



Brussels, 3.6.2013  
COM(2013) 336 final

**REPLIES OF THE COMMISSION AND THE EEAS TO THE SPECIAL REPORT OF  
THE EUROPEAN COURT OF AUDITORS**

**"EU COOPERATION WITH EGYPT IN THE FIELD OF GOVERNANCE"**

# **REPLIES OF THE COMMISSION AND THE EEAS TO THE SPECIAL REPORT OF THE EUROPEAN COURT OF AUDITORS**

## **“EU COOPERATION WITH EGYPT IN THE FIELD OF GOVERNANCE”**

### **EXECUTIVE SUMMARY**

I. The Commission/EEAS welcome the ECA Special Report on Egypt but regret the negative nature of many of the titles/subtitles in the report, since they actually do not reflect the Court’s observations, many of which are more balanced. The Commission/EEAS believe that the titles/subtitles also mislead the reader since they do not take sufficiently into consideration the local political context and the efforts made by the Commission/EEAS over the years to establish a dialogue and cooperation on the difficult issues of governance, democracy and human rights, including rights for women and minorities. The outcome of the EU political dialogue and support is the result of difficult negotiations with the Egyptian side, and the impact of EU engagement and assistance on governance might therefore be considered as relatively limited in comparison with other countries. However, it can also be considered as a very positive achievement bearing in mind the local context and the effects of the January 2011 uprising.

III. The amounts allocated to CSOs are comparatively smaller if compared to other types of assistance, but they are adequate to the kind of the targeted local organisations and kind of activities.

VI. The Commission/EEAS in the given circumstances have been able to adequately manage EU support and where possible improve governance in Egypt. Conditions under the authoritarian Mubarak regime were already very challenging and let little room for engaging in a meaningful and substantive dialogue and cooperation on all human rights issues.

The analysis of the political situation in the period covered by this report clearly shows that since the January 2011 events, there has been a slow down if not a paralysis of the decision making process at government's level and an increased aversion towards civil society and human rights more broadly. It is not only a matter of coping with "difficult conditions" but also with a completely new situation, different from that when the projects examined were designed and launched. The protracted political instability and lack of commitment by the government did only allow for a partially successful review of the governance portfolio. Time is needed to see results, especially in a non-conducive and still unpredictable environment. The decision to keep open human rights projects and give them a chance to be revamped was certainly very well politically motivated.

VII. Efforts made by the Commission/EEAS to include a large number of human rights and democracy issues in the ENP-EU Egypt Action for reforms were huge and permanent, despite the difficulties encountered to reach significant results.

The Commission/EEAS consider that progress was achieved. The continuous pressure led to the establishment of a Subcommittee discussing human rights, the earmarking of 10% of the bilateral budget in support of human rights, good governance and democracy projects, including support for child rights and women rights, with indeed significant positive and measureable impact. Regarding the ENPI project and given the short period of time for its implementation before the Uprising, it is premature to conclude on the level of outputs, as there is still time to deliver.

The Budget Support operations in reference were designed before the uprising. Cancelling those operations would have gone to the detriment of the Egyptian population, already badly affected by the increased hardship that followed the 2011 January revolution. The Commission support adopted in 2012 does not comprise any BS operations but includes significant programmes in the social and education fields that are highly relevant in the current context.

Finally the decision to continue providing financial assistance despite all the obstacles encountered is of a political nature, and should also be seen in the regional context and in consideration of the crucial strategic role Egypt is playing. The decision by the Commission/EEAS, in this respect, is in line with the decisions taken by other development partners including EU Member States.

VIII. Despite the budgetary constraints, as an immediate response to the Arab Spring, the EU created the new Civil Society Facility (CSF) to strengthen the capacity of Civil society actors to promote national reform and increase public accountability. At the end of 2012, the total amount of on-going thematic grants awarded under this new instrument, the DCI and the EIDHR, and managed by the EU Delegation in Egypt was 17.4 million EUR. An equivalent amount has also been allocated through the bilateral Human Rights and Democracy programmes in Egypt, showing that the Commission attaches equal importance to reinforcing human rights through both governmental and non-governmental channels.

Before the January 2011 uprising, the Commission has granted several sector budget support programmes. It has to be underlined that, although a credible and relevant PFM reform programme is an indispensable eligibility criterion for SBS, the aim of a SBS lays primarily in improvements in the sector (basic services for health and education). The Commission recognises that progresses could and should have been more rapid. However, it should be noted that during the period the Egyptian authorities for the first time conducted a constructive dialog on PFM with the donor community, were supportive of a PEFA and subsequently agreed on roadmap to enhance PFM.

The fight against corruption project started late due to the absence of agreement between the Commission and Egypt regarding its implementation method. The Commission/EEAS diligently made its utmost efforts to obtain the agreement signed by the Egyptian authorities, putting the project on the political agenda. After the 2011 uprising, the EUD immediately requested to add a specific component on asset recovery, as a direct answer to the regime change.

Despite the difficult context, the Commission has closely monitored this file. This has been confirmed through the independent ROM mission that took place in November 2012 (see Commission reply to § 52). Concerning the outputs, the project will run until 20 July 2014. We are therefore half way through the implementation period and it is therefore premature to conclude on the level of achievement.

IX. The review marked a new policy direction by introducing the concepts of increased differentiation and revamping the 'more for more' approach. This has already been applied to Egypt in considering how to allocate the overall SPRING (Support for Partnership, Reforms and Inclusive Growth) funding in 2012 and 2013. The policy will be further reinforced when the new ENI Regulation is adopted.

Support to Women has been high in the Commission agenda in terms of both policy and financial assistance ; a number of grants to Civil Society Organizations were devoted to this area. Also a project of €4 m was signed in December 2012 with UNWOMEN aiming at women empowerment.

The new mechanism to support civil society was set up after the uprising. It is therefore premature to try to assess its achievements and its added value.

X. Based on the new Budget Support guidelines, the EU applies and will apply conditionality in a strict sense. Assessment of General and Special conditions is made thoroughly before any BS disbursement. Tranches are released based on progress achieved in meeting agreed reform benchmarks. No payments are made for non-performance.

## **INTRODUCTION**

9. The analysis of the Egyptian population concerns on the new constitution and the reasons of boycott need to be carefully spelled out. Following President Morsi's constitutional declaration by

end November 2012 and rushed adoption of the draft Constitution and subsequent call for referendum, the Constitution was adopted on 25/12 with a slight majority and with very low voter participation (some 30%). It has to be noted that at the time of the President's constitutional declaration, all non-Islamists had left the Constituent Assembly (CA) in charge of the drafting of the Constitution since the CA was considered 'too Islamist'. Despite the EU and the international community's calls for inclusive dialogue in order to bridge the domestic political divide between Islamists and the secular opposition, the political polarization has deepened.

16. The Commission has increasingly emphasised improvement of PFM as an eligibility criterion to budget support, most recently with a new approach to budget support reflected in new guidelines in force since 1/1/2013<sup>1</sup>.

The support to PFM was not only carried out through SBS programmes as the Commission, in its programme "Public Administration reform and local development" has allocated €2 million Technical Assistance support for PFM issues (Budget preparation).

17. The amounts allocated to CSOs are comparatively smaller if compared to other types of assistance ; they are however adequate to the kind of the targeted local organisations and kind of activities.

## **OBSERVATIONS**

### ***Few results achieved before the Uprising***

The Commission/EEAS do not share the Court's point of view and consider that the results have been achieved to the extent of the difficulties encountered.

### **Ineffective treatment of human rights before the Uprising**

The Commission/EEAS do not share the Court's point of view as regards the treatment of human rights before the Uprising.

24. The ENP Action Plan is an ambitious document and the strategic approach from the Commission was to include a vast set of priority areas in order to, later in the programming process, define a more specific focus. The reasons being the following:

First, it has to be emphasised that the Action Plan is a joint EU-Egypt document. The Egyptian authorities certainly wanted to dilute human rights elements of the Action Plan, in particular with regard to civil and political rights. and negotiations were extremely difficult. Second, human rights are indivisible, and the Commission considers that it is appropriate to engage a dialogue on all aspects and concerns. Finally, The Commission/EEAS consider that the degree to which human rights issues are addressed in the Action Plan was, and remains a significant achievement. It paved the way for the establishment of a Sub-committee that focuses on human rights and has been invaluable in providing a forum for discussion of issues that, until the Action Plan was established, could not be properly addressed. The Action Plan also enabled bi-lateral co-operation programmes in human rights and governance to be set up.

25. The Commission/EEAS consider that the degree to which human rights issues are addressed in the Action Plan was, and remains a significant achievement.

### **Main human rights project largely unsuccessful**

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<sup>1</sup> Concerning footnote 6, the description is correct concerning the audited period, but as of 1/1/2013, new mechanisms with three types of budget support have been put in place : Good Governance and Development contracts (GGDC), Sector reform Contracts (SRC) and State building Contracts (SBC).

The Commission/EEAS do not share the Court's point of view as regards this human right project.

The Commission/EEAS consider that this was a relevant project which faced implementation challenges.

26. The Commission/EEAS would like to underline the success it represented to have human rights and democracy selected as a priority area. In this context, it should be mentioned that already in 2005, the Commission negotiated the first EU-Egypt bilateral programme on human rights amounting to €5 million.

28. Specific efforts were made to integrate the four components of the programme by creating a PMU that was responsible for the internal coordination between them. Furthermore, it was not possible to integrate lessons learnt from the previous projects in the new programme because at the time of the programme's identification the old projects were still on-going and delivering ; in other words, it was too early to include lessons learnt.

The organizations selected (NCCM, NCHR, NCW and EEAA) to act as implementing partners of the programme were the relevant public bodies in charge of these issues at the time of the project design, and are still relevant and operational today. Like all other Egyptian Ministries and Institutions, these organisations had to adjust to the radical political changes that took place in the country after the fall of Mubarak regime, as would have happened anywhere else in the world going through such a rapid transformation. By supporting these Public institutions through a Financing Agreement signed by the Ministry of International Cooperation, the Commission/EEAS consider that the Government of Egypt was fully on board and endorsing this initiative whatever association these institutions had or not with the former First Lady. The NCW and the NCCM did perform well as they did very positive work on women's rights that was recognized by the EU and other donors at the time.

29.

(a) The Commission made huge efforts to have the Financing Agreement signed by the Egyptian authorities in time. As a result, the Egyptian authorities committed to move forward with the EU on human rights issues, which is an important achievement in itself.

(b) The biggest delay in the programme's implementation was due to 1) the call for proposals component and 2) the contribution agreement with UNDP on Integrating human rights in Higher Education Institutions. By the end date for contracting (23/12/2012), all contracts were finally signed despite the difficult context around these issues (Human rights in Higher Education and women's rights), the volatile political context after the uprising and the numerous changes in leadership especially within the Ministry for Higher Education.

(c) The Commission/EEAS do not consider that the cancellation of the component for enhancing CSO capacity was a major setback for the programme. By being firm in its position on minorities, the Commission/EEAS took into account the political dimension concerning minorities and the European Council Conclusions of 23 October 2011 which stated that *'the European Council is concerned about the recent tragic clashes in Egypt and underlines the importance of the promotion and protection of freedom of religion or belief, including the protection of religious minorities as an essential component of any democratic society'*.

While the Commission/EEAS are aware that the decision to maintain the original wording on minorities caused delays in the programme, this decision also allowed for the re-design of the call for proposals component, which led to the financing of a new project with UNWOMEN on women's rights, with a strong focus on violence against women. The project on women is politically very timely in the current Egyptian context. Considering the rapid deterioration of women's rights in the country and the risk of losing funds earmarked to Human Rights support, the

Commission/EEAS showed good political judgment and took clear decision when shifting the funds to a highly relevant UN-lead activity on women's rights.

30. Developing a constructive dialogue on Human Rights with the Egyptian Authorities was particularly challenging in the period since the adoption of the Commission Decision in 2008.

The programme obliged Egyptian authorities to continue a dialogue about human rights issues with the Commission and to implement concrete activities in the field of human rights. Closing the project would have suited the Egyptian government, as it would have been a way for them to avoid implementing specific human rights activities. The EU engagement and discussion on these issues kept the human rights question high in the dialogue agenda.

The programme has been extended until December 2015. It is therefore premature to conclude on the level of outputs, as there is still time to deliver. Even if only a few outputs are achieved so far, it is important to note their value given that they have been achieved in a very challenging environment in which the human rights situation continues to deteriorate.

31. Different instruments to support civil society were used in a complementary manner with a view to achieving ambitious political and human rights objectives in Egypt.

32. The type of support provided to CSOs through the thematic budget lines cannot be compared to traditional bilateral programmes, for example in support of reforms, due to the kind of organisations and actions targeted by these instruments and the complementary nature of both EIDHR/DCI NSA instruments.

33. The need for a mapping had already been identified by the Commission early 2012. This mapping exercise is expected to take place during 2013.

While mapping is useful to get an overview of active civil society actors in different sectors, it is not the only relevant tool to help design guidelines of calls for proposals, as it does not give detailed information about different organizations' management or absorption capacities. This information is gathered more effectively through the Delegation's experience<sup>2</sup> managing over 40 grants with civil society organizations.

34. The average length of time was not governed by a specific rule of the former Financial Regulation. It was in any case within the timeframe allowed by the applicable Financial Regulation, and lower than the reduced timeframe foreseen in the new Financial Regulation 2013 (9 months between the submission of the full proposal and the signature of the contract).

The duration of the call for proposals procedure is not proportional to the duration of a contract or to the amount. The Commission considers that the average amount (EUR 150,000) and the duration (2 years) of the sample of contracts examined are neither small nor short. The call for proposals procedure allows for a thorough review of applications and gives reasonable assurance of Beneficiaries' ability to manage the funds effectively. All these checks are made with a view to ensuring the sound financial management of public funds.

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<sup>2</sup> This experience continues to show that the maximum size of grants should be kept under 300,000 EUR, especially for local organizations, in order not to overwhelm generally weak internal management systems. In terms of co-financing levels, the Delegation has strived to minimize the co-financing requirements for Egyptian organizations as much possible in line with the applicable regulations (in the calls for proposals 2011 and 2012, the EU co-financing rate was 95%). The Delegation has deliberately maintained a wide range of priorities and funding requirements that are as flexible as possible to maximize the number and type of proposals, covering the broad spectrum of human rights challenges faced in Egypt. The need for a broad coverage has been highlighted repeatedly by all stakeholders.

36. The fact that the contribution of projects to improving governance is mostly at the local level is to be expected considering that the beneficiaries are often small organizations working at the local level, and that the DCI and EIDHR instruments support and encourage this type of work. It is important to note that these small, pilot projects can be symbolically and politically very important. For example, one of the projects financed under EIDHR followed and gave visibility to the Khaled Said torture case, which ended up triggering the uprising against the Mubarak regime.

### **Dialogue but little action on human rights and democracy**

The Commission/EEAS have been very active however, the dialogue on human rights and democracy was challenging.

38. The Commission/EEAS confirm that during 2008-2010, the EU side increasingly raised critical issues in the human rights subcommittee.

The Commission/EEAS would like to reiterate the importance of the reference to the 'Informal Road Map' of November 2010 paving the way for enhancing relations between the EU and Egypt'. This Informal Road Map consists of political, social, economic and other objectives from the Action Plan with concrete benchmarks for Egypt to achieve. Only when these benchmarks would be achieved the EU would enter into negotiations of possible 'enhanced' or deepened EU-Egypt relations as initially requested by Egypt in 2008 and endorsed by the EU in 2009, the fulfilment of the Action Plan being the key reference tool.

39. The Commission/EEAS did actually succeed in following up on action items. Meetings were held where concrete action points were raised, including the offer to use European expertise for advising Egypt on NGO legislation. The fact that implementation did not take place did not depend on Commission/EEAS lack of insistence but rather on a lack of will and commitment from Egypt's side.

As a mark of the Commission/EEAS continued insistence to offer, in particular, TA support to the NGO law, the Commission/EEAS have in March 2013 provided TA support to the NGO legislation currently debated.

40. It was only in 2011 that Commission/EEAS ENP Progress Reports for all partner countries began to include Action Points addressed to partner countries and to be monitored the following years.

41. Any decision on aid suspension and cutting needs to be handled carefully by the Commission/EEAS. In fact, the negative impact of such decisions on the most vulnerable has to be assessed against achieving no or little progress on human rights issues. Egypt not being an aid dependent country and with aversion to 'foreign' interference, the Commission has considered that strengthening its political dialogue with Egypt is a more efficient approach.

The decision to remain engaged with Egypt despite the challenging political and human rights context has been taken not only by the Commission but also by other donors, including EU Member States.

## **No PFM reform plan**

The EU-Egypt Action Plan addresses a number of PFM reform priorities although not in a detailed way (see paragraph 42). The Commission/EEAS consider that substantial progress has been made during the period under audit.

42. The Action Plan is a jointly agreed document following long and difficult negotiations. The fact that the EU achieved to include numerous key EU priorities is in itself an achievement. Problems in Egypt are plentiful and need to be addressed in one way or the other.

The Commission/EEAS also wish to draw attention to the 'Informal Road Map' referred to under § 38 where e.g. the PFM priorities are detailed with specified benchmarks.

In this context, it should be noted that the increased attention placed on Public Financial Management reflects the recognised need for full coherence between political ambitions and financial and technical co-operation. At the time of the negotiations of the first Action Plan, issues that were more clearly political in nature were given more emphasis while it was considered that more technical issues such as PFM, while not being less important, would be addressed more extensively through the EU-Egypt co-operation programme.

43. Although a credible and relevant PFM reform programme is a critical eligibility criterion for SBS, the primary aim of an SBS lays in improvements in the sector (basic services for health and education). During the period, the Egyptian authorities for the first time began to recognise the problem, conducted a constructive dialog on PFM with the donor community, were supportive of a PEFA and subsequently agreed on roadmap to enhance PFM.

The Commission/EEAS regularly underlined in its policy dialogue the need for a proper PFM Reform Plan and has taken steps to assist the Egyptian authorities in this area, including the conducting of 1<sup>st</sup> PEFA exercise.

44. The Commission/EEAS recognise that more rapid progress by the Egyptian authorities on PFM would have been desirable.

The Commission/EEAS followed up to the extent possible on the PEFA results, in particular taking the low absorption capacity and willingness of the Ministry of Finance into account. The Commission/EEAS has prepared the first Technical Assistance Programme focussing on Budget Preparation signed with the Egyptian authorities in December 2011 and coordinated with other donors who tackle other weaknesses of Egypt's PFM Reform system, which was considered by the other donors as a great success.

45. The anti-corruption strategy drafting process began in September 2012 (first workshop) and is on track. This activity is implemented closely with the Ministry of Justice (Human rights department).

## **Major shortcomings in PFM not tackled**

The Commission/EEAS addressed numerous weaknesses in the PFM area although progress was slower than expected.

46.

(a) In the years before the uprising, the Ministry of Finance paid lip service to the need for introducing an internal audit function.. However, it rejected any concrete Technical Assistance that was finally mobilised early 2013 by the Commission/EEAS by using top quality experts from the OECD.



(b) The integration of Egypt's accounting units into the TSA is a gradual process, following Egypt's reform capacity and willingness. The TSA reform benchmark assisted positively to maintain/keep momentum of this process.

So far, given that the condition has not been fulfilled yet, only one out of the 4 scheduled fix tranches has been paid.

(c) The process of implementation of GFMS is a gradual process, following Egypt's reform capacity and willingness. This area has been identified among priority areas of EU support in the next programming 2014-2015, and is yet to be formally adopted.

(d) The roll out exercise was delayed due to the institutional and political instability as well as to budgetary constraints. EU support will continue as Egyptian authorities recently renewed their commitment to pursuing the roll out.

47. In the absence of a specific request from the Egyptian government, there is no specific PFM sector support programme. To the extent possible, the Commission/EEAS focussed in the context of sector support programmes on key priorities of PFM for which agreement with the Egyptian government could be found. The importance of transparency has been acknowledged and in the 2011 Communication on a modern approach to Budget Support , a 4<sup>th</sup> eligibility criterion has been added : "Transparency and Oversight of the budget". The comprehensiveness of the budget is assessed in PEFA exercises (PI 6 and 7) as well as in the risk management framework (RMF) of the Commission (question 4.1)<sup>3</sup>.

(a) See also reply to paragraph 47.

(b) The Commission/EEAS/ tackled the issue of "Special Funds" in the context of the establishment of the TSA and its progressive coverage. Special funds are expected to become marginal in the future through Treasury control that will be exercised once TSA has integrated all public sector institutions bank accounts. The Commission/EEAS have used the SBS programmes to address this issue, for instance the Health SBS includes a reform indicator monitoring the expansion of the centralised budget control systems to a number of ministries, which is related to a more comprehensive control of accounts. The on-going Energy and Water SBS operations, not covered under this report, also include reform indicators related to increased fiscal transparency and accountability of broader public sector institutions.

See also reply to paragraph 47 and 47a.

(c) The uprising gave rise to a new Constitution with provisions as well as staff changes at the CAO that appear to create valuable openings in the area of transparency and reform.

48. The Commission applied strictly the budget support guidelines which include clear criteria, in particular for the dynamic approach, looking at past and recent policy performance benchmarked against reform commitments, but allowing for situational adjustment. In the particular political context of Egypt, already a slow pace of PFM reform implementation can be hailed as a progress.

49. The Commission will seek in its future BS operations to associate other donors and so to create necessary leverage for influencing reforms.

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<sup>3</sup> EFA indicators : PI-6 : Comprehensiveness of information included in budget documentation ; PI-7 : Extent of unreported government operations.

RMF - 4.1 Comprehensiveness of the Budget, which takes up the two PEFA indicators:

It should be noted also that an important new element of internal governance is the Budget Support Steering Committee (BSSC) chaired by the Director General of DEVCO, with representatives of DEVCO, EEAS and ECFIN at management level. It has been working since mid-2012 strengthening continuous steering and enhancing political and policy scrutiny and ensuring coherence of EU budget support operations.

50. The TA envelopes embedded in sector budget support programmes are in most countries devoted to the beneficiaries of the sector targeted and not to PFM reform. In Egypt, despite resistance from the Ministry of Finance, the Commission/EEAS successfully developed a first TA project (FA signed in December 2011) focussing on improvements in the budget preparation process.

The Commission/EEAS acknowledge that SBS was not accompanied by any funding for CSOs to develop their role in monitoring the national budget, but at the time, it was not compulsory and was viewed only as an example of good practice, which actually proved to be difficult to be implemented in this case. The political context is indeed not conducive for the establishment of CSOs with sufficient capacities in this area.

### **Little progress in fighting corruption**

More progress is needed on fight against corruption.

51. Reform benchmarks for Egypt's SBS programmes are focussing on sectoral reform programme as agreed with the beneficiary. As regards the PFM, reform benchmarks the Egyptian government did not accept nor propose reform benchmarks in the corruption area. Since the uprising, the fight against corruption has become an important issue. However the (significant) inclusion of fight against corruption would be overcharging the SBS instrument. Prevention of corruption or fraud that could be associated to the implementation of the SBS programmes was governed under articles 14 and 18 of the General Conditions of their Financing Agreements.

52. The fight against corruption project started late due to the absence of agreement between the Commission and Egypt regarding its implementation method, since the Commission insisted on having the project managed by UNODC, custodian of the UNCAC. The Commission diligently made its utmost efforts to obtain the agreement signed by the Egyptian authorities, putting the project on the political agenda, at a time when corruption was a major challenge and when no other donors managed to tackle this issue bilaterally with the Government. After the 2011 Uprising, the Commission immediately requested to add a specific component on asset recovery, as a direct answer to the regime change.

The project started in August 2011. UNODC could not fully implement all activities due to the context of deep political crisis. This uncertainty prevailed until the election of President Morsi. During this period, the project did not have the backing of the transition authorities, which resulted in a slowdown in implementation.

This file has been closely monitored by the Commission. Exchanges between the EU Delegation and UNODC are regular since the beginning of the project, with at least one meeting a month in addition to specific projects activities (workshops, seminars etc...), which are closely followed by the Delegation. Those meetings resulted in requests and exchanges on both sides, to ensure that despite the situation, the project was still up and running. Due to the positive evolution of the political situation, steering committees are now taking place on a more regular basis, with more stable interlocutors confident enough to discuss sensitive issues in a more open manner.

The independent ROM (Result Oriented Monitoring) mission that took place in November 2012 does not share the opinion of the Court regarding the project, in particular on insufficient monitoring of the project.

According to the ROM report (Efficiency and Implementation to date - p.2): *"Inputs were provided on time and at the planned costs. UNODC manages them in transparent and accountable manner, uses them cost-effectively and monitors them regularly. The contractual procedures are understood by all. The Legal Framework and workplan are used in management. The project copes well in the current political transition. Activities are implemented as scheduled; some are shifted in 2013,*

*without impairing implementation. The project is underspent, but likely to be on track in 2013. A Project National Experts Coordinating/Steering Committee was formed with representation from UNODC, MSAD, MoJ, MoI, and MoFA. The project is monitored by UNODC and the EU Delegation Project Manager. The project is adequately flexible; it monitors the beneficiaries' actual needs and adjusts workshops and trainings accordingly. (...) The communication among the stakeholders, the Contractor and the EU Delegation Project Manager is very good".]*

Concerning the outputs, the project will run until 20 July 2014. It is therefore half way through the implementation period and it is premature to conclude on the level of achievement, as there is still time to deliver.

### **The Commission did not adequately use the ENP cooperation framework to address PFM and corruption**

The Commission/EEAS do not share the Court's point of view as regards the way the ENP cooperation framework has been used to address PFM and corruption.

The Commission/EEAS faced continuous resistance from the Egyptian side when increasingly addressing PFM and corruption within the ENP cooperation framework.

53. The EU Delegation suggested several times to include PFM issues on the agenda of the Informal Economic Dialogue where it would be appropriate, but it has to be noted that all agenda items within the formal dialogue structure are jointly agreed on.

The purpose of the Association Committee is to take stock of technical discussions during the year. If the Egyptian side had accepted PFM in the Informal Economic Dialogue, it would indeed also have been raised at Association Committee level.

54. Fight against corruption is a key element of PFM, and the Action Plan, by addressing PFM, paved the way for policy dialogue on the issue, and corruption to be addressed in co-operation initiatives. After the uprising, fight against corruption has become a national top priority and the Commission/EEAS are planning initiatives in the new SSF (Single Support Framework) to support the Egyptian anti-corruption programmes.

55. The ENP Progress Reports follows progress made in areas of the Action Plan. Given that PFM issues are not widespread in the Action Plan, they are not widespread in the ENP Progress Reports.

56. See replies to § 53 and 54

### ***Few Changes in response to the Uprising***

The Commission/EEAS consider that significant changes were introduced in response to the Uprising such as the revision of the ENP policy, the appointment of two EUSRs, additional instruments to support civil society, the creation of a task force for Egypt.

59.

(a) The Commission carried out a comprehensive study in 2009 "Evaluation of European Commission's Support with Egypt – Country level Evaluation" which was presented in 2010 and covered 1998-2008 period and which was taken into consideration for the ENP review.

60. By the time the uprising took place and the Commission decided to re-orient its planned cooperation for 2011, the decision process (a complex process that normally lasts up to one year), was almost at its end and it would have been impossible to make more radical changes. The biggest changes in the NIP 2011-2013 took place in 2012-2013.

61. The Commission's review of its assistance programme confirmed the pertinence of the underlying priorities and the complementarity with the demands of the revolution. See also answer to § 60.

### **Less attention to women's and minorities' rights**

The Commission/EEAS underline that throughout the audited period high attention was paid to women's and minorities' rights. This was further emphasized politically and financially after the Uprising.

63. In their joint letter to Foreign Ministers of 3 February 2013, HRVP Ashton and Commissioner Füle indicated that 'in line with the ENP review Communication, the assessment of partners' progress in democratisation will be based on progress against the following criteria:

the respect of other human rights (abolition of capital punishment, freedom of religion, non discrimination on the basis of gender or sexual orientation, non discrimination of minorities, rights of the child, abolition of torture and degrading punishments).

They also wrote that 'particular attention will be paid to women's rights, reflecting the major role once again played by women in recent events in the South'

Both factors are specifically assessed in allocating the SPRING budget which is allocated to countries having demonstrated progress in implementing political and democratisation reforms.

(a) The Delegation in Egypt closely monitors this issue and stresses the importance of minority rights as for instance in the ENP report and at the latest Association Committee meeting held on 28 February 2013.

(b) The People's Assembly elected in 2011 debated about women's rights but no formal draft law has been put forward yet. The entire legislative framework on women's rights is still in place. The Commission/EEAS are closely monitoring this issue and stress the importance of women's rights at every high level event, for instance at the latest Association Committee meeting held on 28 February 2013.

64. The themes identified by the Court as being most at risk have been followed up by the Commission with specific and adequate measures: women's rights have been included systematically in all local calls for proposals, the Egyptian Government request for a derogation to including the rights of minorities as an added value element in the calls for proposals was not accepted, a new project to promote women's rights through UNWOMEN was set up following the re-allocation of 4 million EUR for civil society under the bilateral human rights programme.

### **New support for CSOs has so far had little impact**

The new support for CSOs was launched in September 2011 and it is too early to conclude on its impact.

66. The EED was set up at the end of 2012 and several EU member States have made financial contributions to its operating budget.

The EED is not an EU instrument managed by the Commission or the EEAS and therefore no responsibility for late start of activities can be imputed to the Commission/EEAS..

67. Egypt has received the highest allocation of CSF funds for 2012-2013 in the South Neighbourhood region (2,100,000 EUR for Egypt out of 22,000,000 for Neighbourhood South). Furthermore, it should be noted that in Egypt, local NSA calls for proposals include CSF funds, and calls for proposals for NSA are launched at the same time as local EIDHR calls for proposals. As such, there is no risk for overlap as they are treated as one pool of funds with different thematic strands.

68. The Commission/EEAS is closely monitoring the situation regarding the new draft NGO law. During the EU-Egypt Association Committee that took place on 28 February 2013, the EU reiterated its concerns i.a. about freedom of association in Egypt. The EU strongly highlighted the importance of ensuring a favourable environment for civil society and called for the adoption of a new NGO law in line with international standards that eases registration procedures and limits the discretionary power of the Government of Egypt to authorize or reject registration requests. Due to the insistence of the Commission/EEAS, the Minister of Justice finally accepted the EU offer to, to provide peer advice on the draft NGO law, in order to draft a law in line with international standards. This technical assistance was provided in mid March 2013.

70. There are now three different contracts for Budget Support: Good Governance and Development contracts, Sector reform Contracts and State building Contracts.

The respect of fundamental values of human rights, democracy and the rule of law set out in the Lisbon Treaty is in particular a pre-condition for Good Governance and Development Contracts (GGDC) which are widely seen as providing an endorsement of a country's overall policy and governance stance.

Where the conditions do not permit a Good Governance and development Contact, a sector reform contract (SRC) may be provided based on an assessment balancing fundamental values concerns with the need to protect and serve the population. For fragile countries or in a situation of transition state building contracts (SBC) can be provided. For these the risk of inaction will be balanced against fundamental value concerns.

The Commission applies conditionality in a strict sense. Tranches are released based on progress achieved in meeting agreed reform benchmarks. No payments are made for non-performance.

71. The impact of the revised budget guidelines on the on-going budget support programmes is to be seen on the occasion of the next tranche payment assessments.

## **CONCLUSIONS**

72. The Commission/EEAS in the given circumstances have been able to effectively manage EU support and where possible improve governance in Egypt. Conditions under the authoritarian Mubarak regime were already very challenging and let little room for engaging in a meaningful and substantive dialogue and cooperation on all human rights issues.

The analysis of the political situation in the period covered by this report clearly shows that since the January 2011 events, there has been a slow down if not a paralysis of the decision making process at government's level and an increased aversion towards civil society and human rights more broadly. It is not only a matter of coping with "difficult conditions" but also with a completely new situation, different from that when the projects examined were designed and launched. The protracted political instability and lack of commitment by the government did only allow for a partially successful review of the governance portfolio. Time is needed to see results, especially in a non-conducive and still unpredictable environment. The decision to keep open human rights projects and give them a chance to be revamped was certainly very well politically motivated.

73. The Action Plan includes a large number of human rights and democracy issues which was the result following long and difficult negotiations with the Egyptian side. The fact that the Commission/EEAS achieved to include numerous key human rights and democracy issues is in itself an achievement. Human rights problems –whether relating to socio-economic or to civil and political rights – are plentiful and need to be addressed.

Again, the Commission/EEAS wish to draw attention to the 'Informal Road Map' – referred to above, where sectors I and II refer to basic human rights with benchmarks.

74. Support provided by the Commission/EEAS and in particular under budget support, has allowed the provision and extension of basic social services (health, education,...) to reach out the poorest and the most vulnerable population. Suspension of EU support would have affected negatively these populations and slowed down the path of highly needed reforms. Disbursements were made upon progress in the agreed reforms and actual performance in these areas.

As regards the funds allocated to CSOs, despite the budgetary constraints and as an immediate response to the Arab Spring, the Commission/EEAS created the new Civil Society Facility to strengthen the capacity of Civil society actors to promote national reform and increase public accountability. An amount of almost €70 million has been allocated to this new instrument that targets all ENP countries and complements other initiatives to support Civil society such as EIDHR and NSA/LA instruments.

At the end of 2012, the total amount of on-going thematic grants awarded under the DCI, EIDHR and ENPI-CSF programmes managed by the EU Delegation in Egypt was 17.4 million EUR.

75. The Progress Report painted a fair picture of Egypt's reform efforts in the PFM reform area and in line with the weight given to the PFM issues in the Action Plan.

76. The main objective of a SBS (or SRC) is to accompany sector related reforms but not per se the management of public finances (except in case of a PFM SRC).

As part of the SBS, few benchmarks were added to tackle also PFM issues in key priority areas for which government agreement could be found.

Satisfactory implementation of PFM reforms is one of four eligibility criteria for budget support operations but not a condition. The Commission applied a stringent monitoring on Egypt's PFM reform efforts and gave a fair assessment in its Annual PFM progress reports.

During the period, the Egyptian authorities for the first time began to recognise the problem, conducted a constructive dialogue on PFM with the donor community, were supportive of a PEFA and subsequently agreed on roadmap to enhance PFM.

77. The fight against corruption project started late due to the absence of agreement between the Commission and Egypt regarding its implementation method. The Commission diligently made its utmost efforts to obtain the agreement signed by the Egyptian authorities, putting the project on the political agenda, at a time when corruption was a major challenge and when no other donors managed to tackle this issue bilaterally with the Government. After the 2011 Uprising, the Commission immediately requested to add a specific component on asset recovery, as a direct answer to the regime change.

The project started in August 2011, but not all activities could be fully implemented due to the context of deep political crisis. This uncertainty prevailed until the election of President Morsi. During this period, the project did not have the backing of the transition authorities, which resulted in a slowdown in implementation.

This file has been closely monitored by the Commission. Exchanges between the EU Delegation and the implementing agency are regular since the beginning of the project, with at least one meeting a month in addition to specific projects activities (workshops, seminars etc...), which are closely followed by the Delegation. Due to the positive evolution of the political situation, steering committees are now taking place on a more regular basis, with more stable interlocutors confident enough to discuss sensitive issues in a more open manner.

The independent ROM (Result Oriented Monitoring) mission that took place in November 2012 does not share the opinion of the Court regarding the project, in particular on insufficient monitoring of the project.

Concerning the outputs, the project will run until 20 July 2014. We are therefore half way through the implementation period and it is premature to conclude on the level of achievement, as there is still time to deliver.

78. The Commission/EEAS closely monitor the issues of minorities and women rights and stress regularly their importance to the Egyptian authorities. For instance, in the 2012 ENP progress report and at the latest Association Committee meeting held on 28 February 2013. Women's rights have been included systematically in all local calls for proposals, while the incorporation of the minorities' issue in call for proposals was always rejected by the Egyptian Government. Furthermore, a new €4 million project to promote women's rights through UNWOMEN was set up in December 2012.

The CSF mechanism is yet to deliver results as granted projects are just starting. The EED mechanism is financially sponsored by the Commission and EEAS without management responsibility.

79. No new BS operation has been initiated in Egypt since the adoption of the New Guidelines by the Commission. All upcoming BS operations will follow the new guidelines with full rigour.

## **RECOMMENDATIONS**

80.

(a) This recommendation is already being implemented.

As part of the new ENP policy, where focus on human rights and democracy is systematically taken on board. This approach will be further reflected in the new EU-Egypt ENP Action Plan that will include appropriate benchmarks.

There is for instance an on-going dialogue on these issues in the context of the design of a new State Building Contract under AAP 2013, which will include democratic governance indicators.

(b) This recommendation is already implemented.

The Commission and the EEAS regularly review budget lines and budgetary allocations especially in the light of new information, reviews and evaluations and reallocate resources as and when necessary.

The Commission/EEAS will follow closely the political developments in Egypt and especially in the field of human rights and democracy and will strive to have the most balanced program for this country and make an adequate allocation for the various instruments for the future cooperation.

(c) The recommendation is implemented already .The Commission/EEAS will continue to avoid the risk of overlap between the different instruments..

(d) The recommendation is implemented already. The new Financial Regulation which entered into force on 1<sup>st</sup> January 2013, reflects a more flexible and responsive support of the provisions on grants, for example lighter procedures for low value grants, possibility of using cost simplified options (lump sums etc), changes in subgranting (higher threshold/purpose of the action) and shortened time. It also reduces the length of time between the submission of the full proposal and the signature of the contract to 9 months. It should be noted that the Commission already met this ambitious target in Egypt (8.5 months).

(e) The Commission/EEAS accept this recommendation. The new ENP approach has emphasised the conditionality of deepening democracy and commitment to fundamental values for those countries willing to strengthen their partnership with the EU. The design of the new European Neighbourhood Instrument currently under inter-institutional negotiation is giving more space to the "incentive based approach" which will be applied strictly by the Commission.

81.

(a) The Commission/EEAS agree with the recommendation to place more emphasis on these issues during negotiations on the new Action Plan. However, it should be noted that this Action Plan is the result of negotiations with the Egyptian government and has therefore to be agreed jointly.

As regards cooperation, it was already agreed that support to anti-corruption including PFM should be key priority for the period 2014-2015.

(b) The Commission/EEAS do not agree with the recommendation. However, the Commission/EEAS will continue to suggest the inclusion of PFM issues on the agenda of the informal Economic Dialogue where it would be and still is appropriate.

(c) The Commission/EEAS accept this recommendation and are committed to aligning PFM support with the IMF Road Map.

82. The Commission/EEAS will ensure that future budget support operations to Egypt will be in line with the provisions of the new approach and the new BS guidelines, including the review of the 4 eligibility criteria.