South-South and North-South interconnections;
- promote the potential of renewable energy sources and support the Kyoto process;
- promote more efficient energy demand management;
- harmonise rules and standards as well as information system and statistics in South Mediterranean countries.

The above priorities implied a second thought of the structure and of the funding of projects of common interest. It concerned no more an “*ad hoc*” community measure but an uninterrupted and voluntary contribution offered by the member states and the partners involved in the energy co-operation.

Thus, for some of these priorities sub-regional cooperation programmes were signed to facilitate progress and make concrete steps. This notably resulted, as for electricity, in a Protocol for the creation and integration into the EU of a Maghreb electricity market, in an

⁹ Vth Euro-Mediterranean Conference of Foreign Ministers, Valencia 22-23 April 2002, Presidency Conclusions

¹⁰ Ministerial Declaration of the Euro-Mediterranean Energy Forum, Athens, 21 May 2003

agreement for the integration of the Turkish and Greek networks and in several agreements between Israel and the Palestinian authority on cooperation in the sphere of electricity and energy demand management.

Special reference was also given to *“the need to substantially increase the role of energy efficiency and renewable energy in the perspective of an energy sustainable future as recommended at the last Summit in Johannesburg (WSSD)”*.

The Sixth Euro-Mediterranean Conference in Naples in December 2003¹¹ closed the second stage of the Euro-Mediterranean co-operation and developed several themes that have a bearing on the energy market.

In particular the Conference expressed strong support for initiatives aiming at integration at a sub-regional level on trade and investment in infrastructure. Ministers agreed to use the MEDA regional envelope to stimulate sub-regional integration and also stressed the use of MEDA technical assistance to promote convergence of regulations and standards with those in the EU internal market.

The Euro-Mediterranean Conference in Naples was the last ministerial meeting before the enlargement of the EU in May.

Ministers discussed the political and economic prospects for the region offered by the EU's Wider Europe policy. This initiative offered the EU's neighbouring partners, in exchange for tangible political and economic reforms, gradual integration into the expanded European internal market and the possibility of ultimately reaching the EU's four fundamental freedoms: free movement of goods, services, capital and people.

2.1 The third stage: the European Neighbourhood Policy

The third period of the Euro-Mediterranean co-operation process is characterised by certain initiatives aimed to restructure and refocus that relationship born on 1995 under the Barcelona Declaration.

The root of this third phase is represented by the 2002 Copenhagen European Council in which was formulated the idea the Union should seize the opportunity offered by its enlargement to enhance relations with the neighbouring countries on the basis of shared values.

¹¹ VI Conference of Euro-Mediterranean Foreign Ministers, **Naples, 2-3 December, 2003**

However, the idea of the circle of friendly neighbouring countries has taken concrete shape on March 11/2003 when the EU Commission came out with the Communication “*Wider Europe- Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*”¹² where it has stated new objectives and has drawn up a new strategy of the EU after the enlargement.

The main message of the paper was the intention to avoid drawing new dividing lines in Europe, to promote stability and prosperity within and beyond the new borders and to develop a zone of prosperity and a friendly neighbourhood – “*a ring of friends*”- around the Union.

The task of the Commission was to find a way for building a framework for the Union’s relations with the countries that do not currently have a prospective of becoming EU members. The Commission also states that the new EU approach can not be a “*onesize-fit-all*” policy and recognised the differences in starting positions for different countries.

The new common challenges were defined as “three P”: Proximity, Prosperity and Poverty, what reflects the attempt to find common grounds for the strategy regardless the differences between the countries- neighbours.

Concerning the 2003 work plans, Communication listed several incentives¹³ and the approach was characterised by some new arrangements that may reflect the EU assessment of previous pitfalls in its former cooperation initiatives.

Following the agenda put forward in the Wider Europe Communication, on July 1st 2003 the Commission through the new Communication “*Paving the Way for a New Neighbourhood Instrument*”, addressed the European Council request and assessed the possibility to create a New Neighbourhood Instrument (NNI).

The Commission proposed a two-step approach: from year 2004 up to year 2006 it is planned to seek a better coordination between the existing financial instruments

¹²Commission of the European Communities, Communication from the Commission to the Council and the European Parliament. *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, COM(2003)104,11.3.2003.
http://europa.eu.int/comm/world/enp/pdf/com03_104_en.pdf.

¹³“*Extension of the internal market and regulatory structures; Preferential trading relations and market opening, Perspectives for lawful migration and movement of persons, Intensified cooperation to prevent and combat common security threats, Greater EU political involvement in conflict prevention and crisis management, Greater efforts to promote human rights, further cultural cooperation and enhance mutual understanding, Integration into transport, energy and telecommunications networks and the European research area, New instruments for investment promotion and protection, Support for integration into the global trading system, Enhanced assistance*”

(INTERREG, PHARE, TACIS, CARDS, MEDA); while after 2006 the New Neighbourhood Instrument will be established providing cross-border and regional cooperation around the external border.

The Communication also defined the coordination work that had been taken forward between different cooperation instruments INTERREG, PHARE and TACIS. According to the presented approach the NNI was to cover all the borders between the EU and partner countries.¹⁴

Finally On May 12th 2004 the Commission presented a more precise description of the methods and goals of the Union's relations with its New Neighbours and it spelled out in a **Strategy Paper**¹⁵.

The above document introduced some new concepts like “*joint ownership*”, “*monitoring*” and “*added value*”, defining the European Neighbourhood Instrument steps, promoting the issue of the Action Plan and advancing the negotiation of European Neighbourhood Agreements, when Action Plan priorities are met.

In particular the differentiation between partner countries, in terms of regional economic co-operation, administrative and institutional capacities, was at the root of the neighbourhood policy and of the Strategy Paper.

A step-by-step or progressive approach towards EU neighbouring countries was required in order to introduce a gradual engagement for each state depending on its willingness to progress with economic and political reform. The way to pursue this policy was not anymore *political conditionality* but rather benchmarks: clear and public definitions of the actions that the EU expects the partners to implement.

The European Union offered the prospect of a stake in the EU's internal market to those countries that make concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms.

In the context of the contractual system and in cooperation with the New Neighbours, flexible action plans for each country which were covering a period of three to five years and are supported by European promotion programmes.

The action plans are key instruments of the medium-term policy, are policy papers based on existing association agreements, includes the whole scale of cooperation and

¹⁴Attinà-Rossi, “*European Neighbourhood Policy: Political, Economic and social Issues*”, publication of the Project **The European Union Neighbourhood Policy** of the Faculty of Political Sciences of the University of Catania, cofinanced by the European Commission Jean Monnet Project – Heading A-3022, Catania, 2004

¹⁵Commission of the European Communities, “*Communication from the European Commission. European Neighbourhood Policy. Strategy Paper*”, COM(2004)373 final, 12.5.2004.
http://europa.eu.int/comm/world/enp/pdf/strategy/Strategy_Paper_EN.pdf.

are subdivided into sectors in order to shape in concrete steps the interaction of reforms and access to the EU interior market.

The Action Plans, which the European Council rightly calls "*political key instruments*", defined the goals and scope of cooperation, a schedule for its implementation which was to be negotiated in each case, and a mechanism for current monitoring.

Another new element was the readiness of the EU to elaborate and implement the Action Plans in cooperation with the partners. This means that "*The EU does not seek to impose priorities or conditions on its partners. The Action Plans depend, for their success, on the clear recognition of mutual interests in addressing a set of priority issues.....*"

With special regard to the integration of the infrastructural networks, the EU "Strategy" gave strong impulses to the functional cooperation in various dimensions such as energy and pipeline systems, transport, environment, information and communication.

The European Neighbourhood Instrument established in the context of the budget 2007-2013 in order to support national, regional, thematic and cross border co-operation programmes involving both EU member states and NCs. Consultations with the European Bank for Reconstruction and Development and other financial institutions on increased engagement and better coordination of the New Neighbourhood programmes were provided.

As clearly explained by Margot Wallstrom¹⁶, it is important to note that "*the new Neighbourhood Policy complements the Barcelona process and not supplant the current framework of the EU's relations with its southern Mediterranean partners established in the context of the Barcelona process and complemented by association agreements and the common strategy*".

The new policy had general objectives which are similar to the Mediterranean partnership and based on it, namely to work together in order to reduce poverty, create a space of prosperity and shared values.

"Whereas the idea underlying Barcelona, implemented through association agreements, was trade integration which stopped at the borders (notably through tariff dismantling), the Neighbourhood Policy goes beyond that and provides for greater integration, going beyond borders so to speak by means of approximation of legislation".

"In short, the Barcelona process remains key to relations between the European Union and the southern Mediterranean. The idea of harmonisation or at least convergence

¹⁶ Margot Wallstrom, Vice President of the European Union, Responsible for Institutional Relations and Communication Strategy, "*The European Neighbourhood policy and the Euro-Mediterranean Partnership*", Euro-Mediterranean Parliamentary Assembly, Cairo 14 March 2005, SPEECH/05/171

of legislative systems, which was embryonic in the association agreements, is spelled out more clearly in the Neighbourhood Policy. The European Neighbourhood Policy does not replace the process launched ten years ago in Barcelona. It renews it, clarifies it and does not make Barcelona more remote”.

The new era of the “enlargement” co-operation was completed by the “*Communication on the development of energy policy for the enlarged EU, its neighbours and partners countries*” that identified the EU’s objective towards its neighbours as the progressive creation of an integrated European internal energy market, not limited to EU members.

The document declared that extending the benefits of the Internal Market is part of the projection of stability to the “*ring of countries*” that surround the Union and is a central role for the Union. It also recognised that the neighbouring countries are vital to EU energy policy as suppliers and transit countries.

The Communication did not suggest the entire and wholesale exportation of all standards and regulatory frameworks to neighbouring countries, but rather “*substantively similar levels of market access and adoption of equivalent standards.*”

However, the Communication was fairly weak on energy efficiency and renewable energy as well as vague on climate change. In particular, it needed to be ensure that climate protection, and accordingly energy efficiency and renewable energies, received due consideration in the drafting of country reports, action plans, and in national, regional, and cross-border activities.

3. The Euro-Mediterranean Energy Platform (REMEP)

After long time since the inception of the Barcelona Process, the intensification of the energy dialogue - aimed at promoting regional energy integration and enhancing energy security among the EU and Mediterranean countries- urged the opportunity to provide continuous support in a manner not possible through the medium of MEDA technical assistance projects.

That is why on 2 December 2003, Ministers signed a Declaration of Intent on the *Establishment of the Rome Euro-Mediterranean Energy Platform (“REMEP”)* by which Algeria, Morocco, Tunisia and the European Commission agreed on the progressive integration of the electricity markets of these three Maghreb countries into the EU electricity internal market¹⁷.

¹⁷http://ec.europa.eu/dgs/energy_transport/international/regional/euromed/energy/index_en.htm

According to the article 1 of the draft decree of the Minister of Productive Activities, *“the Platform works and operates within the framework of the Euro–Mediterranean Energy Partnership, set up in compliance with the conclusions of the Euro–Mediterranean Energy Ministerial Conference held in Trieste on 9 June 1996, gathering the countries participating in the Barcelona process.*

In this perspective, the Platform is an ad hoc logistic facility supporting the Forum for any exchange, cooperation and dissemination activities. Its catalyst role shall result from the mechanisms of cooperation and technical assistance programs in the field of energy and from the promotion of activities within the existing industry networks. It shall perform its activity at the sole service of the Euro – Mediterranean Energy Forum, to support the development of energy cooperation priorities as defined by the Forum itself”¹⁸.

The EU and Mediterranean countries were each covered the cost of their personnel and their participation in the REMEP activities as well as the regional working groups established by the Athens and Rome ministerial conferences.

The development of REMEP must be considered in two phases: a start-up phase for the implementation of the 2003-2006 Priorities and a development phase.

In the start-up phase REMEP are be comprised of an Orientation Committee within the Forum hosted in Rome and endowed with a coordinator and a secretariat. REMEP draw up a yearly work programme and examine requests for technical assistance from participating countries.

With regard to the development phase, the Commission will conduct the necessary consultations with the Members States and Mediterranean Partners Countries potentially interested by the development of REMEP in view of defining the modalities of its future status, taking into account the Commission communications « Energy Policy of the EU board-based, its neighbouring countries and partners » and « Wider Europe » in particular with regard to the interconnection projects of the energy networks of interest « Pan-European » and the new proximity instrument.

According to the article 2, the objectives of REMEP are:

- To implement the 2003-2006 priority actions and to define a multi-annual work programme to be proposed to the Forum as from 2006.
- To help define priority energy project proposals for technical and financial assistance.

¹⁸Draft Decree of the Minister of Productive, *“Establishment of the “Rome Euro-Mediterranean Energy Platform” within the framework of Euro-Mediterranean Energy cooperation, 15/10/2004.*

- To provide technical support and analysis, and
- To act as a catalyst with IFIs.

Moreover, in line with the general objectives outlined under article 2, the Platform shall perform the following specific activities (Article 3) :

- To support the approximation of the laws and regulations of the Mediterranean Partner countries with those of the EU
- To contribute through existing Working Groups to the continuity of initiatives adopted during the Athens Conference, i.e. integration of Maghreb markets, identification of projects of common interest between Israel and Palestine, gradually development of electricity and gas interconnections.

The continuous monitoring and technical support for these initiatives and for the other actions of common interest defined in the 2003–2006 priorities are essential in order to make concrete, quantifiable progress in the development and implementation of the Euro-Mediterranean energy policy.

The development of the Euro-Mediterranean Energy Partnership has been based until now on exclusive financial support from the Community through MEDA technical assistance projects, under which actions are limited to the lifetime of the projects¹⁹.

This arrangement does not allow for the continuity needed to establish an energy policy. For example, since the Athens conference which put an end to the *Ad hoc* Working Groups, the Forum's activities have continued to be developed only thanks to the support of the Commission and the Italian Presidency. This has been achieved through the ad hoc regional working group in charge of preparing for the Rome conference, to which some 20 representatives of Member states and Partner Countries have accepted to participate.

The 2003-2006 priorities adopted during the Athens Conference, however, include not only actions whose lifetime may be defined and limited (achievement of energy interconnections and infrastructures, for example), but also major cross-cutting, continuous

¹⁹Décision 96/706/CE du Conseil, du 6 décembre 1996, concernant l'adoption d'orientations pour les programmes indicatifs relatifs à des mesures d'accompagnement financières et techniques de la réforme des structures économiques et sociales dans le cadre du partenariat euro-méditerranéen (Meda) (JO L 325 du 14.12.1996, p. 20).

Règlement (CE) no 2698/2000 du Conseil, du 27 novembre 2000, modifiant le règlement (CE) no 1488/96 relatif à des mesures d'accompagnement financières et techniques (Meda) à la réforme des structures économiques et sociales dans le cadre du partenariat euro-méditerranéen (JO L 311 du 12.12.2000)

actions that do not have a time limit (security and continuity of energy supplies, harmonization and approximation of laws in the framework of reforms).

While ad hoc Community or bilateral funding can cover actions with time limits, cross-cutting actions, which require continuous Euro-Mediterranean cooperation, will call for a funding arrangement that guarantees continuity.

With special regard to the promotion of renewable energies and energy efficiency policy, Remep is designed to frame energy policies which encourage the efficient use of energy and water, boost the use of renewable energy sources and protect the environment; facilitate exchanges, cooperation and dissemination of information between the countries belonging to the Euro-Mediterranean partnership; harmonise regulatory frameworks at regional level, especially those concerning environmental protection and renewable energy sources²⁰.

The Rome Euro-Mediterranean Energy Platform has been inaugurated on 15 October 2004 and has been defined as a “*flexible and light structure which enables it to play a role of catalyst, to make profit from the existing mechanisms and programmes, to reactivate co-operation networks and maintain already operational working groups*”²¹.

4. The regulatory energy system

The Bodies of the Euro-Mediterranean partnership have produced a copious regulation of the energy sector in which is reflected the ambiguous character of the Barcelona process that is among the international right and the European right.

The functional ambiguity, therefore, entails the utilisation of a pluralism of legal documents in order to ensure the converging energy policy of Euro-Mediterranean countries and the integration of the respective national markets.

On the one hand there are the Association Agreements by which the signer States - both European and Mediterranean- and the Union undertake respective obligations, binding for the international legal order : they guarantee a great stability to the partnership by spelling conditions and deadlines for the alignment of the legal order of Mediterranean partners to the “*acquis communautaire*”.

²⁰*Preliminary Work Programme of Remep for 2004-2005*, par. 4 - Trans-Euro-Mediterranean energy networks Exploratory opinion - EESC 1388/2003 - October 2003 DG TREN – Mrs de PALACIO-

²¹Draft Decree of the Minister of Productive, “*Establishment of the “Rome Euro-Mediterranean Energy Platform” within the framework of Euro-Mediterranean Energy cooperation*”, 15/10/2004.

On the other hand, the co-operation is regulated by a flurry of declarations of intent, memoranda, work plans and agendas that form the real basis of the entire process. Those kind of acts have not binding effectiveness "*strictu sensu*".

Thus, in reason of the increasing co-operation relationships the Euro-Mediterranean partnership has recurred to changeable form of integration. In the energy sector that is occurred since the Athens Conference in 2001, in which were launched some negotiations for the conclusion of multilateral agreements and programmes of sub-regional nature.

Through the sub-regional agreements, the partnership process become more flexible allowing a faster co-operation among EU and those Mediterranean countries able to realise structural reforms with the aim to align themselves to the European legal order without the general consent of other Mediterranean partners.

Therefore, the regulation resulting from the above sub-regional agreements has not as recipients all the Mediterranean countries but is addressed only to the signer States that - from time to time- are interested to amplify the integration process with different conditions and deadlines from region to region, imposing on the respective overture of energy markets and on the alignment of the national order to the principles of competition and economic freedom affirmed in the international treats.

4.1 The Association Agreements

As part of the Euro-Mediterranean partnership process, a new generation of association agreements²² have been set up between the European Community and its Member States, of the one part, and the Mediterranean partnership countries of the other.

Although they are bilateral agreements and provide for specific arrangements with each partner State - outlining the strategic areas of co-operation and determining priorities for the implementation of activities - the association agreements share a similar structure and replace the first generation of agreements (Co-operation Agreements of 1970s).

The Association Agreements are of a "mixed" type (drawing on both European Community and Member States' competences - the latter concerning the second and third

²² With the conclusion of negotiations with Syria (October 2004), the grid of Association Agreements with Mediterranean Partners has been completed. Association Agreements are in force between the EU and Tunisia (since 1998), Israel (2000), Morocco (2000), Jordan (2002), Egypt (2004) and on an interim basis with the Palestinian Authority (1997). Agreements were signed with Algeria in December 2001, and with Lebanon in January 2002.

EU pillar) and after signature they have to undergo a lengthy ratification process by the national parliaments of the EU Member States.

All the agreements cover a policy dialogue areas, order the respect of human rights, establish the conditions for the implementation of a free trade area through the expectation of a gradual recognising of the economic and competition freedoms ratified by the Community treats, count rules on the economic, financial, social and cultural cooperation as well as the implementation of the institutional reform.

However, with special regard to the energy co-operation field, the agreements do not pinpoint the goals. Each agreement do not contain more than a short article on the energy co-operation: this article is limited to establish in a vague way the wideness of the area covering by the energy partnership.

An elucidatory example is given by the agreement contracted between the EU and the Tunisia where at the article 57 is stated that “*Cooperation shall focus on: (a) renewable energy; (b) promoting the saving of energy; (c) applied research relating to networks of databases linking the two Parties' economic and social operators; (d) backing efforts to modernise and develop energy networks and the interconnection of such networks with Community networks*”²³.

Similarly are the agreements contracted with the State of Morocco, Egypt, Jordan, Palestine. Very evanescent is then the clause contained in the agreement stipulated by Israel.

The goals of the convergence in the energy sector, therefore, result not crystallized in that type of agreements. On one hand, they are predominantly contracting by the multilateral co-operation and by the effectiveness of the institutional framework created by this process; on the other hand they are contracting by multilateral sub-regional agreements that addresses many subjects of the Mediterranean areas.

4.2 The Sub-regional Agreements

Multilateral relations or regional cooperation within the framework of the Euro-Mediterranean Partnership is an innovative approach complementing and strengthening the bilateral relations track.

Compared with the bilateral association agreements, the Sub-regional agreements have different nature: some are declarations of intent and multilateral programmatic acts

²³ EU-Tunisia Association Agreement (1998), *Official Journal L 097*, 30/03/1998 P. 0002 - 0183

that give rise to regulations of soft law. Through these, the signer States promote further meetings and elaborate projects in order to push on the co-operation process.

An example is given by the “*Agreement on General Principles for Israeli-Palestinian Co-operation in the sphere of Energy Demand Management and Renewable Energy*”, initiated on October 2003.

Of different nature are the sub-regional agreements that are binding at international level, contracting the signer States to respect the obligations and the burdens that are stated in it with the aim of a respective overture of the national energy markets.

In this direction goes the Protocol signed in 2003 by the European Commission and the Energy Ministers of Morocco, Algeria and Tunisia aimed at developing by 2006 a regional electricity market compatible with that of the EU ²⁴.

To this end, an institutional framework comparable to that developed for the integration of the South-East European energy market has been set up during 2004. A High Level Permanent Group and a Regulatory Forum will thus be established. All these started meeting and working during the course of 2004.

In particular, the Protocol has bound the contractors to re-approach their national energy policies with the aim to permit the access to the network in a non-discriminatory and transparent way and with priced fairly. Each participant is to designate a competent organization to exercise regulatory functions. Independent of operators, charged with ensuring competition and efficiency. The countries define common rules for the market.

Moreover, progress was made with the structure of governance:

- A Ministerial Council and a High Level Permanent Group was created to drive the process. REMEP provide the secretariat.
- To facilitate regional exchanges the countries have to develop the necessary mechanisms (tariffs, mechanism for managing congestion) defined in cooperation with the system operators ensuring that these latter are compensated for the full costs of trans-boundary flows.
- The composition and functions of the Ministerial Council are set out, including the identification of infrastructure projects of common interest.
- The composition and functions of the High Level Permanent Group are set out, including the identification of infrastructure projects of common interest.

²⁴ Protocole d'accord pour l'intégration progressive des marchés d'électricité de l'Algérie, du Maroc et de la Tunisie dans le marché intérieur de l'électricité de l'Union Européenne Rome, 2 décembre 2003.

- A Regulatory Forum of participating members must be established to monitor the progress achieved and make recommendations if appropriate.

7. Conclusions

The creation of a free trade area - as a goal of the economic-financial euro-Mediterranean partnership- goes with the gradual implementation of a euro-Mediterranean energy policy.

Compared with the general and vague structure²⁵ realised by the Barcelona process, the previous paraphrase of the energy relationships has highlights certain characteristics of the regulation of the sector that goes in other-direction.

The regulation has not found into the Association Agreements stipulated among the EU and each Mediterranean Partners its way out. The articles dedicated to the energy co-operation are generics and do not set specific and concise goals for the signatories States.

This situation, however, it was partially filled by the stipulation, in recent years, of sub-regional agreements that have opened new perspectives to the cooperation process. On the contrary of the general co-operation acts adopted by the Ministerial Conferences, the sub-regional agreements emphasize the local dimension and the role of Mediterranean partners and, thus, allows to regulate in a more flexible manner the integration process of the markets so that the conditions and the modalities of the process can be easily adapt to the different national situations.

However the juridical and institutional system reforms that Mediterranean partners should implement, for the creation of an integrated energy market with that internal of the EU, are still great. In recent years, the "*acquis communautaire*"²⁶ has been notably developed making more complicate the alignment of the legal order of Mediterranean countries to that European.

Several structural obstacles hamper the creation of adequate regulations that allows energy companies to enter and to act freely into the market (e.g. Tunisia and Syria have laws that do not permit any opening to the competition); equally can it say for the energy

²⁵ For further information, A. de Guttry, *Possibili scenari di evoluzione istituzionale del partenariato euro-mediterraneo*, in Aa.vv

²⁶ Directive n. 2003/54/CE; Directive n. 2003/55/CE; COM/2003/0741 def.; Directive n. 2001/77/CE

regulations or for the *status of transmission system operators* (that are not independents) and , therefore, for the conditions of the access to the power grid²⁷.

Regarding renewable energies, only Turkey has adopted an orderly regulation for the promotion of the electricity generation from renewable energy sources and, except for Tunisia and Morocco, Mediterranean countries have not so far designed comprehensive strategies and programmes indicating which measures and actions they intend to implement in order to meet their commitments under the Barcelona process.

Despite of Mediterranean region comprises a heterogeneous group of countries with different economical profiles, energy market structures, national energy priorities and policy objectives, they are at a stage where their energy sector requires radical adjustment. Reform must be based on liberalising the sector, restructuring the energy industry and developing renewable energy sources.

The transition to a renewable energy economy can only be achieved when adequate legal frameworks exist at local, regional, national and international level formulating concise strategies and policies in order to renew the energy system and to offer practical tools for a better and more secure and sustainable energy supply.

According with these principles, the fruitful “*continuum*” of the Partnership in the energy sector requires the development of a common energy policy framework, based on the objectives agreed. In particular, it might be desirable to have first instruments like feed-in laws implemented adequately in order to create a market for renewable energy and than move towards market oriented mechanisms like green certificate trading once some degree of harmonisation between European energy systems and Mediterranean legal frameworks is being achieved and demand for green electricity created.

The on-going dialogue between the EU and Mediterranean Countries revealed the need to develop specific energy policy guidelines, which will cater the successful and on time realization of the FTA by the year 2010.

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