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

**"EU SUPPORT FOR GOVERNANCE IN THE DEMOCRATIC REPUBLIC OF THE
CONGO"**

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EXECUTIVE SUMMARY

I. The Commission and the EEAS consider that the fundamental elements of good governance such as human rights, democracy, security and basic public services are not **sufficiently** respected.

III. Some projects to which the Court's comment may apply were at a very early stage of implementation and had consequently not yet delivered results. The delays as compared to the initial timetables are mainly due to the fragility and post-crisis situation in DRC. The operational periods of the projects have therefore been extended and most expected results of the projects and programmes are achievable. The timeline for assessing the effectiveness of EU programmes needs to take into account the realities of working in a fragile state. The Commission and the EEAS consider also that progress needs to be recognised where it occurred, for instance the 2006 elections and overall public finance management.

As pointed out by the Court in this report, the National budget is insufficient. However, it increased by a factor of twenty over the last ten years and is still expected to double by 2016. This trend allows the government to progressively allocate appropriate funds to related budget items including human resource and maintenance budgets thereby improving sustainability in the medium term.

IV. Objectives were in line with the EU vision for DRC at the time and were expected to capitalize on the positive democratic trend which was expected after the first democratic elections in 2006. Risk management does not only imply that risk will be avoided, but that the support will be adjusted to take account of a changing political situation or the time necessary to complete the action. Both approaches have been applied by the Commission. The Commission and the EEAS therefore consider that DRC context and risks have been adequately taken into consideration.

In a state like DRC where all administrative and social structures had been destroyed, the use of preconditions would have been ineffective since the purpose of the support was to rebuild the basic services of the state. On the other hand, the delegation has always maintained political and sector dialogue with the authorities and has always counterbalanced EU support with progress achieved by the authorities. This is defined by the Commission and EEAS as a "contractual approach". It promotes "mutual accountability" as proposed by the "New deal" for engagement in fragile states.

Governance issues are dealt with in both political dialogue fora and policy dialogue fora. Political positions taken by the EU (Delegation and EEAS/Commission) are agreed and coordinated with Member States.

V. The issue should be examined from both aspects since it is also true that aid effectiveness and efficiency cannot be improved without governance itself. Without progressively providing the basic building blocks for governance (for Public Finance, legal frameworks, local authority services and decentralisation) progress will remain slow and always encounter operational difficulties.

VI. As stated before, the use of conditionality has to be modulated to take into account the fragility of DRC and form a part of the political dialogue with the country. The term "conditionality" is not really in line with the spirit of partnership under which the cooperation is delivered to the ACP countries in the framework of the Cotonou Agreement. The Commission promotes mutual accountability and strengthen policy and political dialogue.

INTRODUCTION

11. Although it expressed its regrets over the constitutional amendment that should have aimed for a greater consensus with the opposition, the EU does not consider the January 2011 Constitutional

amendment as illegal or antidemocratic. The timing of this amendment also allowed the opposition political parties to incorporate this change in their electoral strategies.

12. The instability in the eastern DRC is of complex origin. Its root causes are linked to regional, national (DRC) and local elements. The EEAS and the Commission will soon present a joint communication regarding an EU strategic framework for the Great Lakes where further analysis will be proposed.

OBSERVATIONS

EU support for governance in the DRC is relevant to needs but has achieved limited overall results

[Reply to the heading]

The Commission and the EEAS consider that EU support for governance in the DRC is relevant to needs but has achieved partial results.

30. The Commission and the EEAS consider that their capacity to react appropriately to the problems which affected the elections has not been affected by the fact that the support to the electoral cycle was not foreseen in the NIP. In the Commission's and EEAS' views, the EU's involvement at the different stages of the electoral cycle, together with the international community, could not have been more significant without affecting the DRC's political and financial ownership in the process.

34. While the support of the Commission may not cover the entire territory, its geographical distribution is balanced including for the components related to governance.

The EU's cooperation strategy for governance focuses largely on support for the central government (which has a national dimension) and for a limited number of provinces including Bas Congo and Kasai occidental and the eastern DRC.

As far as cooperation in other sectors is concerned: the 10th EDF is however unable to cover the entire country although the presence of EU programmes in other sectors covers important areas in the Oriental and Occidental Kasai, Bandundu, Equator, North and South Kivus, the Bas-Congo and Kinshasa. At this stage, geographical complementarity between the EU's cooperation and the programmes of EU Member States is effective but cannot meet all needs in some of the poorest parts of the country. The EU also has to focus cooperation on a limited number of interventions in order to avoid dispersion.

The Commission is working with other donors to ensure the best possible coordination between interventions. The support for urgency (eg. envelope B) is concentrated in the affected areas of the country and contributes to the stabilization plan and reconstruction of the eastern DRC (STAREC) supported by all donors. The Commission has in fact resisted pressure from the media, which led to devoting all efforts to the east. It should also be taken into consideration that the poorest provinces are also the least populated and most difficult to access, which implies that they are not the most appropriate field of intervention for big donor since global impact of support is reduced.

EU support for governance is relevant to the needs in all areas but progress is uneven and overall limited

[Reply to the heading]

The Commission and the EEAS consider that EU support for governance is relevant to the needs in all areas but progress is uneven and partial.

Progress is limited by obstacles and delays habitually encountered in fragile states but without necessarily putting in jeopardy the overall results that are expected.

35. Some projects to which the Court's comment may apply were at a very early stage of implementation and had consequently not yet delivered results. The delays as compared to the initial timetables are mainly due to the fragility and post-crisis situation in DRC. The operational periods of the projects have therefore been extended and most expected results of the projects, programmes are achievable (and, thus the Commission and the EEAS do not agree with certain scores in the table in Annex I).

The timeline for assessing the effectiveness of EU programmes needs to take into account the realities of working in a fragile state. The Commission considers that progress advances in the right direction.

As pointed out by the Court in this report, the National budget is insufficient. However, it increased by a factor of twenty over the last ten years and is still expected to double within the next five years. This trend allows the government to progressively allocate appropriate funds to related budget items including human resource and maintenance budgets thus improving sustainability in the medium term.

41. Please see reply to paragraph 11.

The EEAS and the Commission reacted in a timely manner to the Constitutional amendment (cf HR/VP statement) and all the necessary clarifications were requested from the DRC in the framework of regular political dialogue.

Although it expressed its regrets over the constitutional amendment that should have aimed for a greater consensus with the opposition, the EU does not consider the January 2011 Constitutional amendment as illegal or antidemocratic. The timing of this amendment also allowed the opposition political parties to incorporate this change in their electoral strategies.

42. The fact that the international community, including the Commission, provided financial support to the electoral process is not a guarantee of success and transparency of the election, neither a sign of support to a regime. The EU's evaluation of the 2011 electoral process, including its structural flaws, was clearly expressed in the final report of the EU electoral observation mission.

46. The REJUSCO programme was a "Justice d'urgence" action aimed at providing essential support to the Judiciary and connected areas in the East at the brink of collapse. Its overall performance should also be seen in this context. The need to distinguish a specific situation in the east that did not provide all the necessary conditions for sustainability was an important assumption of the Country Strategy Paper (CSP) and National Indicative Programme (NIP) documents.

49. The Commission would like to point out that

- 1) even if the budget allocation is not sufficient, its increasing levels indicate a positive trend (see reply to paragraph 35);
- 2) a feature of the PARJ programme is precisely to improve administrative capacity; and
- 3) the commitment of the current Justice Minister (nominated in May 2012) is strong.

53. The inability to obtain information on redeployment is one of the reasons that the 9th and 10th EDF NIP programmes, as well as the IFS components, placed much importance on improving HR

management of the PNC. To date this has included a comprehensive census of the PNC, the setting up of a computerised databank, training, and support in the drafting of a new organic law (signed by the President on 1 June 2013) on overall PNC management.

Corrective actions necessary to improve sustainability have been taken.

54. At present, all of the facilities constructed in the project framework are in use by the PNC.

Operational capacities of the PNC have actually improved by the installation and equipment of the provincial police headquarters, notably the command and communication centres in Goma and in Bukavu.

Indeed, construction works suffered certain delays due to a series of unexpected factors such as the non-availability of construction fields with proper documentation, procedural constraints, lack of skilled labour and construction material in the East, and also bad weather which affected the completion of the project within the 18 month IFS implementation period.

56. The issue was raised by the Commission which secure government engagement to ensure financing of functioning, maintenance costs, etc., thus achieving sustainability of EU interventions.

As an example of targeted conditionality, the delegation was successful in getting a specific allocation of 325.000 USD inscribed in the 2013 budget for precisely this activity.

With the financial contribution of the DRC government, the sustainability of this EU intervention has notably improved.

61. Progress on the PFM reform is steady and recognised by the international community, including the Bretton Woods Institutions, and has the full undivided support and commitment of the Prime Minister. In the context of this extremely fragile state, the Commission considers that promising intermediary results have been achieved.

63. On the advice of the EU Delegation, the National Authorising Officer (NAO) has cancelled the works contract for the rehabilitation of the offices of the SAI because of poor workmanship on the part of the Contractor and intends to re-contract with another company. Despite this delay and inconvenience, the SAI has been able to continue the recruitment of new magistrates.

64. The Commission does not anticipate difficulties in recruiting the experts and a “Cadre de concentration” on public finance reform has been signed with the Finance Minister and eight donors (with the EU Delegation as lead donor).

65. These emergency budget support programmes were implemented in full coordination with the Bretton Woods institutions; they were designed to prevent a serious drawback in the process of stabilisation of the DRC. The country reached the completion point of the Heavily indebted poor countries (HIPC) initiative, and all observers agreed that improvement in macro-economic balance and PFM had occurred.

73. Whereas it is true that the PA2D suffers from the government's lack of will to put in place the decentralisation process, the PAP is less dependent on government policies and continues its capacity building of the legislative institutions. The main obstacle for achieving all the PAP's objectives – the postponing of the provincial elections – has been mitigated by focusing on strengthening the administration of the four legislative institutions as well as the members of the National Assembly.

74. The Commission is not the promoter of DRC decentralisation, but the Congolese themselves are. Therefore it is not pushing for a "Kinshasa top-down approach". However, the DRC is currently a centralised country and decentralisation cannot be put in place without reforms, including as regards Public Finance Management also at central level.

The Commission did not take sufficient account of the fragile national context in the design of EU programmes

[Reply to the heading]

The Commission and the EEAS consider that the fragile national context made it impossible to achieve programmes as they had been initially designed.

Risks were not adequately addressed

[Reply to the heading]

The Commission and the EEAS consider that the risk level is high due to the fragility of the country and has properly been taken into account.

78. As the Court notes, risks cannot be avoided in a fragile country like DRC. These are known and it is unrealistic to assume that the implementation of programmes could run smoothly without major problems. In this context, full risk prevention is quite ineffective and risk management should focus on responding to problems when they occur. The Commission has been able to adapt its interventions by adjusting the activities or deadlines for achieving them.

Support to governance in the DRC must also be analysed in a political context rather than in the context of the definition and implementation of programmes.

79. Please see reply to paragraph 78.

81. Please see reply to paragraph 65.

82. The Commission and the EEAS consider that the risk assessment was appropriate and they design projects on the basis of their best knowledge at the specific time, taking into consideration the constraints of the Financial Regulation. If problems or delays occur, projects are amended as foreseen and allowed by the Financial Regulation.

(a) Please see replies to paragraphs 1, 30, 41, and 42.

The Commission support to the electoral process was embedded in an international framework approach since the PACE programme was supported by the international community. The PACE I programme which supported the 2006 elections has been considered as a success.

Through the PACE II, the international community contributed to the 2011 electoral process but deliberately avoided taking the lead. The Commission was an important contributor to the program (+/- 20%) but did not have full control of its design and timing. Nevertheless, the international partners were aware of the risks of setting overarching and ambitious targets as it was not conceivable, given the nature of the issue, to only set partial targets.

The main problem of the election was not the lack of dialogue with the international community (see report of the EU Election Observation), which has been started by the EU in a timely manner independently of the fact the funds were already committed or allocated to the support to the electoral process.

(b) The REJUSCO programme was an emergency justice programme intended to prevent the collapse of the judiciary system and to keep up the momentum of the fight against impunity and respect for human rights. It was not, strictly speaking, part of the justice reform programme. The design and implementation problems were due to its multi-donor character and other implementation difficulties.

Please see also reply to paragraph 46.

(c) Please see above and replies to paragraph 49.

(e) The Commission and the EEAS consider that the whole decentralisation support strategy under the 10th EDF did take into consideration the risks highlighted. Moreover, a midterm review has been undertaken in order to improve the programme's performance and set it 'back on track'. The PA2D might not achieve progress as expected, especially concerning support at a national level, but significant progress can be made at the provincial level.

(f) The programme was flexible enough to enable different sets of priority actions depending on developments.

84. The use of strict conditionality in policy dialogue with very fragile states has generally proved to be ineffective or counterproductive. Political dialogue with the Congolese authorities favours a contractual approach, which is more realistic and promotes progress of the partner approach. For example, the Commission cancelled the 5 million Euro 9th EDF Financing Convention because the DRC failed to approve appropriate legislation on the reform of the Civil aviation authority; it has also withdrawn from the Pace Fund, supporting the electoral process; and through the threat of not funding the police academy if a valid land title was not provided, the authorities were pushed to identify a terrain for its construction.

85. The Commission emphasises that it has been successful in securing proof of land ownership in all ongoing construction programmes while it has delayed awarding contract pending the production of the required documentation.

The Civil aviation project was cancelled because essential pre-conditions were not met. However, this approach should not be an obligation in every single project, but only taken if necessary. Also, risks on "doing and non-doing" must be taken in consideration.

86. Please see reply to paragraph 84.

87. In fact, the Commission suspended disbursements and cancelled contracts in a number of cases including on governance related projects. The most recent example being, in view of the irregularities observed during the 2011 presidential and legislative elections, the Commission's decision (subsequently replicated by the other donors) to close PACE II and to definitively cancel its last two payments (total 12 million euro).

89.

(b) As regards the Commission and the EEAS, all efforts are already deployed to encourage coordinated EU policy dialogue. The delegation is promoting regular and frequent EU coordination meetings at political and cooperation levels in all areas of political/cooperation activity. In a general manner, the Commission and the EEAS consider however that there is still room for improvement in the coordination with Member States.

(d) Please see replies to paragraphs 84 and 87.

90.

(a) Political, development and humanitarian actions were part of a coherent set of EU actions. The EU remained an active and credible political partner in the democratisation dialogue. In this regard, the EU's leverage in political dialogue does not necessarily depend on the fact that the EDF national indicative program focuses on a specific sector but on the overall EU-DRC cooperation. European Commission and EEAS reactions to the political context were taken after consultation of and in coherence with Member States.

Please see also replies to paragraph 41 and 42.

(b) The Commission withdrew its funding precisely because the CMJ was not effective.

The REJUSCO was a donor driven initiative and implemented as such in a context of emergency.

CONCLUSIONS AND RECOMMENDATIONS

91. Some projects to which the Court's comment may apply were at a very early stage of implementation and had consequently not yet delivered results. The delays as compared to the initial timetables are mainly due to the fragility and post-crisis situation in DRC. The operational periods of the projects have therefore been extended and most expected results of the projects and programmes are achievable.

The timeline for assessing the effectiveness of EU programmes needs to take into account the realities of working in a fragile state. The Commission and the EEAS consider also that progress needs to be recognised where it occurred, for instance the 2006 elections and overall public finance management.

As pointed out by the Court in this report, the National budget is insufficient. However, it increased by a factor of twenty over the last ten years and is still expected to double by 2016. This trend allows the government to progressively allocate appropriate funds to related budget items including human resource and maintenance budgets thereby improving sustainability in the medium term.

92. The development challenges in the DRC have been characterised inter alia by: lack of administration, lack of policies, lack of funds, lack of human resources, lack of political stability and lack of peace in parts of the country. This provides a difficult framework for a partnership based on the fact that a) the ultimate decisions and progress lie with the DRC b) the absence of partnership can be a real set-back to the stabilisation process of this enormous state, which came close to the brink of collapse. DRC leadership and ownership are essential, while a transition process led by donors only would deliver inefficient donor driven projects.

In this context, risks have been correctly assessed by the Commission not only in terms of doing, but also with regard to the consequences of non-doing. This recognises that the risk of non-engagement in the context of DRC can outweigh most risks of engagement. The Commission and EEAS views are that EU coordination is working well in DRC.

In line with the Cotonou agreement and the "New deal for engagement in fragile states" in November 2011, the Commission promotes mutual accountability based on agreed and achievable milestones, in preference to conditionalities.

Recommendation 1

(a)

While sharing the general preoccupations expressed by the Court, the Commission and EEAS do not accept the recommendation of the Court.

(i) The Commission will continue to aim at achieving an appropriate balance of aid between all provinces including the poor ones in full coordination with other donors and taking into consideration that the poorest DRC provinces are also the least populated.

(ii) The Commission will continue to involve local actors in the implementation of its projects, and within the limit of their capacity. The Commission will also support their capacity building.

(iii) The Commission will continue to support the improved management of natural resources provided that it is confirmed as a sector of the 11th EDF and in the context of work sharing arrangements with other donors.

(b) The Commission and EEAS will continue to place great emphasis on the importance of democratic elections in its dialogue with the DRC. It can be confirmed that this political dialogue will be maintained as per established channels and in the respect of the defined prerogatives and roles of the different EU institutions and Member States as well as other donors.

About the risk assessment, the answer of the Commission is provided under recommendation 2.

About the specific risk of "regime entrenchment", it is addressed collegially by all EU institutions and Members States. Commission programs are in line with the EU political options and are approved by Members States.

(c) The Commission and the EEAS will continue to strengthen and possibly increase the capacity of national oversight institutions, in the context of work sharing arrangements with other donors.

(d) The Commission and the EEAS agree with the recommendation.

Recommendation 2

(a) The Commission and the EEAS agree with the recommendation since these are principles that the Commission already applies.

The risk and impact assessment takes into consideration the fragility context of the partner country.

(b) The Commission and the EEAS do not accept this part of the recommendation. It will continue to take measures to prevent or mitigate risk of engagement.

The course of action to be followed if risks become reality will be defined taking into account the overall political situation prevailing at the time and in coordination with other donors.

Recommendation 3

(a) The Commission and the EEAS agree with the recommendation.

(b) The Commission and the EEAS cannot agree to this recommendation.

The Commission designs projects on the basis of its best knowledge at the specific time, taking into consideration the constraints of the Financial Regulation. If problems or delays occur, projects may be amended and possibly extended.

(c) The Commission and the EEAS cannot agree to the recommendation.

As is normal practice, the Commission amends programmes notably following ROM missions and policy/political dialogue with partner countries.

Recommendation 4

(a) The Commission and the EEAS cannot agree to the recommendation.

The Commission applies the principles agreed internationally in 2011 for a "New deal for engagement in fragile states". In particular this involves: (i) setting clear, relevant and realistic benchmarks taking into consideration the fragility of the country, (ii) periodically assessing compliance with these agreed benchmarks, (iii) discussing with partner country compliance gaps and corrective measures in the context of political/policy dialogue, and (iv) keeping in mind the need to promote aid predictability.

(b) The Commission and the EEAS agree with the recommendation.

(c) The Commission and EEAS cannot accept the recommendation.

The Commission and the EEAS are fully engaged in encouraging coordinated EU policy dialogue. The EU leverage over the DRC is not just a matter of development aid, but rather a function of the comprehensive relation between the EU and the partner country.