



EUROPEAN COURT OF AUDITORS

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EU COOPERATION WITH EGYPT IN THE FIELD OF GOVERNANCE



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REPLY OF THE COMMISSION AND THE EEAS

ABBREVIATIONS

CAO: Central Audit Organisation

CSF: Civil Society Facility

CSOs: civil society organisations

CSP: country strategy paper

DCI-NSA: Development Cooperation Instrument — non-state actors

EEAS: European External Action Service

EED: European Endowment for Democracy

EIDHR: European Instrument for Democracy and Human Rights

ENP: European neighbourhood policy

ENPI: European Neighbourhood and Partnership Instrument

FGM: female genital mutilation

GDP: gross domestic product

IFS: Instrument for Stability

IMF: International Monetary Fund

MEDA: Measures to accompany the economic and social reform in the Mediterranean non-member countries

MoF: Ministry of Finance

MTEF: medium-term expenditure framework

NCCM: National Council for Childhood and Motherhood

NCHR: National Council for Human Rights

NCW: National Council for Women

NGO: non-governmental organisation

NIP: national indicative programme

PEFA: public expenditure and financial accountability

PETS: public expenditure tracking survey

PFM: public finance management

SBS: sector budget support

SCAF: Supreme Council of the Armed Forces in Egypt

SIGMA: support in governance and management

TA: technical assistance

TSA: treasury single account

EXECUTIVE SUMMARY

I.

Egypt is the largest country in the Arab world and has traditionally played a leading role in north Africa and the Middle East. It has also been a major part of the Arab Spring through the uprising against the Mubarak regime in early 2011.

II.

Both before and after the uprising Egypt was one of the main beneficiaries of assistance from the European Neighbourhood and Partnership Instrument (ENPI) which the EU uses to support its European neighbourhood policy (ENP).

III.

For the period 2007–13 Egypt received an allocation of approximately 1 billion euro. Approximately 60 % of these funds are channelled through sector budget support (SBS) to the Egyptian government, the rest through projects agreed with the Egyptian authorities. The EU has also made much smaller amounts available directly to civil society organisations (CSOs), notably through the European Instrument for Democracy and Human Rights (EIDHR).

IV.

The audit addressed the question of whether the European Commission and the European External Action Service (EEAS) managed effectively the EU support to improve governance in Egypt before and after the 2011 uprising.

V.

The audit covered the period up to September 2012. It focused on two key areas of governance: human rights and democracy on the one hand, and public finance management (PFM) and the fight against corruption on the other hand. The audit examined 25 projects and the three main SBS programmes. It also examined how the EU managed the wider ENP cooperation framework with Egypt to achieve progress in these areas.

EXECUTIVE SUMMARY

VI.

The audit found that overall the Commission and EEAS have not been able to manage EU support to improve governance in Egypt effectively. This was partly due to the difficult conditions they have faced in Egypt but also to shortcomings in the way the Commission and EEAS have managed their cooperation with Egypt.

VII.

Before the uprising the Commission managed to include a large number of human rights and democracy issues in the ENP EU–Egypt action plan for reforms and also made this area one of its priorities for ENPI assistance. However, it was unable to achieve progress either in the framework of its ENP dialogue or through the main ENPI project it funded in this area. Notwithstanding these difficulties the Commission continued to provide significant financial assistance to the Egyptian government, notably through budget support.

VIII.

Before the uprising, projects which directly funded CSOs tended to be relatively more successful but received very limited funding. Despite the considerable funding provided through budget support, this instrument has not been effective in promoting PFM and only slow progress has been made. The Commission funded a very relevant anti-corruption project but the project has also been slow to start and has not been sufficiently closely monitored.

IX.

After the uprising the ENP review marked a significant effort by the newly created Commission and EEAS to improve the effectiveness of EU support. However, the review has not yet been translated into a significant revision of EU support to Egypt. While the review's focus on promoting 'deep democracy' is very relevant to Egypt, women's and minorities' rights are key issues in Egypt which have not been strongly emphasised in the review and subsequent new assistance. The added value of new mechanisms to support civil society remains to be demonstrated while additional funding allocated to CSOs in Egypt has been modest.

X.

The related review of EU budget support identifies some important ways to strengthen Commission management but these changes will not be effective unless the Commission is more strict in applying its conditionality.

XI.

The report sets out recommendations on how to strengthen support to human rights and democracy and PFM and the fight against corruption and on the need to review the use of budget support to Egypt.

INTRODUCTION

1. This audit report assesses the European Commission's and European External Action Services' (EEAS) efforts to promote good governance in Egypt before and after the events of 2011.

RECENT DEVELOPMENTS IN EGYPT

2. Egypt with 84 million inhabitants is the largest country in the Arab world and has traditionally played a leading role in north Africa and the Middle East. It also has one of the biggest Muslim populations in the world but with a significant Christian minority. Its relations with neighbouring Israel are of critical importance to peace in the region and beyond.
3. Following the overthrow of the monarchy in 1952, Egypt was ruled until 2011 by three autocratic presidents, each with a military background: firstly, Colonel Nasser until his death in 1970, then Colonel Sadat before his assassination by Muslim radicals in 1981 and from 1981 to 2011 by Sadat's Vice-President, Hosni Mubarak, who had also been the Commander of the Air Force.
4. Mubarak maintained the emergency laws, originally put in place following Sadat's assassination, throughout his 30 years in power. Until 2005, he was the only candidate to run for the presidency and consequently won five consecutive elections with a huge majority. His National Democratic Party similarly dominated the parliament. He finally yielded to pressure to allow competitive presidential elections in 2005 but then placed such restrictive conditions on them that it was hard for a viable competitor to run against him.
5. In contrast, particularly from 2005, Mubarak undertook a range of liberalising economic reforms which were generally welcomed by the international community. However, these reforms reinforced rather than reduced inequality with both the military and circles linked to his family holding major interests in the economy.

- 6.** On 25 January 2011 a popular uprising began with demonstrators protesting against the continued emergency laws, including related police brutality and torture, the lack of free elections and limited freedom of speech. The protests were also directed against widespread corruption and high levels of unemployment coupled with rising food prices. These largely unexpected events led to Mubarak's resignation on 11 February 2011.
- 7.** From February 2011 to June 2012 Egypt was de facto run by the Supreme Council of the Armed Forces (SCAF). The SCAF in many ways continued the authoritarian approach of previous governments, including a major crackdown on foreign NGOs starting in autumn 2011. Nevertheless, following several postponements, presidential elections held in May and June 2012 led to the candidate of the Muslim Brotherhood, Mohamed Morsi, gaining a narrow victory.
- 8.** This success of the Muslim Brotherhood was consistent with their strong showing in the parliamentary elections at the end of 2011 where their candidates won 235 out of the 498 seats. At the same time, a more conservative Islamic bloc led by the Salafists won 123 seats. Secular, liberal groups, despite having played an important role in the uprising, only obtained approximately 20 % of the seats. However, in June 2012 the Supreme Court ruled aspects of the election were unconstitutional and new elections are now scheduled for 2013.
- 9.** In December 2012 Egyptians voted in favour of a new constitution. However, large sections of Egyptian society expressed strong concerns about what they perceived to be a shift towards Sharia law, restrictions on both the freedom of expression and women's and minorities' rights, and the continued privileged role of the military.

EU COOPERATION FRAMEWORK

- 10.** Egypt's association agreement with the EU, which entered into force in 2004, provides the legal basis and institutional framework for its cooperation with the EU. An association council is foreseen to meet at ministerial level at least once a year for dialogue on major issues related to the agreement or on other bilateral or international issues of mutual interest. An association committee, supported by subcommittees, is intended to enable dialogue at the level of senior officials to ensure the implementation of the agreement.
- 11.** A key feature of the association agreement is its insistence on the respect of democratic principles and fundamental human rights (Article 2). This reflects the EU's long-standing commitment to promoting human rights and democracy in its international relations which is also enshrined in Article 21 of the Treaty on European Union¹.
- 12.** Egypt is the largest country in terms of population covered by the EU's ENP². The ENP was launched in 2004 with the objective of avoiding the emergence of new dividing lines between the enlarged EU and its southern and eastern neighbours by strengthening the prosperity, stability and security of both the EU and its neighbours.
- 13.** Central to the ENP are the bilateral action plans between the EU and each ENP partner country. These set out a range of short- and medium-term priorities for political and economic reforms agreed between the two sides. The EU–Egypt action plan was adopted by the EU–Egypt Council in March 2007 and covers six areas³. It was due to expire in March 2012 but its duration has been extended while a new action plan is prepared in conjunction with the new Egyptian authorities. The European Commission publishes ENP progress reports annually on the implementation of the planned reforms set out in the action plans.

¹ Article 21(1) of the Treaty on European Union states that: 'The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to.'

² The other ENP beneficiary neighbours are: Algeria, Armenia, Azerbaijan, Belarus, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, occupied Palestinian territories, Syria, Tunisia and Ukraine.

³ 1. Enhanced political dialogue, economic and social development and reform; 2. Trade-related issues, market and regulatory reform; 3. Transport, energy and environment; 4. Migration, social integration, justice and security; 5. Science and technology, research and development, information society and audiovisual cooperation; 6. People-to-people contacts.

14. Up until the end of 2010 the European Commission was responsible for developing the ENP approach and then programming and implementing the assistance and the overall ENP cooperation framework. Following the establishment of the EEAS in December 2010, the EEAS became responsible for policy development and the overall cooperation framework and the EEAS and Commission shared responsibilities for programming assistance. Implementation of assistance remains the responsibility of the Commission.

EU FINANCIAL ASSISTANCE

15. The ENPI⁴ was launched in 2007 to provide financial assistance to help partner countries implement the action plan. The ENPI replaced the previous EU 'MEDA' financial assistance programme, which had just covered southern and eastern Mediterranean countries⁵. ENPI assistance is conditional on the respect of democracy and human rights (Article 28). Egypt is one of the main beneficiaries of the ENPI, receiving an allocation of approximately 1 billion euro in the framework of EU's Egypt country strategy paper (CSP) for 2007–13. The CSP identifies three priority areas for ENPI assistance (see *Annex I* for details of allocations):
- (a) supporting reforms in the areas of democracy, human rights and justice (90 million euro);
 - (b) developing the economy's competitiveness and productivity (409 million euro);
 - (c) ensuring the sustainability of development (508 million euro).
16. Approximately 40 % of ENPI assistance to Egypt is used to finance projects while in the order of 60 % of ENPI assistance to Egypt is being implemented through SBS. This involves the channelling of EU funds directly to Egypt's national budget subject to Egypt meeting sectoral and PFM reform conditions⁶. In recent years the Commission in its aid programmes has placed a major emphasis on improving PFM — how beneficiary governments plan, implement and control their budgets — in order to help improve the economy, efficiency, effectiveness and transparency of both how they use their own national finances and also EU funds. Budget support is the main instrument the Commission has used for this purpose in Egypt.

⁴ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument (OJ L 310, 9.11.2006, p. 1).

⁵ Council Regulation (EC) No 2698/2000 of 27 November 2000 amending Regulation (EC) No 1488/96 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (OJ L 311, 12.12.2000, p. 1).

⁶ The Commission's budget support can take two forms: general budget support (GBS) or sector budget support (SBS). GBS focuses more on supporting national development plans while SBS focuses on sector strategies. In accordance with its general approach to providing budget support in lower middle income countries, the Commission has used exclusively SBS in Egypt.

17. While EU assistance in Egypt is mainly financed through the ENPI, further, much smaller support in the area of governance has been provided through the European Instrument for Democracy and Human Rights (EIDHR), and thematic programmes funded from the Development Cooperation Instrument (DCI), the Instrument for Stability (IfS) and the more recently established Civil Society Facility. A key characteristic of this support is that the Commission can provide it directly through grants to civil society organisations (CSOs) and other non-state actors (NSAs) without having to enter into financing agreements with the national authorities.

AUDIT SCOPE AND APPROACH

18. The audit addressed the overall question:

‘Have the European Commission and the European External Action Service (EEAS) managed effectively the European Union support to improve governance before and after the 2011 uprising?’

19. The audit covered the period from the launch of the ENPI in 2007 to September 2012⁷.

20. The audit focused on two key areas of governance: democracy and human rights on the one hand, and PFM and the fight against corruption on the other hand.

(a) In the area of democracy and human rights the audit examined:

- (i) the largest human rights programme funded from the ENPI (17 million euro);
- (ii) the annual funding from the EIDHR and the related DCI thematic programme on NSAs, including a sample of 15 projects with a total value of 2,95 million euro;
- (iii) two projects funded from the Instrument for Stability with a total value of 2,86 million euro.

(b) In the area of PFM and the fight against corruption:

- (i) the three largest SBS programmes (total value of 304 million euro)⁸;
- (ii) the main anti-corruption project financed by the ENPI (2,5 million euro).

More detailed information on all the interventions audited is given in **Annex II**.

21. For each of these areas of governance the audit also assessed the EU–Egypt action plan, the dialogue between the EU and Egypt on the implementation of the action plan, and the Commission’s progress reports.

22. The Court gathered evidence for its assessment through documentary review and interviews with the EEAS, the Commission, the Egyptian authorities and CSOs, as well as other donors. The audit included a 2-week visit to Egypt in June 2012. An international expert provided advice to the audit team in the field of democracy and human rights.

⁷ The audit did not include EU support provided through the previous ‘MEDA’ programme (see paragraph 15).

⁸ The audit examined only the PFM and anti-corruption aspects of these programmes.

OBSERVATIONS

FEW RESULTS ACHIEVED BEFORE THE UPRISING

INEFFECTIVE TREATMENT OF HUMAN RIGHTS BEFORE THE UPRISING

- 23.** As for all ENP countries, before negotiating the action plan with the Egyptian authorities, the European Commission issued in 2005 a country report⁹ setting out its assessment of the situation in Egypt. The report included critical observations on the political situation and highlighted the negative impact of the emergency law on human rights and democracy.
- 24.** Following negotiations with the Egyptian authorities, the Commission was able to have three high priority areas relating to human rights and democracy included among the 19 high priorities areas in the action plan¹⁰. However, at a more detailed level, the action plan contained as many as 39 priority actions in the field of human rights and democracy. This represented an overly ambitious agenda which was not based on clearly spelled-out priorities on the part of the Commission.
- 25.** The actions foreseen covered sensitive topics such as cooperation in the field of elections, the right of assembly and association, and the rights of detainees. Nevertheless, a number of key issues which had been raised in the country report were not directly addressed, in particular the continuance of the emergency law, the role of military and state security courts and the widespread use of torture. In addition some actions were rather vaguely defined and without clear benchmarks to assess progress.

⁹ COM(2005) 72 final of 2 March 2005.

¹⁰ (i) enhance political dialogue and cooperation on shared values; (ii) enhance the effectiveness of institutions entrusted with strengthening democracy; (iii) promote the protection of human rights in all its aspects.

MAIN HUMAN RIGHTS PROJECT LARGELY UNSUCCESSFUL

- 26.** The 2007–13 CSP was the first time that human rights and democracy had been selected as a priority area for EU financial assistance (see paragraph 15). This represented a success for the Commission in its efforts to push these topics up the political agenda in its relations with Egypt.

- 27.** The main intervention launched in this area in the framework of the CSP was an ENPI programme for the promotion and protection of human rights and civil society. It aimed to increase the capacity of Egyptian institutions as well as CSOs to effectively implement international conventions in this area. The programme was intended to help address the high priority given in the action plan to human rights. It was approved in 2008 for 17 million euro (for details see **Annex II**).
- 28.** There were several weaknesses in the programme's design. It was to a large extent the continuation of different projects financed under the 2002–06 CSP¹¹. However, these projects were not well integrated with each other in the new programme, particularly the project 'Promotion of environmental rights through CSOs'. Moreover, the Commission when designing the programme did not sufficiently take into account lessons learnt from these earlier projects. Two of the organisations selected to implement the programme, while reformist in their approach, were public bodies created by the Mubarak regime, and specifically linked to the President's wife, rather than government ministries¹². This link has become a handicap for the programme after the uprising.
- 29.** Implementation of the programme has been subject to major delays, largely attributable to a lack of commitment from the Egyptian authorities.
- (a) The financing agreement was signed by the Egyptian authorities only on 23 December 2009, the last day before the deadline for this. This followed a difficult negotiation process between the Commission and the Egyptian authorities over the content of the programme and how it was to be implemented.
 - (b) Implementation following the signature continued to be very slow. After 30 months, and just 6 months before the contracting deadline, only 53 % of the programme funds had been contracted and 22 % paid. There were particular delays in getting the programme management unit operational which have affected implementation of the programme as a whole.
 - (c) The cancellation in April 2012 of the component for enhancing CSO capacity (4 million euro) was a major setback for the programme. It was the result of the lack of agreement between the Egyptian authorities and the Commission on the wording to be used in relation to minorities and gender when drafting the call for project proposals. The Commission services themselves did not take a clear decision on these points.

¹¹ Funding for the 2002–06 CSP came from the MEDA instrument (support in the field of democratisation, human rights and civil society programme and children at risk programme).

¹² National Council for Childhood and Motherhood (NCCM), National Council for Women (NCW).

- 30.** Despite the efforts the Commission made to keep the programme alive, it has produced few outputs so far and their sustainability is very much dependent on political developments in Egypt. While the Commission intended the programme to be a way to raise the profile of human rights issues, in practice it was not able to use it as a means of developing dialogue with the Egyptian authorities on this subject.

LITTLE FUNDING BEFORE UPRISING FOR CIVIL SOCIETY THROUGH EIDHR AND DCI-NSA THEMATIC PROGRAMME

- 31.** The Commission has used the EIDHR to address some very sensitive subjects such as the electoral process and the combating of torture and ill-treatment. These could not be addressed in the framework of the ENPI assistance given that this requires the Commission to enter into financing agreements with the national authorities. While the EIDHR initially was used more to focus on socio-economic rights, the Commission's introduction of the DCI-NSA thematic programme in this area since 2010 has allowed it to concentrate the EIDHR on democracy and political rights. The funding was used to build up the capacity of CSOs to act effectively in these areas and to provide support to the victims of human rights abuses.

- 32.** However, the very limited funding made available before the uprising for these two instruments does not reflect the policy importance which the EEAS and Commission gave to democracy and human rights in the action plan (see paragraph 24). It is also low compared to the assistance allocated from the ENPI to human rights and democracy (see previous section)¹³ and the amounts allocated to budget support. For the EIDHR the average annual funding from 2008 to 2010 was as little as 875 000 euro, despite there being an average of 40 applications a year. Only between four and seven grants were awarded each year for an average amount of approximately 150 000 euro. Allocations were equally modest for the DCI-NSA thematic programme when it was introduced in 2010¹⁴.

- 33.** The Commission has not yet carried out a mapping exercise on Egyptian CSOs. Its lack of detailed information on CSOs made it harder to ensure that the views of a variety of CSOs on the content of the annual calls for proposals for EU programmes were taken into account. It also made it more difficult to design calls for proposals appropriate to their capacity¹⁵.

¹³ Some of the CSOs which the audit team met with during its work in Egypt expressed particular frustration at the limited EU funding channelled to CSOs for human rights and democracy support compared to the amounts allocated to the Egyptian authorities.

¹⁴ The 2010 NSA thematic programme allocation was 970 000 euro. Forty-eight applications were received and three grant contracts awarded.

¹⁵ For example, the size of the grants to be awarded or the required level of co-financing.

- 34.** Implementation of assistance through the EIDHR and the DCI-NSA thematic programme was slowed down by the length of the procedures for the Commission's call for proposals. The average time between the deadline for CSOs to submit their project proposals and the Commission's signature of the grant contract to fund the project was 8,5 months for the sample of contracts examined. This is despite the small contract amounts and the fact that the timeframe for their implementation is often only 24 months.
- 35.** Nine of the 14 signed projects in the sample suffered delays due to long approval procedures by the Egyptian Ministry of Solidarity and Social Justice¹⁶. In these cases the Commission adopted a flexible and supportive approach, systematically suspending the timeframe for project implementation until the CSOs received the necessary approval.
- 36.** Of the five projects in the sample that had been completed, three had delivered the planned outputs to the benefit of the target groups. The other two projects did not fully achieve their objectives, mainly due to interference from the Egyptian authorities. The projects' contribution to improving governance has been mostly at very local level.

¹⁶ In order to comply with Law 84/2002, NGOs must obtain approval of each project funded from foreign sources before carrying out the activities.

DIALOGUE BUT LITTLE ACTION ON HUMAN RIGHTS AND DEMOCRACY

- 37.** After lengthy negotiations, the Commission was able to obtain the agreement of the Egyptian authorities to set up a subcommittee on political matters within the framework of the association committee. However, the name of the subcommittee reflected the compromise involved: 'Subcommittee on Political Matters: Human Rights and Democracy — International and Regional Issues'. While the Commission wished to focus dialogue on human rights and democracy, the Egyptian side wanted to concentrate on international security issues in line with its ambition to develop a strategic partnership with the EU.

- 38.** The subcommittee met once a year from 2008 to 2010. The EU side increasingly raised critical issues relating to human rights and democracy in Egypt, including torture, freedom of association and expression, the restrictive law on NGOs¹⁷ and the continuance of the emergency law itself. However, the response of the Egyptian side was to focus on international issues and reassure the EU side that action was being taken on domestic governance issues or to play down their importance. The Egyptian authorities also argued that they were addressing human rights issues through the ENPI programme on this subject although in reality they were constantly delaying this project (see paragraph 29).
- 39.** The Commission did not succeed in ensuring that the issues it brought up in the subcommittee dialogue were subsequently followed up by the Egyptian authorities with concrete actions. Even when issues raised were included as action items at the end of the meeting, they were not generally implemented. For example, the 2009 subcommittee included as an action point 'exploring the possibility to use EU technical assistance to advise Egypt on NGO legislation in Member States'. This was not followed up.
- 40.** The Commission's progress reports on the implementation of the action plans similarly raised sensitive issues concerning human rights and democracy and took an increasingly critical stance. However, they did not refer to the problems faced in implementing EU assistance intended to address these issues. At the same time, until the 2011 progress report¹⁸, no proposals were made by the Commission in the reports on measures to be taken by the Egyptian authorities to tackle the issues raised.
- 41.** The Commission made no link between its criticisms of human rights violations made in the progress reports and the option of reducing or suspending EU assistance. This is despite the fact that human rights clauses are included in the association agreement, the ENPI regulation (see paragraphs 11 and 15) and the financing agreements for individual programmes. While the reduction or suspension of budget support, given that it was directly financing the national budget, could have been a particularly potent way of backing up human rights concerns, this was not done before the uprising.

¹⁷ Law 84/2002.

¹⁸ From 2011, the progress report is a joint staff working document between the Commission and the EEAS, and is under the responsibility of the latter.

NO PFM REFORM PLAN

- 42.** The EU–Egypt action plan addresses a number of PFM reform priorities although not in a detailed way. It also referred to the need for more transparency and a revised anti-corruption policy but without emphasising the importance of tackling corruption and including it among the 19 high priority areas.
- 43.** Budget support is a key instrument used by the Commission for promoting PFM reform in partner countries. Commission policy emphasises the need for countries receiving budget support to put in place a PFM reform plan in order to prioritise and coordinate reforms. However, despite the fact that approximately 60 % of EU assistance is being channelled through budget support, the Commission did not require the Egyptian authorities to establish such a plan.
- 44.** In 2009 the Commission funded a public expenditure and financial accountability (PEFA) assessment on the state of PFM in Egypt which highlighted weaknesses in key areas of PFM, including external audit and legislative scrutiny of audit reports. However, the PEFA exercise was not followed up by firm steps to put in place a reform programme. Only in December 2011 did the Ministry of Finance (MoF) endorse an International Monetary Fund roadmap which provided the basis for a PFM reform programme¹⁹.
- 45.** Egypt still does not have an anti-corruption strategy although one of the objectives of the ENPI anti-corruption project launched in 2011 is to produce such a strategy (see paragraph 52).

¹⁹ This report has not been made publically available by the Egyptian authorities.

MAJOR SHORTCOMINGS IN PFM NOT TACKLED

46. The pace of PFM reform in Egypt has been slow and SBS programmes have made only a limited contribution to reforms. For example:

- (a) No significant progress has been made in introducing an effective internal audit function despite this area being highlighted in the 2007 EU–Egypt action plan. The MoF originally requested the Commission’s support in this area in June 2009 but the Commission’s only concrete input at the time of the audit was the organisation of a regional seminar on the subject held in June 2011²⁰.
- (b) The Egyptian authorities initiated work in 2006 on establishing a treasury single account (TSA), which is an essential tool for consolidating and managing government cash resources. By June 2012 approximately 500 of the government’s accounting units out of a total of 2 600 had been integrated in the TSA. Although the Commission included progress in this area as a condition in the health SBS programme, this condition did not have a significant incentive effect.
- (c) Progress in implementing the government financial management information system (GFMIS) has also been slow due to a lack of resources and the low priority attached to it by the MoF. This is again despite Commission conditionality in this area.
- (d) Progress was made in developing a pilot medium-term expenditure framework (MTEF) and programme-based budgeting for the education sector. However, subsequent roll-out of these pilot projects to other ministries is still ongoing.

47. The Commission has not used its SBS programmes to address the following major shortcomings in PFM.

- (a) Important areas of the budget are not transparent. Military expenditure is not declared and there is also no information on presidential expenses.

²⁰ The Commission organised a regional seminar covering several north African countries using SIGMA (support in governance and management).

- (b) The Egyptian authorities hold at least 36 billion Egyptian pounds (approximately 4 billion euro), equivalent to 2,4 % of Egyptian GDP, outside the state budget in so-called 'special funds'. Their exact size is unknown, as are the purposes for which, and the way in which, they are used. The Commission has not used the SBS programmes to specifically address this issue.
- (c) No progress has been made in reforming external auditing. The Central Auditing Organisation (CAO), the supreme audit institution in Egypt, reported directly to President Mubarak and its audit reports are largely secret. The CAO's lack of reform and transparency is a serious impediment to improving PFM.

²¹ A 'Support to public administration reform' project (9 million euro), for which the financing agreement was signed in December 2011, foresaw the contracting of TA contract for PFM reform.

48. According to Commission policy, the satisfactory overall implementation of PFM reforms is a general condition for budget support. However, the Commission did not establish clear criteria in terms of annual reform milestones and benchmarks for monitoring and assessing what constituted an adequate pace of reform and continued to disburse budget support despite the slow implementation of reforms.

49. The Commission has been the only donor providing budget support to Egypt. As a result there has been no scope for coordinating with other donors to increase the funding attached to conditions and thereby strengthen their incentive effect.

50. While EU budget support programmes in most countries are generally accompanied by technical assistance (TA) to advise on PFM reforms, little use has been made of such TA in Egypt. In addition, no specific TA project on general PFM reforms was funded until December 2011²¹. The SBS programmes have also not been accompanied by any funding for CSOs to develop their role in monitoring the national budget.

LITTLE PROGRESS IN FIGHTING CORRUPTION

- 51.** Despite Egypt's serious problems in the area of corruption²², the SBS programmes have done little to directly address this issue. Some EU budget support programmes in other countries have included specific conditions on corruption but this was not the case in Egypt. The main exception was the provision in the framework of the education SBS programme of TA for a public expenditure tracking survey (PETS). The survey was partly intended to identify 'leakages' in the education sector but the exercise was not very effective.
- 52.** The main EU project specifically directed at fighting corruption was approved in 2008 for 2,55 million euro. It was the only significant donor project launched in this area in the years before the uprising. However, its implementation has been difficult and the Commission has not sufficiently monitored the project despite its importance. Given the recent start of the project and the delays already encountered, its outputs so far are limited. Nevertheless its prospects for sustainability appear good given the current widespread public concern in Egypt about corruption.

²² Egypt was ranked 77th in the Transparency International Corruption Perception Index in 2004, and 112th in 2011 (183 countries surveyed). The World Bank's worldwide governance indicators (WGIs) show that the control of corruption in Egypt has worsened over the period from 2001 to 2011.

THE COMMISSION DID NOT ADEQUATELY USE THE ENP COOPERATION FRAMEWORK TO ADDRESS PFM AND CORRUPTION

- 53.** Neither the Commission nor the Egyptian authorities put PFM issues on the agenda of the association committee, while none of the eight sub-committees included PFM in its remit. The annual EU–Egypt economic dialogue meetings could have potentially been used to address PFM issues, but were not.
- 54.** Corruption matters were discussed in the Subcommittee on Justice and Security, which met annually from 2007 to 2010. There was some exchange of information on anti-corruption initiatives but regular calls for cooperation from both sides were not followed up by concrete actions. The dialogue also did not lead to new ENPI projects nor did it address the difficulties faced in starting up the 2008 ENPI project (see paragraph 52). The broad scope of the subcommittee and the limited time scheduled for its meetings made more in-depth discussions, decision-making and follow-up difficult.

- 55.** The ENP progress reports have devoted little attention to PFM. The reports have, however, become more critical. Thus the 2010 report noted the overall slow pace of PFM reform while the 2011 report touched for the first time on the military budget, criticising the military's efforts to keep its budget outside any civilian or democratic control, although this subject still warrants much more attention.
- 56.** Similarly, the Commission only briefly addressed the subject of corruption in the progress reports. From 2007 to 2010 the reports were moderately positive on progress made, ignoring fundamental challenges in this area. The 2011 report adopted a more critical stance, recognising corruption as a major issue.

FEW CHANGES IN RESPONSE TO THE UPRISING

ASSISTANCE PROGRAMMES REMAINED LARGELY UNCHANGED DESPITE ENP REVIEW

- 57.** Before the Arab Spring in 2011, the High Representative and the Commission launched an overall review of the ENP in July 2010 involving consultations with Member States, partner countries and civil society to assess how it could be made more effective. The outcome of this review was published in a joint communication in May 2011 entitled 'A new response to a changing neighbourhood'²³. Its main focus was to emphasise the EU's support for democratic reform and it proposed to give countries incentives to move in this direction by offering what it termed 'more for more': more EU funding, better trade access to the EU and better travel possibilities to the EU in return for more democratic reforms²⁴. An EU special representative (EU SR) for the southern Mediterranean was appointed in July 2011 to help implement the review²⁵.
- 58.** In fact a 2007 Commission communication following the launch of the ENPI had already referred to a 'more for more' approach: 'The ENP is a partnership for reform that offers 'more for more': the more deeply a partner engages with the Union, the more fully the Union can respond, politically, economically and through financial and technical cooperation'²⁶.

²³ COM(2011) 303 final of 25 May 2011.

²⁴ These potential benefits offered by the EU are sometimes described as the three 'M's: money, markets and mobility.

²⁵ Council Decision 2011/424/CFSP of 18 July 2011 appointing a European Union special representative for the southern Mediterranean region (OJ L 188, 19.7.2011, p. 24).

²⁶ 'A strong neighbourhood policy', COM(2007) 774 final of 5 December 2007 (p. 2).

59. While overall the ENP review involved an extensive consultation process, consultations specifically with stakeholders involved in Egypt were quite limited.

- (a) No specific in-depth study or evaluation to identify the reasons for the limited effectiveness of ENPI assistance to Egypt prior to the uprising was made.
- (b) While the Commission organised a meeting for senior officials from ENP partner countries, including Egypt, in October 2010 as part of the ENP review, the planned ministerial meeting in early 2011 was not held.
- (c) ENP review consultations with NGOs working in Egypt were very limited. While the Commission organised a meeting in November 2010 in Brussels with NGOs from all ENP partner countries, the invitation was sent at short notice to only six Egyptian NGOs, of which just one attended.

60. Following the uprising the EEAS and Commission also carried out a review of the CSP 2007–13 and NIP 2011–13 to assess their continued relevance. The EEAS and Commission concluded that there was no need to formally revise these two documents as the assistance set out in them was sufficiently broad-ranging and flexible. The NIP 2011–13 had been based on a 2009 review of the CSP which took a positive view of developments in Egypt in the area of human rights and democracy, referring to the need to ‘consolidate achievements made so far and to encourage further bold steps towards political reform’. Similarly the EU delegation’s review of the proposed ENPI assistance programme for 2011 did not lead to major changes²⁷.

61. Particularly at the level of the CSP and NIP, it would have been expected that the EEAS and Commission would propose more changes in the light of the uprising and the ENP review. This is notwithstanding the fact that the SCAF, while in power as a caretaker government in the 18 months after the uprising, limited the scope for developing a completely new assistance strategy with the Egyptian authorities.

²⁷ Two projects, one on family planning (20 million euro) and one on demining (10 million euro) were cancelled because they were not considered high priority. They were replaced by one on support to agricultural SMEs (22 million euro) and the doubling of funding for a project to improve slums in Cairo.

LESS ATTENTION TO WOMEN'S AND MINORITIES' RIGHTS

- 62.** The ENP review emphasises the need for 'deep democracy', highlighting the importance not only of elections but the independence of the judiciary, the accountability of the police and army, and the need to combat corruption. All of these are major issues in Egypt, the concept of 'deep democracy' contrasting with the lip service paid to democracy by the authorities before the uprising.
- 63.** On the other hand the review pays less attention to two aspects of 'deep democracy' which are particularly important in Egypt and under threat after the uprising.
- (a) The rights of minorities: sectarian violence has been increasing with Christians suffering the brunt of the violence. Investigations into the violence have been sluggish or non-existent²⁸.
 - (b) The rights of women: while this was an area where some advances were made over the last decade of the Mubarak regime, this progress is at risk since the uprising. Following the uprising the new parliament called for the abolition of several institutions supporting women's rights. It also demanded a reduction in the age of marriage, the decriminalising of female genital mutilation (FGM) and a review of the personal status law and child law in line with Sharia principles.

Apart from the human rights aspects, further regression in these areas also threatens to exacerbate current economic problems, particularly through their negative impact on tourism and foreign and domestic investor confidence.

- 64.** The EEAS and Commission have so far taken only a few new funding initiatives in these two areas as a result of the review. They included new themes in the 2011 and 2012 EIDHR calls for proposals on promoting tolerance, pluralism and intercultural dialogue although funding only amounted to approximately 500 000 euro for the 2011 budget. The main new funding initiative on women's rights was a proposal to transfer the 4 million euro from the cancelled component of the ENPI human rights and democracy programme (see paragraph 29(c) to a project with UN Women to support women's rights and livelihood.

²⁸ 'Egypt: investigate violence against Coptic Christians', Human Rights Watch, 10.10.2011 (<http://www.hrw.org/news/2011/10/10/egypt-investigate-violence-against-copticchristians>).

NEW SUPPORT FOR CSOS HAS SO FAR HAD LITTLE IMPACT

- 65.** As part of its stress on developing 'deep democracy', the review underlines the important role of civil society. Accordingly it proposes two new initiatives in this area: the Civil Society Facility (CSF) instrument and the European Endowment for Democracy (EED) foundation.
- 66.** One particular purpose of the EED is to support unregistered CSOs. This is potentially a useful measure to address the problems which CSOs faced in Egypt both before and after the uprising. The EED is also intended to allow more flexible procedures for funding CSOs than is currently the case. However, the EED is yet to start delivering assistance as it was only still in the process of being set up in mid 2012 and experiencing difficulties attracting funding.
- 67.** The CSF was only starting to become operational at the time of the audit and Egypt's allocation for 2011 was only 600 000 euro. Additional funding for the EIDHR and the DCI-NSA thematic programme following the uprising has also been modest despite an increase in the number of applications from CSOs. There is a risk of overlap between the CSF, the EED, and the existing EIDHR and the DCI-NSA thematic programme.
- 68.** While the Egyptian authorities have been reviewing the current restrictive law on NGOs, it remains unclear how far the new law foreseen for 2013 will bring significant liberalisation.

BUDGET SUPPORT: POTENTIAL PROGRESS BUT REVISED CONDITIONS NEED TO BE STRICTLY APPLIED

- 69.** The ENP review also referred to planned changes in budget support. The actual changes were subsequently set out in the Commission communication 'The future approach to EU budget support to third countries'²⁹. Several elements of the revised approach are relevant to Egypt:
- (a) as part of its PFM general condition for budget support, the Commission will pay particular attention to the fight against corruption;
 - (b) transparency and oversight of the budget will be a new eligibility criterion for budget support;
 - (c) closer coordination with other donors to increase leverage on political and policy reform dialogue and the impact of the funds.
- 70.** However, the potential benefits of the new approach will not be realised unless the Commission takes a stricter approach than before the uprising to assessing whether the eligibility criteria have actually been met. Moreover, while the revised approach to budget support now makes a commitment to human rights and democracy a condition for GBS (now termed 'good governance and development contracts'), this is not so clearly the case for SBS (now termed 'sector reform contracts') which has been the form of budget support used in Egypt³⁰.
- 71.** Ongoing SBS programmes in Egypt have not been modified following the uprising to take account of the revised approach. Work on implementing the IMF roadmap (see paragraph 44) did not start during the first half of 2012.

²⁹ COM(2011) 638 final of 13 October 2011.

³⁰ The communication refers to the reduction or suspension of GBS as a response to a 'significant' deteriorating trend in a country's commitment to human rights and democracy. However, in such cases funding may be transferred to SBS programmes. In the case of SBS political governance issues are to be weighed against the needs of service delivery. Thus SBS programmes are only to be suspended as part of the suspension of all assistance programmes following a 'severe' deterioration in political governance.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

- 72.** Overall the EEAS and Commission have not been able to effectively manage EU support to improve governance in Egypt. This was partly due to the difficult conditions they have faced in Egypt but also to shortcomings in the way the EEAS and Commission have managed EU cooperation with Egypt. Before the uprising, the Commission attempted to address some key governance issues but was unable to find a way to obtain concrete results. After the uprising, the EEAS and Commission's review of the ENP highlighted a number of areas where cooperation needed to be made more effective but little has been achieved so far.
- 73.** Before the uprising the Commission included a large number of human rights and democracy issues in the action plan but did not have a clear strategy for prioritising and implementing them. While it also raised important issues in the framework of its dialogue, it did not ensure that discussions were followed up by specific actions. This was similarly the case for its annual 'progress reports' on Egypt.
- 74.** Before the uprising, the Commission made considerable efforts to set up and implement a sizeable ENPI programme on human rights but the programme has so far achieved few outputs due, principally, to the lack of cooperation from the Egyptian authorities. Despite the lack of progress on human rights and democracy the Commission continued to provide large sums of money to the Egyptian government, notably through budget support. While the projects which the Commission funded directly through CSOs, were more successful, the money allocated to this area was very limited.
- 75.** PFM and corruption issues were not given a high priority in the EU–Egypt action plan despite the significant challenges in these areas. No forum was established for dialogue on PFM within the framework of the association committee while the progress reports devoted only limited attention to these areas and until recently tended to take too optimistic a view of results being achieved in these areas.

- 76.** Budget support has been the main Commission mechanism for implementing assistance to Egypt, and one of budget support's main objectives is to improve the management of public finances. Progress towards achieving this objective has been very slow and some key shortcomings in PFM were not addressed. The Commission, the only donor to use budget support, has been too flexible in its assessments that the Egyptian authorities were satisfactorily implementing PFM reforms, a key condition for granting budget support.
- 77.** The Commission did not use budget support to directly address corruption although this was common practice in other countries. The Commission has funded an important anti-corruption project but the project has been delayed and the Commission has not monitored it sufficiently. It has not yet achieved major results and its prospects for sustainability will depend on the follow up given by the Egyptian authorities to the public demand for action in tackling corruption.
- 78.** After the uprising, the ENP review marked a significant effort by the EEAS and Commission to improve the effectiveness of support to ENP countries, including Egypt. However, they have not yet translated the review into significant changes in the support to Egypt, mainly because of the difficult conditions prevailing on the ground in Egypt. The emphasis on 'deep democracy' is very relevant to Egypt but women's rights and minority rights are key issues in Egypt which have not been strongly emphasised in the review and subsequent new assistance. Two new mechanisms have been established to support civil society but so far new assistance on the ground in Egypt has been limited.
- 79.** The recent review of budget support identifies some key areas for improvement and specifies new stricter eligibility conditions. The impact of these new conditionalities will greatly depend on the rigour with which they are implemented.

RECOMMENDATIONS

- 80.** In relation to human rights and democracy the EEAS and Commission should use the new context following the uprising to:
- (a) identify a limited number of benchmarked human rights and democracy priorities, and develop an intensive dialogue on them with the Egyptian authorities;
 - (b) review the budget for the EIDHR and DCI-NSA thematic programme in line with the ENP review's commitment to 'deep democracy' and reallocate resources from ENPI assistance to these instruments in cases where the Egyptian authorities do not sufficiently cooperate in ENPI governance programmes;
 - (c) avoid overlap and dispersion of funding between the different instruments used in this area (EIDHR, DCI-NSA, CSF, EED);
 - (d) accelerate support to CSOs, notably at the calls for proposals stage, and make it more flexible and responsive to their organisational capacity;
 - (e) apply conditionality rigourously in relation to human rights and 'deep democracy'.
- 81.** In relation to PFM and the fight against corruption the EEAS and Commission should accelerate the progress made in this area by:
- (a) placing more emphasis on these issues in the new action plan, particularly in relation to guaranteeing budgetary transparency and fully independent external auditing;
 - (b) establishing an association agreement subcommittee specifically devoted to PFM and the fight against corruption;
 - (c) supporting the Egyptian authorities in the implementation of the IMF roadmap and agree on clear milestones for its implementation.

- 82.** Specifically in relation to strengthening the management of budget support, the EEAS and Commission should carry out a review on the basis of the revised EU approach to budget support of the appropriateness of providing budget support to Egypt. Eligibility criteria such as respect for human rights, transparency and oversight of the budget and tackling seriously the issue of corruption should be strictly applied.

This report was adopted by Chamber III, headed by Mr Karel PINXTEN, Member of the Court of Auditors, in Luxembourg at its meeting of 14 May 2013.

For the Court of Auditors



Vítor Manuel da SILVA CALDEIRA
President

ENPI PROGRAMMED ALLOCATIONS FOR EGYPT 2007–13

(million euro)

	NIP 2007–10	NIP 2011–13
Priority 1 — Supporting reforms in the area of democracy, human rights and justice	40	50
Support for political development, decentralisation and promotion of good governance	13	5
Promotion and protection of human rights	17	15
Support for the modernisation of the administration of justice	10	10
Upgrading of regulatory, institutional and legislative environment	0	20
Priority 2 — Developing the competitiveness and productivity of the economy	220	189
Support for the implementation of the action plan programme (SAAP)	220	
— Trade facilitation and customs reform		20
— Economic legislation and the business environment		
— Agriculture and sanitary and phytosanitary system		
— Transport, energy science and technology		169
— Modernisation of the statistical system		
Priority 3 — Ensuring the sustainability of development	298	210
Support for education reform	120	105
Support for public health reform	120	0
Interest rate subsidies (transport, energy, environment)	58	0
Water and waste water services	0	50
Support to rural development		
Local community development	0	35
Support to agricultural SMEs		
Solid waste management		20
TOTAL NIP	558	449

Source: Egypt national indicative programmes 2007–10 and 2011–13.

OVERVIEW OF AUDITED PROGRAMMES AND PROJECTS

HUMAN RIGHTS AND DEMOCRACY

ENPI programme on the promotion and protection of human rights and civil society in Egypt (17 million euro)		
Component title	Contracted amount (euro)	Paid amount (euro)
'Family and child rights' programme	2 000 000	821 736
Support NCW Ombudsman Office in promoting women's rights and increase its efficiency	1 200 000	578 666
Support NCHR Ombudsman Office to enhance a culture of Human Rights through its structure	1 000 000	470 224
Promotion of environmental rights through civil society organisations — Percso	500 000	282 654
Technical assistance to the 'Protection of human rights and civil society' and 'Support to political development and good governance' programmes	1 161 700	531 915
Ministry of International Cooperation. Start-up programme — estimate for the Programme Management Unit (PMU) 'Promotion and protection of human rights and civil society in Egypt' and 'Support to political development and good governance' programmes	128 035	76 821
'Abandonment of FGM and empowerment of families' joint programme	3 000 000	1 006 320
Subtotal ENPI Programme	8 989 735	3 768 336

ANNEX II

EIDHR		
Title	Contracted amount (euro)	Paid amount (euro)
Supporting women leadership and participation in elections 'Elections supportive to women's engagement in public life'	134 071	134 071
Combating impunity and stopping torture in Egypt (a multi-level integrated approach)	135 457	75 986
Socio-economic rights advocacy empowerment programme for marginalised producers network	56 123	28 649
Enforcing economic and social rights through transition to adult life disabled children and young people in Minia governorate	72 780	72 136
The Egyptian platform for non-partisan parliamentary and presidential electoral observation	300 000	269 149
Legislative and judicial obstacles to economic and social rights	111 645	106 051
Protect the at-risk children through giving them access to their rights	111 280	53 002
Mechanisms for legal protection of oppressed women	173 578	156 220
Speak up Egypt! Women's voices	235 046	87 884
Get it right! Enhancing knowledge of legal professionals on public law and fundamental rights	246 239	95 920
Promoting intercultural dialogue: Building civic values and capacity for peaceful coexistence and cooperation	213 840	49 045
Subtotal EIDHR	1 790 059	1 128 113

ANNEX II

DCI-NSA		
Title	Contracted amount (euro)	Paid amount (euro)
Water and sanitation for the poor in upper Egypt	257 000	167 107
Support services for the reintegration of street children and youth into society	350 000	87 442
Empowering street children to claim their rights as citizens	281 237	85 918
Civic engagement through social networking	Originally planned amount: 272 787	Cancelled
Subtotal DCI-NSA	1 161 024	340 647

IfS		
Title	Contracted amount (euro)	Paid amount (euro)
Support to democratisation in Egypt	1 654 235	846 171
Support activities to electoral processes in Egypt	1 203 431	962 745
Subtotal IfS	2 857 666	1 808 916

PUBLIC FINANCE MANAGEMENT AND FIGHTS AGAINST CORRUPTION

ENPI — sector budget support ¹			
Title	Allocated amount (euro)	Contracted amount (euro)	Paid amount (euro)
Transport sector policy support programme (TSPSP)	80 000 000	78 947 955	36 543 674
Education sector policy support programme (ESPSP)	120 000 000	118 178 898	75 549 034
Education sector policy support programme (ESPSP) — additional commitment	20 000 000		
Health sector policy support programme II (HSPSP II)	110 000 000	107 700 000	20 700 000
Subtotal ENPI–SBS 3 SBS programmes (plus one additional commitment)	330 000 000	304 826 853	132 792 708
ENPI programme on the support for political development, decentralisation and promotion of good governance (3 million euro allocated)			
Supporting measures to combat corruption and money laundering, and to foster asset recovery in Egypt one project		2 548 657	487 528

Grand total:

- 25 projects for 17,3 million euro contracted.
- 3 SBS programmes for 304,8 million euro contracted.

¹ The auditors examined only the aspects of the SBS programmes relating to PFM and the fight against corruption at country or sector level.

Source: Common Relex Information System (CRIS) at 30.9.2012.

REPLY OF THE COMMISSION AND THE EEAS

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 for the kind of targeted local organisations and the 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 left 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 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 only allowed 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.

REPLY OF THE COMMISSION AND THE EEAS

VII.

Efforts made by the Commission/EEAS to include a large number of human rights and democracy issues in the ENP EU–Egypt action plan 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 a 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 ongoing thematic grants awarded under this new instrument, the DCI and the EIDHR, and managed by the EU delegation in Egypt was 17.4 million euro. 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 had granted several SBS 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 an 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 dialogue on PFM with the donor community, were supportive of a PEFA and subsequently agreed on a 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 the addition of 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 paragraph 52). Concerning the outputs, the project will run until 20 July 2014. We are therefore halfway through the implementation period and it is therefore premature to conclude on the level of achievement.

REPLY OF THE COMMISSION AND THE EEAS

INTRODUCTION

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 on the Commission agenda in terms of both policy and financial assistance; a number of grants to civil society organisations were devoted to this area. Also a project of 4 million euro was signed in December 2012 with UN Women aiming at women's 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 the progress achieved in meeting agreed reform benchmarks. No payments are made for non-performance.

9.

The analysis of the Egyptian population concerns on the new constitution and the reasons for boycott need to be carefully spelled out. Following President Morsi's constitutional declaration at the end of November 2012 and rushed adoption of the draft constitution and subsequent call for a referendum, the constitution was adopted on 25 December 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 polarisation 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 January 2013¹.

The support to PFM was not only carried out through SBS programme, as the Commission, in its programme 'Public administration reform and local development', has allocated 2 million euro of 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 for the kind of targeted local organisations and the kind of activities.

¹ 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).

REPLY OF THE COMMISSION AND THE EEAS

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 subcommittee 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 bilateral cooperation 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

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

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 ongoing and delivering; in other words, it was too early to include lessons learnt.

The organisations 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 performed well as they did very positive work on women's rights that was recognised by the EU and other donors at the time.

REPLY OF THE COMMISSION AND THE EEAS

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 moving forward with the EU on human rights issues, which is an important achievement in itself.

29. (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 December 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 of Higher Education.

29. (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 UN Women 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-led 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 on 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 have been 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 and DCI-NSA instruments.

REPLY OF THE COMMISSION AND THE EEAS

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 for calls for proposals, as it does not give detailed information about different organisations' management or absorption capacities. This information is gathered more effectively through the delegation's experience² managing over 40 grants with civil society organisations.

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 (150 000 euro) 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.

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 organisations 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.

² This experience continues to show that the maximum size of grants should be kept under 300 000 euro, especially for local organisations, in order not to overwhelm generally weak internal management systems. In terms of co-financing levels, the delegation has strived to minimise the co-financing requirements for Egyptian organisations as much as 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 maximise 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.

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 2008–10, 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 were achieved would the EU 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.

REPLY OF THE COMMISSION AND THE EEAS

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 paragraph 38 where for example the PFM priorities are detailed with specified benchmarks.

In this context, it should be noted that the increased attention placed on PFM reflects the recognised need for full coherence between political ambitions and financial and technical cooperation. At the time of the negotiations on 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 cooperation 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 dialogue on PFM with the donor community, were supportive of a PEFA and subsequently agreed on a 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 the first 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 focusing 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).

REPLY OF THE COMMISSION AND THE EEAS

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 to introduce an internal audit function. However, it rejected any concrete TA that was finally mobilised early 2013 by the Commission/EEAS by using top-quality experts from the OECD.

46. (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 in maintaining/keeping of momentum in this process.

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

46. (c)

The process of implementation of GFMIS 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 for 2014–15, and is yet to be formally adopted.

46. (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 focused 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 fourth 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.)³.

47. (a)

See also reply to paragraph 47.

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 ongoing 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 47 (a).

³ 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.

REPLY OF THE COMMISSION AND THE EEAS

47. (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 progress.

49.

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

50.

The TA envelopes embedded in SBS 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) focusing 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 implement in this case. The political context is indeed not conducive to the establishment of CSOs with sufficient capacities in this area.

Little progress in fighting corruption

More progress is needed on the fight against corruption.

51.

Reform benchmarks for Egypt's SBS programmes are focusing on the 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 the fight against corruption would be overcharging the SBS instrument. Prevention of corruption or fraud that could be associated with 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 the addition of 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.

REPLY OF THE COMMISSION AND THE EEAS

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

This file has been closely monitored by the Commission. Exchanges between the EU delegation and UNODC have been regular since the beginning of the project, with at least one meeting a month in addition to specific project 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 halfway through the implementation period and it is premature to conclude on the level of achievement as there is still time to deliver.

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 the inclusion of 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.

The 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 cooperation initiatives. After the uprising, the 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 follow 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 paragraphs 53 and 54.

REPLY OF THE COMMISSION AND THE EEAS

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 and 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 the 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 reorient its planned cooperation for 2011, the decision process (a complex process that normally lasts up to 1 year), was almost at its end and it would have been impossible to make more radical changes. The biggest changes in the NIP 2011–13 took place in 2012–13.

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 paragraph 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 emphasised 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:

- o 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.

63. (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.

63. (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 include 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 UN Women was set up following the reallocation of 4 million euro for civil society under the bilateral human rights programme.

REPLY OF THE COMMISSION AND THE EEAS

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 the late starting of activities can be imputed to the Commission/EEAS.

67.

Egypt has received the highest allocation of CSF funds for 2012–13 in the south neighbourhood region (2 100 000 euro 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 of 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 authorise or reject registration requests. Due to the insistence of the Commission/EEAS, the Minister of Justice finally accepted the EU offer to provide peer advice on the draft NGO law, in order to draft a law in line with international standards. This TA was provided in mid March 2013.

70.

There are now three different contracts for budget support: good governance and development contracts (GGDCs), sector reform contracts (SRCs) and state building contracts (SBCs).

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

Where the conditions do not permit a GGDC, an SRC may be provided based on an assessment balancing fundamental value concerns with the need to protect and serve the population. For fragile countries or in a situation of transition SBCs 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 ongoing budget support programmes is to be seen on the occasion of the next tranche of payment assessments.

REPLY OF THE COMMISSION AND THE EEAS

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 left 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 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 only allowed 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 the inclusion of numerous key human rights and democracy issues is in itself an achievement. Human rights problems — whether relating to socioeconomic 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, in particular under budget support, has allowed the provision and extension of basic social services (health, education, etc.) to reach out to 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 euro 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 ongoing thematic grants awarded under the DCI, EIDHR and ENPI-CSF programmes managed by the EU delegation in Egypt was 17.4 million euro.

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 an 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.

REPLY OF THE COMMISSION AND THE EEAS

Satisfactory implementation of PFM reforms is one of four eligibility criteria for budget support operations but not a condition. The Commission applied stringent monitoring of 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 a 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 the addition of 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 have been regular since the beginning of the project, with at least one meeting a month in addition to specific project 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 halfway 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 calls for proposals was always rejected by the Egyptian government. Furthermore, a new 4 million euro project to promote women's rights through UN Women 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.

REPLY OF THE COMMISSION AND THE EEAS

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 ongoing dialogue on these issues in the context of the design of a new SBC under AAP 2013, which will include democratic governance indicators.

80. (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 programme for this country and make an adequate allocation for the various instruments for future cooperation.

80. (c)

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

80. (d)

The recommendation is implemented already. The new financial regulation which entered into force on 1 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 has already met this ambitious target in Egypt (8.5 months).

80. (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 interinstitutional 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 has already been agreed that support to anti-corruption including PFM should be a key priority for the period 2014–15.

81. (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.

81. (c)

The Commission/EEAS accept this recommendation and are committed to aligning PFM support with the IMF roadmap.

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 four eligibility criteria.

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THIS REPORT ADDRESSED THE QUESTION OF WHETHER THE EUROPEAN COMMISSION AND THE EUROPEAN EXTERNAL ACTION SERVICE MANAGED EFFECTIVELY THE EU SUPPORT TO IMPROVE GOVERNANCE IN EGYPT BEFORE AND AFTER THE 2011 UPRISING. IT FOCUSED ON KEY AREAS OF GOVERNANCE: HUMAN RIGHTS AND DEMOCRACY, PUBLIC FINANCE MANAGEMENT AND THE FIGHT AGAINST CORRUPTION.

IT CONCLUDES THAT OVERALL THE COMMISSION AND EEAS HAVE NOT BEEN ABLE TO MANAGE EU SUPPORT TO IMPROVE GOVERNANCE IN EGYPT EFFECTIVELY. THIS WAS PARTLY DUE TO THE DIFFICULT CONDITIONS THEY HAVE FACED IN EGYPT BUT ALSO TO SHORTCOMINGS IN THE WAY THE COMMISSION AND EEAS HAVE MANAGED THEIR COOPERATION WITH EGYPT.



EUROPEAN COURT OF AUDITORS



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