



EUROPEAN  
COURT OF AUDITORS

Special Report No 9

2013

ISSN 1831-0834

# EU SUPPORT FOR GOVERNANCE IN THE DEMOCRATIC REPUBLIC OF THE CONGO





Special Report No 9 // 2013

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(pursuant to Article 287(4), second subparagraph, TFEU)

EUROPEAN COURT OF AUDITORS  
12, rue Alcide De Gasperi  
1615 Luxembourg  
LUXEMBOURG

Tel. +352 4398-1  
Fax +352 4398-46410  
E-mail: [eca-info@eca.europa.eu](mailto:eca-info@eca.europa.eu)  
Internet: <http://eca.europa.eu>

Special Report No 9 // 2013

More information on the European Union is available  
on the Internet (<http://europa.eu>).

Cataloguing data can be found at the end of this publication.  
Luxembourg: Publications Office of the European Union, 2013

ISBN 978-92-9241-359-0  
doi:10.2865/13761

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*Printed in Luxembourg*

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# ACRONYMS

**ACP:** African, Caribbean and Pacific states

**CAF:** Country assistance framework

**CENI:** Commission Électorale Nationale Indépendante (Independent National Election Commission)

**CMJ:** Comité Mixte de la Justice (Joint Committee on Justice)

**CSDP:** Common security and defence policy

**CSP:** Country strategy paper

**CSRP:** Comité de Suivi de la Réforme de la Police (Police Reform Monitoring Committee)

**DCI:** Development cooperation instrument

**DG:** Directorate-General

**DRC:** Democratic Republic of the Congo

**EDF:** European Development Fund

**EEAS:** European External Action Service

**EIDHR:** European Instrument for Democracy and Human Rights

**EUPOL:** European Union Police Mission in Kinshasa

**EUSEC:** EU mission to provide advice and assistance for security sector reform in the DRC

**HIPC:** Heavily indebted poor countries

**IfS:** Instrument for Stability

**MONUC:** United Nations Organisation Mission in the DRC (replaced by MONUSCO)

**NIP:** National indicative programme

**OECD/DAC:** Organisation for Economic Cooperation and Development/Development Assistance Committee

**OLAF:** European Anti-Fraud Office

**PAG:** Programme d'Appui à la Gouvernance (Governance Support Programme)

**PAMFIP:** Projet d'Appui à la Modernisation des Finances Publiques (Support programme for the modernisation of public finance management systems)

**PAP:** Programme d'Appui aux Parlements (Support Programme for Parliaments)

**PARP:** Programme d'Appui à la Réforme de la Police Nationale (National Police Reform Support Programme)

**PEFA:** Public expenditure and financial accountability

**PFM:** Public finance management

**REJUSCO:** Programme d'Appui à la Restauration de la Justice à l'Est de la République Démocratique du Congo  
(EU programme for the restoration of justice in the eastern part of the DRC)

**ROM:** Results-oriented monitoring

**UNDP:** United Nations Development Programme

**UPI:** Unité de Police Intégrée (EU support programme for the training of the Integrated Police Unit)



## EXECUTIVE SUMMARY

### I.

The Democratic Republic of the Congo (DRC) is widely recognised as one of the most fragile states in the world. The incapacity of the state to deliver basic services to its population is a convincing indicator of fragility. Fundamental elements of good governance such as human rights and democracy are not respected. Having provided about 1,9 billion euro of assistance between 2003 and 2011, the EU is one of the most important development partners of the DRC.

### II.

The Court examined the effectiveness of EU support for improving governance in the DRC. More specifically, it examined EU support for the electoral process, the justice and police and public finance management reforms, and the decentralisation process.

### III.

The Court concludes that the effectiveness of EU assistance for governance in the DRC is limited. EU support for governance is set within a generally sound cooperation strategy, addresses the main needs and has achieved some results. However, progress is slow, uneven and overall limited. Fewer than half of the programmes examined have delivered, or are likely to deliver, most of the expected results. Sustainability is an unrealistic prospect in most cases.

### IV.

Like other development partners, the Commission faces serious obstacles in its efforts to contribute to improving governance in the DRC. The absence of political will, the donor-driven dynamics of the programmes and the lack of absorption capacity account for these failures. However, while the Commission is well acquainted with the main causes and consequences of state fragility in the DRC, it did not take sufficient account of these challenges when designing EU programmes. Risks have not been adequately addressed, programme objectives tend to be overly ambitious, conditionality has a weak incentive effect and policy dialogue has not been exploited to its full potential and adequately coordinated with EU Member States.

### V.

The task of state reconstruction and improving governance in the DRC is going to be a long process. If, as a main development partner with the DRC and an advocate of good governance and human rights, the EU is to continue to support governance in the DRC, it needs to improve significantly its aid effectiveness. In this respect, the Commission needs to be both more realistic on what can be achieved and about the design of EU programmes and more demanding of the Congolese authorities when monitoring compliance with the conditions agreed and the commitments made<sup>1</sup>.

### VI.

The Court recommends that the Commission and the EEAS improve the EU's cooperation strategy with the DRC, better assess the risks in connection with the successful implementation of programmes, establish objectives that are achievable in the national context and strengthen the use of conditionality and policy dialogue.

<sup>1</sup> DRC Prime Minister Augustin Matata Ponyo has declared that 'The DRC needs partners who are demanding but understanding, proactive but respectful and critical but clear-sighted' (*Libération*, 12.12.2012).

# INTRODUCTION

## STATE FRAGILITY

1. The Commission defines 'fragility' as meaning weak or failing structures and situations where the social contract is broken due to the state's incapacity or unwillingness to deal with its basic functions or meet its obligations and responsibilities regarding service delivery, management of resources, rule of law, equitable access to power, security and safety of the population and protection and promotion of citizens' rights and freedoms<sup>2</sup>.
2. Fragile states are often characterised by public institutions, political processes and social mechanisms that lack effectiveness, inclusiveness or legitimacy, high levels of poverty and serious underdevelopment. Another typical feature in many fragile states is that they are unable to exercise effective government authority.
3. Many EU policy documents, including the European Consensus on Development<sup>3</sup>, recognise state fragility as a particular concern in the context of the EU's development cooperation objectives. In 2007, the Commission communication 'Towards an EU response to situations of fragility' emphasised long-term development cooperation as a response to fragility.
4. The need to promote good governance was stressed in the Commission's communications on 'Governance and development'<sup>4</sup> and 'Governance in the European consensus on development', which sought to develop a coherent and common approach to promoting democratic governance.

<sup>2</sup> COM(2007) 643 final of 25 October 2007.

<sup>3</sup> COM(2006) 421 final of 30 August 2006.

<sup>4</sup> COM(2003) 615 final of 20 October 2003.

## THE DEMOCRATIC REPUBLIC OF THE CONGO

### SOCIOECONOMIC SITUATION

5. The Democratic Republic of the Congo (DRC) is located in central Africa, covers 2,3 million km<sup>2</sup> and has an estimated population of 68 million<sup>5</sup> composed of approximately 350 ethnic groups (see **Map**). It was the second most industrialised country in Africa at independence from Belgium in 1960. It has considerable mineral and forest resources, agricultural potential and hydroelectric capacity. The DRC also has oil. Despite natural resource potential, it is now one of the least developed countries. Economic decline started as a result of predatory economic practices, poor governance and insufficient investment under former President Mobutu. Protracted conflict in the Great Lakes region since the early 1990s has had a devastating impact on the economy: infrastructure suffered considerable damage, many institutions were destroyed, assets were lost and investment came to a halt<sup>6</sup>.
6. There has been some macroeconomic recovery since the accession of Joseph Kabila to power in 2001 and the end of the civil war. The government has implemented a programme of reforms aimed at restoring macroeconomic stability, directing resources towards the rehabilitation of infrastructure and reforming the civil service and banking sector. Much economic activity takes place in the informal sector beyond government control. This is a serious handicap to tax revenues. The national budget for 2013 is 8 billion US dollars which is insignificant given the country's size, population and natural resource wealth.
7. Inadequate and dilapidated infrastructure is a major obstacle to economic growth, social development, effective public administration, security and the building of a sentiment of national unity. An overwhelming challenge is a vast and fragmented territory that the government does not control.

<sup>5</sup> World Bank (2011).

<sup>6</sup> Trefon, Th., *Congo Masquerade – The political culture of aid inefficiency and reform failure*, Zed Books, London and New York, 2011.

## MAP

## DEMOCRATIC REPUBLIC OF THE CONGO — ADMINISTRATIVE MAP



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8. Poverty and vulnerability indicators show no signs of improvement. In 2011, the DRC's Human Development Index was 0,286, which gave the DRC a rank of 187 out of 187 countries with comparable data<sup>7</sup>. About 70 % of the population lives below the poverty line<sup>8</sup>. Life expectancy is 48 years<sup>9</sup>. The country is unable to meet its citizens' educational needs<sup>10</sup>. Despite the abundance of natural resources, the DRC paradoxically remains a poor food producer; around 70 % of the population is food insecure and some 14 % of children under 5 years suffer from acute malnutrition<sup>11</sup>.

9. One key development challenge is poor governance. The inadequate capacity of government departments to deliver basic services is central to the country's fragility. Poor leadership, the lack of professionalism, limited career prospects, inadequate human resources management, low salaries<sup>12</sup> and poor working conditions are among the causes of an inefficient and ineffective public administration. Many 'public' services have to be paid for to compensate for the state's incapacity to deliver them. Corruption is widespread: Transparency International's Worldwide Corruption Perception Ranking (2011) has the DRC in 168th place out of 182 countries evaluated (see also paragraph 82).

## POLITICAL AND INSTITUTIONAL SITUATION

10. After the end of Mobutu's regime in 1997, the holding of presidential and legislative elections in 2006 was a major political accomplishment. The elections followed important peace-building efforts which were the basis for a government of national unity that helped set up a transitional government headed by President Joseph Kabila in June 2003<sup>13</sup>.

<sup>7</sup> The HDI of sub-Saharan Africa as a region increased from 0,365 in 1980 to 0,463 in 2011, placing the DRC well below the regional average.

<sup>8</sup> African Development Bank, 'Analyse de la pauvreté en RDC', Working Paper No 112, August 2010.

<sup>9</sup> World Bank country data for the year 2011.

<sup>10</sup> The adult literacy rate was 67 % in 2009 and the primary completion rate was 59 % in 2010 (World Bank).

<sup>11</sup> <http://www.fao.org/emergencies/resources/documents/resources-detail/en/c/162039/>. See also the Court's Special Report No 1/2012 on the effectiveness of European Union development aid for food security in sub-Saharan Africa, in particular Figure 2, Table 2 and Annex I (<http://eca.europa.eu>).

<sup>12</sup> A mid-level civil servant earns less than 100 US dollars a month.

<sup>13</sup> The government was a political compromise among the five main armed groups: the former government army (Forces Armées Congolaises (FAC)), the Mouvement de Libération du Congo (MLC), the Rassemblement Congolais pour la Démocratie (RCD), the Rassemblement Congolais pour la Démocratie/Mouvement de Libération (RCD/ML) and the Rassemblement Congolais pour la Démocratie/National (RCD/N), as well as Mai-Mai militias.

11. The Congolese authorities were dilatory in preparing the November 2011 presidential and legislative elections foreseen by the Constitution. Following a controversial amendment of the Constitution, the presidential election was reduced to a single round, leaving little chance for the opposition to emerge victorious. The lack of cooperation with foreign partners, mismanagement and poor planning of the voting operations strongly affected the credibility of the national electoral commission (CENI) and the results of the elections<sup>14</sup>.
12. Instability and violence in the eastern DRC remain a major concern. The root causes are the weakness of the state, ethnic tensions, land disputes, the presence of armed groups, both foreign<sup>15</sup> and Congolese, and the failure to fully implement peace agreements<sup>16</sup>. The illegal exploitation of the region's mineral wealth continues to fuel conflict. Many international and bilateral partners are involved in security sector reform. As witnessed by the DRC national army's inability to deal with rebels and militias, reform results are poor.

## **EU COOPERATION WITH THE DRC IN THE PERIOD 2003–11**

13. EU cooperation with the DRC was suspended from 1992 to 2002 because of the lack of progress in the political democratisation process, the high degree of corruption, economic mismanagement and differences between EU Member States' policies towards the country. During this period, the EU maintained an active presence through humanitarian aid funded by the DG Humanitarian Aid and Civil Protection (ECHO).
14. EU development cooperation resumed after the signing of the Global and Inclusive Accord in December 2002 and its ratification in Sun City (South Africa) in April 2003. EU financial support to the DRC during the period 2003–11 came to 1 868 million euro, comprising 72 % (1 344 million euro) in development cooperation, 23,5 % (439 million euro) in humanitarian aid and 4,5 % (85 million euro) in political and security-related cooperation.

<sup>14</sup> The results were immediately followed by claims of manipulation, fraud and human rights violations. Although 32 million people registered to vote in 2011, fewer than 19 million (around 59 %) actually cast their ballots. The gap between registration and voting is best accounted for by the tardy arrival of ballots in many of the 63 000 polling stations and the difficulties people had in locating the stations where they were supposed to vote. In pro-Kabila Katanga, registration and voting were officially highest. In the pro-opposition provinces of Equateur, Kasai Oriental and Kasai Occidental, they were low.

<sup>15</sup> The M23 rebellion, with Rwandan support, is the most recent illustration of armed groups operating in eastern DRC and contributing to the overall volatility of the situation and was the main foreign affairs challenge of the second semester of 2012. The M23 succeeded in capturing Goma, the strategic capital of North Kivu. It received significant attention at the UN General Assembly in September 2012 when Presidents Kabila and Kagame refused to publicly shake hands. The M23 is a rebel movement made up mainly of Congolese Tutsis who formerly comprised the 'Congrès National pour la Défense du Peuple' (CNDP). The M23 defected from the DRC army in April 2012 amid pressure on the government to arrest General Ntaganda, who was wanted by the International Criminal Court for crimes against humanity.

<sup>16</sup> 'The DRC: Background and current developments', US Congressional Research Service report by Ted Dagne, Specialist in African Affairs, April 2011.

## DEVELOPMENT COOPERATION

15. The main instrument for development cooperation with the DRC is the EDF. In September 2003, the 9th EDF country strategy paper (CSP) and national indicative programme (NIP) were signed for an initial amount of 171 million euro, built around three main priorities: (i) macroeconomic support aimed at opening access to debt relief; (ii) support for the health sector; and (iii) institution building and support for the transition to democracy.
16. In November 2003, 105 million euro was added, following a Council decision<sup>17</sup> to provide financial support for the democratic transition. In June 2005, the 9th EDF mid-term review allocated an additional 270 million euro and added transport infrastructure as a focal sector. At the end of 2011, the total allocation from the 9th EDF was 625 million euro<sup>18</sup>.
17. The initial allocation under the 10th EDF NIP, signed in September 2008, was 561,7 million euro. The allocation for unforeseen needs was increased from 47,7 million euro in 2008 to 120 million euro in 2010, mainly for continued rehabilitation efforts in the eastern DRC and to address the impact of the world food price rise and financial crises. The 10<sup>th</sup> EDF allocation amounts to a total of 709 million euro (June 2013).
18. The 10th EDF cooperation strategy builds on three focal sectors:
  - (a) governance — support for centralised and decentralised governments, public finance management (PFM) reform and security sector reform (justice and police);
  - (b) infrastructure and transport — support to rehabilitate or upgrade roads and waterways;
  - (c) health.

<sup>17</sup> Council Decision 2003/583/EC of 21 July 2003 on the reallocation of funds received by the European Investment Bank for operations carried out in the Democratic Republic of Congo under the second, third, fourth, fifth and sixth EDFs (OJ L 198, 6.8.2003, p. 8).

<sup>18</sup> The 9th EDF allocation is the final allocation after adding allocations granted as a result of mid-term and end-of-term reviews, as well as decommitted funds from the 7<sup>th</sup> and 8<sup>th</sup> EDFs.

19. Support in non-focal sectors mainly targets regional integration measures and the management of forestry resources.
20. The **Table** provides an overview of the allocations made under the 9th and 10th EDF NIPs.

TABLE

### ALLOCATIONS UNDER THE 9TH AND 10TH EDFs

(million euro)

9th EDF			10th EDF		
		%			%
<b>Programmable aid</b>			<b>Programmable aid</b>		
<b>Focal sectors</b>			<b>Focal sectors</b>		
Health	80	14	Governance	130	23
Infrastructure	50	9	Infrastructure	276	49
Macroeconomic support	106	19	Health	91	16
Institutional support/governance	105	19			
<b>Sub-total</b>	<b>341</b>		<b>Sub-total</b>	<b>497</b>	
<b>Non-focal sectors</b>			<b>Non-focal sectors</b>		
Elections	105	19	Sustainable natural resources, regional measures, TCF <sup>2</sup>	72	13
Natural resources, DDR <sup>1</sup> , others	104	19			
<b>Sub-total</b>	<b>209</b>		<b>Sub-total</b>	<b>72</b>	
<b>Total programmable</b>	<b>550</b>		<b>Total programmable</b>	<b>569</b>	
<b>Non-programmable aid</b>	<b>75</b>		<b>Non-programmable aid</b>	<b>140</b>	
<b>Total</b>	<b>625</b>		<b>Total</b>	<b>709</b>	

<sup>1</sup> Disarmament, demobilisation and reinsertion of former soldiers.

<sup>2</sup> Technical Cooperation Facility.



## EU THEMATIC BUDGET LINES

- 21.** During the period 2003–11, support from the EU general budget amounted to 147 million euro, mostly under the Development Cooperation Instrument (DCI) for support to non-state actors and food security programmes. The European Instrument for Democracy and Human Rights (EIDHR) was deployed in the fields of support for victims of torture, the promotion of democracy and the rule of law, human rights and fundamental freedoms and non-state actors. The Instrument for Stability (IfS) funded stabilisation measures in the eastern DRC and support for the police, such as the support programme for peace and stabilisation in the eastern DRC (see paragraphs 52 and 54).

## HUMANITARIAN AID

- 22.** With about 500 million euro over the period 2003–12, DG Humanitarian Aid and Civil Protection (ECHO) is the largest donor of humanitarian assistance in the DRC. This support is concentrated mostly in the eastern part of the country.

## POLITICAL AND SECURITY COOPERATION

- 23.** The EU Council's diplomatic contributions to regional stabilisation efforts have included successive nominations of EU Special Representatives (EUSR) with a mandate to focus on stabilisation in the African Great Lakes countries, particularly during the post-transition phase in the DRC. The emphasis has been on security sector reform and the fostering of democratic institutions.
- 24.** The EU has also launched five common security and defence policy (CSDP) missions in the DRC: two military operations (Artemis and EUFOR RD Congo) and three civilian missions (EUPOL Kinshasa (2005–07), EUPOL RDC (2007–ongoing) and EUSEC RDC (2005–ongoing)). The two latter civilian missions aim to contribute to the reform of the security sector.

## AUDIT SCOPE AND APPROACH

- 25.** The Court sought to assess whether EU support for governance in the DRC is effective. The audit focused on two questions:
- (a) Is EU support for governance relevant to needs and achieving its planned results?
  - (b) Does the Commission take sufficient account of the DRC's fragile context in the design of EU programmes?
- 26.** The audit covered EU support for the electoral process, security sector reform (justice and police), public finance management (PFM) reform and decentralisation over the period 2003–11.
- 27.** The audit was carried out between March and December 2012 and included:
- (a) a review of key policy documents in the abovementioned areas, review of the CSPs and NIPs for the 9th and 10th EDFs, and interviews with European Commission and EEAS staff in Brussels;
  - (b) a review of 16 EU-funded programmes. This review aimed to assess the effectiveness of individual interventions, which were scored using the Commission's results-oriented monitoring (ROM) methodology (see **Annexes I** and **II**);
  - (c) a visit to the DRC from 28 May to 14 June 2012, during which the Court's auditors interviewed EU Delegation staff, the Congolese authorities, other main development partners and civil society representatives. Visits were made to programmes in Kinshasa, Bas-Congo, South Kivu and North Kivu;
  - (d) at the audit design and report drafting stages, consultation of a Congo expert specialised in governance and the politics of state–society relations.

## OBSERVATIONS

### EU SUPPORT FOR GOVERNANCE IN THE DRC IS RELEVANT TO NEEDS BUT HAS ACHIEVED LIMITED OVERALL RESULTS

- 28.** The Court examined whether EU support for governance in the DRC:
- (a) is set within a sound cooperation strategy which addresses the country's main needs and is in line with EU policy as regards its response to situations of fragility;
  - (b) has achieved or is likely to achieve expected results.

### EU SUPPORT FOR GOVERNANCE IN THE DRC IS SET WITHIN A GENERALLY SOUND COOPERATION STRATEGY

- 29.** The EU's cooperation strategy is based on an appropriate assessment of the political, economic, social and security situation in the DRC. Under the 9th EDF, the Commission progressively set out a cooperation strategy which was relevant to the evolving post-conflict situation and the absence of a national poverty reduction strategy prior to 2006. Support for the electoral process was crucial for institution building and the transition to democracy. The rehabilitation of infrastructure, notably in the health sector, was badly needed to improve the living conditions of the population. Macroeconomic support under the heavily indebted poor countries (HIPC) initiative was instrumental in restoring macroeconomic stability and paving the way for PFM reform and development<sup>19</sup>.
- 30.** The 10th EDF strategy correctly builds on the same principles. It aims to address the challenges of both political and infrastructure reconstruction through support for governance, health, and transport and water infrastructure. These objectives are aligned with the priorities set in the national poverty reduction and growth strategy document<sup>20</sup> and the government's priority action programme<sup>21</sup>. A weakness is that support for the 2011 electoral cycle, although consistent with the priority given to governance, was absent from the strategy set out in the CSP and the financial allocation in the NIP. This reduced the Commission's capacity to react appropriately to the major problems which affected the preparation of those elections (see paragraphs 11, 40, 41, 87 and 90).

<sup>19</sup> In July 2010, the DRC reached the HIPC completion point; 12,3 billion US dollars of the country's 13,1 billion US dollar debt was forgiven.

<sup>20</sup> Document de Stratégie pour la Croissance et la Réduction de la Pauvreté (DSCR).

<sup>21</sup> Programme d'Actions Prioritaires (PAP).

31. Support for governance is central to the 9th and 10th EDF cooperation strategies because good governance is crucial for peace, stability and development. This support covers a range of key areas in which it aims to contribute to long-term reforms and thus strengthen the state's capacity to assume its basic functions as regards the rule of law, security and the management of public resources.
32. In line with EU policy for responding to situations of fragility, development cooperation is combined with humanitarian assistance funded by DG Humanitarian Aid and Civil Protection (ECHO) and with political and security cooperation, mainly in the eastern DRC, where the government does not exercise sovereign control over the territory.
33. The cooperation strategy therefore follows a comprehensive approach, involving security, political, economic and development aid and humanitarian assistance, in accordance with the Organisation for Economic Cooperation and Development/Development Assistance Committee (OECD/DAC) Principles for Good Engagement in Fragile States and the EU policy framework.
34. The EU's cooperation strategy focuses on support for the central government and for the eastern DRC. This reflects the priority given to strengthening the state's capacity as well as the need to address the huge humanitarian crisis in the region. However, the 10th EDF CSP pays little attention to geographical complementarity between the EU's cooperation strategy and the programmes of EU Member States and other development partners. It appears that other partners also devote a significant part of their aid to the East, as well as to the two most prosperous provinces (Bas-Congo and Katanga). There is therefore a risk of imbalance in the distribution of development aid, to the detriment of the poorer provinces<sup>22</sup>.

<sup>22</sup> The two poorest provinces receiving the least in development aid are Equateur and Maniema. The two Kasais are also poor and receive little development aid.

**EU SUPPORT FOR GOVERNANCE IS RELEVANT TO THE NEEDS IN ALL AREAS BUT PROGRESS IS UNEVEN AND OVERALL LIMITED**

35. The Court found that fewer than half of the programmes examined have delivered, or are likely to deliver, the planned results and that sustainability is an unrealistic prospect in most cases (see the scores in columns 'Results' and 'Sustainability' in **Annex I**).

## SUPPORT FOR THE ELECTORAL PROCESS

- 36.** The immediate priority after the end of the civil war was to steer the country away from the path of war and towards reconciliation, unity and peace. Following the Pretoria Agreement, the transition process started on 30 June 2003 with the setting-up of a transitional government whose main mandate was to usher in democracy through fair, competitive, transparent and democratic elections. This objective was complicated by the transitional government's awkward power-sharing arrangement and the differing views among prominent political leaders on the nature of transition and reconstruction. The holding of a constitutional referendum in 2005 and the elections in 2006 marked the end of the transition period<sup>23</sup>. The second electoral cycle started in November 2011.
- 37.** The main EU objective in the period following the resumption of structural cooperation with the DRC (see paragraph 13) was to accompany the process of political transition and reconstruction of democracy. For the first electoral cycles (2005 and 2006), the Commission funded the following two programmes as its contribution to a multi-donor trust fund managed by the United Nations Development Programme (UNDP):
- (a) the 'Programme d'Appui au Processus Électoral' (PAPE)<sup>24</sup> adopted in November 2004 provided a contribution of 105 million euro from the additional envelope allocated by the Council in July 2003 (see paragraph 16);
  - (b) the second PAPE contribution, adopted in November 2005, was a 60 million euro extension to the previous programme that was funded from the programmable aid for non-focal sectors of the 9th EDF.
- 38.** To support the preparation and organisation of the second electoral cycle, the Commission also contributed to a trust fund managed by the UNDP, which had initiated the 'Programme d'Appui au Cycle Électoral (PACE I)'<sup>25</sup> in 2007 to maintain and strengthen the existing institutional infrastructure with a view to preparing the second electoral cycle. The EDF has funded two programmes:
- (a) the 9th EDF provided 3 million euro for 'Appui à la CENI', which was launched in November 2007;
  - (b) the 10th EDF provided 47,5 million euro for the 'Programme d'Appui au Cycle Électoral 2011–13' (PACE II)<sup>26</sup>, launched in May 2011.

<sup>23</sup> The constitutional referendum was held on 18 December 2005. The combined presidential and national/provincial elections took place on 30 July and 29 October 2006 across the whole country.

<sup>24</sup> EU support programme for the 2005–06 electoral process.

<sup>25</sup> Support programme for the 2011–2013 electoral process initiated by the UNDP.

<sup>26</sup> EU support programme for the 2011–13 electoral process.

- 39.** The two EU programmes supporting the 2005–06 electoral process have achieved most of their objectives by contributing at the appropriate time to the preparatory work that was necessary for the elections to take place in a generally satisfactory manner, as confirmed by the EU Electoral Observation Mission<sup>27</sup>. The process is considered by the DRC's foreign partners to have been successful in terms of the organisation of logistics when faced with the huge and unique challenge of the situation in the country. The EU and other foreign partners succeeded in having elections held at the presidential and legislative levels. A major drawback, however, was the lack of support for local elections, which were also scheduled but never took place.
- 40.** The objectives of EU support for the 2011 presidential elections were not achieved. As intended, the preparation and organisation of the 2011 presidential and legislative elections were led by the Congolese authorities; however, the process was poorly managed and significant delays occurred in launching the preparation process. When the international community did react, it was too late for the elections to take place in a satisfactory manner. There were also delays in setting up the CENI<sup>28</sup>. Those in power carefully selected the members of the CENI and excluded potentially pro-opposition civil society representatives.
- 41.** In January 2011, the Constitution was amended: the presidential voting procedure was reduced to a single round, leaving the opposition little chance of emerging victorious. The international community was slow to react, arguing that this was an issue of national sovereignty. As far as the Commission and the EU Member States are concerned, this is not a valid reason: the Cotonou Agreement does provide them with the possibility to engage in political dialogue and a consultation procedure if they consider that the partner country fails to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law<sup>29</sup>.
- 42.** The credibility gap that characterised the 2011 electoral process and the lack of democratic legitimacy of the electoral results are acknowledged by a very large part of the Congolese people and the international community<sup>30</sup>. The support provided by the international community, including the Commission, risks being perceived as contributing to regime entrenchment to the detriment of the population.

<sup>27</sup> Final report from the EU Electoral Observation Mission to the DRC covering the 2006 presidential, legislative and provincial elections. Report dated 23.2.2007.

<sup>28</sup> The presidential term that was officially supposed to end on 6 December 2011 was not extended to accommodate the serious delays in setting up the CENI (March 2011) and promulgating the electoral law (August 2011).

<sup>29</sup> Articles 8, 9 and 96.

<sup>30</sup> Final report from the EU Electoral Observation Mission to the DRC covering the 2011 presidential and legislative elections.

## SUPPORT FOR THE JUDICIARY

- 43.** The establishment of the rule of law is a fundamental part of stabilising and rebuilding the DRC. The country's history of fragility and conflict has led to the breakdown of state institutions, which, if these are not rebuilt with new strong structures promoting the rule of law, could lead to further political problems and violence. The EU has addressed these concerns by providing support targeting the eastern DRC, as well as supporting the long-term restructuring of central judicial bodies.
- 44.** The Court examined two programmes:
- (a) the 'Programme d'Appui à la Restauration de la Justice à l'Est de la République Démocratique du Congo' (REJUSCO), launched in 2006, a multi-donor funded programme<sup>31</sup> to which the EU contributed 7,9 million euro from the 9th EDF;
  - (b) the justice component of the 'Programme d'Appui à la Gouvernance' (PAG), with funding of 9 million euro from the 9th EDF in January 2007.
- 45.** The REJUSCO programme aimed to contribute to: (i) capacity-building for the judiciary in North and South Kivu; (ii) improving the functioning of justice so as to guarantee fair and equitable trials; and (iii) increasing the confidence of the population of these eastern provinces in their judiciary by monitoring trials and prisons and helping to raise the public's awareness of their rights and obligations, notably with regard to gender-based violence.
- 46.** While relevant, these ambitious objectives were only partially met, mainly due to the programme's complexity, the multiplicity of procedures, the difficult environment and poor dialogue between partners and the government. As a consequence, the programme was stopped earlier than originally planned and the Commission's contribution reduced. Although the quality of some outputs, notably buildings, was poor, the programme did contribute to improving the law courts' functional capabilities. However, prison conditions are still deplorable, and much remains to be done to improve the population's access to and confidence in the judiciary. The unrest in Goma (M23 Movement) caused upheaval in the region which may have further undermined the work that has been done using EU aid (see paragraph 12).

<sup>31</sup> Co-financed by Belgium (3,7 million euro), the Netherlands (1,1 million euro) and the United Kingdom (2,9 million euro). Sweden joined at a later stage with specific support for activities targeting gender-based violence.

- 47.** The justice component of the PAG aims to support judicial reform by: (i) strengthening the capacity of the Ministère de la Justice et des Droits Humains (MJDH)<sup>32</sup>, the Comité Mixte de la Justice (CMJ) and the Conseil Supérieur de la Magistrature (CSM)<sup>33</sup>; (ii) improving the functioning of the judiciary in Kinshasa Province; and (iii) setting up a long-term policy strategy.
- 48.** The programme was still ongoing at the time of the Court's visit. Difficulties in recruiting the technical assistance team delayed the implementation of activities by 2 years. This led to the cancellation of one fifth of the programme's budget. The programme is likely to achieve a large part of the planned results as regards strengthening the central judicial institutions and the judiciary in Kinshasa Province. A major problem is that the policy reform will not be adopted before the end of the programme due to inefficiency on the part of the CMJ. This has led the Commission to suspend its financial support to the CMJ.
- 49.** For both programmes, sustainability of results is not guaranteed owing to the insufficient national budget for the justice sector, persistent weaknesses in administrative capacity and the national government's inadequate commitment to sector policy reform.

#### **SUPPORT FOR THE POLICE**

- 50.** One of the main priorities of the institutional reforms launched by the Congolese authorities, after years of neglect under Mobutu and the protracted period of armed conflict, was to provide security to the population. The main weaknesses of the Congolese national police are the lack of equipment and infrastructure, inadequate training and low and irregularly paid salaries, all of which are causes of demotivation. One main problem is the culture of trickle-up, whereby police employees have to provide resources to their chiefs. The police, like the military, live off the population.
- 51.** The EU's main objectives at the beginning of the transition period included protecting state institutions and strengthening internal security in order to safeguard the transition process and facilitate the holding of elections. Since 2005, it has aimed to support a wider and longer-term process in which the institutional and governance reform of the security forces is a key component.

<sup>32</sup> Ministry of Justice and Human Rights.

<sup>33</sup> Supreme Judicial Council.



**52.** The Court examined three programmes in this area:

- (a) 'Appui à la formation de l'Unité de Police Intégrée' (UPI), launched in May 2004 with funding of 5 million euro from the 9th EDF intra-ACP envelope<sup>34</sup>;
- (b) the Support Programme for peace and stabilisation in the eastern DRC, launched in June 2008 with an EU contribution of 10 million euro from the IfS, including 2,9 million euro for the police;
- (c) 'Programme d'Appui à la Réforme de la Police Nationale (PARP)', launched in August 2010 with funding of 11 million euro from the 10th EDF.

<sup>34</sup> The intra-ACP envelope refers to cooperation with ACP States that is embedded in the regional cooperation benefiting many or all ACP States. Such operations may therefore transcend the concept of geographic location.

**53.** The UPI support programme was conducted jointly with EUPOL Kinshasa, a CSDP police mission (see paragraph 24). It had a limited number of clear and logical priorities. It was successful in establishing a unit of 1000 highly trained police officers with the necessary logistical support and equipment, and it achieved its planned results by ensuring security for the constitutional referendum and the elections of 2005 and 2006. The Court was unable to obtain any information concerning the redeployment of personnel and equipment once the programme ended. The sustainability of these results is therefore unclear.

**54.** The police component of the support programme for peace and stabilisation in the eastern DRC has partially achieved its planned results. It has provided buildings, facilities and equipment for two mobile intervention units and the regional police headquarters in Goma and Bukavu. Construction works suffered from long delays, in particular in Bukavu, and are of poor quality. At the time of the Court's visit, the facilities financed in Bukavu were not yet in use. In Goma, they were not yet operational due to the lack of running water and electricity, which were supposed to have been installed and funded by the police authorities. So far, the programme has not been effective in improving the operational capacity of the police in the region. The unrest in Goma (M23 Movement) may have further undermined the work that has been done using EU aid (see paragraph 12).

**55.** The PARP aims to support the reform of the Congolese national police by strengthening the coordination capacities of the Comité de Suivi de la Réforme de la Police (CSRП), reorganising the management of human and budgetary resources and improving training infrastructure. It is being implemented in coordination with the technical support provided to the CSRП by EUPOL RDC, another CSDP police mission.

- 56.** The programme was at an early stage of implementation at the time of the Court's visit. It had succeeded in setting up a human resources database, which is a key step for the police reform to be implemented. However, the sustainability of this database was a matter for concern since there were no plans regarding IT system maintenance after the end of the technical assistance funded by the EU.

#### **SUPPORT FOR PUBLIC FINANCE MANAGEMENT REFORM**

- 57.** In 2008, the public expenditure and financial accountability (PEFA) review established that PFM was characterised by deficiencies in most areas, including an obsolete legal budgetary framework, flawed budgetary planning and implementation and frequent recourse to exceptional procedures. Key functions such as accounting and treasury operations did not respect the principles of good practice, and external scrutiny mechanisms were practically non-existent.
- 58.** Following the review, the government adopted, and is implementing with the support of development partners that include the EU, a strategic plan for public finance reform aimed at addressing these weaknesses over the period 2010–17.
- 59.** The Court examined three EU programmes:
- (a) the public finance component of the 'Programme d'Appui à la Gouvernance' (PAG), signed in January 2007 and funded by a 9th EDF contribution of 6,5 million euro;
  - (b) the natural resources component of the PAG, funded by a 9th EDF contribution of 9 million euro;
  - (c) the 'Projet d'Appui à la Modernisation des Finances Publiques' (PAMFIP), signed in May 2010 and funded by a contribution of 10 million euro from the 10th EDF.

**60.** The Court also examined two targeted budget support programmes:

- (a) 'Appui budgétaire à la Stabilisation économique de la RDC'<sup>35</sup>, signed in August and December 2009 and funded by a total of 48,6 million euro from the 10th EDF and the DCI;
- (b) 'Appui budgétaire pour atténuer les effets de la crise économique et financière en RDC'<sup>36</sup>, signed in December 2010 and funded by 50 million euro from the 10th EDF under the Vulnerability FLEX (V-FLEX) initiative set up in 2009.

**61.** The three EU support programmes addressing central PFM reforms have produced moderate results so far.

**62.** The PFM component of the PAG has strengthened the Comité d'Orientation de la Réforme des Finances Publiques (COREF)<sup>37</sup>, which is the key interministerial body in charge of coordinating PFM reform. It also contributed to adoption of the 'Plan Stratégique de Réforme des Finances Publiques' (PSRFP)<sup>38</sup> and has reinforced the capacities of the Inspection Générale des Finances (IGF)<sup>39</sup> and the National Assembly's Commission Économique, Financière et Contrôle Budgétaire (Ecofin)<sup>40</sup> by providing training, consultancy and equipment and by rehabilitating office premises.

**63.** Support for the supreme audit institution (SAI) has, on the other hand, been largely unsuccessful. While there has been an increase in the number and capacities of staff, the intended rehabilitation of the SAI's headquarters is at a complete standstill owing to a legal dispute with the contractor. The SAI's operational capacity has been seriously affected as a result.

**64.** The PAMFIP, a logical continuation of the PAG, aims to strengthen budgetary programming, accounting and customs services. The programme was at an early stage of implementation at the time of the Court's visit, but it was already hindered by difficulties in recruiting experts and coordinating certain activities with other donors.

<sup>35</sup> Budget support for macroeconomic stabilisation in the DRC.

<sup>36</sup> Budget support to mitigate the impact of the economic and financial crisis.

<sup>37</sup> Steering Committee for the Reform of Public Finance.

<sup>38</sup> Strategic plan for public finance reform.

<sup>39</sup> Inspectorate General of Finances.

<sup>40</sup> Economic, Financial and Budgetary Control Committee.

- 65.** One objective of the two targeted budget support programmes was to contribute to improving PFM. However, the programmes did not establish any links with the government's PFM reform plan, nor did they identify which priorities they were intended to support. It is unclear how programmes of this sort can achieve such an objective, given that funds were disbursed in a single fixed tranche, with no performance-related conditions or policy dialogue requirements. The Court notes that, although the country is facing a difficult economic and budgetary situation and low salaries are one reason for the inefficiency of government departments (see paragraph 9), MPs' salaries were increased from 1 500 US dollars during the transition period to 6 000 US dollar in 2006 and 13 000 US dollars in 2012. In 2011, spending on the Presidency, the Prime Minister, the National Assembly and the Senate accounted for 11 % of total budgetary expenditure and was almost three times the amount spent on health<sup>41</sup>.
- 66.** The adoption of the strategic plan for public finance reform is an indicator of the government's commitment to PFM reform, which the coordinated support of development partners helps to maintain. However, as with EU programmes in other areas, insufficient budgetary resources and weak public finance management raise doubts as to the capacity of the institutions supported by the PAG and PAMFIP programmes to continue their activities and maintain buildings and equipment without donor support.
- 67.** The DRC's economic future and the prospects of improved governance depend closely on the way in which the country's considerable natural wealth is managed. However, the end of conflict and the holding of elections have not yet transformed the DRC's natural resources into drivers of development. In this context, the natural resources component of the PAG aims to strengthen the capacity of key institutions to manage the mining and forestry sectors, improve the conditions for attracting investment and increase revenues.
- 68.** When examined about 1½ years before the end of its operational period, the natural resources component of the PAG had produced modest results. One reason was an inadequate needs assessment, which had failed to identify some main weaknesses in the management of natural resources, such as illegal exploitation, corruption, the lack of reliable data, weak control and customs mechanisms, arbitrary taxation, low productivity and the low processing rate of commodities. There were also weaknesses in the programme's design, leading to serious delays during implementation and to the need to cancel many of the planned activities.

<sup>41</sup> In 2011, the total budget was 6 746 billion Congo/Kinshasa francs (CDF). Budgetary appropriations for the Presidency, the Prime Minister, the National Assembly and the Senate amounted to 291 billion CDF (4,3 %) while appropriations for health came to 233 billion CDF (3,5 %). Total budgetary spending was 3 515 billion CDF, of which 393 billion CDF (11,1 %) went on the former sector and 137 billion CDF (3,9 %) on the latter.

- 69.** While the programme has contributed to strengthening the capacities of some institutions, many results are unlikely to be achieved. These include adoption of a national forestry plan, revision of the mining code and strengthening of the exploitation, processing and marketing chain.

<sup>42</sup> Support programme for the start-up of decentralisation in the DRC.

<sup>43</sup> Support programme for parliaments.

#### **SUPPORT FOR THE DECENTRALISATION PROCESS**

- 70.** Decentralisation in the DRC is the subject of a long political debate that returned to the agenda with the adoption of the Constitution in 2006. It has three dimensions (political, administrative and fiscal) and aims to foster democracy and enhance local political accountability while improving service delivery to citizens.

- 71.** The Court examined two programmes:

- (a) the 'Projet d'Appui au Démarrage de la Décentralisation en RDC' (PA2D)<sup>42</sup>, signed in May 2010 and funded by a 10th EDF contribution of 15 million euro;
- (b) the 'Programme d'Appui aux Parlements' (PAP)<sup>43</sup>, signed in May 2010 and funded by a 10th EDF contribution of 5 million euro.

- 72.** The PA2D aims to ease the passage towards decentralisation by supporting the bodies in charge of steering decentralisation reform at national level and strengthening the administrative capacities of the provinces of Kinshasa and North Kivu. The PAP aims to contribute to the consolidation of democracy in the DRC by strengthening the capacities of the National Assembly, the Senate and the two provincial assemblies in Kinshasa and North Kivu.

- 73.** Both programmes were at an early stage of implementation at the time of the Court's visit, but already they had limited prospects of success. They were experiencing major problems for a variety of reasons, chief of which were the weaknesses of the Congolese administration, the postponement of the provincial elections and the national authorities' insufficient political commitment to pursuing the decentralisation objective. The current Presidency is in a phase of trying to consolidate power. Decentralisation requires the sharing of power, which the President is reluctant to do at this time. In these circumstances, the sustainability of any results that both programmes might achieve is very questionable unless there is a major change in the political context.

**74.** Despite overwhelming social consensus within the country on the need for decentralisation, the government is reluctant to move ahead with reform. The Kinshasa-based top-down approach advanced by the DRC's foreign partners, including the Commission, therefore has limited potential for success in promoting the implementation of decentralisation. Provincial governments claim to be in favour of receiving the benefits of decentralisation but are reluctant to accept the responsibilities of service provision that it would entail. One political obstacle is the imbalance between provincial assets: two provinces (Bas-Congo and Katanga) contribute to more than half of the country's tax revenues.

**75.** As a result, the decentralisation process has been considerably delayed.

- (a) Many legal instruments concerning decentralisation have not yet been adopted.
- (b) The retrocession process has not yet been implemented<sup>44</sup>.
- (c) Local elections, originally due to be held in 2008, and then rescheduled for 2011, never took place. The provincial elections foreseen for 2011 have been put on hold<sup>45</sup>.
- (d) The creation of 26 provinces, instead of the current 11, should have been completed by May 2010, but the law has still not been adopted.

### **THE COMMISSION DID NOT TAKE SUFFICIENT ACCOUNT OF THE FRAGILE NATIONAL CONTEXT IN THE DESIGN OF EU PROGRAMMES**

**76.** The Court examined whether the Commission:

- (a) adequately addressed the main risks to the effectiveness of the EU programmes;
- (b) set clear and achievable objectives;
- (c) made appropriate use of conditionality and policy dialogue to encourage the Congolese authorities' commitment to improved governance.

<sup>44</sup> Article 175 of the Constitution stipulates that 40 % of national revenues collected in each province is to be devolved to them, a process known as retrocession, while another 10 % is to be assigned to an equalising investment fund (*Caisse nationale de Péréquation*), which would be restricted to investment expenditure. The overall aim is to reduce provincial inequalities.

<sup>45</sup> Currently, the provincial governors perform a double role by simultaneously representing their provinces and carrying out central government tasks. The heads of local government are appointed by the President.

## RISKS WERE NOT ADEQUATELY ADDRESSED

- 77.** External aid is implemented in high-risk environments, and this is even more the case in fragile states. Like other development partners, the Commission cannot avoid taking risks. However, it should manage the risks appropriately in order to mitigate them as far as possible.
- 78.** The Commission is well acquainted with the situation in the DRC and with the causes and consequences of state fragility. When designing the EU programmes examined by the Court, it identified many risks and considered the lessons learned from previous programmes. The Commission took account of the difficult context and weak national administration when choosing how to deliver aid and implementing a control system. However, the Commission did not assess the likelihood of risk or its potential impact on the programmes. In many cases, the preparatory documents merely referred to assumptions and/or risks to the effectiveness of programmes, although it was well-known that there were serious problems concerning, in particular, the national authorities' insufficient commitment to reform and their weak institutional and financial capacity to ensure the sustainability of results after completion of the EU programmes.
- 79.** The programme documents do not mention a number of major risks — notably the lack of political will, fraud and corruption — which are a serious matter for concern in the DRC (see paragraph 9). Other risks were under-evaluated, such as transport and communication problems, the national authorities' limited absorption capacity (see paragraph 82(c)) and the difficulty in recruiting international experts and local contractors with the necessary equipment and skilled labour, especially in the remote and often insecure eastern areas of the DRC (see paragraph 82(b)).
- 80.** The programmes examined by the Court did not systematically include measures to prevent or mitigate the main specific risks identified in the area concerned, or guidance for project managers and the Commission's services on the course of action to be followed if risks become reality.
- 81.** The targeting approach followed for the budget support programmes adopted in 2009 does not prevent or reduce risks. Budget support funds are merged with other resources in the partner country's budget (known as 'fungibility') and cannot be traced beyond the stage at which they are paid into that budget. They are exposed to the same PFM weaknesses and risks as other national budget resources (see paragraph 65).

## OBJECTIVES WERE OFTEN TOO AMBITIOUS

**82.** The inadequate assessment of risks largely contributed to the setting of overly ambitious objectives for seven of the programmes examined by the Court.

- (a) The objective set for the PACE (see paragraph 38) and support for the CENI (see paragraphs 11 and 40) of contributing to democratic elections was unrealistic given the Congolese authorities' limited availability for dialogue with the international community concerning timely preparations for the 2011 electoral process.
- (b) The objectives of the REJUSCO programme (see paragraphs 45 and 46) were too ambitious for the post-conflict situation in the eastern DRC. For example, the programme did not take into account the shortage of construction and consultancy firms with appropriate skilled labour and equipment. It also involved a complex management structure and a combination of heterogeneous rules and procedures. The programme had to be scaled down during implementation and was eventually shelved following a denunciation to the European Anti-Fraud Office (OLAF) about works contracts.
- (c) The mid-term evaluation of the justice component of the PAG (see paragraphs 47 and 48) found that, with its 35 planned activities and a budget about twice the annual budget of the Ministry of Justice<sup>46</sup>, the programme was ill-adapted to the Ministry of Justice's limited structure and absorption capacity. It had to be significantly scaled down during implementation.
- (d) The natural resources component of the PAG (see paragraphs 67 to 69) pursues numerous priorities involving a wide range of activities and needs for expertise. This has led to significant difficulties and the need to modify and considerably scale down the programme during implementation.
- (e) The PA2D (see paragraphs 71 to 73) did not adequately take account of the fact that the decentralisation process was mainly donor-driven. From the outset, the Congolese government has been reluctant to support the reform. Many legal instruments concerning decentralisation have not yet been adopted, and many observers see the whole process as abortive. The EU programme approved in 2009 has come to a virtual standstill.
- (f) Objective-setting for the PAP (see paragraphs 71 to 73) did not take sufficient account of the risk of postponed senatorial and provincial elections, which has seriously delayed realisation of the programme's objectives.

<sup>46</sup> PAG mid-term evaluation report, October 2011.



### CONDITIONALITY AND POLICY DIALOGUE WERE NOT EXPLOITED TO THEIR FULL POTENTIAL

- 83.** EU programmes involve not only the funding of planned activities but also two other components which must be combined appropriately in order to maximise the chances that EU funds are well spent:
- (a) agreement with the partner country on conditions linked to the programme objectives and risks;
  - (b) policy dialogue with the government on the definition and implementation of appropriate reform policies and strategies.

<sup>47</sup> Special Report No 17/2012 on the European Development Fund (EDF) contribution to a sustainable road network in sub-Saharan Africa (<http://eca.europa.eu>).

### CONDITIONALITY

- 84.** For the EU programmes examined by the Court, the Commission used conditionality in a way which considerably reduced the potential incentive effect on the national authorities' commitment to reform and the possibility for the Commission to use conditions as a tool in policy dialogue with the government.
- 85.** As the Court has already found in connection with EDF support for road infrastructure programmes in sub-Saharan Africa<sup>47</sup>, the Commission rarely imposed preconditions which the Congolese authorities must meet before a programme could start, tendering was launched or a contract was signed. Few examples of this approach, such as the requirement for the prior adoption of legislation or provision of suitable land, were detected in the programmes examined.
- 86.** The conditions set are not legally binding but are generally presented in financing agreements as 'accompanying measures' to be taken up by the Congolese authorities. These measures are often vaguely defined (e.g. to progressively increase spending on maintenance depending on budgetary capacity) or unrealistic (e.g. to ensure adequate maintenance).

- 87.** Thus it was difficult for the Commission to monitor compliance with the conditions and to take timely and appropriate measures where they were not met. In only one case did the Commission decide to suspend disbursement of an EU contribution: in view of the irregularities observed during the 2011 presidential elections, the Commission decided in co-ordination with other donors to withhold its final payment. However, this was a case of 'too little too late'.

#### **POLICY DIALOGUE**

- 88.** The Commission was a main actor promoting policy dialogue with the Congolese government in coordination with other donors. It participated actively in the country assistance framework (CAF) and the various thematic working groups which are the institutional framework for dialogue between line ministries, donors and representatives of civil society. It funded interministerial bodies which were to play a key role in the reform process and coordination with donors<sup>48</sup>. The Commission also maintained dialogue with the government when programming and reviewing the 9th and 10th EDF cooperation strategies, designing and monitoring the implementation of individual programmes and conducting joint annual reviews of EU cooperation.

- 89.** However, the quality of policy dialogue was affected by several key weaknesses.

- (a) Thematic working groups were not an effective forum for coordinated policy dialogue. By mid-2009, most of them operated without an action plan and had no clear mission, objectives, responsibilities, budget or timetable. Line ministries were often not actively involved and meetings did not address relevant issues. An attempt was made to improve the functioning of the working groups, but a 2011 evaluation performed by the Ministry of Planning found that many problems remained.
- (b) Although this unsatisfactory situation was partly the result of weak national administrative capacity, the Congolese authorities have preferred the approach of bilateral policy dialogue with each donor so as to take advantage of potential differences of opinion and competition among donors. This has been facilitated by inadequate coordination in policy dialogue between donors, including between the Commission and EU Member States, particularly in the area of support for the police<sup>49</sup>.

<sup>48</sup> For example the Comité de Suivi de la Réforme de la Police and the Comité d'Orientation de la Réforme des Finances Publiques.

<sup>49</sup> 'CSDP missions and operations: Lessons learned processes', European Parliament, Directorate-General for External Policies (PE 457.062, p. 52), April 2012.

- (c) The EU and like-minded foreign partners face increased difficulty in influencing the direction taken by the DRC authorities with regard to governance. The DRC has natural resources which the world needs, and the engagement of newer foreign partners with no-strings-attached business agendas (such as China, South Africa, Brazil and South Korea) further diminishes traditional development partners' leverage over the DRC government.
- (d) As indicated above (see paragraphs 84 to 87), the Commission's approach to conditionality considerably reduces its capacity to take full advantage of policy dialogue.

**90.** In this context, policy dialogue with the Congolese authorities has been a challenging task for the Commission that has achieved varied and, overall, limited results.

- (a) As support for the electoral process was not a focal sector of the 10th EDF cooperation strategy, the Commission did not make it sufficiently clear from the outset that supporting democratic elections remained a key political priority of EU cooperation after the transition period. This affected its capacity to react appropriately and in a timely manner.
- (b) In the justice sector, the CMJ has not proved an effective forum for dialogue and has been largely unsuccessful in obtaining the adoption and implementation of reform by the Ministry of Justice. This led the Commission to withdraw its funding for the CMJ secretariat in 2011. The Congolese authorities also demonstrated little appropriation of the REJUSCO programme, which was perceived by the population as a donor-driven initiative.
- (c) In the police sector, policy dialogue has been difficult. Although the CSRP is an appropriate forum for dialogue, the Congolese authorities have shown moderate commitment to reform and a preference for bilateral dialogue with individual donors. It took 5 years for the organic police law to be adopted.
- (d) The lack of political will to implement the decentralisation process has afforded little scope for useful policy dialogue.
- (e) Policy dialogue in relation to PFM reform has been less difficult, notably due to coordinated donor involvement since the 2008 PEFA.

## CONCLUSIONS AND RECOMMENDATIONS

**91.** The Court concludes that the effectiveness of EU assistance for governance in the DRC is limited. EU support for governance is set within a generally sound cooperation strategy, addresses the country's main governance needs and has achieved some results. However, progress is slow, uneven and, overall, limited. Fewer than half of the programmes have delivered, or are likely to deliver, most of the expected results. Sustainability is an unrealistic prospect in most cases.

<sup>50</sup> DRC Prime Minister Augustin Matata Ponyo has declared that 'The DRC needs partners who are demanding but understanding, proactive but respectful and critical but clear-sighted'. (*Libération*, 12.12.2012).

**92.** In common with other development partners, the Commission faces serious obstacles in its efforts to contribute to improving governance in the DRC: the absence of political will, the donor-driven dynamics of the programmes and the lack of absorption capacity. However, while the Commission is well acquainted with the main causes and consequences of state fragility in the DRC, it did not take sufficient account of this context when designing EU programmes. Risks have not been adequately addressed, programme objectives are often too ambitious, conditionality has a weak incentive effect and policy dialogue has not been exploited to its full potential and adequately coordinated with EU Member States in all areas.

**93.** The task of state reconstruction and improving governance in the DRC is going to be a long process. If, as a main development partner with the DRC and an advocate of good governance and human rights, the EU is to continue to support governance in the DRC, it needs to improve significantly its aid effectiveness. In this respect, the Commission needs to be both more realistic on what can be achieved and about the design of EU programmes and more demanding of the Congolese authorities when monitoring compliance with the conditions agreed and the commitments made<sup>50</sup>.

**94.** The Court makes the following recommendations with a view to improving the effectiveness of EU support for governance in the DRC.

### RECOMMENDATION 1 EU COOPERATION STRATEGY

In coordination with other development partners, notably EU Member States, the Commission and the EEAS should:

- (a) with a view to programming for the 11th EDF and the design of future EU programmes, (i) pay increased attention to ensuring an appropriate balance of aid between all provinces, especially the poorer ones; (ii) combine support at central level with programmes at the provincial level that link political and territorial decentralisation with improved natural resource management strategies and infrastructure rehabilitation and development; and (iii) reconsider EU support for improved management of natural resources on the basis of a comprehensive needs assessment;
- (b) place greater emphasis, in its dialogue with the DRC government, on the fact that democratic elections are a key component of governance, and carefully assess all risks to ensure that EU programmes in this area do not support regime entrenchment;
- (c) promote improved DRC government accountability through increased support to strengthen the capacity of national oversight institutions, in particular the specialised committees of the National Assembly and the supreme audit institution;
- (d) in all governance areas covered by the EU cooperation strategy, systematically consider the need to support the fight against fraud and corruption.

## RECOMMENDATION 2 RISKS

The Commission should:

- (a) at the outset of programmes and regularly during their implementation, assess the likelihood and potential impact of the main risks to the achievement of programme objectives. This will involve (i) appraising the relevance and credibility of the country's policies and action plans for improving governance in relation to the available institutional and financial resources, and (ii) monitoring progress against commitments made by the DRC authorities;
- (b) establish measures to prevent or mitigate risks and clearly define the course of action to be followed if risks become reality.

## RECOMMENDATION 3 PROGRAMME OBJECTIVES

The Commission should:

- (a) focus objectives on a limited number of priorities;
- (b) set out a time frame which is better adapted to the programme environment;
- (c) provide for flexibility during programme implementation so that objectives can be reviewed promptly where appropriate.

#### RECOMMENDATION 4 CONDITIONALITY AND POLICY DIALOGUE

The Commission should:

- (a) strengthen its use of conditionality and policy dialogue. This will involve (i) setting clear, relevant, realistic and time-bound conditions, (ii) periodically assessing compliance with the agreed conditions, and (iii) responding firmly, proportionately and in a timely manner if the DRC government shows insufficient commitment to compliance, where appropriate by suspending or terminating the programme;
- (b) urge the DRC government to adopt the necessary measures for improving the functioning of the thematic working groups, and monitor the implementation of those measures;
- (c) take a more active leadership role towards EU Member States to encourage coordinated policy dialogue and increase EU leverage over the DRC government.

This Report was adopted by Chamber III, headed by Mr Karel PINXTEN, Member of the Court of Auditors, in Luxembourg at its meeting of 16 July 2013.

*For the Court of Auditors*



Vítor Manuel da SILVA CALDEIRA  
*President*

## ANNEX I

## SCORING OF PROGRAMMES

(million euro)

Programmes	Area	Amount	EU instrument	Relevance	Design	Results	Sustainability	Implementation period
Appui à la formation de l'Unité de Police Intégrée (UPI)	Police	5,00	Intra-ACP — 9th EDF	A	B	B	D	7.5.2004 – 31.12.2005
Programme d'appui à la réforme de la Police Nationale (PARP)		11,00	10th EDF	A	B	B	C	12.8.2010 – 12.2.2015 Rider: 12.2.2016
Support for Peace and Stabilisation in the eastern DRC (police component)		2,90	IFS	A	B	C	C	20.6.2008 – 30.6.2011
Programme Restauration de la Justice à l'Est de la République Démocratique du Congo (REJUSCO)	Justice	7,90	9th EDF	A	C	C	D	11.7.2006 – 31.12.2010
Programme d'appui à la gouvernance (PAG) — Volet Justice		9,00	9th EDF	A	B	B	C	25.1.2007 – 31.12.2012 Rider: 31.12.2013
Appui au processus électoral en RDC (APEC)	Elections	105,00	Additional envelope	A	B	B	C	29.11.2004 – 31.12.2010
Programme d'appui au processus électoral (PAPE / APEC)		60,00	9th EDF	A	B	B	C	24.11.2005 – 31.12.2006
Appui à la CENI		3,00	9th EDF	B	C	C	C	13.11.2007 – 31.12.2009
Programme d'appui au cycle électoral 2011–13 (PACE)		47,50	10th EDF	A	B	D	D	25.5.2011 – 27.5.2014
Programme d'Appui Budgétaire pour la Stabilisation Économique de la RDC	Public finance management	48,62	10th EDF/DCI	C	C	N/A	N/A	2009
VFLEX — Appui budgétaire pour atténuer les effets de la crise économique et financière en RDC		50,00	10th EDF	C	C	N/A	N/A	2010
Programme d'appui à la Gouvernance (PAG) — Volet finances publiques		6,50	9th EDF	A	B	C	B	25.1.2007 – 31.12.2012 Rider: 31.12.2013
Programme d'appui à la Gouvernance (PAG) — Volet ressources naturelles		9,00	9th EDF	B	C	C	C	25.1.2007 – 31.12.2012 Rider: 31.12.2013
Programme d'appui à la Modernisation des Finances Publiques (PAMFIP)		10,00	10th EDF	A	A	C	B	20.5.2010 – 20.5.2015



Programmes	Area	Amount	EU instrument	Relevance	Design	Results	Sustainability	Implementation period
Projet d'appui au démarrage de la décentralisation en République Démocratique du Congo (PA2D)	Decentralisation	15,00	10th EDF	A	C	C	C	20.5.2010 – 20.5.2015
Programme d'appui aux Parlements (PAP)		5,00	10th EDF	A	B	B	C	20.5.2010 – 20.5.2014 Rider: 20.5.2015
<b>TOTAL</b>		<b>395,42</b>						

**Legend:**

On the basis of the scoring methodology in **Annex II**, the following ratings have been established:

A	Criterion met
B	Minor weaknesses
C	Serious weaknesses
D	Criterion not met

## SCORING METHODOLOGY

For the purpose of the audit, the scoring of relevance, design, results and sustainability was based on the Commission's ROM methodology. The criteria used are listed below:

Relevance	
<b>A</b>	Clearly embedded in national policies and European Commission strategy; responds to Paris Declaration commitments on ownership, alignment and harmonisation; is highly relevant to needs of target group.
<b>B</b>	Fits well in national policies and EC strategy (without always being explicit); reasonably compatible with Paris Declaration commitments; relevant to target group's needs.
<b>C</b>	There are some issues/problems regarding consistency with national and EC policies or the Paris Declaration, or relevance to targeting.
<b>D</b>	Contradicts national policies or EC strategy or Paris Declaration commitments; relevance of needs is questionable. Major adaptations needed.
Design	
<b>A</b>	Clear and well-structured logical framework; feasible and consistent vertical logic of objectives; sufficiently SMART; OVs (objectively verifiable indicators); risks and assumptions clearly identified and managed; exit strategy in place.
<b>B</b>	Adequate intervention logic, although it might need some improvements regarding hierarchy of objectives, OVs, risk and assumptions.
<b>C</b>	Problems with intervention logic may affect performance of project and capacity to monitor and evaluate progress; improvements necessary.
<b>D</b>	Intervention logic is faulty and requires major revision for the project to have a chance of success.
Results	
⇒ <b>For closed projects</b>	
<b>A</b>	Benefits and capacities drawn from results are available, of good quality and used by all target groups.
<b>B</b>	Outcomes are mostly of good quality, available and used by most target groups. Room for improvement exists, however without serious impact on effectiveness.
<b>C</b>	Some benefits are available, but not always of the best quality. Improvements are necessary to ensure the project can achieve its purpose in terms of quality, reach and availability.
<b>D</b>	Outcomes are not available in most cases and are of poor quality. Major changes are urged to attain results.
⇒ <b>For ongoing projects</b>	
<b>A</b>	Full achievement of results is likely in terms of quality and coverage. Negative effects have been mitigated.
<b>B</b>	Results will be achieved with minor limitations; negative effects have not caused much harm.
<b>C</b>	Results will be achieved only partially owing, among other things, to negative effects to which management was not able to fully adapt. Corrective measures are necessary to improve the ability to achieve results.
<b>D</b>	Project will not achieve its purpose unless major, fundamental remedial action is taken.

Sustainability	
⇒ <b>Financial/economic sustainability</b>	
<b>A</b>	Potentially very good; costs for services and maintenance are covered or affordable; external factors will not change that.
<b>B</b>	Likely to be good, but problems might arise namely as a result of changing external economic factors.
<b>C</b>	Problems need to be addressed regarding financial sustainability either in terms of institutional or target group, costs or the changing economic context.
<b>D</b>	Very questionable unless major changes are made.
⇒ <b>Level of ownership</b>	
<b>A</b>	Local structures and institutions are strongly involved in all stages of implementation and are committed to continue producing and using results after the end of EC funding.
<b>B</b>	Implementation is based in good part on local structures and institutions which are also involved to some degree in decision-making. Likelihood of sustainability is good, but there is room for improvement.
<b>C</b>	Project uses mainly ad hoc arrangements and not enough local structures and institutions to ensure sustainability. Continued results are not guaranteed. Corrective measures are needed.
<b>D</b>	Project depends completely on ad hoc structures with no prospect of sustainability. Fundamental changes are needed to enable sustainability.

# REPLY OF THE COMMISSION AND THE EEAS

## EXECUTIVE SUMMARY

### I.

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

### III.

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

As pointed out by the Court in this report, the national budget is insufficient. However, it increased by a factor of 20 over the last 10 years and is still expected to double by 2016. This trend allows the government to progressively allocate appropriate funds to related budget items including human resource and maintenance budgets, thereby improving sustainability in the medium term.

### IV.

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

# REPLY OF THE COMMISSION AND THE EEAS

## INTRODUCTION

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

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

### V.

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

### VI.

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

### 11.

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

### 12.

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

## REPLY OF THE COMMISSION AND THE EEAS

### OBSERVATIONS

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

Reply to the heading

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

#### **30.**

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

#### **34.**

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

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

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

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

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

Reply to the heading

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

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

#### **35.**

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

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

## REPLY OF THE COMMISSION AND THE EEAS

As pointed out by the Court in this report, the national budget is insufficient. However, it increased by a factor of 20 over the last 10 years and is still expected to double within the next 5 years. This trend allows the government to progressively allocate appropriate funds to related budget items including human resource and maintenance budgets, thus improving sustainability in the medium term.

### 41.

Please see reply to paragraph 11.

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

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

### 42.

The fact that the international community, including the Commission, provided financial support to the electoral process is neither a guarantee of success and transparency of the election nor a sign of support to a regime. The EU's evaluation of the 2011 electoral process, including its structural flaws, was clearly expressed in the final report of the EU electoral observation mission.

### 46.

The REJUSCO programme was a 'Justice d'urgence' action aimed at providing essential support to the judiciary and connected areas in the east on the brink of collapse. Its overall performance should also be seen in this context. The need to distinguish a specific situation in the east that did not provide all the necessary conditions for sustainability was an important assumption of the country strategy paper (CSP) and National indicative programme (NIP) documents.

### 49.

The Commission would like to point out that:

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

### 53.

The inability to obtain information on redeployment is one of the reasons why the 9th and 10th EDF NIP programmes, as well as the IFS components, placed much importance on improving HR management of the PNC. To date this has included a comprehensive census of the PNC, the setting up of a computerised databank, training and support in the drafting of a new organic law (signed by the President on 1 June 2013) on overall PNC management.

Corrective actions necessary to improve sustainability have been taken.

### 54.

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

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

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

## REPLY OF THE COMMISSION AND THE EEAS

**56.**

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

As an example of targeted conditionality, the delegation was successful in getting a specific allocation of 325000 US dollars inscribed in the 2013 budget for precisely this activity.

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

**61.**

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

**63.**

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

**64.**

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

**65.**

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

**73.**

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

**74.**

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

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

Reply to the heading

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

### **Risks were not adequately addressed**

Reply to the heading

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

**78.**

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

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



## REPLY OF THE COMMISSION AND THE EEAS

### 79.

Please see reply to paragraph 78.

### 81.

Please see reply to paragraph 65.

### 82.

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

### 82. (a)

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

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

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

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

### 82. (b)

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

Please see also reply to paragraph 46.

### 82. (c)

Please see above and replies to paragraph 49.

### 82. (e)

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

### 82. (f)

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

### 84.

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

### 85.

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

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

## REPLY OF THE COMMISSION AND THE EEAS

### CONCLUSIONS AND RECOMMENDATIONS

#### 86.

Please see reply to paragraph 84.

#### 87.

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

#### 89. (b)

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

#### 89. (d)

Please see replies to paragraphs 84 and 87.

#### 90. (a)

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

Please see also replies to paragraph 41 and 42.

#### 90. (b)

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

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

#### 91.

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

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

As pointed out by the Court in this report, the national budget is insufficient. However, it increased by a factor of 20 over the last 10 years and is still expected to double by 2016. This trend allows the government to progressively allocate appropriate funds to related budget items including human resource and maintenance budgets, thereby improving sustainability in the medium term.

#### 92.

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

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

## REPLY OF THE COMMISSION AND THE EEAS

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

### **Recommendation 1 (a)**

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

### **Recommendation 1 (a) (i)**

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

### **Recommendation 1 (a) (ii)**

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

### **Recommendation 1 (a) (iii)**

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

### **Recommendation 1 (b)**

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

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

Concerning the specific risk of 'regime entrenchment', it is addressed collegially by all EU institutions and Member States. Commission programmes are in line with the EU political options and are approved by Member States.

### **Recommendation 1 (c)**

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

### **Recommendation 1 (d)**

The Commission and the EEAS agree with the recommendation.

### **Recommendation 2 (a)**

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

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

### **Recommendation 2 (b)**

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

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

### **Recommendation 3 (a)**

The Commission and the EEAS agree with the recommendation.

### **Recommendation 3 (b)**

The Commission and the EEAS cannot agree to this recommendation.

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

## REPLY OF THE COMMISSION AND THE EEAS

### **Recommendation 3 (c)**

The Commission and the EEAS cannot agree to the recommendation.

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

### **Recommendation 4 (a)**

The Commission and the EEAS cannot agree to the recommendation.

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

### **Recommendation 4 (b)**

The Commission and the EEAS agree with the recommendation.

### **Recommendation 4 (c)**

The Commission and the EEAS cannot accept the recommendation.

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

European Court of Auditors

**Special Report No 9/2013**

**EU support for governance in the Democratic Republic of the Congo**

Luxembourg: Publications Office of the European Union

2013 — 50 pp. — 21 × 29.7 cm

ISBN 978-92-9241-359-0

doi:10.2865/13761



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THE DEMOCRATIC REPUBLIC OF THE CONGO IS ONE OF THE MAIN BENEFICIARIES OF EU SUPPORT, WITH ABOUT 1,9 BILLION EURO OF ASSISTANCE PROVIDED BETWEEN 2003 AND 2011.

IN THIS REPORT, THE EUROPEAN COURT OF AUDITORS ASSESSED IF THE COMMISSION AND THE EEAS MANAGED EFFECTIVELY EU SUPPORT FOR GOVERNANCE AND WHETHER THIS SUPPORT ACHIEVED ITS PLANNED RESULTS. IT FOCUSED ON KEY AREAS OF GOVERNANCE: THE ELECTORAL PROCESS, JUSTICE AND POLICE, PUBLIC FINANCE MANAGEMENT REFORMS AND THE DECENTRALISATION PROCESS.

IT CONCLUDES THAT EU SUPPORT HAS BEEN SET WITHIN A GENERALLY SOUND COOPERATION STRATEGY, ADDRESSING MAIN NEEDS, BUT PROGRESS HAS BEEN SLOW, UNEVEN AND OVERALL LIMITED. SUSTAINABILITY WAS AN UNREALISTIC PROSPECT FOR MOST PROJECTS EXAMINED. THIS WAS IN PART DUE TO THE FRAGILE COUNTRY CONTEXT BUT ALSO DUE TO SHORTCOMINGS IN THE WAY IN WHICH THE COMMISSION AND THE EEAS HAVE MANAGED THEIR COOPERATION WITH THE DRC.



EUROPEAN COURT OF AUDITORS



ISBN 978-92-9241-359-0

