



EU Democracy Assistance:
An Analysis of Theory and Practice 1991-2011

Larissa Ogertschnig

Thesis submitted for assessment with a view to obtaining
the degree of Doctor of Laws of the European University Institute

Florence, December 2012

European University Institute
Department of Law

EU Democracy Assistance:
An Analysis of Theory and Practice 1991-2011

Larissa Ogertschnig

Thesis submitted for assessment with a view to obtaining
the degree of Doctor of Laws of the European University Institute

Examining Board

Prof. Gráinne de Búrca, NYU, formerly EUI (Supervisor)

Prof. Philippe C. Schmitter, EUI

Prof. Dimitry Kochenov, University of Groningen

Prof. Erwan Lannon, University of Ghent

© Larissa Ogertschnig, 2012

No part of this thesis may be copied, reproduced or transmitted
without prior permission of the author

Summary

In the late 1980s/early 1990s the EU started to pursue a new policy: that of democracy promotion. It quickly put in place a whole range of instruments that would facilitate the transition to democracy and its consolidation in new democracies. Democracy assistance has over the last two decades, due to its ‘positive’ features, increasingly emerged as one of the EU’s preferred instruments of that policy, expressed in particular in increasing budgets for democracy assistance programmes, new democracy assistance facilities, and explicit policy declarations on the topic. This thesis outlines and analyses the EU’s strategy of democracy promotion through the use of democracy assistance from its inception in the early 1990s until 2011, focusing on all major world regions except the enlargement dimension. While revealing numerous details on the strategy, it attempts to also answer the following three more fundamental questions: What is the EU’s underlying conception of democracy? What is its preferred model of democratization? And what is its preferred approach to democracy assistance? In looking for answers, the thesis first traces the emergence and evolution of the use of EU democracy assistance, revealing major developments, stumbling blocks, and key features of the policy tool. A discussion of primary law traces the partly difficult development of EC/EU competences to engage in democracy promotion and especially assistance as well as the limited role primary law plays in policy implementation. An outline of the procedural and institutional dimension investigates the role of core actors in policy-making and implementation, including EU institutions, civil society organizations, and third state governments. Further, the thesis provides detailed quantitative data on EU commitments and expenditure under its specific democracy assistance programme – the EIDHR – as well as under mainstream assistance programmes and analyses the thematic and geographical distribution of provided funds.

Acknowledgments

Just as is the case with many of my colleagues at the EUI and elsewhere, the choice of my PhD topic has strongly been driven by very personal motivations and experiences. Before I entered the EUI, I worked as Civil Education Project (CEP) – a now dissolved NGO – Visiting Lecturer in several post-Soviet Central Asian countries. It was my first experience in an authoritarian environment, where students and colleagues would not always speak out loudly what they thought and believed in and where, more than once, those who did were silenced. Without that I was then really aware of it, I was implementing a ‘democracy assistance’ project, as my teaching also involved explaining the workings of multi-party political systems and, more generally, introducing free speech and discussion in classrooms. There was only a small step from this practical experience and the interest it awoke in me, to wanting to explore the role of external actors in domestic democratization processes in more detail in a comprehensive research project. And soon my originally envisaged PhD topic on EU institutional reform changed into EU democracy assistance. (I have to also admit though, that the prospect of doing some travelling to interesting exotic (undemocratic) places also played some role.) All in all, without CEP and its excellent programmes and projects and without my stays in Almaty, Tashkent, and Ashgabat this research would not have been carried out.

Writing the thesis has been an at times very tough but also an extremely interesting and enriching experience. During my research I have lived in several countries and have met many interesting people, academics and practitioners, from whom I have learned a lot about my topic, research, as well as life more generally. I am highly indebted to all of them and would here like to express my sincere gratitude for all the help and encouragement I received. Above all, I would like to thank my supervisor Gráinne de Búrca for her continuing advice, support and trust during so many years. Without her help I would hardly have managed to write this thesis. Further, I would like to thank Philippe C. Schmitter, who introduced me to the topic of democratization in his seminars at the EUI. On few other occasions did I wish that a seminar would go on for many more hours than it actually did. Finally I would also like to mention Bruno de Witte, who always supported me when I needed.

Beyond the Badia Fiesolana and Villa Schifanoia, I would like to thank the members of the EU Delegation in Ukraine, in particular Ferruccio Bogó, who allowed me to get an insight into the practice of EU democracy assistance. Thanks are also due to Toni M. Fine and the Leitner Center for International Law and Justice, who hosted me during my stay at Fordham University in New York. I am also indebted to Joseph Marko at my current workplace, the University of Graz, who gave me sufficient time to conclude my thesis while working in his team.

Of my colleagues at the EUI I would in particular like to mention Roland Erne, Diana Digol, Arolda Elbasani, Verena Fritz, Jessica Almqvist, Nanna Marklund, Ounia Doukouré, Emily Delivré, and Andrés Delgado, who have been great colleagues and some of whom have become very good friends. Thanks to Anny Bremner at the Academy of European Law for the great cooperation during the year I worked there.

Thanks are also due to Alberto Caselli, who introduced me to Italian slow food and kept my artistic brain cells alive. Outside San Domenico, life would not have been fun and interesting without the friendship of Sina and Angelo, Barbara and Angelo, Sibylle, Rita and Neri, le maestre e genitori at the Scuola Materna in Pian di Mugnone and Scuola Boccaccio in via Faentina, the group of artists (and would like to be artists) around Enzo Butera, and the Amnesty International group in Villach.

I will always be indebted for the support I received from my family, in particular my parents Rosi and Karl, my aunt Renate, and uncle Seapl. I would like to thank Berdi, who has accompanied me for a long time during this research. Thank you Stefan for supporting me during the last stage of writing this thesis, pushing me to send it off, and for doing the proof-reading. And, finally, a big thanks to Elias and Olivia, who have always managed to distract me when research and writing seemed overwhelming.

Table of Contents

Summary	ii
Acknowledgments	iv
Table of Contents	vi
List of Acronyms	xvi
List of Tables	xx
Introduction	1
1. The Context	1
2. The Focus of this Thesis	3
3. Existing Literature and the Value-Added by this Thesis	7
4. Interdisciplinarity and Methodology	11
5. The Structure of this Thesis	11
PART I: GENERAL FRAMEWORK FOR THE STUDY OF DEMOCRACY ASSISTANCE	13
Chapter 1: Core Definitions, Concepts, and Conceptions in the Study of Democracy Assistance	15
I. Introduction	15
II. Core Definitions, Concepts, and Conceptions	16
1. Defining Democracy Assistance	16
2. The International Dimension of Democratization	21
a) Actors	22
b) Influences and/or Approaches	25
i. Contagion	26
ii. Coercion/Control	28
iii. Political Conditionality	30
iv. Consensus	32
3. Explaining Democratization	35
a) The Structural Approach in the Study of Democratization	36
i. Socio-Economic Development and Democratization	37
ii. Cultural Factors and Democratization	40
b) The Genetic or Transition Approach in the Study of Democratization	41
i. Liberalization	42

ii. Transition	43
iii. Consolidation	45
4. Models of Democracy	47
a) The Concept of Democracy	48
b) Two Core Ideas of Liberal Democracy	48
c) Essential Features of (Liberal) Democracy	50
i. The Minimum Procedural Conditions of Democracy	52
<i>Elections</i>	52
<i>The Freedom of Expression, the Right to Alternative Information and the Media</i>	54
<i>The Freedom of Association: Political Parties and Civil Society</i>	55
ii. An Additional Element: The Rule of Law	58
d) Various Models of Democracy	61
i. The Elitist Model of (Liberal) Democracy	61
ii. The Pluralist Model of (Liberal) Democracy	63
iii. The Model of Social Democracy	64
iv. The Model of Participatory Democracy	66
e) Democracy and Related Concepts: Human Rights and Good Governance	67
III. Conclusion	69
Chapter 2: Basic Issues in Democracy Assistance	73
I. Introduction	73
II. Introducing Basic Issues on Democracy Assistance	73
1. The International Evolution of Democracy Assistance	73
a) The Early 20 th Century: Wilsonianism	74
b) The 1950s and 1960s: Colonialism, Decolonization, and Development Policies	75
c) The 1970s: The German Political Foundations and Human Rights Policies	77
d) The 1980s: The National Endowment for Democracy (NED) and USAID Programmes	81
e) The Early 1990s: The Start of Democracy Promotion and Assistance in Europe	83
f) The Mid-1990s and Beyond: Consolidation and Challenges	85
2. Basic Approaches to Democracy Assistance	91
a) The Political and Developmental Approach to Democracy Assistance	92
b) The Advantages and Disadvantages of the Approaches	93
3. The Rationale of Democracy Promotion (and Assistance)	95
a) Value-based Motives	96
b) Instrumental Motives	98

4. The Legality and Legitimacy of Democracy Assistance	100
a) Democracy Assistance in International Law and Allowed Restrictions	100
b) The Legitimacy of Democracy Assistance	104
5. The Effectiveness of Democracy Assistance	106
6. Limitations of Quantitative Data and some Statistics on Democracy Assistance	108
a) Limitations of Quantitative Data on Democracy Assistance	108
b) Some Statistics on Democracy Assistance by Major Donors	112
III. Conclusion	115
PART II: AN ANALYSIS OF EU DEMOCRACY ASSISTANCE	119
Chapter 3: Introducing EU Democracy Assistance: The Emergence and Evolution of the Policy Instrument	121
I. Introduction	121
II. The Major Stages in the Development of EU Democracy Assistance	122
1. The Pre-1990s: The Late Emergence of EU Democracy Promotion and Assistance	122
a) The Absence of EU Democracy Assistance and Human Rights Promotion before the mid-1980s	122
b) Early, Isolated Examples of EC Democracy Assistance	123
c) A Soft Start of the EC's External Human Rights Policy: The Statement on Human Rights within European Political Cooperation in 1986	126
2. 1990-1992: The Start of EC Democracy Assistance	127
a) The European Parliament and Democracy Assistance in Latin America	127
b) 1990: The Real Beginning of the EC's External Human Rights and Democratization Policy	128
c) 1991: The Elaboration of Principles and Tools for the New Policy of the EC	129
i. The Commission	129
ii. The European Council	130
iii. The European Parliament	131
iii. The Council	132
3. 1993-1996: The Parallel Development of Democracy Assistance in Mainstream Development Programmes and Specific Programmes	134
a) Democracy Assistance as Part of Development Programmes and within CFSP	134
b) The European Initiative for Democracy and Human Rights (EIDHR)	135
c) Developing a Strategy for the EC's External Human Rights and Democratization Policy	138
4. 1997-2002: The Consolidation of the EIDHR	140

a) Challenging the Legality of the Specific Democracy Assistance Programmes	140
b) The Transformation of the EIDHR	142
c) Identifying a Distinctive Character for the EIDHR	144
d) Rendering the EIDHR More Strategic	146
e) Focusing on Election Support	149
f) Addressing Conceptual Issues (in the ACP Context)	150
5. 2003-2006: The Growth of Democracy Assistance in Mainstream Programmes	153
a) Confirming the Role of Democracy and Development	153
b) The Governance Agenda	154
i. The Democracy Facility	155
ii. The ACP Governance Initiative	156
iii. The ENPI Governance Facility	157
iv. Democracy as Part of Governance Profiles and Indicators	158
6. 2007: Overhauling External Assistance Programmes	160
a) A Simplification of the EU's External Aid Programmes	160
b) The European Instrument for Democracy and Human Rights (EIDHR)	161
c) Initiatives of the European Parliament	163
7. 2009: Putting Democracy Promotion on the Agenda	164
a) 2009: A Consensus on EU Democracy?	164
8. The Repercussions of the Arab Spring	168
a) New Initiatives for Core Regions	168
b) 2011: European Parliament Resolution on EU External Policies in Favour of Democratization	170
c) The European Endowment for Democracy (EED)	172
d) COM(2011) 886 final: Human Rights and Democracy at the Heart of EU External Action	173
e) Proposal for a New EIDHR Regulation Post-2012	175
III. Conclusion	176
Chapter 4: Competences and Legal Bases for EU Democracy Assistance	189
I. Introduction	189
II. The Pre-Lisbon Legal Framework	190
1. The EC-Treaty	190
a) An Overview of the Legal Bases relevant for Democracy Assistance	190
b) An Analysis of the Legal Bases relevant for Democracy Assistance	196
i. Democracy Assistance as Tool of EC Democracy Promotion under Articles 177(2) and 181a(1)?	196

ii. Explaining the Double-Track Legal Basis and Absence of a Separate, Specific Section on Democracy Promotion	199
iii. The Geographical Scope (<i>ratione personae</i>) of Articles 177(2) and 181a(1) ECT	201
<i>Before the Reform of EC External Assistance Instruments (before 1 January 2007)</i>	202
<i>After the Reform of EC External Assistance Instruments (since 1 January 2007)</i>	204
iv. Different Procedural Rules of Articles 179, 181a and 308 ECT	207
<i>Differences in Procedural Rules</i>	207
<i>The Use of Multiple Legal Bases with Different Procedural Rules</i>	209
v. Independent Democracy Assistance Programmes or Democracy Assistance as Part of General Development Assistance Programmes Only?	210
<i>A Restrictive Interpretation of the ECT</i>	211
<i>A Broad Interpretation of the ECT</i>	213
vi. The Substantive Scope of Article 177(2) ECT and 181a ECT	216
<i>Development-Related Democracy Assistance Only?</i>	216
<i>A Broad Material Scope for EC Democracy Assistance</i>	218
vii. The Determination of the Substantive Scope of Democracy Promotion in Primary Law	219
c) Shared Competence of the EC and Member States in Democracy Assistance	223
i. ‘Complementary’ Competence	223
ii. The Principles of Subsidiarity and Proportionality	227
2. The EU-Treaty	229
a) An Overview of the Legal Basis relevant for Democracy Assistance	229
b) An Analysis of the Legal Bases Relevant for Democracy Assistance	230
i. Democracy Assistance as Tool of CFSP-based Democracy Promotion?	230
ii. Procedural Rules	232
c) Inter-pillar Delimitation	233
i. Article 47 TEU: The Collision Rule	234
ii. Case C-91/05 <i>Commission v. Council (ECOWAS or Small Arms Light Weapons)</i>	235
iii. Implications for TEU-based Democracy Assistance	237
3. Summary of the Analysis of the Pre-Lisbon Legal Framework	239
III. The Current Legal Framework	240
1. Supranational Democracy Assistance: The TFEU and the TEU	240
a) An Overview of the Legal Bases Relevant for Democracy Assistance	240
b) An Analysis of the Legal Bases Relevant for Democracy Assistance	245
i. Democracy Assistance as Tool of EU Democracy Promotion under Articles 209 and 212 TFEU?	245
ii. The Double-Track Legal Basis and Absence of a Separate Section on Democracy Promotion	245

iii. The Geographical Scope (<i>ratione 'personae'</i>) of Articles 208, 209 and 212 TFEU	246
iv. Procedural Rules of Articles 209 and 212 TFEU	246
v. The Scope of Articles 208 and 212 TFEU	246
c) Shared Competence, Subsidiarity and Proportionality	247
2. CFSP-Based Democracy Assistance	248
a) An Overview of the Legal Bases Relevant for Democracy Assistance	248
b) Analysis of the Legal Bases Relevant for Democracy Assistance	249
i. Democracy Assistance as Tool of CFSP-based Democracy Promotion	249
ii. Procedural Rules	249
iii. 'Inter-Pillar' Delimitation	250
3) Summary of the Analysis of the Current Legal Framework	251
III. Conclusion	252
Chapter 5: The Institutional and Procedural Dimension of EU Democracy Assistance	255
I. Introduction	255
II. An Analysis of the Institutional and Procedural Dimension of EU Democracy Assistance	256
1. Policy-making in EU Democracy Assistance	256
a) Primary Law	258
b) Secondary Law	259
i. The Necessity of Secondary Legislation	260
ii. The EIDHR Regulations	261
<i>The Substantive Content of the EIDHR Regulations</i>	262
<i>Procedures for the Adoption of the EIDHR Regulations</i>	263
iii. The Mainstream and Specific Assistance Programmes	265
iv. The EU Budget and the Financial Regulation	266
c) Commission Communications	269
d) European Council and Council Conclusions and European Parliament Resolutions	273
2. Policy Implementation	277
a) Three Basic Modes of Aid Implementation	278
b) The Standard Cycle of Operations	280
c) Programming	280
i. Programming the EIDHR	281
<i>The Increasing Importance of Programming in the case of the EIDHR</i>	281
<i>The Character of EIDHR Programming Documents</i>	282
<i>The Legal and Regulatory Basis for EIDHR Programming</i>	283
<i>Types of Programming Documents and their Essential Content: Strategy Papers and Annual Action Programmes</i>	284

<i>Procedures in the Adoption of Programming Documents</i>	286
<u>(1) Drawing up the draft programming document:</u>	286
<u>(a) The Commission Headquarters</u>	286
<u>(b) The Delegations</u>	288
<u>(c) Civil Society</u>	288
<u>(d) The Member States</u>	290
<u>(2) Quality control and comitology</u>	290
<u>(3) The Formal Approval</u>	294
ii. Programming the Mainstream Development Programmes	295
<i>Programming in the case of the Mainstream Development Programmes</i>	296
<i>The General Character of Mainstream Development Programming Documents</i>	297
<i>The Legal and Regulatory Basis for Programming Mainstream Development Programmes</i>	297
<i>Types of Programming Documents and their Essential Content: Strategy Papers, Multiannual Indicative Programmes and Annual Action Programmes</i>	298
<i>Procedures in the Adoption of Programming Documents</i>	299
d) Project Identification and Formulation (with a Financing Decision)	301
i. Project Identification under the EIDHR	301
ii. Project Identification under the Mainstream Development Programmes	303
e) Technical Implementation (i.e. implementation in a more limited sense)	303
f) Evaluation & Audit	304
III. Conclusion	306
Chapter 6: Democracy Assistance under the EIDHR: An Analysis of the EU's Specific Programme for Democracy Assistance	311
I. Introduction	311
II. An Analysis of the EIDHR	312
1. A General Quantitative Account of the EIDHR	312
a) EU Budgetary Commitments for the EIDHR	313
b) Financial Envelopes in the EIDHR Regulations	317
c) EU Expenditure under the EIDHR	318
i. Total EU Expenditure under the EIDHR	318
ii. EU Democracy Assistance under the EIDHR	321
2. The Thematic Distribution of EIDHR Funds	323
a) The Determination of the Thematic Distribution of the EIDHR	324
i. The EIDHR Regulations	324
ii. The EU Budget	328
iii. The Programming Stage	329

b) The Thematic Distribution of EIDHR Expenditure	332
i. The Thematic Distribution of the Entire EIDHR Expenditure	333
ii. The Thematic Distribution of EIDHR Expenditure for Democracy Assistance	337
3) The Geographical Distribution of EIDHR Funds	343
a) The Determination of the Geographical Distribution of EIDHR Funds	344
i. The EIDHR Regulations	344
ii. The EU Budget	344
iii. The Programming Stage	345
b) The Regional Distribution of EIDHR Expenditure 1996-2006	347
c) The Distribution of EIDHR Expenditure among Countries 2000-2006	350
i. The Distribution of all EIDHR Funds among Countries 2000-2006	352
ii. The Distribution of EIDHR Expenditure for Democracy Assistance among Countries 2000-2006	356
4. Core Features of the Stage of Implementation	360
a) (Technical) Project Implementation	360
i. Project Types	360
ii. Project Sizes	362
iii. Partners in Implementation	364
III. Conclusion	367
Chapter 7: Democracy Assistance as Part of the EU's Mainstream and Special Development Assistance Programmes: An Overview of the Programmes	373
I. Introduction	373
II. Overview of the EU's General and Specific Development Assistance Programmes	374
1. Overview of the General Development Assistance Programmes	375
<i>Before 1 January 2007</i>	
a) Asia and Latin America: The ALA Regulation	375
b) The Newly Independent States (NIS): The Tacis Programme	380
c) The Mediterranean States: The MEDA Programme	385
d) The ACP states: The Lomé Conventions and the Cotonou Agreement	390
e) Palestine: Special Assistance Programmes	394
f) South Africa: Special Assistance Programmes	395
<i>Since 1 January 2007</i>	
g) The European Neighbourhood States in Eastern Europe and the Mediterranean: The European Neighbourhood and Partnership Instrument (ENPI)	397
h) Developing Countries in Latin America and Asia (including former Soviet Central Asia): The Development Cooperation Instrument (DCI)	402

i) The ACP states: The Cotonou Agreement	407
j) The Instrument for Cooperation with Industrialized and other High-Income Countries and Territories (ICI)	407
2. Overview of the Theme- and Actor-specific Development Assistance Programmes	409
<i>Before 1 January 2007</i>	
a) Co-financing with European NGOs (or B7-6000)	409
b) Decentralized Cooperation (B7-6002)	410
c) The Rapid Reaction Mechanism (RRM)	411
<i>Since 1 January 2007</i>	
d) The Instrument for Stability (IFS)	412
e) Non-State Actors and Local Authorities in Development	114
III. Conclusion	415
Chapter 8: Democracy Assistance as Part of the EU's Mainstream and Special Development Assistance Programmes: The Implementation of the Programmes	421
I. Introduction	421
II. An Analysis of Democracy Assistance under the EU's Mainstream and Specific Development Assistance Programmes	422
1. A General Quantitative Account	422
a) Commitments for Democracy Assistance under the EU's Mainstream and Specific Development Programmes	423
i. EU Commitments in the OECD Sector 'Government and Civil Society – General'	425
ii. EU Commitments for Democracy Assistance	429
b) Expenditure for Democracy Assistance under the EU's Mainstream and Specific Development Programmes	431
i. EU Expenditure in the OECD Sector 'Government and Civil Society – General'	432
ii. EU Expenditure for Democracy Assistance under Mainstream and other Specific Development Programmes	434
2. The Thematic Distribution of Funds	437
a) The Determination of the Thematic Distribution of Funds	438
i. The EU's Mainstream and Specific Development Assistance Regulations	438
ii. The EU Budget	438
iii. The Programming Stage	439
b) The Thematic Distribution of Funds	441
3. The Geographical Distribution of Funds	450

a) The Determination of the Distribution of Funds	451
i. The Regulations	451
ii. The EU Budget	451
iii. The Programming Stage	452
b) The Regional Distribution of Funds in the Sector ‘Government and Civil Society’	452
c) The Regional Distribution of Funds for Democracy Assistance	455
d) The Regional Distribution of Funds among Sub-Sectors of Democracy Assistance	458
III. Conclusion	460
Conclusion	467
1. The Emergence and Evolution of EU Democracy Assistance	468
2. Competence and Legal Basis for EU Democracy Assistance	470
3. The Institutional and Procedural Dimension	472
4. An Analysis of the EIDHR	475
5. An Analysis of Mainstream Development Assistance Programmes	479
6. The EU’s Motivations to Provide Democracy Assistance	485
7. The Model of Democracy	486
8. The EU’s Approach to Democratization	489
9. The EU’s Approach to Democracy Assistance	490
10. Key Remaining Issues	492
Appendix	496
Bibliography	507

List of Acronyms

AAP	Annual Action Programme
ACP	African, Caribbean, and Pacific States
AIDCO	EuropeAid Cooperation Office
ALA	Asia and Latin America
AU	African Union
AWP	Annual Work Programme
BMZ	(German) Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung
BiH	Bosnia and Herzegovina
CBSS	Country Based Support Scheme
CCM	Civilian Crisis Management
CEE	Central and Eastern Europe
CEEC	Central and Eastern European Countries
CFSP	Common Foreign and Security Policy
CHR	Commission on Human Rights
CL	Civil Liberties
COE	Council of Europe
COHOM	Council Working Group on Human Rights
COM	Commission Communication
COREPER	Committee of Permanent Representatives
CSCE	Conference on Security and Cooperation in Europe
CSP	Country Strategy Paper
CSPs	Country Strategy Papers
CSR	Corporate Social Responsibility
CTP	City-Twinning Programme
DAC	Development Assistance Committee
Danida	Danish International Development Agency
DCI	Development Cooperation Instrument
DEVCO	Directorate-General Development and Cooperation – Europeaid
DEVE	Committee on Development (in the European Parliament)
DfID	Department for International Development
DHRC	Democracy and Human Rights Committee
DG	Directorate-General
DG RELEX	Directorate-General for External Relations
DRC	Democratic Republic of the Congo
DROI	Subcommittee on Human Rights (in the European Parliament)
EC	European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECOSOC	Economic and Social Council
ECOWAS	Economic Community Of West African States
ECR	European Court Reports
ECT	Treaty establishing the European Community
ECU	European Currency Unit
EDF	European Development Fund
EEAS	European External Action Service
EEC	European Economic Community
EED	European Endowment for Democracy

EIDHR	European Initiative for Democracy and Human Rights/European Instrument for Democracy and Human Rights
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EPC	European Political Cooperation
EPD	European Partnership for Democracy
EU	European Union
EU EOM	European Union Election Observation Mission
EUSR	European Union Special Representative
FAA	Foreign Assistance Act
FH	Freedom House
fSU	former Soviet Union
FYROM	The former Yugoslav Republic of Macedonia
GAP	Governance Action Plan
GNI	Gross National Income
GSP	General System of Preferences
GTZ	German Gesellschaft für Technische Zusammenarbeit
HDIM	Human Dimension Implementation Meetings
HRC	Human Rights Committee
IBPP	Institution Building and Partnership Programme
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICI	Instrument for Cooperation with Industrialized and other High-income Countries and Territories
IDEA	International Institute for Democracy and Electoral Assistance
IFS	Instrument for Stability
IGC	Intergovernmental Conference
IPA	Instrument for Pre-Accession
iQSG	inter-service Quality Support Group
LIEN	Link-inter European NGOs
MEDA	Mesures d'accompagnement financières et techniques (à la réforme des structures économiques et sociales dans le cadre du partenariat euro-méditerranéen)
MFA	Ministry of Foreign Affairs
MIP	Multiannual Indicative Programme
MNC	Multi-national Corporation
NED	National Endowment for Democracy
NGO	Non-governmental organization
NID	National Democratic Institute
NIMD	Netherlands Institute for Multi-party Democracy
NIS	Newly Independent States (of the former Soviet Union)
OA	Official Assistance
OAS	Organization of American States
ODA	Official Development Assistance
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organization for Economic Co-operation and Development
OJ	Official Journal of the European Communities/Official Journal of the European Union

OMC	Open Method of Coordination
OPPD	Office for Promotion of Parliamentary Democracy
OSCE	Organization for Security and Cooperation in Europe
OSI	Open Society Institute
PCA	Partnership- and Cooperation Agreement
PCM	Project Cycle Management
PR	Political Rights
PSC	Political and Security Committee
RRM	Rapid Reaction Mechanism
SALW	Small Arms and Light Weapons
SCR	Service Commune Relex
SEA	Single European Act
SEE	Southern and Eastern Europe
SIDA	Swedish International Development Agency)
SP	Strategy Paper
TAO	Technical Assistance Office
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNDEF	United Nations Democracy Fund
UNDP	United Nations Development Programme
UN GA	United Nations General Assembly
UNICEF	United Nations Children’s Fund
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNODC	United Nations Office on Drugs and Crime
US	United States of America
USAID	United States Agency for International Development
WFD	Westminster Foundation for Democracy

List of Tables

Table 1: The International Dimension of Democratization	27
Table 2: US (USAID) Democracy Assistance 1990-2005 (expenditure; in million US\$)	113
Table 3: US (USAID) Democracy Assistance 2006-2010 (total costs; in million US\$)	113
Table 4: Distribution of US (USAID) Democracy Assistance 1990-2005 by major Sectors (expenditure; in million US\$)	113
Table 5: Democracy Assistance by selected European States 1999-2006 (commitments; in million Euros)	114
Table 6: OECD ODA Commitments in the Sector ‘Government and Civil Society – general’ by major Western Donor States for all Developing Countries 1995-2009 (in million US\$)	114
Table 7: OECD ODA Disbursements in the Sector ‘Government and Civil Society – general’ by major Western Donor States for all Developing Countries 2002-2009 (in million US\$)	115
Table 8: Democracy Promotion-relevant Provisions of the ECT and TEU	196
Table 9: Democracy Promotion- and Democracy Assistance-relevant Provisions of the TEU and TFEU	244
Table 10: EIDHR Commitments in the EU Budgets 1978-2011 (in million ECUs/Euros)	315
Table 11: Financial Reference Amounts in the EIDHR Regulations (in million Euros)	318
Table 12: EU Expenditure under the EIDHR and its Forerunner Programmes 1992-2006 (in million ECUs/Euros)	320
Table 13: EU Expenditure for Democracy Assistance under the EIDHR and its Forerunner Programmes 1996-2000 (in million Euros)	322
Table 14: Summary of Provisions defining the Thematic Scope of EIDHR Assistance in the 1999 EIDHR Regulations (Article 2 of Regulations 975 and 976/1999, as amended by Regulations 2240 and 2242/2004)	325
Table 15: Summary of Provisions defining the Thematic Scope of EIDHR Assistance in the 2006 EIDHR Regulation (Article 2 of Regulation 1889/2006)	326
Table 16: Thematic Priority Areas as Defined in the four EIDHR Programming Documents adopted since 2001 (in particular for democracy assistance)	330
Table 17: EIDHR Thematic Distribution of Expenditure 1996 to 2000 (in million Euros and %)	334
Table 18: EIDHR Thematic Distribution of Expenditure 2000 to 2006 (in million Euros and %)	334

Table 19: Thematic Distribution of EIDHR Expenditure for Democracy Assistance 1996-2000, including Election Observation (in million Euros and in % of total democracy assistance)	338
Table 20: Thematic Distribution of EIDHR Expenditure for Democracy Assistance 2000-2006 including Election Observation (in million Euros and % of total democracy assistance)	338
Table 21: Thematic Distribution of 105-odd EIDHR Democracy Assistance Projects 2007-April 2009, excluding Election Observation(!) (in million Euros and % of total Democracy Assistance)	339
Table 22: Regional Distribution of EIDHR Expenditure between 1996-1999 (in %)	347
Table 23: Regional Distribution of EIDHR Expenditure in 2000 (in %)	347
Table 24: Regional Distribution of EIDHR Expenditure between 2000-2006 (in %)	347
Table 25: Regional Distribution of EIDHR Expenditure between 1996-2006 (in %)	347
Table 26: Average Share of all EIDHR Funds of Each State in the main Regions between 1996-2006 (in %)	348
Table 27: EIDHR Expenditure for Country-specific Macro, Micro, and Targeted Projects per Country in the NIS 2000-2006	353
Table 28: EIDHR Expenditure for Country-specific Macro, Micro, and Targeted Projects per Country in Asia 2000-2006	353
Table 29: EIDHR Expenditure for Country-specific Macro, Micro, and Targeted Projects per Country in the Mediterranean and the Middle East 2000-2006	354
Table 30: EIDHR Expenditure for Country-specific Macro, Micro, and Targeted Projects per country in Latin America 2000-2006	354
Table 31: Expenditure for EIDHR Democracy Assistance for Macro, Micro, and Targeted Projects per Country in the NIS 2000-2006	357
Table 32: Expenditure for EIDHR Democracy Assistance for Macro, Micro, and Targeted Projects per Country in Asia 2000-2006	357
Table 33: Expenditure for EIDHR Democracy Assistance for Macro, Micro, and Targeted Projects per Country in the Mediterranean and Middle East 2000-2006	358
Table 34: Expenditure for EIDHR Democracy Assistance for Macro, Micro, and Targeted Projects per Country in Latin America 2000-2006	358
Table 35: Distribution of EIDHR Expenditure through EIDHR Instruments 2000-2006 (in numbers of projects, million Euros, and % of all EIDHR expenditure)	362
Table 36: Overview of Major EU Development Programmes before and since 1.1.2007 (except for CEECs and Western Balkans)	375
Table 37: EU ODA Commitments in the OECD Sector 'Government and Civil Society – General' 1995-2009 (in million Euros)	426

Table 38: EU ODA Commitments for Democracy Assistance 1995-2009 (in million Euros and %)	430
Table 39: EU ODA Disbursements in the OECD Sector ‘Government and Civil Society – General’ 1995-2009 (in million Euros)	433
Table 40: EU ODA Disbursements for Democracy Assistance (in million Euros and %)	434
Table 41: Thematic Priorities concerning Democracy Assistance in Tacis and ENPI Programming Documents concerning Georgia 2002-2013	440
Table 42: Distribution of ODA Commitments for ‘Government and Civil Society – General’ 1995-2009 (in million Euros)	443
Table 43: Commitments in the Sector ‘Government and Civil Society general’ 1995 – 2009 per major Region (in million Euros)	453
Table 44: Average EU Commitments in the Sector ‘Government and Civil Society – General’ per Country in each major Region 1995 -2009 (in million Euros)	453
Table 45: Average Share of Sector ‘Government and Civil Society – General’ of all EU ODA Commitments in major Regions 1995- 2009 (in %)	454
Table 46: Commitments for Democracy Assistance 1995 – 2009 per major Region (in million Euros)	455
Table 47: Average (!) Commitments for Democracy Assistance per Country in each Major Region 1995 – 2009 (in million Euros)	456
Table 48: Average Share of Democracy Assistance of Sector ‘Government and civil society – general’ in major Regions 1995 – 2009 (in %)	456
Table 49: Thematic Distribution of Commitments for Democracy Assistance in major Regions 1995-2009 (in million Euros and in %)	459
Table 50: EU ODA Commitments 1995-2009 (in million Euros and %)	462
Table 51: Distribution of ODA Commitments among Sub-Sectors of ‘Governance and Civil Society – General’ 1995-2009 (in million Euros and %)	464
Table A: EU Commitments for the EIDHR its Forerunner Programmes	496
Table B: Micro Project Facility Allocations per Region and Country 1999-2006 (in 100.000 Euros)	501
Table C: Major Recipients of EIDHR Funds in the NIS, the Mediterranean & Middle East, Asia, and Latin America (in absolute numbers and per capita, 2000-2006)	503
Table D: Major Recipients of EIDHR Funds for Democracy Assistance in the NIS, MEDA & Middle East, Asia, and Latin America 2000-2006 (in absolute amounts and per capita, 2000-2006)	504

Introduction

“Human rights and democracy must run as a “silver thread” throughout EU external policies.”¹

1. The Context

The *Revolução dos Cravos*, which started on 25 April 1974 in the Portuguese capital Lisbon, did not only lead to a regime change in Portugal but also marked the start of what should later be termed the ‘third wave of democracy’: a series of regime changes from authoritarianism to democracy in numerous countries of various continents over a certain period of time that strongly outnumbered regime changes in the opposite direction.² Consequently, within a period of twenty-five years the number of electoral democracies worldwide more or less tripled and the number of liberal democracies doubled, exact numbers of course depending on the used definitions of democracy.³ Overall the process confirmed the widespread and growing appeal of (liberal) democracy in its numerous variations as most acceptable form of government for states and made it the predominant type of regime worldwide. The decade from 2000 onwards has witnessed further attempts at democratization, but also various setbacks, with the overall number of democracies in 2012 being similar to the level of 2000.⁴ Discussions have also been carried out on whether – attempted – moves towards democratization in the former Soviet Union (fSU) in the early to mid-2000s or in the Arab world since early 2011 still form part of third wave or of a new, ‘fourth wave of democracy’.⁵

One particular phenomenon that accompanied the third wave of democracy, in particular since the late 1980s and early 1990s, was the influence of the ‘international dimension’ of

¹ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council, Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach, COM(2011) 886 final, 12.12.2011, at 7.

² S. Huntington, *The Third Wave: Democratization in the Late 20th Century* (1991), at 3-4 and 15-6.

³ L. Diamond and M. F. Plattner, ‘Introduction’, in L. Diamond and M. F. Plattner (eds), *The Global Divergence of Democracy* (2001), at x and xii; C. W. Haerpfer, P. Bernhagen, R. F. Inglehart and C. Welzel, ‘Introduction’, in C. W. Haerpfer, P. Bernhagen, R. F. Inglehart and C. Welzel (eds), *Democratization* (2009), at 2; Freedom House, Freedom in the World – Electoral Democracies at <http://www.freedomhouse.org/sites/default/files/Electoral%20Democracy%20Numbers%2C%20FIW%201989-2012.pdf> (last accessed on 1.7.2012).

⁴ Ibid.

⁵ M. McFaul, ‘The Fourth Wave of Democracy and Dictatorship: Noncooperative Transitions in the Postcommunist World’, 54 *World Politics* 2 (January 2002), at 212.

democratization upon domestic reform processes.⁶ Democratization had previously been considered a predominantly national affair, caused and moved forward by local circumstances and actions. Especially during the ‘snowballing’ of transitions in Central and Eastern Europe (CEE) in 1989/1990⁷ it became obvious that external factors were also at work and not insignificantly influenced the start, mode, and outcome of regime changes.⁸ Some of the external factors are unintentional effects of external presence or action, like the inspiration provided by functioning liberal democracies or by countries opting for a specific type of transition, like negotiations or peaceful protests. Other external factors are actions by external actors that specifically aimed at facilitating a transition to democracy in a specific third state or the consolidation thereof. Examples of such intentional actions – widely and also in this thesis referred to as ‘democracy promotion’ – include political conditionality, sanctions, election monitoring, and, of particular importance for this work, democracy assistance.

The term democracy assistance is nowadays widely used to refer to those programmes and projects that are devised, funded, and/or carried out by external actors and that specifically and directly aim at facilitating democratization processes in non-democratic states and new democracies.⁹ Typical democracy assistance projects include the funding of projects devoted to prepare the holding of elections, to support local election monitoring groups, to support the creation of non-governmental organizations (NGOs) working in the fields of democracy and human rights, to train civil society leaders and journalists, to make citizens aware of their civil and political rights, to train political leaders and parliamentarians, and to reform the judicial system. The tool of democracy assistance forms part of, in European Union (EU)-terminology, a profoundly ‘positive’ approach and overall aims at working pro-actively and openly, in cooperation with the target states’ populations, private organizations, and state institutions in order to facilitate moves towards democracy and its consolidation. While democracy assistance first started to be used on a wider scale by the United States (US) in the mid-1980s, it has over the last twenty-five years become a central instrument of external democracy promotion of most old and new democracies as well as of international organizations like the United Nations (UN). Despite setbacks in democratization over the last decade, the global fight against terror, and backlashes by authoritarian states against democracy promotion efforts, aid budgets for

⁶ L. Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas* (1996).

⁷ S. Huntington, ‘Democracy’s Third Wave’, in L. Diamond and M. F. Plattner (eds), *The Global Resurgence of Democracy* (2nd ed., 1996), at 7.

⁸ P. C. Schmitter, ‘The Influence of the International Context upon the Choice of National Institutions and Policies in Neo/Democracies’, in L. Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas* (1996), at 28.

⁹ P. C. Schmitter and I. Brouwer, *Conceptualizing, Researching and Evaluating Democracy Promotion and Protection*, EUI Working Paper SPS No. 99/9 (1999), at 12 and 17.

democracy assistance have strongly and steadily increased in the case of most involved actors, including in the case of the EU and its Member States.

2. The Focus of this Thesis

It has just been indicated that democracy assistance has over the last two decades also increasingly become one of the EU's main instruments to assist democratization processes abroad. Numerous EU policy papers give evidence of the EU's strong conviction that the positive features of the instrument, that is, its pro-active, open, co-operative nature, make it a highly preferable tool to be used in its external policies towards the majority of third states.¹⁰ Annual budgets of EU democracy assistance programmes have strongly increased over the last two decades and are still increasing. Overall, between 2005 and 2009 the EU committed between 350 and 525 million Euros annually for democracy assistance projects worldwide, including through its specific democracy and human rights programme, the European Instrument for Democracy and Human Rights (EIDHR), and through its general development programmes. Importantly, this data only relates to democracy assistance and does not include commitments for human rights projects and projects pertaining to good governance reform, in particular administrative reform, which is sometimes included in data on democracy assistance. Despite its efforts, the EU nevertheless still lags behind major other international donors, like the US, both in terms of financial commitments and percentages of democracy assistance of overall aid.

This thesis focuses on EU democracy assistance. Inspired by the important works of Thomas Carothers on US democracy assistance, in particular his 1999 book *Aiding Democracy Abroad: The Learning Curve*, it aims to present a comprehensive overview and analysis of the major aspects of EU democracy assistance from its start in the mid-1980s/early-1990s until today in a single publication, covering 'theory' and 'practice', that is, the dimension of policy-making and that of implementation. While the comprehensive objective of the study renders it difficult to formulate a single research question, the following best captures the central objective of the study: "What is the EU's strategy to promote democracy abroad through the use of democracy assistance and how has it evolved since its start?". Overall, the thesis aims at describing and analyzing the development and use of the policy tool of democracy assistance and sees itself as part of 'analytical' studies on EU policies rather than of 'critical' approaches,¹¹ which would, for

¹⁰ See e.g. COM(2011) 886 final, at 9.

¹¹ T. Diez and a. Wiener, 'Introducing the Moscaic of Integration Theory', in A. Wiener and T. Diez (eds), *European Integration Theory* (2nd ed., 2009), at 6-11.

example, criticize the model of democracy used by the EU.¹² This study also points to existing problems and weaknesses in EU policy, deriving from unaddressed problems highlighted by the EU institutions themselves or problems exposed in the analysis. However, the main objective of the study remains to outline what the EU has been doing in the field of democracy promotion through the instrument of assistance since it started to use this policy tool.

In more detail, the thesis includes a discussion of the following issues:

- First, it charts the comparatively late emergence of EU democracy assistance in the mid-1980s/early 1990s and outlines the main stages in the evolution of the policy tool from its inception until late 2011, arguing that the use of the tool developed step-by-step in response to internal learning processes and external factors rather than following a preconceived master plan. Numerous, at times core elements concerning the policy tool evolved nearly accidentally due to varying preferences and actions by different EU institutions.
- Secondly, the thesis discusses the development of EU competences in the field of democracy (and human rights) promotion and argues that despite the current existence of a secure legal basis for democracy assistance, a separate title in primary law on democracy promotion would strengthen the policy and its tools.
- Thirdly, a discussion of the institutional and procedural dimension outlines the main steps to be taken in policy-making and the implementation of EU democracy assistance. It exposes the varying involvement in different programmes and at different stages of policy making and implementation of EU institutions, target states' governments, and of civil society organizations in the EU and in target states.
- Fourthly, thesis separately analyses the two major types of EU democracy assistance programmes, that is, the EIDHR and the democracy-related elements of mainstream development programmes. The analysis in particular exposes
 - how EU commitments and expenditure for democracy assistance under the EIDHR and the mainstream development programmes has evolved since its inception, globally and by major world region, and
 - in which thematic fields the EU spends democracy assistance under the various programmes, globally and by major world region.

¹² For such an approach, although not only focusing on the EU, see e.g. M. Kurki, 'Democracy and Conceptual Contestability: Reconsidering Conceptions of Democracy in Democracy Promotion', 12 *International Studies Review* 3 (2011), at 362-386.

Additionally, based on the just mentioned analysis, the thesis intends to answer three more fundamental questions on EU democracy assistance:

- First, which model or concept of the democracy is underlying EU action? It is argued that the EU is operating with a basic liberal model of democracy, allowing different versions thereof to be realized during implementation, upon the initiative of those involved in aid implementation.
- Secondly, which concept of democratization does the EU work with? The thesis shows that the EU operates within the transition approach to democratization but allows for bottom-up and top-down, reformist and revolutionary types of regime changes to take place, overall, however, giving a slight preference to the gradual, bottom-up initiated reformist paths.
- Thirdly, which is the predominant approach in EU democracy assistance? It is argued that both the developmental and the political approach to democracy assistance are followed in the EU context, both in the case of the EIDHR and the mainstream programmes. Overall, however, the developmental approach is prevailing.

A question that usually emerges in the discussion of democracy promotion, the issue of the impact of EU aid, is not addressed in this thesis, which focuses exclusively on what the EU is doing in terms of facilitating democratic change abroad. Further, the thesis does also not assess the contribution of the use of the EU's policy tool of assistance to nature of the EU as an international actor.¹³

In terms of the period covered, the study aims to be as comprehensive as possible and to address the instrument of EU democracy assistance from its start in the mid-1980s/early 1990s until December 2011, when research was concluded. It should be mentioned that the field is constantly evolving and that in particular the Arab Spring has led to numerous new initiatives that are currently being realized, which this study does not and cannot discuss. One factor that has not allowed a comprehensive treatment in all sections but has in several chapters limited the focus to shorter periods of time than intended is the lack of available statistical data on EU assistance.

In terms of the geographical focus, the thesis aims to cover all third states except those pertaining to the enlargement dimension, that is, states with candidate and potential candidate status. The limitation has relevance for the discussion of applicable assistance programmes as

¹³ For such focus, see A. Wetzel and J. Orbie, 'Promoting Embedded Democracy? Researching the Substance of EU Democracy Promotion', 16 *European Foreign Affairs Review* 5 (2011), at 567.

well as the analysis of statistical data, both of which has only been done for the 'regular' external dimension, that is, that beyond the enlargement context. The exclusion of the enlargement context results from constraints in time and space and the need for restricting the focus of the thesis. Further, it strongly appears that the requirement of democratization and objective of democracy promotion has a different, higher relevance in the enlargement context than in external policies, due to the simple fact that third states will eventually become EU members. This different logic calls for a separate analysis, which is, due to the mentioned constraints, not carried out in this study.¹⁴

It has, however, not always been possible to strictly observe the intended division between the regular external and the enlargement dimension. At times, data is therefore also provided on the implementation of programmes in candidate states and/or potential candidate countries, which is, however, clearly spelled out. The reason for this inconsistency again lies in the structure of available data. More specifically, some programmes, like the EIDHR, cover all third states and reports do not always allow extracting data for individual countries and regions. Further, the Organization for Economic Cooperation and Development (OECD), which is used as an important source for statistical data, uses different regional categories than the EU in its external aid programmes and consequently reports on potential candidate and non-candidate countries in the same category. At the same time, the OECD to some extent does not report on countries covered by this study, like on Russia.

The thesis focuses on 'European Union' democracy assistance rather than on 'European' democracy assistance. It therefore exclusively deals with programmes and projects funded by the EU rather than also with such funded by the EU Member States and/or other European states. EU democracy assistance has for various reasons, including primary law, for the last two decades predominantly been provided within the former first or supranational pillar of the EU rather than also within the EU's Common Foreign and Security Policy (CFSP). The thesis therefore concentrates on programmes and projects funded by the annual EU budget as well as by the European Development Fund (EDF), which, for historical reasons, finances support measures in the group of 78 African, Caribbean, and Pacific (ACP) states. Some CFSP measures implemented over the last two decades, in particular the recent rule of law missions carried out in the framework of civilian crisis management (CCM), show features of democracy assistance, but have

¹⁴ See e.g. H. Grabbe, 'How does Europeanization affect CEE Governance? Conditionality, Diffusion and Diversity', 8 *Journal of European Public Policy* 6 (2001) 1013-1031; F. Schimmelfennig, S. Engert, and H. Knobel, 'Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey', 41 *Journal of Common Market Studies* 3 (2003) 495-518; M. A. Vachudova, *Europe Undivided: Democracy, Leverage, and Integration since 1989* (2005).

been excluded from the focus of this thesis, except for the question of the delimitation of competences between the former first pillar and CFSP.

3. Existing Literature and the Value-Added by this Thesis

In the course of the last fifteen years a large body of literature has been built up on the topic of EU democracy promotion, which is of course a broader theme than democracy assistance, as it refers to all external activities of the EU that are carried out with the intention of facilitating the transition to democracy in a third state or supporting its consolidation. The literature comprises academic studies as well as, due to the nature of the topic, many policy-oriented publications by research institutes, think tanks,¹⁵ and EU institutions¹⁶. The various works in part differ in their specific foci. Some provide broader overviews of the EU's strategies, instruments, and motivations and implemented activities, globally or in different regions.¹⁷ Others concentrate on specific instruments and/or countries and regions, frequently assessing the EU's strategy and its success.¹⁸ Some authors have attempted to determine the factors that underlie the EU's choice of

¹⁵ See in particular the publications by FRIDE, a think-tank based in Madrid, which until more recently for a long period concentrated on EU democracy promotion as one of its key research areas: http://www.fride.org/homepage_english (last accessed on 1.7.2012). Pasos (Policy Association for an Open Society), an 'initiative' to strengthen independent think-tanks based in Prague, has also analysed EU policies: <http://pasos.org/> (last accessed on 1.7.2012). See in particular: E. Bogdanova, *A New Beginning? Democracy Support in EU External Relations Under the Lisbon Treaty*, PASOS Policy Brief No. 1 (2010) and V. Řiháčková, *Walking the Tightrope of Democracy Aid: The Long and Winding Road towards 'Flexible', Well-targeted EU Funding for Democracy and Human Rights*, PASOS Policy Brief No. 3 (2010). See, further, the European Partnership for Democracy (EPD) at <http://www.epd.eu/> and International IDEA at <http://www.idea.int/> (both last accessed on 1.7.2012), which produced some works on EU democracy promotion.

¹⁶ See in particular the Office for Promotion of Parliamentary Democracy (OPPD) at <http://www.europarl.europa.eu/aboutparliament/en/0094641612/Office-for-Promotion-of-Parliamentary-Democracy.html> (last accessed on 1.7.2012). Reference should also be made to the few evaluations of EU programmes relating to democracy assistance funded by the EU that are available at http://ec.europa.eu/europeaid/how/evaluation/evaluation_reports/index_en.htm.

¹⁷ R. Youngs, *Democracy Promotion: The Case of European Union Strategy*, CEPS Working Document No. 167 (October 2001); M. Light, 'Exporting Democracy', in K. E. Smith and M. Light (eds), *Ethics and Foreign Policy* (2001) 75-92; R. Youngs (ed.), *Survey of European Democracy Promotion Policies 2000-2006* (2006); M. Knodt und S. Urdze, 'Die Europäische Union als Exporteur von Demokratie und Rechtsstaatlichkeit', in P. C. Müller-Graff (ed.), *Die Rolle der erweiterten Europäischen Union als Akteur in der Welt* (2006) 385-403; R. Youngs, 'Democracy Promotion as External Governance?', 16 *Journal of European Public Policy* 6 (2009) 895-915; T. A. Börzel and T. Risse, 'Venus Approaching Mars? The European Union's Approaches to Democracy Promotion in Comparative Perspective', in A. Magan and M. McFaul (eds.), *Promoting Democracy and the Rule of Law: American and European Perspectives* (2009) 34-60.

¹⁸ G. R. Olsen, 'Promotion of Democracy as a Foreign Policy Instrument of "Europe": Limits to International Idealism', 7 *Democratization* 2 (2000), 142-167; G. Crawford, *Foreign Aid and Political Reform: A Comparative Analysis of Democracy Assistance and Political Conditionality* (2001); E. Fierro, *The EU's Approach to Human Rights Conditionality in Practice* (2003); D. Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law* (2008); T. Freyburg, S. Lavanex, F. Schimmelfennig, T. Skripka, and A. Wetzel, 'EU Promotion of Democratic Governance in the Neighbourhood', 16 *Journal of European Public Policy* 6 (2009) 916-934; P. J. Kubicek (ed.), *The European Union and Democratization* (2003); R. Youngs (ed.), *The European Union and Democracy Promotion: A Critical Global Assessment* (2010); Urdze S., *Die Externe Demokratieförderung der EU in den Zentralasiatischen Staaten* (2010).

different instruments.¹⁹ Other authors have focused on the particularities of European democracy promotion as different from other actors, in particular the US.²⁰

At the same time a body of literature specifically dealing with democracy assistance has emerged. The publications either focus on the instrument of democracy assistance as such, address the use of democracy assistance by different donors or in different countries, or focus on differences by major donors, in particular the US and European actors.²¹ Several studies, often funded by donors, assess the activities of the particular donor and provided detailed recommendations for the development of the policy tool.²²

Several of the mentioned publications on democracy promotion and on assistance also address EU democracy assistance, either analyzing it at a more theoretical level as one of the numerous EU tools of democracy promotion or as one of the tools used in particular countries or regions.²³ Fewer publication specifically and only deal with EU democracy assistance or analyze individual EU democracy assistance programmes.²⁴ Reference should here in particular be made to the writings of Richard Youngs, who has over the last decade intensively researched the field of European and EU democracy promotion and assistance. Many of his works are published by FRIDE, the already mentioned Madrid-based research institute, which for several years focused on EU democracy promotion as one of its three main fields of research.²⁵ Youngs' work comprises more descriptive and analytical publications on EU activities in the field, providing quantitative data, discussing the thematic focus of assistance, preferred target states and partners

¹⁹ A. Jünemann and M. Knodt (eds), *Externe Demokratieförderung durch die Europäische Union/European External Democracy Promotion* (2007); A. Warkotsch, 'Non-compliance and Instrumental Variation in EU Democracy Promotion', 15 *Journal of European Public Policy* 2 (2008) 227-245; P. Kotzian, M. Knodt and S. Urdze, 'Instruments of the EU's External Democracy Promotion', 49 *Journal of Common Market Studies* 5 (2011) 995-1018.

²⁰ M. van Doorn and R. von Meijenfeldt (eds), *Democracy: Europe's Core Value? On the European Profile in World-wide Democracy Assistance* (2007); Magan A. and M. A. McFaul (eds), *Promoting Democracy and the Rule of Law: American and European Strategies* (2009).

²¹ Schmitter and Brouwer; T. Carothers, *Assessing Democracy Assistance: The Case of Romania* (1996); T. Carothers, *Aiding Democracy Abroad: The Learning Curve* (1999); FRIDE, Project 'Assessing Democracy Assistance' by World Movement of Democracy, at <http://www.fride.org/project/19/assessing-democracy-assistance> (last accessed on 5.5.2011); International IDEA and SIDA: *Evaluating Democracy Support: Methods and Experiences* (2007); D. Huber, 'Democracy Assistance in the Middle East and North Africa: A Comparison of US and EU Policies', 13 *Mediterranean Politics* 1 (2008) at 43-62; R. Youngs, *How to Revitalize Democracy Assistance: Recipients' Views*, FRIDE Working Paper No. 100 (June, 2010).

²² USAID, *Final Report. Effects of U.S. Foreign Assistance on Democracy Building: Results of a Cross-National Quantitative Study* by E. Finkel, A. Pérez-Liñán and M. A. Seligson (2006); International IDEA, *Democracy and Development: Global Consultations on the EU's Role in Democracy Building* (2009); Youngs, *How to Revitalize Democracy Assistance: Recipients' Views*.

²³ Crawford, *Foreign Aid and Political Reform: A Comparative Analysis of Democracy Assistance and Political Conditionality*; See the various country studies in: A. Jünemann and M. Knodt (eds), *Externe Demokratieförderung durch die Europäische Union/European External Democracy Promotion* (2007); L. Fioramonti, *European Union Democracy Aid: Supporting Civil Society in Post-Apartheid South Africa* (2010).

²⁴ For a more policy-oriented analysis of the EIDHR with a focus on the period from 2000 to 2008 see S. Herrero, *A Decade of Democracy Promotion through the European Initiative for Democracy and Human Rights*, EDP Working Papers Series on Democracy Support No. 1/2009 (2009). See also the study carried out by this author for OPPD: Office for the Promotion of Parliamentary Democracy (OPPD), *Getting Acquainted: Setting the Stage for Democracy Assistance: Democracy Support in EU External Relations* (2010).

²⁵ <http://www.fride.org/> (last accessed on 1.7.2012).

in implementation.²⁶ Other works engage in more fundamental discussions on the approach to EU democracy assistance, suggesting for all European actors, including the EU, the preference of the developmental approach that stays away from too politically-perceived forms of assistance and links democracy assistance to human rights assistance and good governance reform.²⁷ Two other European authors have carried out some crucial and detailed analysis of EU democracy assistance. Gordon Crawford, whose major field of expertise is in development studies has as one of the first analysts of EU democracy assistance in the early 2000s outlined the evolution, principle policy documents, and institutional structure for the implementation of EU democracy assistance.²⁸ He then criticized the absence of a more strategic approach, proper assessment of the situation in target countries, and bureaucratic fragmentation and complexity, which the EU has ever since tried to tackle.²⁹ Federica Bicchi, a specialist on EU foreign policy towards the Mediterranean, has in various papers analyzed EU democracy promotion and assistance in that particular region.³⁰ Her article on the implementation of the EIDHR micro-project scheme during the period 2000-2006 in several Mediterranean countries, in which she establishes a gap between policy rhetoric and actual implementation, constitutes one of the most detailed studies of an EU democracy assistance programme done.³¹

More recently, a study conceived by Anne Wetzel and Jan Orbie and carried out by numerous researchers aimed at establishing the ‘substance of democracy promotion’, that is, the various thematic fields of concentration of EU efforts and the resulting concept of democracy, through an analysis of EU policies and activities in various world regions and countries.³² While the authors did not exclusively focus on democracy assistance, it was a central focus of attention in the various individual country- and region-focused studies. Different from current widespread practice the study defined democracy promotion broadly, encompassing, next to the typical

²⁶ Youngs, *Democracy Promotion: The Case of European Union Strategy*; Youngs (ed.), *Survey of European Democracy Promotion Policies 2000-2006*.

²⁷ R. Youngs, ‘Democracy as Product versus Democracy as Process’, in M. van Doorn and R. von Meijenfeldt (eds), *Democracy: Europe’s Core Value? On the European Profile in World-wide Democracy Assistance* (2007) 67-72; R. Youngs, ‘Trends in Democracy Assistance: What has Europe been Doing?’, 19 *Journal of Democracy* 2 (April 2008) 161-169.

²⁸ Crawford, *Foreign Aid and Political Reform: A Comparative Analysis of Democracy Assistance and Political Conditionality*; G. Crawford, ‘European Union Development Co-operation and the Promotion of Democracy’, in P. Burnell (ed.), *Democracy Assistance: International Co-operation for Democratization* (2000) 90-127; G. Crawford, ‘EU Human Rights and Democracy Promotion in Central Asia: From Lofty Principles to Lowly Self-Interests’, 9 *Perspectives on European Politics and Society* 2 (2008) 172-191.

²⁹ G. Crawford, ‘European Union Development Co-operation and the Promotion of Democracy’, at 120-1.

³⁰ F. Bicchi, ‘Democracy Assistance in the Mediterranean: An Overview’, 14 *Mediterranean Politics* 1 (2009) 61-78; F. Bicchi, ‘Dilemmas of Implementation: EU Democracy Assistance in the Mediterranean’, 17 *Democratization* 5 (2010) 976-996.

³¹ Bicchi, ‘Dilemmas of Implementation: EU Democracy Assistance in the Mediterranean’.

³² A. Wetzel and J. Orbie (eds), ‘The Substance of European Union Democracy Promotion’, Special Issue, 16 *European Foreign Affairs Review* 5 (2011) 565-734.

dimensions of democracy assistance, also the socio-economic dimension.³³ It found that, without however providing detailed quantitative data, that this latter field received the major share of attention, after civil rights and topics of good governance and anti-corruption, confirming the prevailing view that the EU mainly pursues the developmental approach to democracy assistance. Civil society, while still receiving much attention, and election support received less than had been suggested before.³⁴ Variations among regions and countries were explained by asymmetric interdependences, geopolitical and economic interests of the EU, and the political situations in target states.³⁵ The study did not find geographic proximity to matter for democracy assistance. All in all it found that EU democracy assistance reflected, borrowing a term from Thomas Risse, “the nature of the beast”,³⁶ that is, concentrating on economic development and building multi-level governance structures.³⁷

This thesis adds a comprehensive study on EU democracy assistance to the existing literature on the topic, which has so far been missing among the numerous works that have either focused on particular periods of time, regions or countries, sub-fields of democracy assistance, specific programmes, or specific questions. Its particular value and difference to other works lies, therefore, in its comprehensive nature as regards the time-frame of analysis, the geographical focus, the focus on policy-making and implementation, and the range of questions asked. Overall, it is suggested that the comprehensive of the study allows it to draw more globally valid conclusions than studies with a more limited focus.

A second important contribution of this thesis to the literature on democracy assistance lies in the discussion of several topics that have so far been neglected in the academic discussion. Most notably, questions of EU competence to provide democracy assistance have so far not been discussed, except for the related discussions in the area of human rights. Hardly any study on EU democracy assistance has so far outlined at which stage in the process of policy-making or implementation those crucial decisions are taken, which lead to the final distribution of funds among countries and thematic areas. At last, EU democracy assistance is often equated with the EIDHR. The thesis established a more balanced picture, giving equal attention to democracy assistance provided under mainstream development programmes, that indeed account for the major part of the funding.

³³ Wetzel and Orbie, ‘Promoting Embedded Democracy? Researching the Substance of EU Democracy Promotion’, at 574.

³⁴ A. Wetzel and J. Orbie, ‘With Map and Compass on Narrow Paths and through Shallow Waters: Discovering the Substance of EU Democracy Promotion’, 16 *European Foreign Affairs Review* (2011), at 707-16.

³⁵ *Ibid.*, at 716-21.

³⁶ T. Risse-Kappen, ‘Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis meet the European Union’, 34 *Journal of Common Market Studies* 1 (1996) 53-80.

³⁷ Wetzel and J. Orbie, ‘With Map and Compass on Narrow Paths and through Shallow Waters: Discovering the Substance of EU Democracy Promotion’, at 724.

4. Interdisciplinarity and Methodology

The topic of democracy assistance is due to its very nature mainly discussed by political scientists. For this reason, the majority of academic works used to outline the conceptual framework of the thesis, which is done in Chapters 1 and 2, pertain to political science and, in the section on theory of democracy, to political theory. At the same time, as the author's primary higher education and occupation is in law, the thesis also draws from important works on EU law and policies written by lawyers, like on the EU's human rights policy. Overall, the thesis aims to be interdisciplinary, using academic literature and approaches to analysis from both political science and law in order to arrive at a comprehensive treatment of the topic and to obtain insights that would not be given by a single discipline.

The major method used in this thesis to outline and analyze EU democracy assistance has been the analysis of EU legislative acts, policy documents, and implementation reports on EU programmes. Some exploratory interviews were carried out with Commission staff in Brussels, the EU Delegation to Ukraine and Russia, and civil society representatives in Brussels and Ukraine. Next to qualitative analysis, the thesis provides numerous tables with statistical data on EU democracy assistance. The quantitative data has been taken or extracted from EU implementation reports or statistical reports, in particular as regards the EU's specific programme, the EIDHR. For information on mainstream development programmes, on which the EU only reports in a highly limited way, data has been extracted from the OECD database on Official Development Assistance (ODA) flows. This constitutes a major different to other studies on EU democracy assistance, like the mentioned study supervised by Wetzels and Orbie. While these authors develop the 'substance of EU democracy promotion' on the basis of two to three country-focused case studies in seven world regions, this thesis induces this substance from aggregate data on EU assistance in basically all states except for EU membership candidates.

5. The Structure of this Thesis

The thesis is divided into two main parts and eight chapters. Part I, which is entitled 'General Framework for the Study of Democracy Assistance', provides a theoretical overview of the main concepts, conceptions, and theories used or referred to in the further analysis, including of the international dimension of democratization, democracy promotion, democracy, and democratization (Chapter 1). Further, it presents the definition of democracy assistance used in this thesis and provides an overview of key issues relating to this policy tool, including a discussion of its features and comparative advantages and disadvantages, the international

historical evolution of democracy assistance, major approaches to democracy assistance, motivations for democracy promotion, questions of effectiveness, legality and legitimacy, and problems quantitative data (Chapter 2).

Part II, which constitutes ‘An Analysis of EU Democracy Assistance’, comprises the remaining six chapters of the thesis. Chapter 3 starts the analysis by an overview of the emergence and evolution of EU democracy assistance since the mid-1980s and early-1990s and provides a detailed analysis of the core policy documents published in the course of the last 25 years. Chapter 4 complements the evolutionary account by a discussion of the development of European Community (EC) and EU competences in the field of democracy promotion and democracy assistance and of the legal bases in primary law. Chapter 5 focuses on the institutional and procedural dimension of EU democracy assistance, outlining the main stages in policy-making and implementation of EU democracy assistance programmes and the role of different institutions, bodies and other actors. Based on this outline, the remaining Chapters concentrate on an analysis of the EU’s major programmes to assist democratization processes abroad. Chapter 6 analyzes the EIDHR and presents quantitative data on EU commitments and expenditure, the thematic focus of assistance, the geographical distribution, and on main partners in implementation. Chapter 7 analyses the numerous mainstream development programmes that, amongst others, fund democracy assistance programmes and projects. Chapter 8 provides a more detailed analysis of the implementation of these programmes, again providing quantitative data on commitments and expenditure, on the thematic focus of assistance and its geographical distribution. The conclusion to the thesis, while recapitulating major research result of individual chapters, also addresses the three main cross-cutting questions raised above: on the notion of democracy underlying EU democracy assistance, the preferred path to democratization, and the main approach to democracy assistance.

**PART I: GENERAL FRAMEWORK FOR THE STUDY OF
DEMOCRACY ASSISTANCE**

Chapter 1: Core Definitions, Concepts, and Conceptions in the Study of Democracy

Assistance

I. Introduction

Chapter 1 concentrates on core concepts and conceptions relevant for the study of democracy assistance and introduces the set of central definitions used in this thesis. It provides, together with Chapter 2, the general conceptual framework for the more detailed analysis of EU democracy assistance carried out in Part II of this study.

Chapter 1 consists of four main sections. It first presents the definition of democracy assistance used in this thesis, which is based on a definition by Philippe C. Schmitter and Imco Brouwer that captures, next to showing some other advantages, in detail the core elements of the phenomenon. It should be mentioned that overall there exists quite widespread agreement on democracy assistance' core features and mode of operation, even if some authors at times still conflate the terms democracy assistance and promotion or use different terminology than assistance, in particular the term democracy support.³⁸ The following section steps back to a more general level to present the so-called 'international dimension of democratization',³⁹ of which democracy assistance, as one instrument of democracy promotion, forms part. The discussion of this international context sheds further light on the particularities and pros and cons of democracy assistance, next to introducing other key definitions, like that of democracy promotion. Thirdly, as democracy assistance facilitates democratization processes, Chapter 1 gives a short overview of the major approaches in the study of democratization and of the individual 'stages' of such a process. Finally, as the final goal of democracy assistance is the establishment of a democratic regime or system of government, Chapter 1 introduces the concept of democracy and some major conceptions thereof.⁴⁰

³⁸ See, for example, Int. IDEA and SIDA: *Evaluating Democracy Support: Methods and Experiences* (2007).

³⁹ G. Pridham, E. Herring and G. Sanford (eds), *Building Democracy? The International Dimension of Democratization in Eastern Europe* (rev. ed., 1997); Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas*.

⁴⁰ The concept of regime or system of government refers to "the formal and informal organization of the centre of political power, and of its relations with the broader society". It determines "who has access to political power, and how those who are in power deal with those who are not". A government is simply "the agency through which the state acts in the political community". S. Lawson, 'Conceptual Issues in the Comparative Study of Regime Change and Democratization', 25 *Comparative Politics* 2 (1993), at 184f.

II. Core Definitions, Concepts, and Conceptions

1. Defining Democracy Assistance

As mentioned above, the definition of democracy assistance used in this thesis is closely based on a definition suggested by Philippe C. Schmitter and Imco Brouwer in 1999. It understands democracy assistance as

*all programmes and projects which are openly adopted, supported and/or (directly or indirectly) implemented by (public or private) foreign actors, mainly take place in target countries, in principle with the consent or toleration of these countries' authorities, and are explicitly designed to directly contribute to the liberalization, democratization or consolidation of democracy of the target country.*⁴¹

The definition unites two basic features that render it particularly useful. On the one hand, it does not suggest any specific strategy of democracy assistance, such as that assistance has to concentrate on certain substantive issues, for example on elections. Similarly, it does not prescribe conceptions of democracy, like the goal of establishing social democracy, or of democratization, like a preference for gradual, reformist regime change, except for requiring a direct rather than indirect contribution to democratization. Overall, by very generally referring to donor activities aiming at democratization (*...explicitly designed to directly contribute to...*), it allows capturing a broad range of strategies and conceptions employed by individual donors, without imposing alien ones. This principal openness only finds limits in, first, that activities have to aim at establishing liberal democracy (broadly defined), which constitutes the overall framework and border of current engagement by all Western states and organizations, and, secondly, that they operate within the genetic approach to democratization (*...directly contribute to the liberalization, democratization or consolidation of democracy...*) (see Sections II.3. and II.4. further below). On the other hand, while being unspecific about underlying conceptions, the given definition provides a quite detailed enumeration of the usually present main features and the mode of action of democracy assistance which allows the reader to get a good understanding of this particular form of democracy promotion.⁴²

⁴¹ Schmitter and Brouwer, at 12 and 17.

⁴² For other definitions of democracy assistance see, for example, Burnell, who only generally mentions three 'sets of considerations' that define democracy assistance: democratic advance as primary objective, peaceful methods, and a concessionary element. P. Burnell, 'Democracy Assistance: The State of the Discourse', in P. Burnell (ed.), *Democracy Assistance: International Cooperation for Democratization* (2000), at 5. Carothers speaks of 'aid' that is given to foster

These main elements should briefly be addressed. First, democracy assistance consists of *programmes and projects*, that is, a series of activities that aim at achieving certain objectives within a certain period of time and budget. Programmes and projects can take many forms but in essence envisage the transfer of information, knowledge or expertise from democracies to democratizing states or the spread of information, knowledge or expertise within democratizing states in order to reform local processes and institutions or to change perceptions and attitudes. They are types of activities that usually require a higher, more elaborate degree and longer-term engagement by the external actors than most other forms of democracy promotion, in particular as regards planning, implementation, and personnel. Additionally, there is basically always a financial element, usually a foreign grant, that is, a financial contribution by way of donation, used for the implementation of a programme or project or at least the provision of money in exchange for a service or work on the basis of a contract. Consequently, democracy assistance is also usually measured in amounts allocated or spent.

Secondly, democracy assistance requires that *foreign actors* have adopted, supported and/or implemented a programme or project. The degree of *foreign* involvement in the planning and implementation of programmes and projects can vary considerably and range from entire external control to a high degree of involvement of local actors, with many different combinations prevailing in practice. It is widely recognized that, just as in socio-economic development cooperation, strong participation of and ‘ownership’ by recipients and beneficiaries of projects at any level is crucial for achieving higher relevance, effectiveness, and sustainability of a project.⁴³ At the same time, however, efforts to ensure pursuing a certain strategy and to achieve coherence with other actors’ programmes push donors to keep considerable control of their efforts.

Thirdly, democracy assistance is provided *openly* and not secretly or semi-secretly.⁴⁴ While secret or semi-secret activities can in principle positively contribute to democratization, they pursue a different approach than openly given assistance and can due to their very character also not share many of the characteristics of openly provided assistance.

Fourthly, democracy assistance programmes and projects are mainly implemented within target countries (*...mainly take place in target countries...*). Local implementation allows working with

democratic openings or further transitions and that is neither a carrot nor a stick. T. Carothers, *Aiding Democracy Abroad: The Learning Curve* (1999), at 6.

⁴³ See, for example, Channel Research: Generating Impact Indicators European Initiative for Democracy and Human Rights (March 2005), at 36-7. More generally, the Paris Declaration on Aid Effectiveness (2005) and the Accra Agenda for Action (2008), adopted in the framework of the OECD, state ‘ownership’ as one of the main criteria of aid effectiveness.

⁴⁴ Although difficult to trace, it is known that the Central Intelligence Agency (CIA) was engaged in many secret efforts during the Cold War. Carothers, at 25. There are also more recent examples of secret activities, see, for example, J. Bransten, ‘Ukraine: Part Homegrown Uprising, Part Imported Production?’, RFE/RL 24.12.2004.

and focusing on people, institutions, procedures in their original environment and therefore to more directly support domestically-rooted processes of reform. As mentioned, such involvement of domestic actors and consideration of local circumstances is also widely expected to increase aid effectiveness. At the same time, so-called ‘external democracy assistance’⁴⁵ also exists. It occurs if an authoritarian setting does not allow the implementation of projects within a particular state, or if the nature of the project requires so. Externally implemented democracy assistance is, however, considered to be potentially less effective as it reaches a smaller audience and works removed from the democratizing context.⁴⁶ Moreover, extensive external assistance would financially and administratively be unfeasible.

Fifthly, democracy assistance is *in principle consensual*, that is, it is carried out with the consent or at least toleration of the recipient state’s government. The consensual nature is important for assistance to entirely unfold its mode of action and use its potential. Consent means explicit acceptance or agreement, while toleration requires absence of direct or indirect obstacles in the implementation of assistance, like outright bans, harassment and intimidation of participating non-governmental organizations (NGOs) and individuals by the authorities, obligatory and burdensome registration rules or disadvantageous taxing provisions.⁴⁷

Consensus is usually present in transitional and, even more, in consolidating countries, where there is a fundamental commitment to democratization and where assistance finds its most receptive environment and conditions for success and can in principle address a very broad or even unlimited range of democratization-related issues.⁴⁸ Assistance is much more problematic in authoritarian or semi-democratic settings, where a real commitment to democracy is by definition missing or limited. Frequently, authoritarian governments oppose democracy assistance outrightly and therefore restrict it to ‘external democracy assistance’,⁴⁹ which consequently constitutes an exceptional form of ‘non-consensual assistance’. But also if authoritarian governments tolerate assistance, which usually occurs as a result of internal or external pressure or in exchange for benefits, like trade concessions, they usually tightly control projects and involved organizations, often considerably circumscribe their focus and scope, and thereby impede proper

⁴⁵ Schmitter and Brouwer, at 14.

⁴⁶ Ibid.

⁴⁷ C. Gershman and M. Allen, ‘New Threats to Freedom: The Assault on Democracy Assistance’, 17 *Journal of Democracy* (2006), at 40-6; National Endowment for Democracy (NED), *The Backlash Against Democracy Assistance: A Report prepared by the National Endowment for Democracy for Senator Richard G. Lugar, Chairman Committee on Foreign Relations, United States Senate* (June 8, 2006), at 15f; T. Carothers, ‘The Continuing Backlash against Democracy Promotion’, in P. Burnell and R. Youngs, *New Challenges to Democratization* (2010), at 59f.

⁴⁸ See, for example, Carothers, *Aiding Democracy Abroad*, at 304-6.

⁴⁹ See, for example, the end of a USAID-financed project in Yemen, D. Finkel, ‘U.S. Ideals Meet Reality in Yemen’, ‘A Struggle for Peace in a Place Where Fighting Never Ends’, and ‘In the End, a Painful Choice’, *Washington Post* on 18., 19., and 20.12.2005.

implementation.⁵⁰ In authoritarian and semi-authoritarian settings, assistance therefore generally works under constraints that can reduce its potential impact. It can nevertheless contribute to preventing a worsening of the situation and to keeping some pro-democratic forces alive.⁵¹

The definition of democracy assistance does not explicitly mention the consent (or toleration) of the third state's citizens and/or civil society. Such would, practically speaking, be difficult to obtain, but is crucial for the implementation of programmes and projects, as citizens and civil society organizations are frequently key targets or implementing actors. Their consent is assumed to be – and indeed is usually – present, as civil society groups in most cases constitute the major pro-democratic forces and opponents to authoritarian governments. However, it should also be mentioned that some traditional ('civil society') groups, especially in Muslim states of North Africa and the Middle East, refute assistance by Western states, in particular by the US, as they refute liberal democracy or, at a more general level, consider democracy assistance as imperialist.⁵²

Sixthly, democracy assistance programmes and projects are *explicitly* designed to contribute to the democratization of target states. The relevant explicit indication about a donor's aims is usually found in programme/project statements or descriptions and therefore easily identifiable. It can, however, also be difficult to discern, especially if donors work with sub-concepts, like civil society and the rule of law, without explicitly mentioning broader objectives. Such lack of clarity forces analysts to accept that a certain part of the projects they are working with is not clearly attributed. Importantly, democratization must not necessarily be the only and primary goal, but programmes can have multiple aims and also pursue hidden objectives, like reducing or controlling migration or improving the investment climate (for example through good governance projects).⁵³ Clearly outside the definition of democracy assistance fall programmes that indeed have an impact on democratization, but which donors have not intended, like the positive effects of socio-economic reform programmes.

Seventhly, democracy assistance programmes and projects are designed to *directly contribute* to the democratization of third states. Some projects very clearly meet the criterion, like those focusing on the core actors, institutions, and processes of a democratic system of government,

⁵⁰ Burnell, 'Democracy Assistance: The State of the Discourse', at 9.

⁵¹ Carothers, *Aiding Democracy Abroad*, at 308; J. M. Scott and C. A. Steele, 'Assisting Democrats or Resisting Dictators? The Nature and Impact of Democracy Support by the United States National Endowment for Democracy, 1990-99', 12 *Democratization* 4 (2005), at 454.

⁵² M. K. Al-Sayyid, 'A Clash of Values: U.S. Civil Society Aid and Islam in Egypt', in M. Ottaway and T. Carothers (eds), *Funding Virtue: Civil Society Aid and Democracy Promotion* (2000), at 64. Also some Western actors, in particular of the political left, continue to associate democracy promotion with imperialism. D. Mathieson and R. Youngs, *Democracy Promotion and the European Left: Ambivalence Confused?*, FRIDE Working Paper No. 29 (December 2006), at 12.

⁵³ See also Schmitter and Brouwer, at 11.

for example on political parties, elections, and the media.⁵⁴ Other projects clearly at most indirectly facilitate democratization processes, like socio-economic reform projects, for example a literacy campaign or business-development project, and do therefore not constitute democracy assistance. However, there is a grey zone of projects, the direct or indirect effect of which cannot as easily be established, in particular many projects in the sector of rule of law and civil society development. Do projects on access to justice and on social sector-focused NGOs directly facilitate democratization and therefore in any case constitute democracy assistance? In essence, the solution depends on underlying conceptions of democracy and democratization, which are intentionally left open in the above definition on democracy assistance. It therefore has to be left to the decision of individual donors as to what they consider to directly contribute to democratization. At the same time, however, and the issue will be returned to in the discussion on the developmental approach to democracy assistance (Chapter 2) and the categorization of projects (Chapters 6 and 8), analysts of democracy assistance have to accept the existence of the mentioned grey zone and that the body of projects they are working with includes unclear cases.

Eighthly, the definition of democracy assistance states that the latter is designed to *contribute* to democratization, that is, to facilitate and assist it, rather than to steer, dominate or determine it. It relates to the widely accepted idea that democratization in essence is and has to be a domestic process, based on some (even rudimentary) domestic impetus for democratization at elite, intermediate and/or mass level, and necessitating a broad range of domestic reforms initiated and carried out by domestic actors. It can be supported by external donors, but not imposed from outside.⁵⁵

Finally, as regards the three stages of the democratization process (*...liberalization, democratization and the consolidation of democracy...*) reference is made to the more detailed discussion in Section II.3. of this chapter. It should only briefly be mentioned that in order to deal with the complexity and diversity of democratization processes, scholars employ a very general model of regime change from some form of non-democratic or authoritarian to a democratic regime, which distinguishes between the mentioned three phases that conceptually differ but may be overlapping in time.

All in all, the used here definition of democracy assistance does not impose specific conceptions of democracy, democratization, or approaches to democracy assistance on donors, while at the

⁵⁴ Ibid.

⁵⁵ Burnell, 'Democracy Assistance: The State of the Discourse', at 9; Carothers, *Aiding Democracy Abroad*, at 308; D. French, R. von Meijenfeldt, and R. Youngs, *A European Foundation for Democracy through Partnership: A Proposal for a New Initiative in EU Democracy Assistance World-wide* (2006), at 6; T. Carothers, 'The "Sequencing" Fallacy', 18 *Journal of Democracy* 1 (January 2007), at 22.

same time it captures the main features of this type of democracy promotion. The core idea of democracy assistance is to directly support domestic political reform processes through an open knowledge, expertise and information transfer or spread that takes place in direct work with local actors, institutions, and processes within the target state. Such mode of operation in principle requires the consent of or toleration by the targets states' authorities. Exceptionally, assistance is provided outside the target state ('external democracy assistance') and/or against the consent of the government. The direct facilitation of democratization processes involves a direct focus on core actors, institutions, and processes of the political regime rather than an indirect effect via, in particular, successful socio-economic reform. Difficulties in identifying the aim and the direct or indirect effect on democratization of a project or programme requires analysts of democracy assistance to accept the existence of a grey area of projects whose inclusion/exclusion is problematic.

2. The International Dimension of Democratization

The 'international dimension' or, to stress its complexity, the 'international dimensions' of democratization, broadly refers to all actors, influences, and activities that originate or are located outside a country's borders and have some relevance for a domestic democratization process.⁵⁶ It was until the 1980s generally attributed limited importance, as transitions to democracy were considered to be one of the most "autochthonous political acts" at all, in which "domestic actors play a predominant role".⁵⁷ Since then hardly any democratization process has occurred though in which international factors have not been influential.⁵⁸ This does not suggest that external factors were usually dominant or decisive for transitions to democracy to begin and succeed, but only that they were present and to some lesser or larger degree influential. Underlying reasons for this change include increased exchanges between and interdependence of states ('globalization'), mainly based on global business and trade, travel, modern forms of communication, in particular (satellite) television, mobile phones, and the internet, in particular social media, as well as the increasing appeal of (liberal) democracy, the growing number of democratization processes and, last but not least, increasing explicit efforts to promote democracy abroad, including through

⁵⁶ L. Whitehead, 'Three International Dimensions of Democratisation', in L. Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas* (1996), at 3; Schmitter, 'The Influence of the International Context', at 28.

⁵⁷ Schmitter, 'The Influence of the International Context', at 26-7; G. Pridham, 'International Influences and Democratic Transition: Problems of Theory and Practice in Linkage Politics', in G. Pridham (ed.), *Encouraging Democracy: The International Context of Regime Transition in Southern Europe* (1991), at 1.

⁵⁸ Huntington, 'Democracy's Third Wave', at 4.

democracy assistance.⁵⁹ At the same time, the early negligence of academic analysis of the international context has from the early 1990s on given rise to a constantly expanding body of literature on the international influence on domestic democratization processes. This shift happened against the background of a broader and increasing awareness that the scientific fields of international relations and comparative politics needed to be linked to a higher degree.⁶⁰ Some of the literature also asserts a more prominent role for international influences in the early cases of the third wave of democracy.⁶¹ As mentioned in the Introduction, the latter term, coined by Samuel Huntington, refers to all transitions that have occurred since the Portuguese regime change in 1974, including those in other Southern European states, Latin America, Asia, and the former Communist area.⁶² Arguably it is still ongoing, with the more recent, but largely unsuccessful, regime changes in the former Soviet Union (Ukraine, Georgia, Kyrgyzstan) and those in the Balkans constituting forms of small ‘after-waves’ to the major wave that reached its peak in Central and Eastern Europe in 1989/1990. Some authors have preferred to call the post-Communist transitions part of a ‘fourth wave’, while, more recently, the ousting of the authoritarian presidents in Tunisia and Egypt has also frequently been termed the beginning of a ‘fourth wave’.⁶³

The following discussion disaggregates the international dimension into actors and four basic influences and/or approaches. It shows that the EU is just one of many actors and positions democracy assistance within the international context of democratization.

a) Actors

A whole range of different actors that in various ways influence domestic political reform processes populates the international dimension of democratization. First, Western democratic states appear as key actors. They are ‘models’ for many people living in authoritarian settings or

⁵⁹ Whitehead, ‘Three International Dimensions of Democratisation’, at 6 and 21.

⁶⁰ H. Yilmaz, ‘The International Context’, in C. W. Haerpfer, P. Bernhagen, R. F. Inglehart and C. Welzel (eds), *Democratization* (2009), at 93.

⁶¹ See, for example, P. Burnell and P. Calvert, ‘Promoting Democracy Abroad’, 12 *Democratization* 4 (2005), at 433; P. Drake, *International Factors in Democratization*, Juan March Institute Working Paper No. 61 (November 1994); H. Yilmaz, ‘External-Internal Linkages in Democratization: Developing an Open Model of Democratic Change’, 9 *Democratization* 2 (Summer 2002), at 69.

⁶² Huntington, *The Third Wave: Democratization in the Late 20th Century*, at 15-6. According to Huntington the first (long) wave lasted from 1828 to 1926, the second (short) wave from 1943 to 1962. Both were followed by reverse waves. Further, transitions can and do occur also outside these timeframes. See also: D. Berg-Schlosser, ‘Long Waves and Conjunctures of Democratization’, in C. W. Haerpfer, P. Bernhagen, R. F. Inglehart and C. Welzel (eds), *Democratization* (2009), at 41f.

⁶³ McFaul, ‘The Fourth Wave of Democracy and Dictatorship: Noncooperative Transitions in the Postcommunist World’, at 212; M. G. Schmidt, *Demokratiethorien: Eine Einführung* (2010), at 434 and 451; St. R. Grand, ‘Starting in Egypt: The Fourth Wave of Democracy?’, The Brookings Institution (10 February 2011).

transitional states,⁶⁴ operate with a broader range of instruments than all other actors, and, in particular, run the largest democracy assistance programmes. While the most notable actors are the US and European states, especially the UK, Germany, the Netherlands, and the northern European countries, Canada, Australia, and Japan also play important roles.⁶⁵ More recently, the new democracies in Central and Eastern Europe (CEE) have also entered the stage as democracy promoters.⁶⁶ Democratizing countries frequently play exemplary roles for states embarking on transitions.⁶⁷

Secondly, many international organizations, like the EU, the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe (COE), the Organization of American States (OAS), the African Union (AU), and the United Nations (UN) also are active democracy promoters. Despite some overlapping, each pursues its very specific, unique approach, favours different instruments of democracy promotion, and concentrates on different geographical areas.⁶⁸ Many of the organizations have established specific institutions or bodies concentrating on democratization-related work, like the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE and the European Commission for Democracy through Law (or so-called Venice Commission) of the COE. The International Institute for Democracy and Electoral Assistance (International IDEA) is an international organization specifically devoted to democracy promotion and focuses on research, advice, and project work. It currently consists of 28 European, Latin American, African, and Asian member and observer states.

Of special relevance for democracy assistance is the group of so-called semi- or quasi-governmental bodies, which are governmentally funded but operate independently. It comprises, on the one hand, political or party foundations, which are established by individual political parties with which they remain personally and ideologically affiliated, receive governmental funding, but retain a high degree of autonomy from the parties and the government as regards

⁶⁴ N. J. Rennger, 'Towards a Culture of Democracy? Democratic Theory and Democratization in Eastern and Central Europe', in G. Pridham, E. Herring and G. Sanford (eds), *Building Democracy? The International Dimension of Democratisation in Eastern Europe* (rev. ed., 1997), at 56f; G. Gill, *Democracy and Post-Communism: Political Change in the Post-Communist World* (2002), at 2.

⁶⁵ D. Azpuru, S. E. Finkel, A. Pérez-Liñán, and M. A. Seligson, 'Trends in Democracy Assistance: What has the United States been Doing?', 19 *Journal of Democracy* 2 (April 2008), at 150f; Youngs, 'Trends in Democracy Assistance: What has Europe been Doing?', at 160f. For Japan see, for example, Institute for International Cooperation – Japan International Cooperation Agency, *Roads to Democracy and Governance* (2003).

⁶⁶ L. Jonavičius, 'The Democracy Promotion Policies of Central and Eastern European States', FRIDE Working Paper No. 55, March 2008; J. Kucharczyk and J. Lovitt (eds.), *Democracy's New Champions: European Democracy Assistance after EU Enlargement*, 2008.

⁶⁷ For 'Democracy Defending Ratings' of democratizing states, see R. G. Herman and T. J. Piccone (eds), *Defending Democracy: A Global Survey of Foreign Policy Trends 1992-2002* (2002), at 16 and 40f.

⁶⁸ For a general overview see Herman and Piccone, at 228-240. For more specific accounts on individual organizations see: C. C. Joyner, 'The United Nations and Democracy', 5 *Global Governance* 3 (1999), at 333f; E. Newman and R. Rich (eds), *The UN Role in Promoting Democracy: Between Ideals and Reality* (2004); L. Pratchett and V. Lowndes, *Developing Democracy in Europe: An Analytical Summary of the Council of Europe's Acquis* (2004); J. Boonstra, *OSCE Democracy Promotion: Grinding to a Halt?*, FRIDE Working Paper No. 44, October 2007.

the spending of their budgets.⁶⁹ The oldest and most known foundations are the German so-called ‘*Politischen Stiftungen*’,⁷⁰ which have provided the blueprint for numerous foundations founded worldwide.⁷¹ Of more recent origin and innovative is the Netherlands Institute for Multiparty Democracy (NIMD), a joint foundation of seven political parties.

On the other hand, several governments have themselves created semi-governmental, independently operating democracy assistance institutions. Most notable are the US’ National Endowment for Democracy (NED) and the British Westminster Foundation for Democracy (WFD), which mainly disburse funds through party-related institutions or parties themselves.⁷² Other examples are the Canadian ‘International Centre for Human Rights and Democratic Development’ (called Rights & Democracy) and the Center for Democratic Institutions (Australia). Efforts by members of the European Parliament to establish a similar body at EU-level did not generate enough support in the early-mid 2000s.⁷³ More recent initiatives by EU Member States have resulted in an agreement to establish a European Endowment for Democracy (EED), which will share some of the features of the above-mentioned quasi-governmental organizations.⁷⁴ The particular attraction of the various semi-governmental bodies lies in combining the advantages of state and private/civil society actors. They have access to and support and trust of political and politically important bodies in both the donor and recipient states, while retaining enough autonomy from their governments to engage in political sensitive issues, in particular work with political parties and related institutions.

Fourthly, democracy assistance would basically be impossible without the uncountable number of locally, nationally and/or internationally operating civil society organizations, in particular NGOs, that engage in awareness-raising and advocacy on democracy-issues, contribute to governmental policy-making, and/or implement democracy assistance projects with private

⁶⁹ S. Mair, ‘Germany’s Stiftungen and Democracy Assistance: Comparative Advantages, New Challenges’, P. Burnell (ed.), *Democracy Assistance: International Cooperation for Democratization* (2000), at 129-30; M. Pinto-Duschinsky, ‘Foreign Political Aid: The German Party Foundations and their US Counterparts’, 67 *International Affairs* 1 (1991), at 34-5; A. Phillips, ‘Exporting Democracy: German Political Foundations in Central-East Europe’, 6 *Democratization* 2 (1999), at 81.

⁷⁰ These are: the Friedrich Ebert Stiftung (SPD), the Konrad Adenauer Stiftung (CDU), Hanns Seidel Stiftung (CSU), the Friedrich Naumann Stiftung (FDP), the Heinrich Böll Stiftung (Green Party), and the Rosa Luxemburg Stiftung (Die Linke); Mair, at 129.

⁷¹ See, for example, the Fondation Jean-Jaurès, the Fondation Robert Schuman, the Olof Palme International Center, and the Jarl Hjalmarson Foundation, the Alfred Mozer Stiftung. Not all existing political foundations engage in democracy promotion, like the Austrian Dr. Karl Renner Institute. See also the European Network of Political Foundations, created in 2006, which aims to be a framework for dialogue and cooperation between national political foundations, the EU, and civil society and encompasses dialogue and cooperation as regards external democracy promotion. See <http://www.european-network-of-political-foundations.eu/cms/index.php> (last accessed on 28.3.2011).

⁷² Carothers, *Aiding Democracy Abroad*, at 32; Pinto-Duschinsky, at 47-8.

⁷³ French, von Meijenfeldt, and Youngs, at 1f.

⁷⁴ Council of the European Union, Council conclusions on the European Endowment for Democracy, 3130th Foreign Affairs Council meeting, 1 December 2011. See Chapter 3 for more details.

funds or governmental grants.⁷⁵ A very particular organization was ‘Otpor!’, a civic youth organization and – later – movement active against the regime of Slobodan Milosevic and widely credited for having played a key role in the latter’s successful dismantling. Otpor!’s strategies were highly influential on many similar groups and movements in other states, like Kmara in Georgia and Pora in the Ukraine. Former Otpor! members have ever since the early 2000s been advising various organizations and movements in authoritarian states, like in Georgia, Ukraine, and Egypt on a (peaceful) strategy of regime change.⁷⁶ Moreover, there are some notable private actors and foundations that strongly engage in democracy promotion, like George Soros, the major private donor in former Communist states.⁷⁷

Businesses, in particular multi-national corporations (MNCs), still play hardly any role in the field, except for some attention to commercial activity-related aspects of good governance and rule of law in some corporate social responsibility (CSR) agendas.⁷⁸

All in all, the overview shows the high number and diversity of actors present in the international context of democratization.⁷⁹ Their engagement is characterized by both overlap and complementarity, posing problems of coordination, but also allowing divisions of labour and diversity in focuses and methods that can be highly beneficial for democracy promotion and assistance.

b) Influences and/or Approaches

It is possible to distinguish between four basic influences and/or approaches through which external actors have/try to have an impact on domestic democratization processes.⁸⁰ The first, contagion, constitutes an unintentional influence or effect of external presence or action. The

⁷⁵ P. Burnell, ‘Democracy Assistance: Origins and Organizations’, in P. Burnell (ed.), *Democracy Assistance: International Cooperation for Democratization* (2000), at 52f; L. Diamond, *Promoting Democracy in the 1990s: Actors and Instruments, Issues and Imperatives. A Report to the Carnegie Commission on Preventing Deadly Conflict* (December 1995), Section 3: Actors; K. F. F. Quigley, *For Democracy’s Sake: Foundations and Democracy Assistance in Central Europe* (1997), at 87-102.

⁷⁶ See <http://www.canvasopedia.org/> (last accessed on 1.6.2012); T. Rosenberg, ‘Revolution U: What Egypt learned from the students who overthrew Milosevic’, *Foreign Policy* (16.2.2011).

⁷⁷ <http://www.soros.org/> (last accessed on 1.6.2012).

⁷⁸ R. Youngs, *International Democracy and the West: The Role of Governments, Civil Society, and Multinational Business* (2004), at 85-129; M. T. Kamminga, ‘Holding Multinational Corporations Accountable for Human Rights Abuses: A Challenge for the EC’, in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999), at 553-69; A. Gatto, ‘Corporate Social Responsibility in the External Relations of the EU’, in P. Eeckhout and T. Tridimas (eds), *24 Yearbook of European Law 2005* (2006), at 423-62.

⁷⁹ For another list of various semi-governmental and private actors in democracy promotion see: Council for a Community of Democracies: *The Diplomat’s Handbook for Democracy Development Support* (2008), at 110-29.

⁸⁰ Whitehead, ‘Three International Dimensions of Democratization’, at 4; Schmitter, ‘The Influence of the International Context’, at 29; P. C. Schmitter, ‘The International Context for Contemporary Democratization’, *2 Stanford Journal of International Affairs* 1 (Fall/Winter 1993), at 4; Magan and McFaul speak of ‘logics of influence’, see A. Magan and M. A. McFaul, ‘Introduction: American and European Strategies to Promote Democracy – Shared Values, Common Challenges, Divergent Tools?’, in A. Magan and M. A. McFaul (eds), *Promoting Democracy and the Rule of Law: American and European Strategies* (2009), at 11f.

remaining three, coercion, conditionality, and consensus, denominate different forms of purposeful, intentional action, also referred to as democracy promotion. Again following Schmitter and Brouwer, democracy promotion can therefore be defined as consisting of all *overt activities, adopted, supported, and/or (directly or indirectly) implemented by (public or private) foreign actors and explicitly designed to directly contribute to the liberalization, democratization or consolidation of democracy of a target country*.⁸¹ Individual democracy promotion activities, also called instruments or tools, can be attributed to one of the three approaches or, at times, to more than one, depending on their particular content. Table 1, provided on the next page, presents the four sub-contexts of the international dimension of democratization and the major democracy promotion tools, which will be looked at in turn.⁸²

i. Contagion

Contagion consists of the unintentional transmission of messages about the content and possibility of political freedom and democratic politics from democratic countries or such undergoing transitions to democracy.⁸³ The literature also uses the concept of diffusion for the same phenomenon, which refers to spread of ideas, institutions, procedures, behaviours, or models from one context to another.⁸⁴ Rather than being unintentional only, forms of diffusion often also comprise intentional efforts of external actors that move from one country to another to emulate certain processes. While contagion was always present, it has, for the already mentioned reasons, like more intensive cross-boundary relations, become particularly strong and obvious during the ‘third wave of democracy’.⁸⁵

⁸¹ Schmitter and Brouwer, at 12. The issues raised in the above discussion on the definition of democracy assistance are equally relevant for this definition.

⁸² For an overview of tools of EU democracy promotion see: Commission, Joint Paper Commission/Council General Secretariat on Democracy Building in EU External Relations, SEC(2009) 1095 final, 27.7.2009; A. Jünemann and M. Knodt: ‘Introduction: Theorizing EU External Democracy Promotion’, in A. Jünemann and M. Knodt (eds), *Externe Demokratieförderung durch die Europäische Union/European External Democracy Promotion* (2007), at 15-19; S. Urdze, *Die Externe Demokratieförderung der EU in den Zentralasiatischen Staaten* (2010), at 23f; Kotzian, Knodt and Urdze focus on the underlying reasons for the choice of specific instruments. Kotzian, Knodt and Urdze, at 995f.

⁸³ Huntington, ‘Democracy’s Third Wave’, at 5 and 7.

⁸⁴ V. Bunce and S. Wolchik, ‘A Regional Tradition: The Diffusion of Democratic Change under Communism and Postcommunism’, in V. Bunce, M. McFaul and K. Stoner-Weiss (eds), *Democracy and Authoritarianism in the Postcommunist World* (2010), at 34-5.

⁸⁵ G. Pridham, *The Dynamics of Democratization: A Comparative Approach* (2000), at 285; Huntington, ‘Democracy’s Third Wave’, at 7; Whitehead, ‘Three International Dimensions’, at 5; Schmitter, ‘The Influence of the International Context’, at 36. S. Levitsky and L. A. Way, ‘Linkage versus Leverage: Rethinking the International Dimension of Regime Change’, 38 *Comparative Politics* 4 (2006), at 379f.

Table 1: The International Dimension of Democratization⁸⁶

Influence/ Approach	Unintentional Factors	Intentional Factors (Democracy Promotion)			
	Contagion	Coercion/Control (‘negative’)	Political Conditionality		Consensus (‘positive’)
			‘negative/ punitive’ conditionality	‘positive/ encouraging’ , and ‘incentive’ conditionality	
Instrument/ Tool	role model as democratic country; role model for regime change and mode of transition.	military intervention and occupation; interim administrations; economic, financial, military, and political sanctions; diplomatic measures that exert normative pressure (‘name and shame’).	political conditionality clauses.	political conditionality clauses; EU membership conditionality; special EU incentives schemes like GSP+ ⁸⁷ , the ENPI Governance Facility ⁸⁸ , the ACP Governance Initiative ⁸⁹ .	democracy assistance; political and human rights dialogues; election and human rights monitoring; EU Special Representatives; diplomatic measures that express approval.

Examples of contagion include the force of attraction of the EEC/EU and its liberal democratic and market economic Member States, that have, next to the use of conditionality, facilitated democratization processes in Southern Europe in the 1970s and 1980s and in Central and South Eastern Europe since the 1990s.⁹⁰ Further, transition processes have frequently inspired populations of states to attempt regime change as well. Examples include the ‘snowballing’ of transitions throughout Eastern Europe in 1989/90,⁹¹ the wave of the so-called ‘colour revolutions’ in Serbia and some states of the former Soviet Union (fSU) in the early-mid 2000s,⁹²

⁸⁶ The table is based on Whitehead’s and Schmitter’s sub-contexts of the international dimension. Whitehead, ‘Three International Dimensions of Democratization’, at 4; Schmitter, ‘The Influence of the International Context’, at 29. A similar table, also developed by the author, has been published in: Office for the Promotion of Parliamentary Democracy (OPPD), *Getting Acquainted: Setting the Stage for Democracy Assistance: Democracy Support in EU External Relations* (2010), at 8.

⁸⁷ General System of Preferences (GSP). The GSP is a trade and development instrument through which the EU provides non-reciprocal preferential access to the EU market to currently about 176 developing countries and territories. Under GSP+ vulnerable developing countries receive additional tariff reductions if they ratify and effectively implement a set of key international human rights conventions. <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/> (last accessed on 1.6.2012).

⁸⁸ European Neighbourhood Policy Instrument (ENPI), see Chapter 3 for a more detailed treatment.

⁸⁹ ACP refers to African, Caribbean, and Pacific states and constitutes a group addressed within a single EU cooperation policy.

⁹⁰ L. Whitehead, ‘Democracy by Convergence: Southern Europe’, in L. Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas* (1996), at 271; Carothers, *Aiding Democracy Abroad*, at 313-4.

⁹¹ Huntington, ‘Democracy’s Third Wave’, at 7; Carothers, *Aiding Democracy Abroad*, at 42; G. L. Munck and C. Skalník Leff, ‘Modes of Transition and Democratization: South America and Eastern Europe in Comparative Perspective’, 29 *Comparative Politics* (April 1997), at 346f; Pridham, *The Dynamics of Democratization*, at 285f.

⁹² M. R. Beissinger, ‘Structure and Example in Modular Political Phenomena: The Diffusion of Bulldozer/Rose/Orange/Tulip Revolutions’, 5 *Perspectives on Politics* 2 (June 2007), at 262; V. Silitski, ‘What Are We Trying to Explain?’, 20 *Journal of Democracy* 1 (January 2009), at 86f. For arguments that diffusion was less relevant

and, most recently, the wave of protests throughout Northern Africa and the Middle East in early 2011. Calls for ‘jasmine strolls’ in China in early 2011, alluding to the Tunisian ‘jasmine revolution’, show that contagion is not limited to countries of the same region.⁹³ Finally, also the particular type of transition has at times been copied. A case in point is the choice of peaceful means for regime change in most Central and Eastern European Countries (CEECs) as well as the use of round table talks, especially in Poland and Hungary,⁹⁴ as well as, more recently, the choice of the so-called ‘electoral model’ of regime change in the colour revolutions.⁹⁵

ii. Coercion/Control

The coercive approach involves the use of military, economic or political force or pressure to (attempt to) (re)establishing a democratic regime against the will of the target state’s government or under control by external actors. In EU-jargon usually referred to as ‘negative’, ‘reactive’ or ‘punitive measures’, its major forms are military imposition, controlled democratization under international administrations, as well as sanctions.⁹⁶ Additionally, also diplomatic measures, like *démarches*, that express disapproval or concern about political developments in a third country, can be included in this group, although, the extent of pressure is of course much more limited.

Democratization by military intervention and during occupation comprises several cases that differ, amongst others, as regards the relevance of democracy for the action, the scale and duration of military action, and their unilateral or collective, UN-sanctioned nature. Major historical and current examples are Japan, Germany, and Austria after World War II, Grenada (1983), Panama (1989), Haiti (1994), Sierra Leone (1997-98), Afghanistan (2001-) and Iraq (2003-).⁹⁷ Examples of controlled democratization processes during interim administration include Bosnia-Herzegovina (1995-) and Kosovo (1999-).⁹⁸

during the colour revolutions see, for example, L. Way, ‘The Real Causes of the Color Revolutions’, 19 *Journal of Democracy* 3 (July 2008), at 56f.

⁹³ ‘Tunisia’s Transition to Democracy: The Jasmine Revolution?’, *The Economist On-line Multimedia* (April 8th, 2011); ‘Jasmine Stirrings in China: No Awakening, but Crush it Anyway’, *The Economist* (March 3rd 2011).

⁹⁴ Whitehead, ‘Three International Dimensions’, at 6 and 21; L. Bruszt, ‘Dancing on the Mine-Field’, in M. D. Kennedy and B. Porter (eds), *Negotiating Radical Change: Understanding and Extending the Lessons of the Polish Round Table Talks* (2000), at 111f.

⁹⁵ J. A. Tucker, ‘Enough! Electoral Fraud, Collective Action Problems, and Post-Communist Colored Revolutions’, 5 *Perspectives on Politics* 3 (September 2007), 537f; V. Bunce and S. Wolchik, ‘Getting Real about ‘Real Causes’’, 20 *Journal of Democracy* 1 (January 2009), at 69f.

⁹⁶ Resolution of the Council and the Member States meeting in the Council on human rights, democracy and development, 28 November 1991, Bull. EC 11-1991, at 122 (from now on referred to as ‘28 November 1991 resolution’).

⁹⁷ J. J. Linz, ‘Transitions to Democracy’, *The Washington Quarterly* (Summer 1990), at 148; Whitehead, ‘Three International Dimensions’, at 8; Schmitter and Brouwer, at 14; L. Whitehead, ‘The Imposition of Democracy in the Caribbean’, in L. Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas* (1996), at 80; M. Byers and S. Chesterman, ‘“You, the People”: Pro-democratic Intervention in International Law’, in G. H. Fox and B. R. Roth (eds), *Democratic Governance in International Law* (2000), at 271f; D. Wippman, ‘Pro-democratic

The most coercive form of democracy promotion remains a rather rarely used tool though. On the one hand, the overwhelming majority of international lawyers and states, except the US, consider it illegal under international law, except if the UN Security Council would authorize an intervention on the basis of Chapter VII of the UN Charter.⁹⁹ On the other hand, military intervention suffers from limitations and has considerable negative side effects, in particular human rights abuses, necessarily resulting from military action that may cause opposition against the intervening and occupying powers.¹⁰⁰ Only in few, specific cases, like the quick reinstatement of a democratically elected but forcefully removed government, is pro-democratic intervention (also without UN Security Council authorization) therefore acceptable.

Sanctions are imposed on third states, governments, groups or individuals, with the aim of pressing the addressees to change behaviours or policies or to push populations to demand reforms from their leaders or regime change itself.¹⁰¹ Different types of sanctions include economic sanctions, which restrict imports and/or exports, financial sanctions, which limit financial transactions or freeze assets held abroad, military sanctions, which prevent trade in arms, and diplomatic sanctions, which sever diplomatic ties and impose travel and visa restrictions for leading figures of the regime.¹⁰² Sanctions can be generally applied and indiscriminately affect a broad range of individuals or products or be targeted or 'smart' and focus on actors that are primarily responsible for the negative situation, like authoritarian leaders, or are otherwise crucial for changes, like the economic elite, or on specific goods. Moreover, sanctions can be adopted and applied unilaterally, that is, by individual states or organizations like the EU, or multilaterally/collectively, based on UN (General Assembly or Security Council) resolutions.¹⁰³

Intervention by Invitation', in G. H. Fox and B. R. Roth (eds), *Democratic Governance in International Law* (2000), at 303; W. M. Reisman, 'Sovereignty and Human Rights in Contemporary International Law', in G. H. Fox and B. R. Roth (eds), *Democratic Governance in International Law* (2000), at 251-3 and 303; T. Carothers, 'Choosing a Strategy', in T. Carothers and M. Ottaway (eds), *Uncharted Journey: Promoting Democracy in the Middle East* (2005), at 193.

⁹⁸ Magan and McFaul, at 12.

⁹⁹ Byers and Chesterman, at 278 and 291-2; Reisman, at 248.

¹⁰⁰ Reisman, at 255; Byers and Chesterman, at 271 and 291; D. Beetham, 'The Contradictions of Democratization by Force: The Case of Iraq', 16 *Democratization* 3 (June 2009), 443f.

¹⁰¹ G. C. Hufbauer, J. J. Schott and K. A. Elliott, *Economic Sanctions Reconsidered* (2nd ed., 1990), at 35f; W. M. Reisman and D. L. Stevick, 'The Applicability of International Law Standards to United Nations Economic Sanctions Programmes', 9 *EJIL* 1 (1998), at 86f; D. C. Hendrickson, 'The Democratist Crusade: Intervention, Economic Sanctions, and Engagement', XI *World Policy Journal* 4 (Winter 1994/5), at 22-4.

¹⁰² K. Gallagher, 'Sanction's Effects on Human Rights Violations', 8 *Monitor: Journal of International Studies* 1 (2001), at 2; http://ec.europa.eu/external_relations/cfsp/sanctions/index_en.htm (last accessed on 18.3.2011).

¹⁰³ Reisman and Stevick, at 87-8; G. Crawford, *Foreign Aid and Political Reform: A Comparative Analysis of Democracy Assistance and Political Conditionality* (2001), at 163f; P. Eeckhout, *External Relations of the European Union: Legal and Constitutional Foundations* (2004), at 424f.

The use of unilateral and multilateral sanctions has increased considerably since the early 1990s with a particular preference for targeted over general (economic) sanctions.¹⁰⁴ They are widely considered, if applied in the right circumstances, to be a very effective instrument that is less violent and destructive than other coercive tools and has considerably smaller and more acceptable retro-costs, that is, costs for the sanctions-applying state and for third states, while still satisfying the desire of responding strongly to violations of norms.¹⁰⁵ Further, sanctions are widely considered legal, especially of international legal standards, like proportionality, are met.¹⁰⁶ Nevertheless, questions of negative side effects for sanctions-applying and neighbouring countries and the risk of incoherent application due to political and economic considerations remain.

iii. Political Conditionality

Political conditionality can be defined as the linking by a state or international organization of perceived benefits to another state to the fulfilment of conditions relating to the introduction and maintenance of a democratic system of government as well as the protection of human rights.¹⁰⁷ It can find application in a ‘negative/punitive’ way or a ‘positive/encouraging’ way. The literature also frequently uses the categories of *ex ante* and *ex post* conditionality, however, not always defining them in the same way.¹⁰⁸

Negative conditionality envisages the reduction, suspension, or termination of benefits in case democratic principles are violated. Examples include the cancellation of political meetings, the alteration of assistance channels away from governmental recipients to civil society organizations, the postponement of financing assistance projects, the reduction or suspension of assistance, the partial or total removal of trade benefits, like tariff reductions, and the partial or complete suspension of trade agreements.¹⁰⁹ As the list shows, several conditionality measures strongly overlap with different types of sanctions. However, sanctions are usually (slightly) more

¹⁰⁴ Reisman and Stevick, at 87-9; Hufbauer, Schott and Elliot, at 41f and 91f; <http://www.un.org/sc/committees/index.shtml> (last accessed on 18.3.2011).

¹⁰⁵ Reisman and Stevick, at 93f; B. Simma, J. B. Aschenbrenner, and C. Schulte, ‘Human Rights Considerations in the Development Co-operation Activities of the EC’, in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999), at 578f.

¹⁰⁶ Reisman and Stevick, at 126f; C. Pippan, *Die Förderung der Menschenrechte und Demokratie als Aufgabe der Entwicklungszusammenarbeit der Europäischen Gemeinschaft* (2002), at 92-6, 98, 106-8.

¹⁰⁷ K. Smith, ‘The Use of Political Conditionality in the EU’ Relations with Third Countries: How Effective?, 3 *European Foreign Affairs Review* (1998), at 256; K. Smith, ‘The EU, Human Rights and Relations with Third Countries: ‘Foreign Policy’ with an Ethical Dimension?’, in K. E. Smith and M. Light (eds), *Ethics and Foreign Policy* (2001), at 185f.

¹⁰⁸ See, for example, the entirely inverted definitions used by Fierro and Magan and McFaul. Fierro, at 98-9; Magan and McFaul, at 13.

¹⁰⁹ Commission Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and third states, COM(95) 216, Annex II; 28 November 1991 resolution.

punitive and are adopted, for example in the EU context, according to different procedures. The existence of both categories can largely be explained by their historical evolution, in particular, the only gradual emergence of different forms of smart sanctions over the last two decades.

Positive/encouraging conditionality foresees the provision of benefits if political conditions are fulfilled. It does not remove granted relations or benefits, but just withholds promised benefits as long as political conditions remain unfulfilled. Positive conditionality has some features of the coercive approach as it uses the economic and political power of Western states or organizations to influence third states' governments. At the same time, it also contains elements of the consensual approach, discussed in the next sub-section, in particular the 'pro-active' rather than 'reactive' nature and some elements of dialogue and encouragement, as third states are given possibility and time to rectify or improve a situation, without immediately being punished.¹¹⁰ Examples of positive conditionality include the withholding of ratification of a cooperation or trade agreement, the non-provision of development assistance, or the linking of accession to an organization, like the EU, to progress in democratic development or respect for democratic principles. Table 1 also refers to 'incentive conditionality', which is a more specific type of positive conditionality that offers third states 'additional' benefits for further improvements in human rights and democratization records. Specific EU-related examples of incentive conditionality, like the ENPI Governance Facility and ACP Governance Initiative are discussed in Chapter 3.

The application of conditionality occurs through various specific here so-called 'conditionality-instruments', which differ from actor to actor and regards the particular field of application. For example, several US legislative acts concerning external assistance, like the Foreign Assistance Act (FAA) of 1961, contain provisions prohibiting the US government to provide aid to governments engaged in "a consistent pattern" of human rights violations.¹¹¹ EU law does not contain an equivalent legal prohibition, but EU institutions are (just) given the possibility to respond to violations through the use of so-called 'political conditionality clauses' or 'human rights and democracy clauses', which have since the early-mid 1990s been systematically included in many EU external agreements and unilateral assistance regulations.¹¹² The clauses determine principles of human rights and democracy to be 'essential elements' of the particular legislative act and give the parties to the agreements or the donor (the EU) the right – in conformity with international law – to partially or completely suspend or terminate the

¹¹⁰ E. Riedel and M. Will, 'Human Rights Clauses in External Agreements of the EC', in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999), at 739.

¹¹¹ Crawford, *Foreign Aid and Political Reform*, at 168.

¹¹² Riedel and Will at 723f; Fierro, at 65f and 213f.

agreements or the effects of the regulations.¹¹³ Political conditionality as precondition of EU membership is explicitly mentioned in the EU-Treaty and to be implemented through a complex monitoring system.¹¹⁴ Special incentive arrangements are either specifically envisaged in legal acts, like the GSP regulation¹¹⁵ or devised as policy instrument, like the ENPI Governance Facility.¹¹⁶

On the whole, political conditionality has since the early 1990s increasingly been a popular tool, especially in its positive form, with Western actors investing considerable efforts in devising different conditionality instruments. Negative conditionality, suffering from the same weaknesses as sanctions, has much less frequently been applied. Studies on its impact for democratization come to different conclusions, strongly depending on the particular country in question.¹¹⁷

iv. Consensus

Consensual forms of democracy promotion, in EU-jargon usually called ‘positive measures’, are characterised by the consent or at least toleration of the third state’s government, active and positive engagement by the foreign actor, as well as, frequently, by pro-active rather than re-active involvement and direct engagement with local individuals or institutions. Some of the tools at time also take on coercive features, for example, if a positive instrument is used to express disapproval and to exert pressure, like when human rights dialogues raise issues of specific human rights violations and the Western actor expresses concern. During the last two decades various consensual forms of democracy promotion have emerged or developed, which should briefly be looked at in turn, except for the tool of democracy assistance that is treated in more detail in other sections of this Chapter and in Chapter 2.

Political dialogues are fora for discussion, argumentation and information exchange between Western governmental officials and/or parliamentarians and their counterparts in authoritarian or democratizing states. Civil society is usually at most informally involved, for

¹¹³ See in particular the Vienna Convention on the Law of Treaties (VCLT) of 1969; Riedel and Will, at 723-4; Fierro, at 230f.

¹¹⁴ Arts 2 and 49 TEU (If not explicitly stated otherwise, references are to the currently applicable provisions, that is, to the TEU, as amended by the Treaty of Lisbon). See, for example, M. Nowak, ‘Human Rights ‘Conditionality’ in Relation to Entry to, and Full Participation in, the EU’, in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999), at 689.

¹¹⁵ Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007, in particular Articles 7-10 of the regulation.

¹¹⁶ Commission, Principles for the Implementation of a Governance Facility under ENPI (no date provided).

¹¹⁷ F. Schimmelfennig, S. Engert and H. Knobel, ‘The Impact of EU Political Conditionality’, in F. Schimmelfennig and U. Sedelmeier (eds.), *The Europeanization of Central and Eastern Europe* (2005), at 49.

example, in parallel meetings before or after the actual dialogue.¹¹⁸ The underlying purpose of dialogues is to persuade participants of non-democratic states, through interaction and learning processes, to implement reforms.¹¹⁹ As mentioned above, there might also be elements of coercion and pressure to achieve the desired result ('name and shame'). The formats of dialogues range from bi-lateral, ad-hoc meetings upon the request of one state to discuss specific events in a third state, as in the case of the OSCE's so-called Vienna Mechanism, over structured, regular, bi-lateral meetings, prepared and followed-up by specific (sub-) committees permanently dealing with democracy-issues in a particular state, as in the EU context, to regular, general meetings of all members of an organization to broadly discuss the implementation of their commitments, as in the Human Dimension Implementation Meetings (HDIMs) of the OSCE.¹²⁰

Human rights and, usually implicitly (through political and civil rights monitoring) democracy monitoring, refers to various supervisory procedures established and carried out within international and regional human rights protection systems, like the UN, COE, and OSCE systems.¹²¹ They are often, but not necessarily, based on legally binding international or regional human rights conventions, like the International Covenant on Civil and Political Rights (ICCPR). The numerous existing mechanisms show considerable differences, amongst others, as regards who monitors (like courts, independent experts, or governments), who is entitled to start the procedure (affected individuals, groups or monitoring bodies), which information is allowed as basis for the investigation and report (like state reports, information by alternative, in particular NGO sources), whether on-site investigation is permissible, whether the process and results are public or confidential, and what are the consequences of monitoring, like binding judgements or non-binding reports. Like in the case of dialogues, monitoring mechanisms either try to constructively engage target states governments and to persuade these to adopt reforms, or impose pressure through 'naming and shaming' or the threat of or use of even harsher measures. On the whole, monitoring has not lost appeal since it was first used in the late 1960s/early 1970s and many existing mechanisms are constantly being reformed with a view to increasing their effectiveness.

¹¹⁸ European Union Guidelines on Human Rights Dialogues, 13 December 2001; EU Guidelines on Human Rights Dialogues with Third Countries – Update, 19 January 2009.

¹¹⁹ Magan and McFaul, at 14, who speak of the 'logic of suasion'; Annual Report on Human Rights 2004, at 49.

¹²⁰ A. Bloed, 'Monitoring the Human Dimension of the OSCE', in G. Alfredsson, J. Grimheden, B.G Ramcharan and A.de Zayas (eds), *International Human Rights Monitoring Mechanisms* (2001), at 633-41; ODIHR, *Human Dimension Commitments: A Reference Guide* (2001), at 123f; Annual Report on Human Rights, 2004, at 9.

¹²¹ A. Bloed, 'Monitoring the CSCE Human Dimension: In Search of its Effectiveness', in A. Bloed, L. Leicht, M. Nowak and A. Rosas (eds), *Monitoring Human Rights in Europe: Comparing International Procedures and Mechanisms* (1993), at 45f; A. Bloed, 'Monitoring the Human Dimension of the OSCE', in G. Alfredsson, J. Grimheden, B. G. Ramcharan, A. de Zayas (eds), *International Human Rights Monitoring Mechanisms* (2001), at 633f; P. Alston and J. Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (2000); R. Brillat, 'Assessing the Strengths and Weaknesses of the European Social Charter's Supervisory System', in G. de Búrca and B. de Witte, with the assistance of L. Ogertschnig (eds), *Social Rights in Europe* (2005), at 3.

Election monitoring constitutes a more specific type of monitoring. It has been defined as the “purposeful gathering of information regarding an electoral process and the making of informed judgements on the conduct of such a process on the basis of the information collected, by persons who are not inherently authorised to intervene in the process”, with a particular stress on the principles of objectivity and non-interference.¹²² The purpose is to promote free and fair elections and thereby democratization through deterring electoral fraud by governmental bodies or parties, thereby enhancing public confidence in the electoral process and encouraging electoral participation, as well as, raising the overall legitimacy of the outcome of the process, that is, of the elected government.¹²³ Election monitoring is a very popular instrument and many donors, especially the EU, have during the last decade invested considerable efforts into its development.¹²⁴ Reasons for its popularity include the central position of elections in the liberal democratic model, the more ‘technical’ character of elections as compared to other elements of democracy, like civil society, which makes them an easier target for external actors,¹²⁵ and their visibility, which provides a convenient tool to enhance a donor’s own international presence.

The last category of consensual instruments consists of measures that combine monitoring, facilitating and mediating functions. They have largely emerged in the 1990s, because of their more intrusive nature rather within regional than international frameworks, in particular within the OSCE, and frequently concentrate on one particular theme or (set of) human right(s). Most notable for the topic of democratisation is the OSCE’s so-called Moscow Mechanism, which, in one of several possible forms, consists of missions of experts or rapporteurs who act as monitors, reporters, and mediators in a conflict,¹²⁶ and the OSCE Representative on Freedom of Media, who has similar functions in the media sector. Other examples include the COE’s Commissioner for Human Rights and the EU’s so-called Special Representatives, usually appointed for particular countries or geographical regions and with a broader mandate than democracy promotion only.¹²⁷

¹²² The definition is based on Int. IDEA, *Code of Conduct for the Ethical and Professional Observation of Elections* (1997), at 10; Communication from the Commission on EU election assistance and observation, COM(2000) 191 final, 11.4.2000, at 4-5; Council Decision 9262/98 Guidelines – EU policy on electoral observation, published in Annex III of COM(2000) 191 final, at 37.

¹²³ National Democratic Institute, *Lessons Learned and Challenges Facing International Election Monitoring* (April 1999).

¹²⁴ Swedish International Development Cooperation Agency (SIDA), *Handbook for European Union Election Observation Missions* (no date provided, but probably of 2002); European Commission, *Handbook for European Union Election Observation* (2008); OSCE/ODIHR, *Election Observation Handbook* (2005); Int. IDEA, *Code of Conduct for the Ethical and Professional Observation of Elections* (1997).

¹²⁵ Carothers, *Aiding Democracy Abroad*, at 125.

¹²⁶ Bloed, ‘Monitoring the CSCE Human Dimension’, at 47; Bloed, ‘Monitoring the Human Dimension of the OSCE’, at 633f.

¹²⁷ See, for example, the objectives and mandate of the European Union Special Representative for the South Caucasus, Council Joint Action 2006/121/CFSP of 20 February 2006 appointing the European Union Special Representative for the South Caucasus, OJ 2006 L49/14, Arts 2 and 3.

On the whole, over the last decades international factors have increasingly played a role in democratization processes of individual states. Not only have there been more unintentional factors at work, also intentional actions – democracy promotion – have multiplied enormously. In particular since the early 1990s, democracy promotion actors have increasingly presented new instruments to facilitate democratization and have ever since refined them and developed them further. These numerous instruments range from pursuing coercive to more positive, engaging approaches, in practice often combining elements of both. Overall, despite the frequent primary association of democracy promotion with the military intervention in Iraq, coercive measures are definitely the least preferred option. If employed, preference is given to those with less negative side-effects, that is, smart, targeted sanctions. Democracy promoters on the whole prefer using positive tools as well as positive and incentive conditionality, which bring together several advantages:¹²⁸ Their direct engagement with local actors, processes, and institutions implements the idea that successful democratization must be a domestically rooted and driven process; their open and consensual nature avoids or at least reduces conflicts with the target states' authorities; they allow the concurrent pursuit of other external policy objectives, as they do not disturb political and economic relations; their proactive rather than reactive nature envisages action not only after (serious) violations of democratic principles but beforehand; they are less prone to influence by geopolitical and economic foreign policy considerations, which usually discriminate against smaller, distant, less important states; they avoid the negative side-effects of certain coercive measures (death, destruction, negative economic repercussions for the target state's population, neighbouring countries, and the sanction employing state). The major critique about positive measures has been that they allow Western states to pursue 'business as usual' rather than reacting more decisively to violations of democratic principles.

3. Explaining Democratization

Democratization is usually – and also in this thesis – defined as the process of regime change from some form of non-democratic to a democratic regime.¹²⁹ The various experiences of the countries having undergone such regime change demonstrate the diversity of the process. Transitions begin at various levels of socio-economic development; some authoritarian regimes break down under strong popular pressure, in others the incumbent political elite is the major

¹²⁸ See also Simma, Aschenbrenner, and Schulte, at 578-82; Burnell, 'Democracy Assistance: The State of the Discourse', at 6-10.

¹²⁹ The term can also be applied to improvements in established democracies. G. Pridham: *The Dynamics of Democratization: A Comparative Approach* (2000), at 17. On different types of non-democratic regimes see J. J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (1996), at 38-45.

democratizing force; time frames, external influences, and, last but not least, successful consolidation of the new democratic regime differs from case to case. Dankwart Rustow has therefore proven to be right, when he suggested in his seminal article of 1970 – challenging the then prevailing view – that “there are many roads to democracy”.¹³⁰

Just as the way to democracy is diverse, there are also numerous different theoretical explanations of why and how democratization starts, proceeds, succeeds and/or fails. New theories or refined versions of older theories continue to emerge regularly and can be expected to appear as long as the third wave is being followed by small after-waves or (possibly) a fourth wave of democracy. In order to cope with the quantity of theoretical explanations, it is helpful to generally distinguish between two major approaches in the study of democratization: the structural approach and the genetic or transition approach.¹³¹ Both have been refined since they have first emerged and, in particular, incorporated elements of each other, but have nevertheless retained their specific characters. While most democratization theories can either be attributed to one or the other basic approach, many also mix elements of both.¹³²

a) The Structural Approach in the Study of Democratization

Studies following the structural approach explain democratization by looking at structural conditions that lie outside the political system and its actors. The most important of these structural conditions is socio-economic development, but conditions like culture, in particular religion and political culture, have also been addressed. One particular strand of the approach, historical sociological analysis, has explained democratization as an outcome of the balance or weight of different social classes.¹³³

The structural approach constituted the first and original school of regime change and was particularly popular between the 1950s and the 1970s. It was then largely suppressed by the transition approach, which criticized it for its determinism, ethnocentrism, exclusive long-term focus, and treatment of individuals as members of groups with predetermined behaviours only. Moreover, its predictions failed to materialize, when despite socio-economic development a

¹³⁰ D. A. Rustow, ‘Transitions to Democracy: Towards a Dynamic Model’, 2 *Comparative Politics* 3 (1970), at 346.

¹³¹ For different classifications see: Pridham, *The Dynamics of Democratization*, at 5; R. B. Collier, ‘Democratic Transition’, in P. B. Clarke and J. Foweraker (eds), *Encyclopedia of Democratic Thought* (2001), at 213f; D. Potter, ‘Chapter 1: Explaining Democratization’, in D. Potter, D. Goldblatt, M. Kiloh and P. Lewis (eds), *Democratization* (1997), at 10f.

¹³² For example G. Sørensen, *Democracy and Democratization: Process and Prospects in a Changing World* (1998, 2nd ed.); Huntington, *The Third Wave*; Pridham, *The Dynamics of Democratization*; Potter, Goldblatt, Kiloh and Lewis (eds); J. Teorell, *Determinants of Democratization: Explaining Regime Change in the World, 1972-2006* (2010).

¹³³ Collier, at 214; B. Moore Jr., *The Social Origins of Dictatorship and Democracy* (1966), at 413f.

‘reverse wave’ to authoritarianism took place in the 1960s and early 1970s.¹³⁴ Eventually, the structural approach reemerged in a refined and qualified version in the early 1990s, in particular as a result of the transformation processes in Central and Eastern Europe, to some extent responding to the various points of criticism mentioned above.¹³⁵ In particular, newer structural studies address the role of individuals and suggest, for example, that “economic development makes democracy possible; political leadership makes it real”¹³⁶.

i. Socio-economic Development and Democratization

As mentioned, the structural factor given most attention in the study of democratization was and still is socio-economic development.

Original studies on the relationship between socio-economic development and democratization and/or democracy – concepts, which original studies did not necessarily clearly distinguish from each other –¹³⁷ overlapped with the modernization theory. They suggested that democracy would result from, but also require each state to go through a universal sequence of different developmental phases of socio-economic development, including industrialization, urbanization, higher educational standards, and a steady increase in the overall wealth of society. Development would effect changes in the social structure and in the political culture of a society, which would eventually, in the final stage, lead to democracy. All in all, socio-economic development was considered to be a precondition or prerequisite for democratization as well as a necessary outcome.¹³⁸

Since the early 1990s a large number of new studies on the relationship between socio-economic development and democracy/democratization has been carried out, employing different quantitative methods and focusing on different time frames and countries.¹³⁹ While they

¹³⁴ V. Randall, ‘Modernisation’, in P. B. Clarke and J. Foweraker (eds), *Encyclopedia of Democratic Thought* (2001), at 442; Huntington, ‘Democracy’s Third Wave’, at 3.

¹³⁵ L. Diamond, ‘Economic Development and Democracy Reconsidered’, 35 *American Behavioral Scientist* 4/5 (March/June 1992), at 468; S. M. Lipset, ‘The Social Requisites of Democracy Revisited’, 59 *American Sociological Review* (February 1994), at 1; L. Diamond, *Developing Democracy: Toward Consolidation* (1999), at 78f; Pridham, *The Dynamics of Democratization*, at 8; Randall, at 441 and 443; A. Przeworski and F. Limongi: *Modernization: Theories and Facts* (1997), at 156.

¹³⁶ Huntington, *The Third Wave*, at 316.

¹³⁷ For example, S. M. Lipset, ‘Some Social Requisites of Democracy: Economic Development and Political Legitimacy’, 53 *American Political Science Review* 1 (March 1959). See the critique of Rustow, at 341f.

¹³⁸ Lipset, ‘Some Social Requisites of Democracy: Economic Development and Political Legitimacy’, at 82; Diamond, ‘Economic Development and Democracy Reconsidered’, at 488; Przeworski and Limongi, at 158; Randall, at 441.

¹³⁹ For an overview see, for example, Diamond, at 469. See also S. M. Lipset, K. - R. Seong and J. C. Torres, ‘A Comparative Analysis of the Social Requisites of Democracy’, 45 *International Social Science Journal* (May 1993), at 155f; Lipset, ‘The Social Requisites of Democracy Revisited’, at 1; T. Vanhanen, *Prospects for Democracy: A Study of 172 Countries* (1997), at 10f; B. Geddes, ‘What do we know about Democratization after Twenty Years?’, 2 *Annual Review of*

have overall produced very diverse results, the majority of studies has suggested the following relationship between the phenomena.

First, socio-economic development is no longer believed to be a precondition or prerequisite for democratization but democratization can in principle occur at any level or rate of socio-economic development.¹⁴⁰ Nevertheless, secondly, the majority of studies suggest that higher levels and rates of socio-economic development make the achievement of a democratic system more likely.¹⁴¹ For example, Seymour Martin Lipset, once a proponent of the modernization approach, wrote in the early-mid 1990s that “while we cannot assume the impact of growth to be mechanistic in encouraging pluralism” it is nevertheless a factor “conducive to the development of democracy”.¹⁴²

It is less clear though, whether the positive effect of socio-economic development is equally strong at all levels of development. Some authors have suggested that its impact is strongest at lower levels of development. Others have found that the likelihood of a positive impact is stronger at middle levels of socio-economic development (“zone of transition”).¹⁴³ Very widespread is also the assumption of a relationship in the shape of an N-curve, which suggests high chances for democratization in poor and lower-middle income countries, low change at some middle range, and high chances in rich countries.¹⁴⁴ Several influential studies of the 1980s suggested that certain levels of socio-economic development produced authoritarianism rather than democracy. In particular, the Dependency School showed that Latin American bureaucratic-authoritarian dictatorships were the result of dependent capitalist development. The reasons were the need to suppress social parties, organizations and popular demands more generally, in face of severe economic measures. As a result, the way to democracy was considered to be a circuitous one, in which dictatorships were required to achieve development, which would eventually lead to democracy. The theory lost appeal though in the late 1980s, when there was hardly evidence that dictatorships carried out successful socio-economic reform.¹⁴⁵ All in all, given the numerous suggestions, many authors simply assume that socio-economic development is at any stage a facilitating factor for democratization.

Political Science (1999), 117f; T. Landman, ‘Economic Requirements of Democracy, in P. B. Clarke and J. Foweraker (eds), *Encyclopedia of Democratic Thought* (2001), at 235.

¹⁴⁰ Przeworski and Limongi, at 158 and 177; Landman, at 236; Randall, at 441f.

¹⁴¹ Diamond, ‘Economic Development and Democracy Reconsidered’, at 468; Sørensen, at 27.

¹⁴² Lipset, Seong, and Torres, at 155f; Lipset, ‘The Social Requisites of Democracy Revisited’, at 17.

¹⁴³ Diamond, ‘Economic Development and Democracy Reconsidered’, at 464; Huntington, ‘Democracy’s Third Wave’, at 22.

¹⁴⁴ Diamond, ‘Economic Development and Democracy Reconsidered’, at 466f.

¹⁴⁵ Diamond, ‘Economic Development and Democracy Reconsidered’, at 473; Przeworski and Limongi, at 177; S. Haggard and R. R. Kaufman, ‘The Political Economy of Democratic Transitions’, 29 *Comparative Politics* 3 (April 1997), at 263f; A. Przeworski, M. Alvarez, J. A. Cheibub and F. Limongi, ‘What Makes Democracy Endure?’, in L. Diamond, M. F. Plattner, Y. Chu and H. Tien (eds), *Consolidating the Third Wave Democracies: Themes and Perspectives* (1997), at 297.

The third conclusion to be drawn from studies on socio-economic development and democracy is that higher levels and rates of socio-economic development are even more important for the successful consolidation of democracy than for transition itself. In this sense, Larry Diamond nearly went so far as suggesting economic growth to be a precondition for the consolidation of democracy.¹⁴⁶

Finally and little disputed, theory suggests there exists “a consistent and strong positive relationship” between socio-economic development and the existence and survival and stability of political democracy.¹⁴⁷ If a country is rich it is most likely a democracy (and vice versa). However, this does not mean that socio-economic development is a precondition for democracy, as also poor states, like India and Mongolia can have democratic systems of government. Further, the chances for the survival and stability of democracy are higher if states are richer or if states are economically developing.¹⁴⁸

The question remains why socio-economic development facilitates democratization and democracy. A first set of arguments directly relates to higher income and economic security. A secure job and income allows people to give more attention to politics, as they are not only concerned with securing basic necessities. Further, economic development leads to the establishment of an economically independent middle class that provides a strong counterweight to the state and demands political freedoms and participation.¹⁴⁹ Finally, economic development means that the state is no longer the only source of economic opportunities, elections stop to be zero-sum games, nepotism and bureaucratic corruption decline, all of which remove obstacles to democratization.¹⁵⁰ A second set of arguments asserts that development creates a civic culture that makes democratization more likely, as such culture involves higher levels of trust among members of a society, a willingness to tolerate diversity, to accommodate and compromise. Education appears to be the most important intervening factor in the creation of a civic culture.¹⁵¹

¹⁴⁶ Diamond, *Developing Democracy: Towards Consolidation*, at 79f.

¹⁴⁷ Diamond, ‘Economic Development and Democracy Reconsidered’, at 468; J. J. Linz and A. Stepan, ‘Actors and Contexts’, in J. J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (1996), at 77.

¹⁴⁸ Randall, at 444; Lipset, ‘The Social Requisites of Democracy Revisited’, at 16; Geddes, at 119; T. L. Karl, ‘Dilemmas of Democratization in Latin America’, 23 *Comparative Politics* 1 (October 1990), at 4; J. B. Londregan and K. T. Poole, ‘Does High Income Promote Democracy?’, 49 *World Politics* (October 1996), at 1.

¹⁴⁹ The argument ‘no bourgeoisie – no democracy’ was originally made by B. Moore. Moore, at 418. Lipset, ‘The Social Requisites of Democracy Revisited’, at 3; Diamond, at 480.

¹⁵⁰ Diamond, ‘Economic Development and Democracy Reconsidered’, at 480-1; Lipset, ‘Some Social Requisites of Democracy’, at 84.

¹⁵¹ Karl, at 3; Lipset, ‘Some Social Requisites of Democracy’, at 80.

ii. Cultural Factors and Democratization

Next to socio-economic conditions, culture has received and still receives considerable attention in the literature. Moreover, Seymour Martin Lipset argued in 1994 that “cultural factors appear even more important than economic ones” in explaining the presence of democracy.¹⁵²

Overall, studies on culture and democracy vary considerable as regards their focus and results. Some contend in a rather general way that only Western culture provides the suitable basis for the creation and working of democratic institutions and that it only has to be shown that it can also work beyond this cultural framework (‘restrictive cultural thesis’).¹⁵³ Slightly more moderate versions of the cultural thesis only assert that certain cultures, in particular Islam, Confucianism, and Orthodox Christianity, are hostile to democracy.¹⁵⁴ Similarly, until the 1960s the hierarchical and authoritarian character of Christianity was considered as obstacle to democratization in Latin America.¹⁵⁵ Of all major world religions only Protestantism was always positively correlated with democracy.¹⁵⁶

Arguments on the sheer incompatibility of certain cultures with democracy have encountered much criticism and have largely been dismissed.¹⁵⁷ As regards more moderate approaches, it has been shown that cultures are complex bodies of ideas, beliefs, doctrines, assumptions, and behaviour patterns and therefore have features compatible and incompatible with democracy. It depends on which features are stressed or compromised, and whether change within a culture is possible and/or acceptable.¹⁵⁸

A different type of work correlating culture and democracy has concentrated on political culture, defined as the system of beliefs and values in which political action is embedded and given meaning.¹⁵⁹ The idea was that a certain type of political culture, namely a civic culture, was necessary or more favourable for democratization (that is, democrats are needed before a democracy can be established). A state torn by war and dominated by corruption is little likely to become a democracy. The thesis was met with criticism. Terry Lynn Karl has mentioned examples of democracies that emerged from uncivic warfare and Dankwart Rustow has argued

¹⁵² Lipset, ‘The Social Requisites of Democracy Revisited’, at 5.

¹⁵³ George Kennan was, for example, a proponent for such thesis. Huntington, ‘Democracy’s Third Wave’, at 13f; Lipset, ‘The Social Requisites of Democracy Reconsidered’, at 5.

¹⁵⁴ Huntington, ‘Democracy’s Third Wave’, at 13-15, 17, and 19.

¹⁵⁵ Lipset, ‘The Social Requisites of Democracy Revisited’, at 6; Karl, at 3; Huntington, *The Third Wave*, at 281 and 77-85.

¹⁵⁶ Lipset, ‘The Social Requisites of Democracy Revisited’, at 5.

¹⁵⁷ Karl, at 3.

¹⁵⁸ Lipset, ‘The Social Requisites of Democracy Revisited’, at 5; Huntington, ‘Democracy’s Third Wave’, at 21.

¹⁵⁹ Karl, at 3.

that “not all causal links run from beliefs and attitudes to actions”, but “there are reciprocal influences” between these two.¹⁶⁰

b) The Genetic or Transition Approach in the Study of Democratization

The second major approach in democratization studies is the so-called genetic or transition approach. It dismisses the idea of a common causality, like socio-economic development, for democratization, but believes that each case is different and that it is the dynamics of the democratization process that is crucial for determining success or failure. Studies following the transition approach therefore concentrate on the dynamics of the process of regime change itself, which they conceptualize as a complex process consisting of three conceptually different phases: liberalization, transition, and consolidation.¹⁶¹ The time shortly before, during, and shortly after the transition has originally been given most attention, however, since the 1990s the consolidation process has also stirred much interest. The approach also recognizes the existence and importance of ‘crucial’ moments, which can be particularly decisive for the success or failure for the democratization process. Importantly, in the overall process an important role is attributed to political actors and their strategic choices, especially also during crucial moments. Actors therefore move to the center of the process of regime change and move it forward by making efficacious, consequential choices.¹⁶² Originally, the focus was mainly on political elites, however, from the 1990s on the masses and civil society were also given more attention.¹⁶³

The genetic approach was originally developed in the 1980s in critique of the structural approach and, in particular, modernization theory, as well as against the backdrop of transitions in Southern Europe and Latin America, which constituted the first cases of analysis.¹⁶⁴ The genetic approach was mainly criticized for ‘excessive voluntarism’, that is, that everything depended on the activities and choices of individuals, in particular of the political elite, unrestrained by structural factors.¹⁶⁵ It responded to the critique by eventually taking pre-existing social, economic, and political relations into account as confining conditions that may restrict or

¹⁶⁰ Ibid.; Rustow, at 341-2.

¹⁶¹ G. O’Donnell and P. C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (1986), at 6; T. L. Karl and P. C. Schmitter, ‘Modes of Transition in Southern and Eastern Europe and South and Central America’, 128 *International Social Science Journal* (1991), at 269f.

¹⁶² O’Donnell and Schmitter, at 48; Karl and Schmitter, at 274; Collier, at 214

¹⁶³ M. Bratton and N. van de Walle, ‘Neopatrimonial Regimes and Political Transition in Africa’, 46 *World Politics* 4 (July 1994), at 460.

¹⁶⁴ Pridham, *The Dynamics of Democratization*, at 9; Collier, at 214f. The major initial study working within the transition approach was: G. O’Donnell, P. C. Schmitter, and L. Whitehead (eds), *Transitions from Authoritarian Rule* (1986). The origin of the approach is, however, D. Rustow’s article of 1970, see Rustow.

¹⁶⁵ Karl and Schmitter, at 271f.

enhance choices, just like the refined structural approaches accepted the role of actors.¹⁶⁶ Moreover, the focus on elites was complemented by a focus on civil society.¹⁶⁷ Overall though, the strategic choices of actors continued to be given primary attention.

The following paragraphs should briefly introduce the three conceptually different and timely possibly overlapping phases of the democratization process: liberalization, transition, and consolidation.

i. Liberalization

Transition to democracy might be preceded by a period of political liberalization. Political liberalization is a process during which authoritarian rulers extend some civil liberties to their populations, like through the release of political prisoners, the easing of media censorship, the permission of (some) civil society activity, and possibly even the permission of some political opposition activity. However, the process falls short of real democratization as the authoritarian government continues to suppress some of the core elements of a democratic system of government, in particular, the holding of regular, free and fair elections.¹⁶⁸ While a state of liberalization is preferable to authoritarianism, it cannot replace full democratization.

The reason for authoritarian rulers to liberalize varies, but is usually caused by a regime crisis, in particular a socio-economic or related legitimacy crisis. Authoritarian regimes are particularly vulnerable as regards socio-economic crisis, because they are usually functionally legitimated. Failure to develop economically and to ensure basic social services can cause critique of authoritarian governments and – because there is no strict difference between the government and the regime – also of the authoritarian regime as such.¹⁶⁹ However, economic success can also be the reason for a legitimacy crisis.¹⁷⁰ As pointed out by structural studies, economically independent and educated middle classes can begin to push for democratization, with South Korea and Taiwan being usually cited as major examples of such process.¹⁷¹ A legitimacy crisis can also occur with the death of a leading figure, if the regime built its legitimacy on that person, like in Franco's Spain.¹⁷² In any case, in the face of a crisis, an authoritarian government can either retain authoritarianism (or even introduce harsher measures of control), but can also begin

¹⁶⁶ Ibid.

¹⁶⁷ D. Friedheim: 'Bringing Society Back into Democratic Transition Theory after 1989: Pact-Making and Regime Collapse', 7 *East European Politics and Societies* 3 (Fall 1993), at 482f.

¹⁶⁸ O'Donnell and Schmitter, at 10; Pridham, *The Dynamics of Democratization*, at 69.

¹⁶⁹ N. Bermeo, 'Rethinking Regime Change, Review Article', 22 *Comparative Politics* 3 (April 1990), at 366; Linz and Stepan, 'Actors and Contexts', at 79; L. Holmes, *Post-Communism: An Introduction* (1997), at 26f and 189f.

¹⁷⁰ Linz and Stepan, 'Actors and Contexts', at 78.

¹⁷¹ H.-H. M. Hsiao and H. Koo, 'The Middle Classes and Democratization', in L. Diamond, M. Plattner, Y. Chu and H. Tien (eds), *Consolidating the Third Wave Democracies* (1997), at 313.

¹⁷² Pridham, *The Dynamics of Democratization*, at 79; Holmes, at 43f.

with liberalizing reforms. The preferred choice is usually determined whether the group of hard-liners of the political elite – conservatives, who believe in the possibility and desirability of retaining the authoritarian regime – or the group of soft-liners – reformers, who believe that the regime needs some liberalization or who even desire real democratization – are more influential.¹⁷³ Also the role of civil society and the population can become important, in particular in support of the reformist soft-liners.¹⁷⁴

If an authoritarian regime liberalizes, this might turn out to be the first step to a transition to democracy. The newly gained liberties can lead to even stronger demands and pressure, which can no longer prevent a regime change. However, the process is characterized by strong uncertainties.¹⁷⁵ Liberalization can also be halted, reversed, continued and reversed again. In the last decade, it has also occurred more frequently that states maintained a status of liberalization for a longer period of time, which eventually resulted in liberalization not only being a transitory status but a type of regime.¹⁷⁶ Morocco, Armenia, Singapore, Malaysia and, in some accounts, also Russia, Azerbaijan, and (before early 2011) also Egypt, can currently be considered ‘liberalized authoritarian states’.¹⁷⁷

ii. Transition

The transition phase constitutes the major stage of the democratization process, as it is when regime change happens. It is characterized by a high degree of uncertainty, when everything is in flux, but in the process of being defined.¹⁷⁸ Its starting-point and even more its end-point are difficult to determine and various suggestions have been made in the literature. According to Juan J. Linz and Alfred Stepan a transition can be considered to begin with the collapse of the authoritarian regime and to be completed when there is agreement about the political procedures to produce an elected government, when this government results from relatively free and fair elections (so-called founding elections), when the elected government *de facto* has power to

¹⁷³ O’Donnell and Schmitter, at 16-19; Bermeo, at 361.

¹⁷⁴ O’Donnell and Schmitter, at 17, 7, and 26; Pridham, *The Dynamics of Democratization*, at 88.

¹⁷⁵ Bermeo, at 368.

¹⁷⁶ M. Bogaards, ‘How to Classify Hybrid Regimes? Defective Democracy and Electoral Authoritarianism’, 16 *Democratization* 2 (April 2009), at 399.

¹⁷⁷ There is no agreement on the classification of regimes. All the mentioned states fall short of being ‘electoral democracies’ as defined by Freedom House, but have combined average Freedom House ratings of 5.5 or better. Freedom House, *Freedom in the World 2010*. Freedom House, a US-based non-profit organization founded in 1941 upon the initiative of a number of highly influential people of both major parties, is engaged in research and advocacy on human rights, political freedom and democracy. It published an annual report on the level of freedom in all countries and territories, that allows easy comparison. For methodology and ratings of Freedom House see: <http://www.freedomhouse.org/template.cfm?page=363&year=2010> (last accessed on 10.6.2011) and Chapter 5, section II. 3) c).

¹⁷⁸ O’Donnell and Schmitter, at 6.

generate policies and is not controlled by unelected institutions, like the military, and when the new executive, parliament, and judiciary does not have to share power with other bodies *de jure*.¹⁷⁹ Similarly but less detailed, other authors have located the end-point of a transition with the beginning of the operation of the new system, that is, when a freely and fairly elected government starts to produce policies.¹⁸⁰

Terry L. Karl and Philippe C. Schmitter have suggested four ideal types of transitions to democracy, which were originally deduced from early third wave transitions in Southern Europe and Latin America but also identified in Central and Eastern Europe.¹⁸¹ As they are ideal types, individual cases of transitions cannot always easily be allocated to one or the other, but often mix elements of more than one type. The four types are as follows:¹⁸²

(1) Transitions from above or top-down, in the case of which reformers or soft-liners of the ruling authoritarian regime remain the decisive actors, like in Turkey, Brazil, and, at least initially, the Soviet Union, where Mikhail Gorbachev was a quite unique ‘liberalizing reformer’.¹⁸³ Top-down transitions also includes the more seldom case of transition by imposition, which refers to cases of regime change through military intervention by foreign states, like in Germany after World War II, in Iraq, and Afghanistan;

(2) Reform transitions from below or bottom-up, in the case of which non-violent mass mobilizations eventually force authoritarian rulers to reform, like in Czechoslovakia;

(3) Revolutions or violent mass uprisings, like in Cuba and (although disputed) in Romania;

(4) Negotiated transitions, in the case of which members of the authoritarian regime and the political opposition agree on regime change through compromise, negotiation and/or pact, like in Spain, widely considered the very model of ‘elite settlement’;¹⁸⁴

As indicated, various types of transitions are difficult to attribute to one of the four ideal types. In the various cases of the so-called ‘colour revolutions’, in particular in Serbia, Ukraine, and Georgia, an ‘electoral model’ of regime change was followed.¹⁸⁵ It included a concerted effort by opposition leaders, civil society groups, and international election observation missions to achieve regime change through winning relatively free and fair elections. When elections were ‘stolen’, the united opposition and civil society organizations encouraged citizens to carry out

¹⁷⁹ Linz and Stepan, at 3.

¹⁸⁰ O’Donnell and Schmitter, at 6; Linz and Stepan, at 3; Pridham, at 19.

¹⁸¹ Karl, at 9; Karl and Schmitter, at 275-6.

¹⁸² For a different classification see, for example, D. Potter, at 16-17.

¹⁸³ Ibid; Gill, at 324; R. Bova, ‘Political Dynamics of the Post-Communist Transition: A Comparative Perspective’, 44 *World Politics* 1 (October 1991), at 130.

¹⁸⁴ J. J. Linz and A. Stepan, ‘The Paradigmatic Case of *Reforma Pactada – Ruptura Pactada*: Spain’, in J. Linz and A. Stepan: *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (1996), at 87f; R. Gunther, ‘Southern Europe’, in C. W. Haerpfer, P. Bernhagen, R. F. Inglehart and C. Welzel (eds), *Democratization* (2009), at 275.

¹⁸⁵ Bunce and Wolchik, at 70.

non-violent mass protests until the incumbents would resign.¹⁸⁶ It was suggested to constitute a new ideal-type of a transition to democracy.¹⁸⁷ The most recent attempts at regime change in the Arab world can be attributed to groups (2) and (3), depending on the violence involved and the role of the incumbent regime to cede power in each particular state.

There is much discussion on the most successful mode of transition. Some authors have claimed that in certain regions, in particular in Sub-Saharan Africa, revolutions might be necessary for regime change, as polarized positions of incumbent and opposition leaders make negotiations unlikely.¹⁸⁸ Studies of transitions in Southern Europe, Latin America, and Central and Eastern Europe have praised the model of negotiation, which has the advantage that it envisages a life for authoritarian rulers after regime change and therefore encourages their participation.¹⁸⁹ Strong civil society organizations and civic engagement appears as important factors in various types of transitions.¹⁹⁰ Most recently, academic scholarship has found strong evidence that the repeated holding of more or less competitive elections generates momentum for democratization, even if several subsequent elections remain flawed.¹⁹¹ There is increasing agreement though that transition by (military) imposition has strongly disqualified itself with the experiences in Iraq.¹⁹² Irrespective of the type of transition, during the transition phase many crucial institutional decisions on the basic rules and procedures of the new democratic system have to be taken, including on the executive system, the electoral system, the role of the judiciary vis-à-vis the legislature, and the power of central banks.

iii. Consolidation

A completed transition is not the endpoint of the democratization process. Not all institutional choices are made or changes are favoured, reforms of central institutions are ongoing, civil rights and liberties are not entirely guaranteed, and not all actors respect democratic rules. A transition has to be followed by a process of consolidation. As consolidation takes place in different partial regimes or sub-fields of democracy, like the civil society and the rule of law sectors,¹⁹³ it can

¹⁸⁶ Beissinger, at 261.

¹⁸⁷ S. I. Lindberg (ed.), *Democratization by Elections: A New Mode of Transition?* (2009).

¹⁸⁸ Bratton, M., and van de Walle, N., 'Neopatrimonial Regimes and Political Transition in Africa', 46 *World Politics* 4 (July 1994), at 460.

¹⁸⁹ Karl and Schmitter, at 280-1.

¹⁹⁰ Gill, at 81.

¹⁹¹ S. Lindberg, 'A Theory of Elections as a Mode of Transition', in S. I. Lindberg (ed.), *Democratization by Elections: A New Mode of Transition?* (2009), at 314f.

¹⁹² D. Beetham, 'The Contradictions of Democratization by Force: The Case of Iraq', 16 *Democratization* 3 (June 2009), at 443.

¹⁹³ P. C. Schmitter, 'The Consolidation of Political Democracies: Processes, Rhythms, Sequences and Types', in G. Pridham (ed.), *Transitions to Democracy: Comparative Perspectives from Southern Europe, Latin America and Eastern Europe* (1995), at 554-8.

proceed with different speeds in different subfields and therefore be completed in some and ongoing in others.

The concept of consolidation has originally been understood as simply referring to the stability or survival of a newly established democratic system, that is, the “prevention of democratic breakdown”.¹⁹⁴ However, such a meaning has eventually been considered too limited and not capturing the developments following a transition process. It has subsequently become widely conceptualized as the process during which, first, at the normative/belief level, all significant political actors, including the political and economic elite as well as civil society and the masses, begin to believe that democracy is the best form of government for their political community at that particular point of time, and secondly, at the behavioural level, the same actors start to voluntarily practice and behave according to the democratic norms and rules. The latter includes that the actors obey the constitution and mutually accepted norms of political conduct, accept the right of all parties to compete for power, do not seek to overthrow the regime, and do not use violence.¹⁹⁵

At the same time, the consolidation process must involve a further improvement of those elements of democracy that have not been entirely fulfilled yet, in particular as regards the respect for civil rights and liberties. The process will entail a whole range of reforms at various partial regime levels of democracy, including the development of the party system, of the electoral system, the legislature, the judicial system, state administration, the media, and civil society.

On the whole, democratization or the process of regime change from one form of non-democratic to a democratic regime, has been variously explained in the academic literature. Overall, two basic approaches are discernable in the study of the phenomenon. On the one hand, the structural approach focuses on long-term, structural factors that lie outside the political system and its actors. The most researched of these structural conditions is socio-economic development. While studies have come to different conclusions, many have asserted that socio-economic development is not a precondition of democratization but nevertheless facilitates transitions to democracy and consolidation. Moreover, it is positively correlated to the presence and stability of democracy. On the other hand, the second basic so-called transition or genetic approach rather looks at the shorter-term process of regime change itself, focuses on actors, which it believes to play a central role, and their choices. It believes in crucial moments during

¹⁹⁴ A. Schedler, ‘What is Democratic Consolidation?’, in L. Diamond and M. F. Plattner, *The Global Divergence of Democracies*, at 153-5.

¹⁹⁵ J. J. Linz and A. Stepan, ‘Democracy and its Arenas’, in J. J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Eastern Europe* (1996), at 5; L. Diamond, *Developing Democracy: Toward Consolidation*, at 65 and 69.

which specific choices can have great impact. This approach has differentiated three conceptually different and timely overlapping phases: liberalization, transition, and consolidation. While the first is characterized by an extension of civil rights and liberties but falls short of democratization, transition refers to the actual regime change, and consolidation to the process in which democracy becomes widely accepted and practiced (“the only game in town”).¹⁹⁶

4. Models of Democracy

One of democracy’s main features is diversity. It has gone through various major ‘transformations’ since the fifth century BC and has become widespread in various forms in different countries worldwide since the early-mid 20th century.¹⁹⁷ At the same time, academic discourse on democracy has brought forward numerous different models, which describe, support, or challenge existing democratic systems or suggest new conceptions. All in all, democracy is today one of the most contested concepts in political theory.

Against the background of this diverse and disputed nature many authors in the field of democratic theory make the useful distinction between one overarching concept of democracy, about whose meaning there is in principle agreement, and several different conceptions or models thereof, like the elitist, pluralist, social democratic, and participatory model, which, while (in many cases) sharing certain ideas and features, involve contestable claims about how much democracy is desirable or practicable and how it might best be realized in sustainable institutional form.¹⁹⁸ The basic concept and four specific models are discussed in turn.

Preliminary it should be explicitly stated that the discussion in this section relates to ‘political democracy’, that is, it concerns the system of governance of the public arena of a state (the ‘political system’), rather than of the economy, society, or the private sphere. While models of democratic governance can also focus on these spheres and, as will be seen further below, social and participatory theory claim that they should, they are not of primary interest here.

¹⁹⁶ Giuseppe la Palma, quoted in Linz and Stepan, ‘Democracy and its Arenas’, at 5.

¹⁹⁷ See, for example, Dahl’s account of the various ‘transformations’ of democracy: R. Dahl, *Democracy and its Critics* (1989). See also D. Held, *Models of Democracy* (1996); A. Arblaster, *Democracy* (3rd ed., 2002) at 15-55.

¹⁹⁸ D. Beetham, *Democracy and Human Rights* (1999), at 33; B. Holden, *Understanding Liberal Democracy* (1988), at 43. On the contrary, W. B. Gallie considers democracy as ‘essentially contested concept’, which implies contestation at the core of the concept, complexity and normativity, and suggests that therefore there can in principle be no grounds for agreement. See D. Collier and S. Levitsky, ‘Democracy with Adjectives: Conceptual Innovation in Comparative Research’, 49 *World Politics* 3 (1997), at 433; J. Waldron, ‘Is the Rule of Law an Essentially Contested Concept (in Florida)?’, 21 *Law and Philosophy* 2 (2002), at 149.

a) The Concept of Democracy

The basic concept of democracy can be understood as ‘rule by the people’, which is the translation of the Greek word ‘*demokratia*’,¹⁹⁹ or, more concretely and following Barry Holden, as “*a political system in which the whole people, positively or negatively, make, and are entitled to make, the basic determining decisions on important matters of public policy*”.²⁰⁰ Similarly, David Beetham suggests that a system is democratic “to the extent that it is subject to control by all members of the relevant association, or all those under its authority, considered as equals” and that the concept of democracy therefore consists of two core principles: ‘popular control’ and ‘political equality’.²⁰¹

Lack of space does only allow a brief look at the main elements of the definition. The concept of democracy requires that *the whole people*, that is, all individuals or all members of an association do and are entitled to participate in decision making, rather than a single person or few persons due to birth, wealth, or education. Exceptions are only possible if limited, objectively applied, and justified, like for children. Unlike Holden, Beetham’s definition stresses the equal entitlements of all individuals (‘political equality’). Further, people are not only *entitled to* but should indeed *make* basic determining decisions and not be prevented from doing so by discouraging or coercive measures. The basic concept does not stipulate a duty to participate as some specific conceptions do in order to achieve some ideal form of democracy.²⁰² Participation can be direct or indirect which means that individuals can either act themselves or through their representatives. Indirect participation through representation became accepted in the mid-18th century and made democratic rule possible in entities larger than city-states.²⁰³ The features of *positive* and *negative* involvement refer to the origination of policy, that is, whether people or their representatives initiate it. Finally, in a democracy people participate in *basic determining decisions*, which are decisions that actually determine courses of events and from which subsidiary decisions and actions flow.²⁰⁴

b) Two Core Ideas of Liberal Democracy

Democracy is today overwhelmingly understood as ‘liberal democracy’. In other words, if a system of government does not accept the two principal tenets of liberal democracy, hardly anybody would call it democracy. These two main ideas are ‘liberty’ and limited ‘government’.

¹⁹⁹ Held, at 1.

²⁰⁰ Holden, at 5.

²⁰¹ Beetham, at 33.

²⁰² Held, at 17 and 36f.

²⁰³ Dahl, at 28f and 213f; Held, at 119. For different concepts and theories of representation see Holden, at 50-3.

²⁰⁴ Holden, at 6-7.

The first core idea of liberal democracy has always been and still is concerned with the liberty of the individual. Individual liberty is the freedom of the individual with respect to his or her social, economic, and political environment. Some definitions also make reference to the concept of self-determination, meaning that the free individual is the one who determines his or her own actions.²⁰⁵ Liberal democracy requires several key liberties to exist, like the freedom of speech and of association, and requires the respect of certain freedoms in other fields, like the economic area, to function properly. The main theories underlying the idea of individual freedom are theories of individual rights, which, largely following John Locke, claim that all individuals have essential basic human qualities in common by virtue of which they have certain basic rights, including “a fundamental moral right to do as he or she wishes in certain areas of life”.²⁰⁶

The second key idea of liberal democracy, limited government or limitations in the scope or locus of democracy, is a direct consequence of the first. If the individual should have a sphere of liberty and autonomy, the sphere in which the whole people and/or the government should be able to influence, determine or restrict his or her actions, even by democratic means, should be limited.²⁰⁷ The limited state is not only necessary for as much individual freedom as possible, but the sphere of freedom is also necessary for the functioning and persistence of the liberal democratic system. The main arguments are, first, that there need to be autonomous areas of will-formation, be it the private sphere, civil society or the economy, which are separate from the state and, secondly, that democracy needs a plurality of power centres to keep control of those in political power.²⁰⁸ Where precisely the limits between the autonomous sphere and legitimate democratic decision-making are, is, however, subject to considerable dispute. Writers on the political right draw the borders around democracy more restrictively. Writers on the political left, like ‘social liberals’, are much more willing to accept (democratic) interventions in freedoms, in particular in the economic sphere.²⁰⁹

So far liberty and government have been treated as concepts that are in tension with each other, based on the idea that government is a threat to liberty and that liberty is best achieved in absence of any governmental constraints (so-called ‘negative liberty’). Such view is closely related to the Anglo-American tradition.²¹⁰ There is, however, also a different view on government, linked to a different conception of liberty (so-called ‘positive liberty’), which underlies some

²⁰⁵ Ibid, at 18f.

²⁰⁶ Ibid, at 13.

²⁰⁷ See Holden’s definition of liberal democracy: “liberal democracy is a political system in which (a) the whole people positively or negatively, make, and are entitled to make, the basic determining decisions on important matters of public policy; and (b) they make, and are only entitled to make, such decisions in a restricted sphere since the legitimate sphere of public authority is limited”. Holden, at 12-13; Beetham, at 35.

²⁰⁸ Beetham, at 35.

²⁰⁹ Sørensen, at 6; N. Barry, ‘Liberalism’, in P. B. Clarke and J. Foweraker (eds), *Encyclopedia of Democratic Thought* (2001), at 414f.

²¹⁰ Holden, at 20.

liberal theories with a ‘social’ focus.²¹¹ It allows qualifying latter theories as ‘liberal’ despite their greater acceptance of state intervention in autonomous spaces because it does not consider such intervention as an assault on liberty. Such a view does not see government as a threat but as an agent of the people and wants it to do something actively for them, like welfare measures, rather than simply staying apart. At the same time, such view stresses the participation of individuals in government as element of their liberty and self-determination. The concept of ‘positive liberty’ understands individual self-determination as ‘rational autonomy’, that is, individuals making reasoned decisions rather than reacting to the desires of the moment and accepts or even requires the state to provide ‘rational guidance’ to the individual.²¹² This conception is more typical of Continental European and, in particular, the French tradition and explains a greater acceptance of state interference in autonomous spheres in Europe than, for example, in the US. However, it needs to be stressed that also in this conception state interference or the scope of democracy has limits and liberal democracy’s key features of liberty and limited government remain valid, although they are differently defined and their borders are differently drawn.

c) Essential Features of (Liberal) Democracy

On the basis of the concept of democracy and the core ideas of liberal democracy, this section looks in more detail at the essential procedural and institutional features of democracy, that is, those features that must be present for a political system to be qualified as (liberal) democratic. In doing so it takes as basis Robert Dahl’s seven ‘minimum procedural conditions’ for ‘polyarchy’,²¹³ which have become widely accepted in the academic literature.²¹⁴ In addition to these seven procedural conditions, a large majority of authors have also added the dimension of the rule of law as further essential element of democracy.

Importantly, while the presence of the seven minimum procedural conditions allows a country to be called democratic, a fully developed liberal democracy, which is usually implied when authors explicitly refer to ‘liberal democracy’, is expected to also protect and promote a whole range of further rights and liberties. In other word, while Dahl’s seven features of course relate to a liberal form of democracy, the qualification of a country as liberal democratic usually requires more than only meeting the seven minimum procedural conditions. The reason for this

²¹¹ Ibid, at 21 and 27.

²¹² Ibid, at 26f.

²¹³ Dahl’s preferred term for real world democracies is ‘polyarchy’, while ‘democracy’ is reserved for some better, higher or ideal form of democracy, which has not yet be achieved by any state yet. Dahl, at 221 and 223.

²¹⁴ For conceptions of democracy being explicitly based on Dahl see, for example, P. C. Schmitter and T. L. Karl, ‘What Democracy is...and is not’, 2 *Journal of Democracy* 3 (Summer 1991), at 78; K. Bollen, ‘Political Democracy: Conceptual and Measurements Traps’, in A. Inkeles (ed), *On Measuring Democracy: Its Consequences and Concomitants* (1993), at 5-7.

expectation is linked to one of the core ideas of liberal democracy, that is, the extensive sphere of personal liberty. While no minimum or exhaustive catalogue of these further rights and liberties exists, it includes the rights enshrined in the ICCPR as well as, although more disputed, such enshrined in other human rights conventions, like the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Exemplary rights and liberties to be protected include the right to property, to choose employment, the freedom of residence, religious freedom, the freedom to enter a marriage, and minority rights.²¹⁵

At this point, also the term ‘electoral democracy’, which has over the last two decades increasingly been used in academic writing, should be introduced. It is definitely one of the most prominent of all ‘democracies with adjectives’, which also include illiberal democracy, guided democracy, military-controlled democracy, oligarchic democracy, authoritarian democracy, defective democracy, and a nearly uncountable number of others.²¹⁶ The terms refer to political systems or ‘hybrid regimes’ that show features of both a democracy and an authoritarian regime and populate a grey zone between the two forms of government. An electoral democracy is usually defined as a democracy in which the last national election or elections fulfilled several conditions of freedom and fairness, including the presence of a competitive multi-party system, universal suffrage, a secret ballot, the absence of massive voter fraud, results representing the public will, and significant public access of the major parties to the electorate through the media and open political campaigning.²¹⁷ However, beyond free and fair elections, other basic rights and freedoms, including the core rights of freedom of expression, association, and assembly are overall not being guaranteed to a more than minimal extent and beyond the election period. The concept of electoral democracy and indeed all democracies with adjectives are problematic because they in fact fail to meet the minimum requirements of a democratic system as, for example, defined by Dahl, but use the designation ‘democracy’. It would be preferable to call such systems ‘electoral regimes’ rather than electoral democracies.

²¹⁵ Freedom House’ list of rights and freedoms that should be protected in order for a regime to be called ‘liberal democratic’ is one example. Freedom House, Freedom in the World, Checklist Questions and Guidelines, at http://www.freedomhouse.org/template.cfm?page=351&ana_page=364&year=2010 (last accessed on 11.6.2011).

²¹⁶ Collier and Levitsky; M. Boogards, ‘How to classify Hybrid Regimes? Defective Democracy and Electoral Authoritarianism’, 16 *Democratization* 2 (April 2009), at 399f.

²¹⁷ See, for example, Freedom House’s criteria for electoral democracies. Freedom House, Freedom in the World, Methodology, http://www.freedomhouse.org/template.cfm?page=351&ana_page=363&year=2010 (last accessed on 11.6.2011).

i. The Minimum Procedural Conditions of Democracy²¹⁸

Robert Dahl's seven minimum 'rights, institutions, processes' that a system must meet in order to be qualified as democratic, are as follows:²¹⁹

1. Elected officials
2. Free and fair elections
3. Inclusive suffrage
4. Right to run for office
5. Freedom of expression
6. Alternative information
7. Associational autonomy

In the further discussion, the first four criteria, relating to elections, and the fifth and sixth, having particular relevance for independent media, should be treated together.

Elections

It has been mentioned that representation has, since the mid-18th century, been considered as legitimate and due to the size of democracies and modern life-patterns increasingly also as absolutely necessary feature of democracy.²²⁰ Among various possible forms of selecting representatives, like rotation or lot, elections have from the beginning on played a key role in modern liberal democracy and remain central today. Some liberal conceptions, like elitist democracy attribute them the most important role of all, while other models, like social and participatory democracy, are more critical about elections and suggest additional forms, in particular, direct forms of citizen participation, but in the majority of cases do not give up elections either.²²¹ As mentioned in more detail in Chapter 2, this widespread support for elections also finds expression in their recognition in international human rights law with several international and regional documents, in particular the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), European Convention

²¹⁸ One basic discussion in democratic theory is whether democracy should be defined in procedural or/and substantive terms. Authors pursue the one or the other approach or mix the two. Some writers have shown that a clear separation is not possible as also procedures involve a substantive dimension. Rustow, at 345; G. Alexander, 'Institutionalized Uncertainty, the Rule of Law, and the Sources of Democratic Stability' 35 *Comparative Political Studies* 10 (2002), at 1148.

²¹⁹ Dahl, at 221. One basic discussion in democratic theory is whether democracy should be defined in procedural or/and substantive terms. Authors pursue the one or the other approach or mix the two. Some writers have shown that a clear separation is not possible as also procedures involve a substantive dimension. Rustow, at 345; G. Alexander, 'Institutionalized Uncertainty, the Rule of Law, and the Sources of Democratic Stability' 35 *Comparative Political Studies* 10 (2002), at 1148.

²²⁰ Beetham, at 35 and 43.

²²¹ P. Schmitter, 'More Liberal, Preliberal or Postliberal', in L. Diamond and M. F. Plattner (eds), *The Global Resurgence of Democracy* (2nd ed., 1996), at 332; Held, at 284; L. Quill, 'Republicanism', in Clarke and Foweraker (eds), at 612.

on Human Rights (ECHR) and various OSCE documents explicitly referring to a ‘right to vote’ as a key element of a ‘democratic’ system of government.²²²

Dahl’s four election-related criteria of democracy stress different features of elections. The first states in a more elaborate form that “control over government decisions about policy is constitutionally vested in elected officials”.²²³ This is, on the one hand, a general statement about the instrument of elections in democracy but, on the other hand, also implies some more specific issues, which are in the literature often referred to as ‘decisiveness’ of elections.²²⁴ It demands that elected representatives (1) do in fact exercise governmental power, that is, that the winners of elections take office and are able to exercise their powers without overriding (usually informal) opposition from unelected groups (like the military), (2) exercise only those powers that are constitutionally foreseen, and (3) end their mandate as constitutionally prescribed.²²⁵ Dahl’s third and fourth criteria relate to equal and universal suffrage by demanding that basically all adults have the right to vote in the election of officials and have the right to run for elective offices. Finally, the elements of the criteria of ‘free and fair’ elections are more difficult to pin down, but they are broadly considered to involve the following. Elections have to be ‘frequent, regular or periodic’ and not single-time events. Only if actors, political and others, can be sure that competitive elections will continue to be held in the future, those losing elections will accept their outcome and wait for the next election to gain access to power instead of applying other means.²²⁶ Moreover, the intervals between elections should not be unduly long to ensure that those in power can still be considered to express the free will of the electors. The usual time between elections lies between 4-6 years.²²⁷ Further, elections have to be ‘genuine’, which implies that there should be a choice between at least two competing parties or candidates.²²⁸ They also need to be free and fair in a more literal sense, which implies that all participating parties and candidates should have the chance to lead their campaign in a free and equal manner and, voters

²²² See, for example, H. J. Steiner, ‘Political Participation as Human Right’, 1 *Harvard Human Rights Yearbook* (1988), at 77-134; T. M. Franck, ‘The Emerging Right to Democratic Governance’, 86 *American Journal of International Law* 1 (January 1992), at 46-91; G. H. Fox, ‘The Right to Political Participation in International Law’, 17 *Yale Journal of International Law* 2 (1992), at 539-607; J. Crawford, *Democracy in International Law* (1993); G. H. Fox and B. R. Roth, *Democratic Governance and International Law* (2000); M. Nowak, ‘ARTICLE 25 Political Rights’, in M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (1993), at 436.

²²³ Dahl, at 221.

²²⁴ G. O’Donnell, *Democracy, Law and Comparative Politics*, IDS Working Paper No. 118 (2000), at 12; Schmitter and Karl, at 81; Collier and Levitsky, at 443. Some of these authors have explicitly added the criteria of ‘decisive’ to Dahl’s list, rather than interpreting his first criteria in this way.

²²⁵ See also: U. N. Human Rights Committee, General Comment 25: ‘The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)’, 12 July 1996, at para. 7.

²²⁶ O’Donnell, at 14.

²²⁷ U. N. Human Rights Committee, at para. 9.

²²⁸ U. N. Human Rights Committee, in particular paragraphs 25 and 26. See also N. D. White, ‘The United Nations and Democracy Assistance: Developing Practice within a Constitutional Framework’, in P. Burnell (ed.), *Democracy Assistance: International Cooperation for Democratization* (2000), at 73.

should be free in their choice and not be forced or coerced into certain behaviours.²²⁹ These latter criteria are guaranteed by the freedom of association and of speech, which are discussed in the next sections.

The Freedom of Expression, the Right to Alternative Information and the Media

The freedom of expression and right to alternative information have been essential foundations of democratic societies and systems of government since the late-18th century and are nowadays included in all major human rights documents.²³⁰ The freedom of expression gives citizens the right to express themselves on political matters broadly defined, including criticism of officials, the government, the type of regime, the socio-economic order and the prevailing ideology, without the danger of severe punishment. The freedom to seek, receive and impart information provides that alternative sources of information exist and are protected by the law. The rights can only be restricted for certain specific reasons, like for the respect of the rights and reputations of others, which have, additionally, to be laid down by law.²³¹

Both rights are of essential importance in liberal democracy and provide the basis for meaningful political participation. They are not only relevant for individual and ordinary citizens, politicians, political parties or groups, but are also of particular relevance for the media, especially the mass media, which have during the 20th century become the principal means through which citizens, individually or organized in groups, and their elected representatives communicate to inform and influence each other (media as “the connective tissue of democracy”) and through which groups themselves communicate.²³² While the media therefore provide the basis or means for communication, it is important to stress that they are more than simply neutral channels for the exchange of views, but that they are widely considered to have – at times even considerable – power in determining or influencing which issues and how these are discussed. They are usually considered as element of civil society, discussed shortly below.

The most significant functions of media in a democracy include the surveillance of the sociopolitical environment, that is, reporting developments likely to impinge positively or negatively on the welfare of citizens; providing meaningful agenda-setting through identifying the key issues of the day; acting as platforms for an intelligible and illuminating advocacy by politicians and spokespersons of other causes and interest groups; carrying out dialogue across a

²²⁹ O'Donnell, at 11.

²³⁰ D. Voorhoof, ‘Guaranteeing the Freedom and Independence of the Media’, in Council of Europe (ed.), *Media and Democracy* (1998), at 35. The referred to articles in human rights documents include Art. 19 UDHR, Art. 19 ICCPR, Art. 10 ECHR and various OSCE documents.

²³¹ See, for example, Art. 19(3) ICCPR.

²³² A. Mughan and R. Gunther, ‘The Media and Democratic and Nondemocratic Regimes: A Multilevel Perspective’, in R. Gunther and A. Mughan (eds.), *Democracy and the Media: A Comparative Perspective* (2000), at 1.

diverse range of views, as well as between power holders (actual and prospective) and mass publics; providing mechanisms for holding officials to account for how they have exercised power; to provide incentives for citizens to learn, choose, and become involved in the political process.²³³

The Freedom of Association: Political Parties and Civil Society

Dahl's criteria 'associational autonomy' refers to the right of citizens to form (relatively) independent associations or organizations and it is, like all before discussed rights, widely recognized in international human rights law.²³⁴ The groups most relevant for the present discussion and to be looked at in turn are independent political parties and civil society organizations. Political parties are not treated as part of civil society but as a separate group, in the literature often also referred to as 'political society', with the major differentiating characteristic between the two groups being parties' direct involvement with state power and ambition to control or to manage it, while civil society remains apart.²³⁵

Political parties are widely considered to be 'indispensable' elements in modern liberal democracy, although it has been suggested that civil society groups are increasingly playing the same roles as parties and thereby reducing the latter's importance.²³⁶ Their four central functions are: (1) to structure the electoral process by nominating candidates for office and by offering citizens a choice between alternative sets of leaders; (2) to provide most citizens with a stable and distinctive set of ideas and goals (symbols) which anchor their expectations, orient them towards policy options and make them feel part of the process of collective choice; (3) once elected, they form the government and provide an internal structure to the legislative process; and (4) to aggregate the interest of citizens, channel their expectations through their internal processes and produce a programme that mixes public policies in such a way to satisfy the general demands of their constituents.²³⁷

Civil society has been variously defined, however, a definition such as Philippe C. Schmitter's has achieved relatively broad acceptance.²³⁸ He defines it as "as set or system of self-

²³³ M. Gurevitch and J. Blumler, 'Political Communication Systems and Democratic Values', in J. Lichtenberg (ed), *Democracy and the Mass Media* (1990), at 270; K. Jakubowicz, 'Media and Democracy', in: *Media and Democracy* (1998), at 14.

²³⁴ See, for example, Art. 20 UDHR, Art. 22 ICCPR and Art. 11 ECHR.

²³⁵ J. L. Cohen and A. Arato, *Civil Society and Political Theory* (1997), at ix.

²³⁶ S. M. Lipset, 'The Indispensability of Political Parties', 11 *Journal of Democracy* 1 (2000), at 48; P. C. Schmitter, *Intermediaries in the Consolidation of Neo-Democracies: The Role of Parties, Associations and Movements*, Institut de Ciències Polítiques i Socials, Working Paper No. 130 (1997), at 9-19.

²³⁷ Schmitter, *Intermediaries in the Consolidation of Neo-Democracies*, at 7-8.

²³⁸ P. C. Schmitter, 'Civil Society East and West', in L. Diamond, M. F. Plattner, Y. Chu and H. Tien (eds), *Consolidating the Third Wave Democracies: Themes and Perspectives* (1997), at 239f. For other definitions see: K. Kumar, 'Civil Society: An Inquiry into the Usefulness of a Historical Term', 44 *British Journal of Sociology* 3 (1993); E. Gellner, *Conditions of Liberty: Civil Society and its Rivals* (1994), at 1; R. Fine, 'Civil Society Theory, Enlightenment and Critique',

organized intermediary groups” that are: (1) relatively independent from both public authorities and private units of production and reproduction, i.e. of firms and families (dual autonomy)²³⁹; (2) are capable of deliberating about and taking collective actions in defence/promotion of their interests or passions (collective action); (3) but do not seek to replace either state agents or private (re)producers or to accept responsibility for governing the polity as a whole (non-usurpation); (4) but do agree to act within pre-established rules of a ‘civil’ or legal nature (civility).²⁴⁰ This definition includes a vast array of groups, like trade unions, consumer and industrial organisations, lobbies, interest groups, pressure groups, civic organisations, voluntary associations, non-governmental organisations, non-profit groups, policy networks, developmental organisations, but also the independent media and the “broader field of autonomous cultural and intellectual activity: universities, think tanks, publishing houses, theatres, filmmakers, and artistic performances and networks” (i.e. “the ideological marketplace”).²⁴¹ Excluded are groups that are not behaving ‘civilly’, like mafia-type organizations, guerrilla movements and reactionary religious organizations.²⁴² Further, Schmitter’s definition excludes groups that are merely inward-looking and perform private ends, like sport clubs and religious groups. The importance of such groups in democracy has, however, been stressed by Putnam, who argues that also such groups build ‘social capital’, that is, “the features of social organization such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit”.²⁴³ Problematic is the role of ascriptive organisations based on kinship, ethnicity, or locality as well as some religious organizations strongly involved in social activities, like Muslim neighbourhood-assistance groups, which might lack Schmitter’s requirement of autonomy and Diamond’s open and voluntary nature²⁴⁴, but are said to (potentially) play important roles in democratization processes and in democratic politics of (non-European) states and societies.²⁴⁵

in R. Fine and S. Rai, ‘Civil Society: Democratic Perspectives’, 4 *Democratization* 1 (Special Issue, Spring 1997), at 7; J. A. Hall, ‘In Search of Civil Society’, in John A. Hall (ed.), *Civil Society, Theory, History, Comparison* (1995), at 2.

²³⁹ As with political society, some authors include profit-pursuing business activities in civil society. Most authors, including Schmitter, do not, but consider it as separate category, called ‘economic society’. Diamond, *Developing Democracy: Toward Consolidation*, at 221; Schmitter, ‘Civil Society East and West’, at 240.

²⁴⁰ Schmitter, at 240. See also Diamond’s definition, which mentions a „realm of organized social life that is open, voluntary, self-generating, at least partially self-supporting, autonomous from the state, and bound by a legal order or set of shared rules”, Diamond, *Developing Democracy: Toward Consolidation*, at 221.

²⁴¹ Diamond, *Developing Democracy: Toward Consolidation*, at 222; See also: H. J. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals* (1996), at 457.

²⁴² Some authors have argued for an ‘inclusive definition’ of civil society recognizing “actually existing civil societies” as they are, that is, including groups operating outside the law. G. White, ‘Civil Society, Democratization and Development (I): Clearing the Analytical Ground’, 1 *Democratization* 3 (1994), at 379.

²⁴³ R. D. Putnam, ‘Bowling Alone: America’s Declining Social Capital’, in L. Diamond and M. F. Plattner (eds), *The Global Resurgence of Democracy* (2nd ed., 1996), at 292.

²⁴⁴ Diamond, *Developing Democracy: Toward Consolidation*, at 221.

²⁴⁵ J. Hearn and M. Robinson, ‘Civil Society and Democracy Assistance in Africa’, in P. Burnell (ed.), *Democracy Assistance: International Cooperation for Democratization* (2000), at 242-4; E. Hutchful, ‘The Civil Society Debate in Africa’, 51 *International Journal* 1, (Winter 1995-96), at 76; I. Brouwer, ‘Weak Democracy and Civil Society Promotion: The

The idea of civil society as intermediate sphere between the private sphere (including individual and family-life, inward-looking group activity and economic activity) and the state considerably enlarges the role of citizens in liberal democracy beyond their participation in elections. First, it provides a framework for citizens to influence policy-making, either through initiation of new proposals or the modification of existing ones at any time of the legislative period. This function of civil society is particularly relevant for individuals and groups that feel not represented by political society or who feel that latter does not sufficiently take into account specific issues. At the same time, from the viewpoint of government, civil society provides authorities with some aggregated information about citizens' and citizen group's opinions and demands. Secondly, civil society allows for controlling and limiting state power at any time, rather than only holding officials accountable on election day, a function, which is mainly performed by and through independent media, but also by other civil society organizations.²⁴⁶ Next to these two central tasks, civil society has additional roles, including the stimulation of participation and awareness-raising of the meaning of 'democratic citizenship', which should reduce citizen's alienation from the political system. Further, it can cross-cut and mitigate traditional cleavages, foster tolerance, moderation and willingness to compromise and provide a training ground for political leaders.²⁴⁷

However, civil society has also been criticized for not giving equal chances to everyone and for favouring the educated and wealthy, which usually already have connections to the political establishment.²⁴⁸ Further, it was suggested that a strong civil society can make the formation of majorities more difficult, lengthy, and precarious, thereby lowering the legitimacy of the democratic government and possibly leading to compromises that no one wants and can identify with.²⁴⁹ Excessively strong civil societies have been considered especially problematic in new democracies, where democratic states and governments are still relatively weak and where civil societies may not yet have accepted to cooperate with the state, but continue to see their role in opposition to it.²⁵⁰

On the whole, the respect of the various rights that underlie Dahl's seven minimum procedural conditions and the resulting institutions, organizations and procedures give rise to a political system that can be called democratic. As indicated, for a full liberal democracy, this

Cases of Egypt and Palestine', in M. Ottaway and T. Carothers, *Funding Virtue: Civil Society Aid and Democracy Promotion*, at 21 and 25-8.

²⁴⁶ Schmitter, 'Civil Society East and West', at 247.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid, p. 248.

²⁵⁰ In authoritarian contexts, for example Communist Central and Eastern Europe, civil society was considered in opposition to the state, as weapon against it, and not as mediating sphere. Cohen and Arato, at 31; J. Keane, *Civil Society: Old Images, New Visions* (1998), at 20.

system must also respect and promote an (albeit not precisely defined) range of other rights. For some kind of mid-range definition of democracy, many authors have added the rule of law as further feature to Dahl's seven procedural minimum conditions.

ii. An Additional Element: The Rule of Law

The concept of the rule of law features in many conceptions of liberal democracy and sometimes it is even attributed such a key position that it is called democracy's 'crowning glory'.²⁵¹ However, as with most concepts discussed in this Chapter, there is no single and widely accepted definition and the rule of law has been conceptualized in many different ways.²⁵² While various categorizations of the different understandings of the rule of law have been suggested,²⁵³ here a distinction should be made between a basic, limited conception, a broader so-called formal conception, and a third so-called material or substantive conception, which together – in view of many authors – constitute the rule of law in a liberal democracy.²⁵⁴

In the narrowest understanding, the rule of law is made up of several precepts and principles that relate to the ordinary working of a legal system. Jeremy Waldron speaks of a "laundry list of features that a healthy legal system should have" and cites Lon Fuller's eight desiderata of 'internal morality of law', which have achieved broad agreement.²⁵⁵ Laws should be (1) general, (2) publicly promulgated, (3) prospective, (4) intelligible, (5) consistent, (6) practicable, (7) not too frequently changeable, and (8) actually congruent with the behaviour of the officials of a regime.²⁵⁶ Some authors have summarized these or similar lists in statements like "the law should be capable of providing effective guidance" and "people should be ruled by the law and obey it".²⁵⁷ Others stress the "supremacy of legal authority", meaning that law should rule officials, including judges, as well as ordinary citizens" ('Legalitätsprinzip').²⁵⁸ Existence of the eight criteria will allow the rule of law to fulfill three of its central purposes: to protect against anarchy, to allow people to plan their affairs with reasonable confidence that they can know in

²⁵¹ O. Taiwo, 'The Rule of Law: The New Leviathan?', XII *Canadian Journal of Law and Jurisprudence* 1 (1999), at 151. See also Linz and Stepan, 'Democracy and its Arenas', at 10f; T. Carothers, 'The Rule of Law Revival', 77 *Foreign Affairs* 2 (1998), at 99.

²⁵² Taiwo, at 154; R. Kleinfeld, 'Competing Definitions of the Rule of Law', in T. Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006), at 31f. Waldron treats it as 'essentially contested concept', suggesting that the contested nature pertains to the different ways of how the rule of law can be achieved. Waldron, at 153f, in particular at 157.

²⁵³ See, for example, G. P. Fletcher, *Basic Concepts of Legal Thought* (1996) at 11-14; R. H. Fallon Jr., 'Rule of Law' as a Concept in Constitutional Discourse', 97 *Columbia Law Review* 1 (1997), at 8 and 10-24; Waldron, at 153-7.

²⁵⁴ This distinction is largely based on Taiwo, at 151f. For the substantive conception see A. Gamper, *Staat und Verfassung: Einführung in die Allgemeine Staatslehre* (2nd ed., 2010), at 231.

²⁵⁵ Waldron, at 154.

²⁵⁶ Ibid.

²⁵⁷ Waldron, at 154, citing Joseph Raz; Fallon, at 8.

²⁵⁸ Fallon, at 8; Gamper, at 229.

advance the legal consequences of various actions, and to guarantee against at least some types of official arbitrariness.²⁵⁹ All eight criteria are expected to prevail in a liberal democratic system. However, rule of law can also be found in authoritarian regimes and some features of ‘socialist legality’ are congruent with rule of law accounts.²⁶⁰

Rule of law in liberal democracy is therefore usually considered in broader, more fundamental terms and identified with a ‘specific ideal of justice’ and specific institutional arrangements (the formal conception of the rule of law).²⁶¹ These additional features equally serve the three central purposes of the rule of law, in particular to control official arbitrariness.²⁶² First, a key role is attributed to an independent and impartial judicial system, which should uphold individual rights. The existence of certain procedural rights, like the right to judicial remedies, a fair and public hearing by a competent, independent and impartial tribunal, the presumption of innocence, and equality of all persons before the courts, play a particularly important role in this respect.²⁶³ Secondly, rule of law is closely linked with the doctrine of separation of powers, which should ensure horizontal accountability.²⁶⁴ Laws need to be created by the legitimate law-making institutions, i.e. an elected legislature, whose members should be bound by the laws like any other member of society.²⁶⁵ Should the executive be engaged in some kind of regulatory, norm-creating activity, it is important that it is based on clear legislative empowerment so that “executive regulation remains firmly imbedded in the overall regulation of the legislative function”.²⁶⁶ The parliament is expected to permanently question the government and to hold it accountable. Additionally, the judiciary controls the parliament and the government as to whether they are exceeding their mandates or violate established rules and judicial review lodged in a high court requires politicians “to step back into the constitutional box that defines the legitimate boundaries of the system”.²⁶⁷ Because judges are not democratically elected but appointed, judicial review creates the so-called “countermajoritarian difficulty”: courts interfering with the

²⁵⁹ Fallon, at 7-8.

²⁶⁰ Taiwo, at 156. But see the critical discussion of socialist legality by Linz and Stepan, at 248.

²⁶¹ Taiwo, at 156.

²⁶² Fallon, at 7-8.

²⁶³ Carothers, at 96. See Gamper on the relevance of procedural rights in the historical development of the concept of the rule of law. Gamper, at 228.

²⁶⁴ Waldron, at 156; Diamond, *Developing Democracy: Toward Consolidation*, at 111; A. Bouloukos and B. Dakin, ‘Towards a Universal Declaration of the Rule of Law: Implications for Criminal Justice and Sustainable Development’, 42 *Comparative Sociology* 1/2 (2001), at 149; F. Feldbrugge, ‘The Rule of Law in the European CIS States’, 26 *Review of Central and East European Law* 3 (2000), at 214. Carothers warns of a too broad notion of the rule of law as too closely resembling Western experiences. For example, Asian style democracy is better understood as “rule by law than rule of law”, because “law exists not to limit the state but to serve its power”, Carothers, ‘The Rule of Law Revival’, at 97.

²⁶⁵ Fallon, at 11.

²⁶⁶ Feldbrugge, at 215.

²⁶⁷ K. Scheppele, ‘Democracy by Judiciary (or Why Courts can Sometimes be More Democratic than Parliaments)’, Paper presented at the Conference ‘Rethinking the Rule of Law in Post-communist Europe: Past Legacies, Institutional Innovations, and Constitutional Discourses’, European University Institute, February 2002, at 3.

popular will, which could be interpreted as ‘rule of men’ instead of rule of law.²⁶⁸ The rationale for giving judges this power is that, because they are politically insulated, they are in the best position to protect the survival of the democratic system. Moreover, judges are themselves constrained by rules, constitutional rules, which limits their competences and activities.²⁶⁹

The substantive conception of the rule of law adds, as the term indicates, a substantive or material dimension to the formal and organizational elements of the rule of law. Some of these formal elements already implied substantive features, like the procedural rights of individuals as part of a functioning judicial system and political rights as part of the division of power. The substantive conception of the rule of law adds, however, a broader range of fundamental or human rights for individuals to these few ones, which should be respected in law-making and implementation and be ensured by the judicial system. It is widely accepted that civil and political rights are encompassed by such conception. It is more disputed to which extent other categories or rights, in particular social rights, also pertain to it.²⁷⁰

The idea of constitutionalism is closely linked to the idea of the rule of law and has been termed its “primary organizing principle”.²⁷¹ Frequently the two notions are even used interchangeably. Constitutionalism requires that the exercise of political power in a state shall be exercised in accordance with and through a general system of principles, rules and procedures, including procedures for amending any of these.²⁷² In the broader sense, the constitution is the system of laws, rules, norms, conventions and procedures which govern the actions of all those subject to it.²⁷³ The ‘constitution’ in the narrow sense is the cluster of supreme or ‘essential’ principles, rules and procedures to which other laws, institutions and governing authorities are subjected to. It is a “code of rules, which aspires to regulate the allocation of functions, powers and duties among the various agencies and officers of government, and define the relationship between these and the public”.²⁷⁴

On the whole, the concept of the rule of law is frequently mentioned as further essential element of democracy. Depending on its conceptualization, it enlarges the concept of democracy to a smaller or larger degree, by the requirement that law regulates the actions of officials and people, that there is the division of powers and the existence of an independent judicial system,

²⁶⁸ The classic statement is Alexander Bickel’s. See, for example, Scheppele, at 3; Waldron, at 156.

²⁶⁹ For the limits of constitutionalism as regards the limits of judges to interpret the constitution, see Waldron, at 157.

²⁷⁰ Gamper, at 232f.

²⁷¹ Linz and Stepan, at 248.

²⁷² J. Tully, ‘The Unfreedom of the Moderns in Comparison to Their Ideals of Constitutional Democracy’, 65 *The Modern Law Review* 2 (2002), at 205.

²⁷³ Tully, at 205.

²⁷⁴ S. E. Finer, quoted in R. Elgie and J. Zielonka, ‘Constitutions and Constitution-Building: A Comparative Perspective’, in J. Zielonka (ed), *Democratic Consolidation in Eastern Europe: Volume 1: Institutional Engineering* (2001), at 31.

or even that individuals are endowed with a whole range of civil and political and even social, economic, and cultural rights.

d) Various Models of Democracy

Based on the outline of the essential procedural and institutional elements of democracy and the rule of law, the following sub-sections concentrate on four more specific models of democracy that either stress individual elements thereof (elitist and pluralist models) or add additional features and extend its scope beyond the political system (social and participatory democracy). The latter two models are, moreover, not satisfied with a procedurally focused definition of democracy, but stress the need to include a substantive dimension.²⁷⁵ The models are, of course, just a few of a much higher number of different conceptions of democracy discussed in the academic literature, which can, due to lack of space, not be presented in more detail.²⁷⁶ The four models have been chosen in view of the analysis and characterization of EU democracy assistance, which at first sight appears to correspond to one or more of them.

i. The Elitist Model of (Liberal) Democracy

Elitist theories of democracy, different variations of which are in the literature also called ‘competitive elitism’, ‘economic theory of democracy’, ‘leadership democracy’, and ‘plebiscitary leadership democracy’, have first emerged and become popular in the early-mid 20th century, but have important defenders also today.²⁷⁷ They have slightly evolved over time and modified some of their assertions, however, have retained their key claims.

The central feature of elitist theories is the focus on elections and politicians. The most famous and still most quoted definition of elitist democracy is by Joseph Schumpeter who, although not having ‘invented’ the elitist model, has made it popular.²⁷⁸ He has suggested that “the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote”.²⁷⁹ Democratic life is therefore “the struggle between rival political leaders, arrayed in parties, for the mandate to rule”, while the citizens’ role is “periodically to choose and authorize

²⁷⁵ On substantive democracy see: M. Kaldor and I. Vejvoda, ‘Democratization in Central and Eastern European Countries’, 73 *International Affairs* 1 (1997), at 62.

²⁷⁶ See e.g. Held; Kurki, at 373f.

²⁷⁷ Max Weber was one of the first defenders of elitist democracy. Held, at 157f and 172; Holden, at 101-3; Sorensen, at 9; Beetham, at 2f; M. G. Schmidt, *Demokratietheorien: Eine Einführung* (2010), at 120f, 131f and 136.

²⁷⁸ Held, at 178; Schmidt, at 131. See in particular Schumpeter’s book ‘Capitalism, Socialism and Democracy’, first published in 1942.

²⁷⁹ Schumpeter quoted in Holden, at 101-2.

governments to act on their behalf'.²⁸⁰ Adam Przeworski has more explicitly referred to the role of political parties and defined democracy as "a system in which parties lose elections. There are parties: divisions of interests, values, and opinions. There is competition, organized by rules. And there are periodic winners and losers".²⁸¹ All in all, in elitist theory the competition or contestation for votes is considered the crucial and sufficiently defining feature of democracy, which explains democracy's central dynamic that provides the basis for everything else.²⁸² In particular, there is no or little space for the actions of citizens beyond voting for their representatives on election day and the presence and active role of organized civil society as policy-input provider and watch-dog is disregarded.²⁸³ Indeed, while newer elitist models are less pronounced about it, Schumpeter openly stated that the average citizens' role should be restricted to casting a ballot.²⁸⁴

Defenders of elitist democracy claim that their model best describes how actually existing Western liberal democracies function.²⁸⁵ In particular, it stresses the crucial role of political leadership, that is, of professional politicians and political parties, while showing the lack of interest and participation of ordinary citizens beyond election day, when they, moreover, make only very broad policy choices or choices for personalities rather than policies.²⁸⁶ Critics have in particular focused on the reduced role accorded to citizens and civil society in elitist models and argued that in reality people are more interested, capable, and active than assumed by elitist conceptions. Moreover, lack of interest and participation was blamed on social and political structures that did not provide the basis for participation. Some critics have even questioned whether elitist theories can be called liberal democratic, as they refute several of liberalism's key tenets, like that of the rationally minded citizen able to decide by himself what is best in her or his interest.²⁸⁷ However, except for some highly technocratic versions, most theories are considered to remain within the liberal democratic scope, as citizens can hold elites accountable on election day and as elites are open and in principle everybody can become part of it.²⁸⁸

²⁸⁰ Held, at 179.

²⁸¹ A. Przeworski, *Democracy and the Market* (1991), at 10.

²⁸² *Ibid*, see especially footnote 2.

²⁸³ *Ibid*, at 11f.

²⁸⁴ Schumpeter quoted in Held, at 189.

²⁸⁵ Schumpeter, quoted in Held, at 178.

²⁸⁶ Holden, at 93; Schmidt, at 136; Przeworski, at 13.

²⁸⁷ Holden, at 102; Schmidt, at 135; Held, at 185.

²⁸⁸ Held, at 179; Schmidt, at 136.

ii. The Pluralist Model of (Liberal) Democracy

The (classic) pluralist model of democracy emerged and was extremely popular in the 1950s and 1960s, after which heavy criticism from various sides basically led to its dissolution into various competing schools. Since the mid 1980s a so-called ‘neo-pluralist school’ has crystallized, in particular in the writings of Robert Dahl, which maintains many of its forerunner’s central tenets, while at the same time responding to critique.²⁸⁹ Much of pluralist theory was based on studying the US system of democracy, however, several authors also developed their theories by analyzing European, including continental, states.²⁹⁰

The core feature of the pluralist (and neo-pluralist) model of democracy is the recognition of the plural or heterogeneous character of society, the economic sphere, and the state and of the dispersion or diffusion of power among a multiplicity of groups or poles.²⁹¹ The key focus is on the intermediate sphere between individuals and the state, which consists of a whole range of different ‘pressure’ or ‘interest groups’, or ‘groups’ more generally, like trade unions, business organizations, community organizations, religious bodies, non–governmental organizations, and lobbies – most of which would today be comprised by civil society.²⁹² Further, also the state and its various institutions are considered to consist of divers, ‘plural’ centres that defend their, at times conflicting, interests and pursue different aims.²⁹³ Also political elites are groups competing for influence, and, if winning an election, are leading groups that are in a more powerful position than the others, however, in their execution of power restrained by the preferences of the latter.²⁹⁴ The pluralist model retains elections and the competitive party system as an element of democracy, but attributes them a much less important role than in elitist democracy.

According to the pluralist model, all or at least most citizens are members of one or, indeed, more of these groups and all groups have, albeit different, resources or powers to pursue and advocate for their interests through different means. Accordingly, democracy is an endless process of conflict, competition, discussion, bargaining and compromising between these multiple and diverse collective actors, in which the government is trying to mediate and adjudicate between the competing demands to arrive at political decisions that are most acceptable to many or most of these groups, although by no means are all interests likely to be

²⁸⁹ Dahl is also one of the earliest and most prominent exponents of classic pluralism. Held, at 214.

²⁹⁰ Schmidt, at 152.

²⁹¹ For a discussion of the pluralist model see in particular Holden, at 100-1 and 103-4; Schmidt, at 151-61; and Held, at 199-232.

²⁹² For example, Held, at 199.

²⁹³ Schmidt, at 152f; Held, at 203.

²⁹⁴ Holden, at 104.

satisfied fully.²⁹⁵ Elections form part of the system, but are just one of the many channels through which citizens express preferences.²⁹⁶

While pluralist theory was lauded for correcting the ‘one-sided’ approach of elitist approaches and for showing the complex context in which policies are made, it was, in particular, criticized for its (mis)conception of power and power relations and the role of the state in dealing with these.²⁹⁷ Critics argued that individuals and groups were highly unequal in their powers and that there was no guarantee that all, or even most, were able to make their views heard, participate in discussion and, importantly, in setting agendas.²⁹⁸ Neopluralists give more attention to these difficulties, but still claim that the essence of democracy is “a variety of pressure groups, an ever-shifting set of demands and an ultimately indeterminate array of political possibilities”, generated by liberal democracy itself and that, next to competitive political parties and an open electoral sphere “vigilant pressure groups can achieve...a degree of political accountability” that only liberal democracy can achieve.²⁹⁹

iii. The Model of Social Democracy

Social democracy is difficult to conceptualize. It has always been strongly determined by the diverse and frequently changing programmes and activities of social democratic parties whose political involvement has given rise to various social democratic systems and whose major policy shift has been the increasing distancing from socialism and (conditional) acceptance of the neo(liberal) economic order in the late 20th century.³⁰⁰ At the same time, some originally social democratic ideas, like welfare, have become universalized and so deeply rooted in Western states that they are no longer associated with social democratic politics only.

Two basic principles appear to underlie social democracy. First, social democracy has always accepted liberal democracy, shared most of its key values, and worked within its

²⁹⁵ Held, at 203.

²⁹⁶ Held, at 204 and 205; Holden, at 103.

²⁹⁷ Held, at 212-3.

²⁹⁸ Ibid, at 213.

²⁹⁹ Ibid, at 217.

³⁰⁰ See, for example, S. Padgett and W. E. Paterson, *A History of Social Democracy in Postwar Europe* (1991); W. E. Paterson and A.H. Thomas, ‘Introduction’, in W. E. Paterson and A. H. Thomas (eds), *The Future of Social Democracy: Problems and Prospects of Social Democratic Parties in Western Europe* (1986), at 1-18; P. Marlière, ‘Introduction: European Social Democracy *in Situ*’, in R. Ladrech and P. Marlière (eds), *Social Democratic Parties in the European Union: History, Organization, Policies* (1999), at 1-15; C. Pierson, *Hard Choices: Social Democracy in the 21st Century* (2001), at 18-63; N. Adnett and S. Hardy, *The European Social Model: Modernisation or Evolution?* (2005); D. E. Apter, ‘Social Democracy’, in W. Outhwaite: *The Blackwell Dictionary of Modern Social Thought* (2nd ed., 2003), at 599; R. Beiner, ‘Social Democracy’, in S. M. Lipset (ed), *The Encyclopaedia of Democracy* (1995), at 1139. Tony Blair’s ‘Third Way’ is the clearest example of a move towards a stronger accommodation of economic (neo)liberalism within a social democratic model. A. Giddens, *The Third Way: The Renewal of Social Democracy* (1998); O. Schmidtke (ed), *The Third Way Transformation of Social Democracy* (2002).

parameters. In particular, it wanted social democratic parties to compete in electoral competition for governmental office to implement policies. While it originally stressed strong institutions and bureaucracy, it has more recently shifted to ‘less state’ and more pluralistic and participatory forms of democratic processes, even if trade unions always played a key role.³⁰¹ Secondly, extending beyond the basic liberal model, social democracy aims at achieving a high degree of social and economic equality. It does so because of a normative claim that each individual should receive an equitable part of social resources³⁰² and because it considers socio-economic equality to be a pre-condition for the realization of political equality. The underlying argument is that high degrees of socio-economic inequalities can render political equality meaningless and thereby fail democracy.³⁰³ While liberal democracy is therefore in principle accepted, it is not considered to be ‘full’ or ‘real’ democracy, but needs to be enriched by a socio-economic equality agenda, not least to ensure its own realization and survival.

The main tool employed to achieve socio-economic equality is intervention in and regulation of the (capitalist, free market) economic and social system, through compensatory and/or countervailing measures and through social policies.³⁰⁴ While the preference for the so-called ‘mixed economy’, which results from the just referred to measures, is not unique to social democracy, there is a more principled commitment to intervention as well as the acceptance of more intrusive forms of intervention.³⁰⁵ In many states social policies are based on a list of individual social rights, like the right to work, to fair remuneration, to social security, or a general social clause in the constitution of a state.³⁰⁶ Social rights and their justiciability strongly differ from state to state albeit with many states and courts still treating them as principles of a programmatic nature than subjective rights that individual can enforce in courts.³⁰⁷

The democratic regulation of the social and economic sphere overlaps with, or can also be referred to as social democracy’s commitment to the ‘welfare state’.³⁰⁸ Despite the historical link between social democracy and welfare policies, the latter are no longer the domain of social democratic parties only, as the welfare system has become deeply rooted in many

³⁰¹ N. Stammers, ‘Social Democracy and Global Governance’, in L. Martell (ed), *Social Democracy: Global and National Perspectives* (2001) 27-48, at 30; Padgett and Paterson, at 1; Apter, at 599.

³⁰² Beiner, at 1139, in part referring to J. Rawls and R. Dworkin.

³⁰³ Holden, at 118 and 141. See also the related discussion on the necessity of social rights for political democracy in: C. Fabre, *Social Rights under the Constitution* (2000), at 121.

³⁰⁴ Marlière, at 1; Pierson, at 61; F. McGowan, ‘Social Democracy and the European Union: Who is Changing Whom?’, in L. Martell, *Social Democracy: Global and National Perspectives* (2001), at 86; Pierson, at 16.

³⁰⁵ Beiner, at 1139.

³⁰⁶ G. S. Katrougalos, ‘The Implementation of Social Rights in Europe’, 2 *Columbia Journal of European Law* (1996), at 277-8.

³⁰⁷ J. Iliopoulos-Strangas (ed), *La protection des droits fondamentaux dans les Etats membres de l’Union européenne* (2000); G. Gori, ‘Domestic Enforcement of the ESC: The Way Forward’, in G. de Búrca and B. de Witte, with the assistance of Larissa Ogertschnig (eds), *Social Rights in Europe* (2005), at 69-70.

³⁰⁸ Beiner, at 1141.

states.³⁰⁹ It is therefore difficult to consider welfare policies as an element only of social democracy. At the same time, the welfare state advocated by social democracy is characterized by a very strong and principled commitment to the welfare state. It considers the rise in public welfare as a primary responsibility of the state, advocates welfare for all citizens and not only for the poor, and accepts more deep-going intrusions into the economic system.³¹⁰

iv. The Model of Participatory Democracy

The scope of forms and theories of ‘participatory democracy’ that have emerged since the 1960s, when they first appeared amidst political upheavals and student protests, is very broad.³¹¹ It ranges from versions which define participatory democracy as some (increased) civil society involvement within the current Western liberal model, to such which, like proponents of ‘expansive democracy’, envisage the introduction of participatory modes of governance in all possible spheres of life, including the family, churches, and prisons, or aspire to an all-encompassing ‘democratization process’, total ‘politicization’ and therefore entire reform of liberal, representative democracy.³¹² The focus here is on ‘moderate’ versions that lie somewhere between these two approaches, which, while quite ardently criticizing many aspects of liberal democracy, do not give up on it completely but retain several of its key features and, like social democracy, build on them to achieve a more complete and ‘substantive’ form of democracy.³¹³ Participatory theories share social democracy’s concern for socio-economic equality, but concentrate more on ‘modes of participation’ by individuals and groups rather than social and welfare policies.

The starting point of participatory democracy is a deep criticism of actually existing liberal democracies’ failure to achieve real (political and socio-economic) equality and liberty for the majority of citizens. First, the capitalist system, which produces a privileged class, and societal differences rooted in class, colour, education, sex, etc., leads to a situation in which some have more political power than others (political inequality). Failure to take these socio-economic difference and resulting inequalities into account has led to their perpetuation in liberal democratic system and even worsening of the situation of the underprivileged, who feel

³⁰⁹ Baldwin, at 137; S. Leibfried and H. Obinger, ‘Welfare State Futures. An Introduction’, in S. Leibfried (ed.), *Welfare State Futures* (2001), at 5.

³¹⁰ A. Briggs, ‘Welfare, social’, in W. Outhwaite: *The Blackwell Dictionary of Modern Social Thought* (2nd ed., 2003), at 733; Leibfried and Obinger, at 4-5; P. Baldwin, ‘Welfare, Promotion of’, in S. M. Lipset (ed), *The Encyclopaedia of Democracy* (1995), at 1372.

³¹¹ Holden, at 116-32; Held, at 263-73; Schmidt, at 170-82; F. Cunningham, *Theories of Democracy: A Critical Introduction* (2002), at 123-41.

³¹² Schmidt, at 172f.

³¹³ Two of the most famous participatory theorists are C. Pateman and C. B. Macpherson. Held, at 264; Schmidt, at 170; Holden, at 120f.

increasingly estranged. Secondly, there is not real liberty due to the lack of participation of underprivileged and, at a more general level, due to the limitation of democracy to the political system rather than also, for example, at the workplace.³¹⁴

The participatory model's key to 'real' democracy is more widespread, active and direct participation of all citizens in a more broadly defined political process, the society and the economy. Active politics is not seen as the domain of government (as in elitist models) or of interest groups and their leaders (as in pluralist models) but of each citizen: everybody is foreseen to participate actively and permanently and not just to cast her or his vote on election day and everybody is considered to be capable of doing so.³¹⁵ All in all, liberal institutions, like parties and elections are retained, but conceptualized differently. In particular, representatives are seen as real agents or delegates, just acting upon the preferences of those who appointed them, rather than as leading figures.³¹⁶ Further, institutions have to be more open, accessible, and transparent, and organizations, like parties and NGOs, be themselves democratized. Participatory theory also envisages more civil society activity, as well as self-government and decentralization.³¹⁷

More participation is not just envisaged in a more strictly defined political space, but also in fields like the education system, the media, churches, etc., as well as, the workplace. Different models of 'workplace', 'economic', or 'industrial democracy' have been put forward, ranging from limited workers' involvement in privately owned firms to forms of collective ownership.

Strong participation and, as part of it, deliberation and discussion, is expected to lead to better policies and higher legitimacy of the regime and government. The major point of critique of participatory models relates to too positive assumptions of the willingness of citizens to participate in a highly engaging political, social, and economic system.³¹⁸

e) Democracy and Related Concepts: Human Rights and Good Governance

This last section on democracy aims to briefly clarifying democracy's relation with two other concepts that are frequently linked with it in the academic literature and the practice of donors: human rights and good governance or democratic governance.

Democracy and human rights are different concepts, as the first relates to a form of government and the second to individual entitlements of human being. At the same time, there is

³¹⁴ Held, at 264-7; Holden, at 116f.

³¹⁵ Cunningham, at 131f.

³¹⁶ Held, at 269 and 301; Holden, at 122; Cunningham, at 126 and 129.

³¹⁷ Cunningham, at 136-9.

³¹⁸ Holden, at 124; Held, at 269.

a basic and intrinsic relationship between the two.³¹⁹ Each of Dahl's seven minimum procedural conditions of democracy can be and has above been formulated as civil or political right that is mentioned in the major international and regional human rights instruments, in particular the ICCPR and ECHR. Further, also the concept of the rule of law encompasses human rights, in particular if conceptualized in a broad, substantive way. Finally, it has been mentioned that a full liberal democracy is expected to promote and protect a considerable array of other human rights than just the essential minimum conditions. On the whole, if the political right to vote and the core civil rights of freedom of association, assembly, and expression are guaranteed and acted upon, and a judicial system is in place that enforces these rights, they together necessarily give rise to a democratic system of governance. If, in addition, other human rights are being respected and promoted, one can speak of a liberal democracy.

The relationship is more complex as regard social and economic rights. They are usually not part of essential minimum conditions of democracy and also not necessarily among those rights that a system needs to respect in order to qualify as full liberal democracy. At the same time, there is an important line of literature that stresses the need of a certain degree of socio-economic equality in order for a democracy to function properly and to sustain.³²⁰ If somebody has no home, sufficient food, and is illiterate, that is, when some basic needs are not met, he or she lacks the necessary conditions to participate politically and, due to a feeling of being abandoned and excluded, also lacks the willingness to for doing so.³²¹ As indicated above, social and participatory models of democracy refer to this relationship between the socio-economic and political dimension and demand democracy to aspire socio-economic equality in order to ensure political equality. Social rights appear as one possible remedy to achieve a higher level of socio-economic equality, as they oblige governments to pursue policies that pursue that goal. This way, social rights are supporting rather than core rights of a democratic system of government.

Next to democracy and human rights promotion, since the late 1980s also the sector good governance has increasingly been endowed with larger aid budgets. It was made popular by the World Bank's identification in 1989 of 'poor governance' as one reason for the failure of development programmes in Sub-Saharan Africa and the concurrent suggestion to engage more strongly in promoting 'good governance'.³²² The focus on governance was not entirely new, however, earlier efforts in the sector were thematically more limited and largely concentrated on public administration reform. The Bank's report marked the start of a broader focus.

³¹⁹ Beetham, at 92.

³²⁰ Holden, at 28f; Fabre, at 121f.

³²¹ Fabre, at 120-8, for a detailed discussion of the arguments and counter-arguments.

³²² The World Bank: *Sub-Saharan Africa – From Crisis to Sustainable Growth* (1989).

While it is accepted that governance refers to the body of rules, institutions, and traditions with which power is exercised and used to devise and implement policies, there is disagreement on which sectors should be covered by a good governance agenda and what exactly constitutes ‘good’ governance. While it is beyond this section to discuss ‘good’ governance in detail, the following five dimensions and their substantive features frequently feature in conceptions: (1) voice and accountability, which basically relates to Dahl’s seven minimum procedural conditions of democracy; (2) political stability and lack of violence, which requires the absence of political and social tensions and unrest and the stability of government; (3) government effectiveness, which requires stable, predictable, and efficient governmental actions, decisions and administrations; (4) minor regulatory burden for business; (5) the rule of law; and (6) low levels of corruption.³²³ Some major actors in international development, like the United Nations Development Programme (UNDP), prefer the use of the term ‘democratic governance’, however, by and large cover the same fields of engagement and efforts.³²⁴ The enumeration shows that good governance is frequently so broadly defined that it encompasses democracy. Often, however, the two concepts are presented as opposing concepts with good governance only referring to those elements of the above enumeration that are not democracy, that is, excluding point (1) and, possibly also point (4).

III. Conclusion

Chapter 1 has introduced core definitions, concepts, and conceptions that are relevant for the study of democracy assistance. First, it has presented Schmitter and Brouwer’s definition of democracy assistance that refers to *“all programmes and projects which are openly adopted, supported and/or (directly or indirectly) implemented by (public or private) foreign actors, mainly take place in target countries, in principle with the consent or toleration of these countries’ authorities, and are explicitly designed to directly contribute to the liberalization, democratization or consolidation of democracy of the target country”*.³²⁵ The definition captures the essential features of the phenomenon while overall not prescribing concepts of democracy, democratization and assistance, except for working within the liberal model of democracy broadly defined and requiring a direct rather than an indirect impact on democratization and therefore excluding socio-economic assistance. The discussion of the definition has outlined that the core idea of democracy assistance is to directly support domestic

³²³ E. Neumayer, ‘Is Good Governance Rewarded? A Cross-national Analysis of Debt Forgiveness’, 30 *World Development* 6 (2002), at 917.

³²⁴ <http://www.beta.undp.org/undp/en/home/ourwork/democraticgovernance/overview.html> (last accessed on 12.6.2011).

³²⁵ Schmitter and Brouwer, at 12 and 17.

political reform processes through an open knowledge, expertise and information transfer or spread that takes place in a direct relationship with local actors, institutions, and processes within the target state. It therefore in principle requires the consent or toleration by the target states' authorities. Exceptionally, assistance is provided outside the target state (external democracy assistance) and/or against the consent of the government, but then potentially less effective.

Secondly, Chapter 1 has introduced the international dimension of democratization, which broadly refers to all actors, influences, and activities that originate or are located outside a country's borders and have some relevance for a domestic democratization process.³²⁶ This dimension has become increasingly important since the start of the third wave of democracy and also increasingly more researched. Next to unintentionally influencing democratization processes in third states (or playing a kind of model role), the numerous diverse actors employ a whole range of tools or instruments to intentionally facilitate democratic development. The tools can be of a coercive nature, like military intervention, can use political conditionality positively or negatively, like EU membership conditionality or the suspension of aid, or can be positive, like in the case of democracy assistance and dialogues. Democracy promoters on the whole prefer using positive tools as well as positive and incentive conditionality, which have several advantages, including its open and consensual nature and the direct engagement with the democratizing institutions and society.

Thirdly, the Chapter has briefly introduced two major approaches in the study of democratization: the structural and the genetic approach. The structural approach focuses on structural factors that lie outside the political system, in particular on socio-economic development, and analyzes their long-term influence on democratization. The transition or genetic approach focuses on the shorter-term process of regime change itself and on the role of actors and their choices, which are considered crucial for democratization. It is this approach that uses the three, conceptually different but timely (potentially) overlapping phases: political liberalization, transition, and consolidation. The first is characterized by an extension of civil rights and liberties but falls short of democratization, transition refers to the actual regime change, and consolidation to the process in which democracy becomes widely accepted and practiced ("the only game in town").³²⁷

Finally, Chapter 1 has introduced the concept of democracy, key ideas of and tensions within liberal democracy, and different models or conceptions of democracy of the 20th and 21st centuries. The concept of democracy was defined, following Holden, as "a political system in which the whole people, positively or negatively, make, and are entitled to make, the basic

³²⁶ Whitehead, 'Three International Dimensions of Democratization', at 3; Schmitter, at 28.

³²⁷ Giuseppe la Palma, quoted in Linz and Stepan, at 5.

determining decisions on important matters of public policy”.³²⁸ Beetham spoke of a system in which there is ‘political equality’ and ‘popular control’.³²⁹ There is nowadays much agreement that democracy must be liberal democracy, the core ideas of which are liberty and limited government. According to Dahl, democracy consists of the following seven essential ‘rights, institutions, processes’: elected officials, free and fair elections, inclusive suffrage, right to run for office, freedom of expression, alternative information, and associational autonomy.³³⁰ Additionally, many authors add the rule of law – variously defined – as further defining feature of democracy.

Different, more specific models or conceptions make different claims on how much democracy is desirable, practicable and how it can and should be realized. The model of elitist democracy stresses the electoral process and argues that competition and contestation for votes is democracy’s central dynamic and key defining feature. It attributes a central role to the political elites and hardly any role to ordinary citizens except as voters. Differently, pluralists stress the plural character of society, the state and the economic sphere, each of which is constituted by numerous ‘(pressure) groups’, constituted by individual citizens in various capacities. While representative institutions play a role as mediator and final decision-makers, democracy is mainly explained as an endless process of interaction, discussion, competition, bargaining and compromise between the numerous, diverse and/or overlapping collective actors. Social democracy and participatory democracy are putting a stronger focus on questions of socio-economic equality, not least that of achieving political equality and liberty. Social democracy works within the institutions and processes of the basic liberal model but additionally stresses the need for a whole range of social and economic policies, frequently, but not only, based on constitutionally guaranteed social rights. Participatory democracy, highly critical of but retaining liberal democracy, envisages a high degree of direct participation by ordinary citizens in a broader range of fields, including the political, social and economic sphere.

³²⁸ Holden, at 5.

³²⁹ Beetham, at 33.

³³⁰ Dahl, at 221.

Chapter 2: Basic Issues in Democracy Assistance

I. Introduction

Chapter 2 focuses on several basic issues and questions regarding democracy assistance in the international context that appear particularly relevant, especially in view of the more specific analysis of EU democracy assistance in Part II of this thesis. It aims at providing a short introduction to each of these selected topics as well as a brief overview of the academic and policy-related literature.

Chapter 2 is articulated in six parts. It first provides an overview of the evolution of democracy assistance in international context, starting with early 20th century ‘Wilsonianism’ and concluding with the backlash against democracy assistance by authoritarian rulers as well as continuing interest in the tool by Western donors in the 21st century. The chapter then discusses the features and pros and cons of the two major approaches used in democracy assistance as identified by Thomas Carothers. Thirdly, Chapter 2 identifies the various underlying motivations of actors to promote (and therefore also to assist) democracy abroad. Importantly, this section does not discuss the preference for assistance as compared to other instruments, but the rationale that underlies all types of democracy promotion. This discussion of the motivations is followed by a brief introduction to the questions of legality and legitimacy of democracy assistance. Fifthly, Chapter 2 asks the question whether democracy assistance is an effective tool of democracy promotion. Finally, Chapter 2 provides some quantitative data on how much the major international donors have over the last decade spent for democracy support programmes and projects.

II. Introducing Basic Issues on Democracy Assistance

1. The International Evolution of Democracy Assistance

This section provides a brief overview of the emergence and evolution of democracy assistance worldwide. It presents the major steps, actors, and factors that have been relevant in the development of the instrument. As the history of democracy assistance cannot be easily separated

from the evolution of the broader domain of democracy promotion, the discussion at times also sheds light on major steps in the development of this policy dimension.

a) The Early 20th Century: ‘Wilsonianism’

As other sections of this overview also show, the US has frequently stood out as the key actor in the development of democracy promotion and assistance. The first examples of Western engagement to promote democratization mentioned in the literature are US involvement in Cuba and the Philippines after the Spanish-American war (1895-98), and in Puerto Rico after 1898.³³¹ Many authors particularly stress the defining role of President Woodrow Wilson (1913-1921) though, who justified several military interventions in Central America as part of an effort to bring democracy to that region, in 1917 declared war on Germany to “make the world safe for democracy”, and advocated for a post World War I European order of democratically constituted and nationally ‘self-determining’ states.³³² His idea of ‘liberal democratic internationalism’ or ‘Wilsonianism’,³³³ based on earlier US ideas of some form of ‘democratic peace theory’ and moral duty, as one of the first free states and democracies, to bring freedom in the form of liberal constitutionalism to the world,³³⁴ appears as key explanatory factor for many US democracy promotion activities until today.³³⁵

Many of the early examples of democracy promotion involved military action. However, other tools were also employed, like election-monitoring operations and forms of democracy assistance, for example the provision of electoral advice in Central America. After World War II, US democracy assistance also included constitutional advice and civic education, in particular in Germany and Japan.³³⁶ All in all, while all these are important early examples of the use of

³³¹ Whitehead, ‘The Imposition of Democracy in the Caribbean’, at 59. In tracing origins of democracy promotion, Burnell even goes back to the French revolution. Burnell, ‘Democracy Assistance: Origins and Organizations’, at 34.

³³² Franck, at 46-91; T. Smith, *America’s Mission: The United States and the Worldwide Struggle for Democracy in the Twentieth Century* (1994), at 3-9.

³³³ Wilsonianism envisages “a world order opposed to imperialism and composed of independent, self-determining, preferably democratic states bound together through international organizations dedicated to the peaceful handling of conflicts, free trade, and mutual defense”. Smith, at 7.

³³⁴ Thomas Jefferson claimed that “a peaceful world order in which America could fully participate needed to be one constituted by democratic states”, Smith, at 7. On the democratization of the US and some Western states in the ‘long nineteenth century’, i.e. between 1760 and 1919, see D. Potter, D. Goldblatt, M. Kiloh and P. Lewis (eds), *Democratization* (1997), at 46-54.

³³⁵ Smith, at 7; Whitehead, at 5; T. Carothers, ‘Democracy Promotion under Clinton’, in T. Carothers, *Critical Mission: Essays on Democracy Promotion* (2004), at 23f; T. Carothers, ‘The Clinton Record on Democracy Promotion’, in T. Carothers, *Critical Mission: Essays on Democracy Promotion* (2004), at 39f; T. Carothers, ‘Promoting Democracy and Fighting Terror’, in T. Carothers, *Critical Mission: Essays on Democracy Promotion* (2004), at 63f; and T. Carothers, ‘Democracy Promotion: Explaining the Bush Administration’s Position’ in T. Carothers, *Critical Mission: Essays on Democracy Promotion* (2004), at 75f; M. Dunne, ‘Integrating Democracy into the U.S. Policy Agenda’, in T. Carothers and M. Ottaway (eds), *Uncharted Journey: Promoting Democracy in the Middle East* (2005), at 209f.

³³⁶ Carothers, *Aiding Democracy Abroad*, at 19.

democracy promotion tools, in particular of assistance, they were rather exceptional and not part of a broader, long-term policy.

b) The 1950s and 1960s: Colonialism, Decolonization, and Development Policies

Some forms of colonial rule, the decolonization process, and early development policies included elements of democracy promotion and assistance without, however, giving rise to comprehensive democracy promotion policies in the 1950s and 1960s.

Most notable of all is British colonial rule, which involved the ‘institutional transfer’ of the Westminster political and administrative system to the colonial domain, and the training of civil servants and other elites.³³⁷ Despite the strong features (and despite the critique) of being ‘imposition’ rather than assistance to some locally driven democratization processes, this transfer of models and training has widely been identified as a key explanatory factor for the more successful and lasting democratization of former British colonies, like India, than of countries under domination by other powers.³³⁸

Secondly, the decolonization process and the implementation of the principle of – and later the right to – self-determination mandated several Western states and the UN to promote democratization in colonies and trust-territories gaining independence, but without the UN Charter providing for specific policy-instruments.³³⁹ Subsequently implemented activities related mainly to the organization of referenda and first elections, in some cases also to the writing of constitutions, and remained therefore within the scope of known examples. All in all, the efforts of Western governments usually ended shortly after the respective territories had gained independence and were furthermore also largely unsuccessful.³⁴⁰ Nevertheless, the UN’s involvement in pre-independence referenda and elections constitutes the direct forerunner of today’s election monitoring missions to independent states, which started with the mission to Nicaragua in 1990.³⁴¹ Moreover, in the mid-1960s the UN Security Council also first turned to mandatory sanctions as a tool for ensuring equal political participation, along with other goals.³⁴²

Finally, during a brief period in the 1960s the then new field of development policy included the explicit goal of political development and provided for some ‘political assistance’ projects, as they were called at the time. This especially relates to the US and its policies in Latin

³³⁷ Burnell, ‘Democracy Assistance: Origins and Organizations’, at 35.

³³⁸ Lipset, ‘The Social Requisites of Democracy Revisited’, at 5.

³³⁹ Art. 73 b and Art. 76 b of the UN Charter; Frank, at 52; White, ‘The United Nations and Democracy Assistance’, at 69-70.

³⁴⁰ Lipset, at 5.

³⁴¹ Franck, at 55 and 69-71; White, ‘The United Nations and Democracy Assistance’, at 69f; Pippan, at 104-5.

³⁴² See the sanctions on Southern Rhodesia 1965-1970, Reisman and Stevick, ‘The Applicability of International Law Standards’.

America, of which J. F. Kennedy's 'Alliance for Progress' and 'law and development' programmes are the most known examples.³⁴³ While also some European donors' development agendas included, albeit not very explicitly, the objective of political development, European policies basically focussed exclusively on socio-economic aid.³⁴⁴ The exceptional American focus can partly be explained by Wilsonianism and partly by the idea that political (liberal democratic) development was inherently linked to and indeed a condition of (capitalist) economic development – a view that would in the late 1980s resurface as a highly influential factor for the development of democracy promotion/assistance. It had few adherents then, though, and political projects were but for few exceptions abandoned in the late 1960s.³⁴⁵

It also needs to be mentioned that during the 1960s the US was, in particular through the Central Intelligence Agency (CIA), in numerous countries secretly engaged in assisting certain political parties, swaying elections or otherwise influencing political outcomes – in particular to prevent the spread of communism rather than to build liberal democracy – much of which stopped after becoming public and strongly criticized in the late 1960s and early 1970s.³⁴⁶

Three major factors prevented the widespread emergence of democracy promotion and assistance in the 1950s and 1960s. First, despite some interest in the political domain as part of socio-economic development assistance, the then prevailing approach to democratization was based on the modernization theory. As mentioned, it claimed that democracy was the final stage of a process of socio-economic development, was impossible in contexts of underdevelopment, but would also necessarily follow socio-economic development.³⁴⁷ The right strategy was therefore to focus on the socio-economic domain and to wait.

Secondly, there was opposition from the newly independent, developing states. They argued that Western states were continuing with some form of neo-colonialism and refuted relevant human rights and democracy-related concerns and activities as illegal interference in their domestic domain.³⁴⁸ At that time, they had the necessary political and economic power for doing so. Western states relied on the raw materials of newly independent states and, given the East-West confrontation, former colonies could play out one superpower and its allies against the other. Further, liberal democracies were, with only about 36 democracies existing in 1962, far

³⁴³ Carothers, *Aiding Democracy Abroad*, at 22-5; Diamond, *Promoting Democracy in the 1990s*, at Notes and References, Note 13.

³⁴⁴ Crawford, *Foreign Aid and Political Reform*, at 56.

³⁴⁵ Carothers, *Aiding Democracy Abroad*, at 25.

³⁴⁶ *Ibid.*

³⁴⁷ Lipset, 'Some Social Requisites of Democracy', at 75f; Randall, at 441f. See also Chapter 1.

³⁴⁸ D. J. Marantis, 'Human Rights, Democracy and Development: The European Community Model', 7 *Harvard Human Rights Journal* (1994), at 5; Crawford, *Foreign Aid and Political Reform*, at 31-2; Reisman, at 243. Several UN documents supported such view, like the 1970 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among states in accordance with the Charter', therein in particular the elaborations on the principles of non-intervention and right to self-determination of peoples.

from being the prevailing type of political regime and did therefore not have the weight they acquired in the early 1990s to pose demands.³⁴⁹

Thirdly, the Cold War influenced Western states' policies. As regards right-wing dictatorships, Western states considered their overall security usually better served by keeping good political, military and economic relations rather than alienating these regimes by imposing political demands, thereby playing into the hands of the Soviet Union (SU) or even triggering the latter's reactions.³⁵⁰ Additionally, in many cases containing communism rather than building liberal democracy appeared as the dominating policy-goal, with, in particular the US, supporting right-wing governments in their suppression of left-wing opposition groups, whose political programmes risked giving rise to regimes too far to the left of US liberalist ideas.³⁵¹ As regards communist states, in particular those in Central and Eastern Europe (CEE), Western democracy promotion activities were clearly excluded by the fear of Soviet involvement, especially after events in Hungary in 1956 and, later, in Czechoslovakia in 1968, proved Soviet control of satellite states and its willingness to respond to attempts of replacing socialism by capitalism in those as well as other countries ('Brezhnev doctrine').³⁵²

On the whole, despite various experiences with democracy promotion and assistance within the framework of decolonization and development policies in the 1950s and 1960s, these did not signify the start of a comprehensive policy and use of the tool.

c) The 1970s: The German Political Foundations and Human Rights Policies

The 1970s became the crucial period for the start of a more widespread and long-term use of several democracy promotion instruments, in particular of democracy assistance, monitoring and political conditionality. The shift to political aid by the German political foundations, and developments within the human rights movement, were the most crucial factors.

As mentioned above, the German *Politischen Stiftungen* are established by individual German political parties, remain personally and ideologically closely affiliated with these parties, receive governmental funding based on the strength of the respective party in the German Bundestag, but can spend their budgets relatively freely and without influence by the government and the parties. They were originally founded after World War II in order to contribute to

³⁴⁹ Huntington, 'Democracy's Third Wave', at 3.

³⁵⁰ Carothers, *Aiding Democracy Abroad*, at 20f; Pinto-Duschinsky, at 34.

³⁵¹ W. Robinson, *Promoting Polyarchy: Globalization, United States Intervention and Hegemony* (1996); R. Burbach, *The Pinochet Affair: State Terrorism and Global Justice* (2003), at 10f.

³⁵² See, for example, C. Abele and C. Offe, 'DPP Dilemmas in CEE: Donor Strategies, Recipient Responses, and Feasibility Issues in Designing Democratic Institutions Elsewhere', (February 2002, draft on file with the author), at 3.

strengthening a new democratic political culture within Germany.³⁵³ As post-Nazi German foreign aid appeared to be more acceptable if distributed through semi-independent political foundations rather than the German government, the *Stiftungen* soon also became Germany's 'official' development organizations operating worldwide.³⁵⁴

In conformity with the then prevailing modernization theory, the German political foundations also initially concentrated on socio-economic aid projects. In the early-mid 1970s, however, they began to provide democracy assistance and, in particular, to support party- and trade union-related institutions and to finance media and civic education projects. They first concentrated on Southern Europe, but soon also on Latin America.³⁵⁵ Their assistance went beyond earlier examples of democracy assistance, both, as regards the material focus as well as the duration of programmes. Just as American policies, the activities of the German political foundations had, until the end of the Cold War, an anti-communist character, even if there was a slight moderation with Willi Brandt's Ostpolitik from the early 1970s on.³⁵⁶

Two general factors and several characteristics of the foundations explain the latter's shift to political aid. First, in 1974 the third wave of democracy began and created more favourable conditions for the provision of democracy assistance in an increasing number of states, especially in Southern Europe and Latin America. Secondly, by the 1970s the modernization approach to democratization was increasingly criticized as its predictions had failed to materialize, in particular because there were no clear moves towards democracy despite higher levels of socio-economic development in several parts of the world.³⁵⁷ That these two general factors primarily encouraged the German political foundations rather than all Western actors to provide political aid resulted from their experience with democratization-related activities within Germany, their character as semi-governmental/semi-independent bodies, and their deliberately-kept low profile, which caused less critique of foreign involvement.

The US and, in particular the European states, which missed these experiences and features, continued not to or only to secretly engage. At the same time, factors like the Cold War and the opposition from target states prevented their geographically broader engagement beyond countries affected by the third wave. Additionally, while the modernization approach was hardly followed anymore, another theory of development began to influence governmental development policies and provide arguments against political aid. It claimed that capitalist development and

³⁵³ The Friedrich Ebert Stiftung had actually already been founded in 1925, but was then banned by the Nazis. The roots of the foundations lay in Germany's long tradition of foreign political payments and payments to non-governmental organizations, including parties, to carry out governmental functions. Pinto-Duschinsky, at 34.

³⁵⁴ Ibid.

³⁵⁵ Burnell, 'Democracy Assistance: Origins and Organizations', at 36, Pinto-Duschinsky, at 33; Mair, at 136.

³⁵⁶ Pinto-Duschinsky, at 33f.

³⁵⁷ Carothers, *Aiding Democracy Abroad*, at 27; Randall, at 442.

democratization could not take place at the same time, as the first of these would require unpopular reforms that in practice only an authoritarian government could implement.³⁵⁸

During the 1970s the framework of human rights protection also developed in important ways, especially as regards the changing concept of state sovereignty and the use of various tools of human rights promotion. These developments would in the long run also prove important for democracy promotion and assistance. Initially, however, important limitations applied. On the one hand, democracy promotion was merely implicit in human rights promotion, as everything occurred under the heading of 'human rights' rather than under 'democratization'.³⁵⁹ On the other hand, while human rights policies included a focus on several of the core liberal democratic rights, like the freedom of speech, the central political right to participate in government and to vote remained excluded.

The US was a leading actor in the development of national, externally focused human rights policies. In the early-mid 1970s the US Congress adopted externally focused human rights-related legislation, which was implemented as well as further developed during the presidency of Jimmy Carter, who declared human rights to be the 'soul' of his foreign policy.³⁶⁰ Instruments of the new policy included political conditionality for US development assistance and US voting on multilateral loans in international financial institutions as well as human rights assistance programmes and projects.³⁶¹ Further innovations were the publication and submission to Congress, from 1977 on, of annual US State Department reports on human rights practices in (and especially in assistance receiving) third states, and the creation of the position of human rights officers in US embassies.³⁶² Despite criticism of double standards in implementation, Carter's policies were overall widely lauded and eventually earned him the Nobel Peace Prize in 2002.³⁶³ They focused on civil rights, in particular on freedom of speech, religion and assembly, without, as mentioned, addressing other core political rights and therefore more directly and explicitly democratization.³⁶⁴

Western European states did not follow the US example, but remained much more cautious in the development of their external human rights policies. There were some individual examples of the use of human rights promotion tools, but overall these remained single events

³⁵⁸ Burnell, 'Democracy Assistance: The State of the Discourse', at 40-1 and 43-4; See, for example, Diamond, 'Economic Development and Democracy Reconsidered', at 473.

³⁵⁹ The requirement of the above provided definition of democracy assistance of an explicit focus on democratization should be interpreted very liberally here.

³⁶⁰ Smith, at 241-2.

³⁶¹ Crawford, *Foreign Aid and Political Reform*, at 168; Carothers, *Aiding Democracy Abroad*, at 28-9.

³⁶² The report is foreseen by the FAA of 1961 and the Trade Act of 1974.

³⁶³ See, for example, K. Sikkink, 'The Effectiveness of US Human Rights Policy, 1973-80', in L. Whitehead, *The International Dimensions of Democratization: Europe and Americas* (1996), at 96; Smith, at 241-2.

³⁶⁴ Smith, at 241-2; Sikkink; at 96; Pinto-Duschinsky, at 53; Diamond, *Promoting Democracy in the 1990s*, at Notes and References, Note 13.

and were not part of broader policies. One case in point was the European Parliament's human rights assistance programme, which started in 1978, but had little funding and a substantively very limited scope, focusing on torture victims.

Important developments at the international level, in particular within the UN, were the emergence of monitoring mechanisms in the late 1960s and 1970s. The first of these mechanisms were the so-called '1503 Procedure' (1970) and the '1235 Procedure' (1967), created by Economic and Social Council (ECOSOC) resolutions, which gave UN-Charter-based bodies, in particular the Commission on Human Rights (CHR), the possibility to investigate 'serious patterns of human rights violations' and other cases the CHR deemed appropriate for special inquiry.³⁶⁵ Of even more profound impact was the entering into force in 1976 of the International Covenant of Civil and Political Rights (ICCPR) (next to the International Covenant on Social, Economic, and Cultural Rights (ICESCR)), which established a specific monitoring body, the Human Rights Committee (HRC), and introduced the regular supervision of each of the rights contained in the Covenant.³⁶⁶ As mentioned, while several core democratic rights were encompassed and therefore monitored, Article 25 ICCPR on the right to participate in government and to vote was not given a liberal democratic interpretation until much later.³⁶⁷

During the 1970s, human rights also became an explicit focus of the newly created Conference of Security and Cooperation in Europe (CSCE). Different from the above examples, the CSCE did not create legally binding rules or specific tools of supervision and/or promotion in the field of human rights. The only instruments were verbal expressions of concern and discussions, which, however, were until the fall of Communism in 1989/90 officially criticized by Communist states as violating the principle of non-interference or countered by arguments that Western states favoured civil and political rights over social rights.³⁶⁸ The assessments of the first fifteen years of the CSCE in the field of democracy and human rights differ considerably, ranging from failure to high importance.³⁶⁹ In any case, as with the emerging international system for human rights protection, the CSCE constituted a framework to build on after the Cold War.

On the whole, the 1970s were important for the evolution of democracy assistance. On the one hand, the German political foundations began to provide political aid, which is widely

³⁶⁵ In 2006 the Human Rights Council replaced the CHR and reformed, upon U.N. General Assembly request, the various procedures. See <http://www2.ohchr.org/english/bodies/hrcouncil/> (last accessed on 28.3.2011). See also H. J. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals* (2000), at 620.

³⁶⁶ <http://www2.ohchr.org/english/bodies/hrc/> (last accessed on 28.3.2011).

³⁶⁷ U.N. Human Rights Committee, General Comment 25, in particular paragraphs 25 and 26. White, 'The United Nations and Democracy Assistance', at 73.

³⁶⁸ J. Helgesen, 'Between Helsinki – and Beyond? Human Rights in the CSCE (Conference on Security and Cooperation in Europe) Process', in A. Rosas and J. Helgesen, with the collaboration of D. Gomien (eds), *Human Rights in a Changing East-West Perspective* (1990), at 245, 252 and 255.

³⁶⁹ *Ibid*, at 242. But see also the positive assessment referred to by Carothers: Carothers, *Aiding Democracy Abroad*, at 29.

considered as the starting point of the current widespread use of the tool. On the other hand, the national and international frameworks for human rights protection developed considerably further, which eventually facilitated the evolution of democracy promotion.

d) The 1980s: The National Endowment for Democracy (NED)
and USAID Programmes

During the early-mid 1980s the US took again the lead in the evolution of democracy promotion and assistance. It made democracy promotion and assistance 'official' US policy and thereby predated the move into the field by other governments, in particular in Europe, for several years.

The new US policy of 'fostering the infrastructure of democracy' was most famously announced by president Ronald Reagan in his speech before the British parliament in June 1982.³⁷⁰ It led to several proposals of possible policies, like Reagan's (strongly anti-communist) 'Project Democracy', of which the US Congress eventually favoured the creation of the already mentioned quasi-governmental National Endowment for Democracy (NED).³⁷¹ Founded in 1983, it became the first organization ever created to be entirely devoted to democracy assistance. It was strongly inspired by the German political foundations but differs in its institutional set-up.³⁷² The NED is registered as non-profit organization and receives annual congressional appropriations, which it independently disburses through four main grantees, next to providing some grants directly to NGOs. The four main grantees, which were mostly specifically created to receive and spend NED funds, are, similarly to the German political foundations, linked to the two major US parties³⁷³ as well as to representatives of business and of trade unions.³⁷⁴ The NED's first projects focused on civil society groups and electoral processes, geographically mainly concentrating on Latin America. Both its material and geographical focus were extended in the late 1980s, when also the NED's initial anti-communist agenda was abandoned.³⁷⁵

US initiatives were not limited to the quasi-governmental sector, but around 1985 also its governmental development organization, the United States Agency for International Development (USAID), began to provide democracy assistance and established a specific office for democratization-related aid.³⁷⁶ The first programmes and projects primarily focussed on

³⁷⁰ <http://www.reagan.utexas.edu/archives/speeches/1982/60882a.htm> (last accessed on 28.3.2011).

³⁷¹ Carothers, *Aiding Democracy Abroad*, at 31.

³⁷² David Lowe, 'Idea to Reality: NED at 25', at <http://www.ned.org/about/history> (last accessed on 28.3.2011).

³⁷³ National Democratic Institute for International Affairs (NDI) and International Republican Institute (IRI).

³⁷⁴ American Center for International Labor Solidarity and Center for International Private Enterprise.

³⁷⁵ Pinto-Duschinsky, at 47-50, Carothers, *Aiding Democracy Abroad*, at 32.

³⁷⁶ Burnell, 'Democracy Assistance: Origins and Organizations', at 38.

elections, parliaments, as well as the administration of justice and concentrated on Latin America, but extended thematically and geographically towards the end of the 1980s.³⁷⁷

The reasons for the US' move into the field are complex and have been in detail outlined by Thomas Carothers.³⁷⁸ It should only be mentioned briefly that while the initial motive for Reagan's initiatives was strong anti-communism, the rise of US democracy promotion and assistance in the 1980s eventually resulted from a moderation of anti-communism and a conviction that a shift away from support for friendly dictators in decline was not only possible but in the long-run the preferable option for the US. This idea was in line with Wilsonianism that thereby again proved to define US behaviour. At the same time, also the wave of transitions to liberal democracy in Latin America was crucial, which affected at least eleven states between 1979 and 1985 and provided the necessary, positive environment for assistance.³⁷⁹

The development of democracy assistance in the US was initially particularly influential in Canada. In 1988, the Canadian parliament set up its own governmentally funded but independently operating organization to provide democracy (and human rights) assistance in third countries. Unlike the NED, the Canadian so-called Rights & Democracy Centre however only directly works with local and regional NGOs.³⁸⁰

In Europe, developments as regards democracy promotion and assistance continued to be slower. European leaders declared in 1986 that they were committed to promoting and protecting human rights and fundamental freedoms and stressed in this context the "principles of parliamentary democracy and the rule of law".³⁸¹ The statement constituted an important further expression of the weakening of the traditional concept of state sovereignty. However, the envisaged tools of human rights (and democracy) promotion were rather weak, encompassing only declarations of concern and diplomatic missions. An EC-funded NGO programme for Chile, created in 1986 upon the initiative of the European Parliament, was a rather exceptional early example of European democracy assistance.³⁸² Some, particularly noticeable organizations in CEE, especially the Polish trade union movement Solidarity, received considerable secret/semi-secret support, amongst others, in the form of funding and technical assistance by various Western European trade unions.³⁸³

In the mid-1980s the first private democracy assistance activities began. Most notable was the establishment, in 1984, of the Soros Foundation Hungary by George Soros, who had been

³⁷⁷ Pinto-Duschinsky, at 53; Carothers, *Aiding Democracy Abroad*, at 35.

³⁷⁸ Carothers, *Aiding Democracy Abroad*, at 29-40.

³⁷⁹ *Ibid.*, at 29; Drake, at 7.

³⁸⁰ http://www.dd-rd.ca/site/who_we_are/index.php?lang=en (last accessed on 28.3.2011).

³⁸¹ Statement on Human Rights of July 1986, Bull. EC 7/8-1986, para. 2.4.4.

³⁸² A. Angell, 'International Support for the Chilean Opposition 1973-1989: Political Parties and the Role of Exiles', in L. Whitehead (ed): *The International Dimension of Democratization: Europe and the Americas* (1986), at 191.

³⁸³ I. Goddeeris, *Solidarity with Solidarity: Western European Trade Unions and the Polish Crisis, 1980-1982* (2010).

active in the Helsinki network and supported dissidents throughout Central and Eastern Europe and the Soviet Union since the 1970s. As the first independent foundation created under Communism to promote an ‘open society’, it achieved a high profile but also had an obviously complicated relationship with the Hungarian government. Its acceptance by the regime can be explained by its initial concentration on education and culture rather than openly political topics. Soros foundations in other CEECs were eventually created in the late 1980s and early 1990s.³⁸⁴

On the whole, during the 1980s the US, as first state, officially started with democracy promotion policies. It created the first ever organization explicitly and primarily devoted to democracy promotion, the NED, and began to provide assistance through official development channels (USAID). European actors lagged behind these developments and retained a much more cautious approach.

e) The Early 1990s: The Start of Democracy Promotion and Assistance in Europe

In the late 1980s, discussions started in some European states, like in Sweden, about the possible inclusion of human rights and democracy-related objectives in external policies.³⁸⁵ This new focus was in particular envisaged in the framework of development policies and as part of discussions on a new development paradigm. Before any of the governments publicly declared a change in its policies though, Europe and the world were taken by surprise by the unexpected fall of Communism in CEE in the second half of 1989 and first half of 1990 and the final end of the Cold War. Against the background of the pro-democracy movements and the removal of an important obstacle to democracy promotion, European states also finally made human rights and democracy promotion explicit objectives of their external policies. The first official declarations of European policy shifts were given by the British Foreign Secretary Douglas Hurd in June 1990, followed by a joint declaration of the development ministers of the Nordic states in September 1990.³⁸⁶ Basically all other European states and the EC followed within two years. Importantly, by then the policy shift was no longer just part of a new approach in development, but democracy promotion was also conceived as a separate, independent policy whose primary objective was democratization.

Using the experiences of the various actors that had entered the field before the early 1990s, the instruments of the new European policies included immediately all already known negative and positive tools, including democracy assistance. Geographically, the policies had in

³⁸⁴ Quigley, at 90.

³⁸⁵ Crawford, *Foreign Aid and Political Reform*, at 56-7 and 59.

³⁸⁶ *Ibid*, at 56-61.

principle a world-wide focus, even if, at least initially, the focus was on Latin America, Africa, and the CEECs. As regards the institutional/procedural structure for the provision of democracy assistance, between 1990 and 1992 basically all Western states started their official, governmental democracy and human rights assistance programmes. Further, the UK followed the NED model and in 1992 established the Westminster Foundation for Democracy (WFD). In most other European, but also some extra-European states, like in Japan, the idea of individual political foundations was preferred and political parties started to receive governmental funding to create their own foundations that would provide democracy assistance in third states.³⁸⁷

At the same time an increasing number of private organizations also explicitly devoted to assist democratization, in particular of NGOs, emerged in all Western as well as in newly democratizing states. They arose as a result of the new liberties and ongoing democratization processes, the desire to participate in the process of political reform, as well as the numerous possibilities to receive grants through governmental programmes. NGOs engaging in the human rights sector had been active at least since the 1970s, and had also addressed issues relevant for democracy, but had only exceptionally focused on core democratic rights *per se*.³⁸⁸

Several factors enabled and facilitated the emergence of democracy promotion in Europe in the early 1990s. First, as mentioned, there was a change of paradigm in development policies, which, in essence, suggested democracy to be a condition or even a pre-condition of successful socio-economic development. It signified a final, fundamental break with the modernization theory that had proposed an inverse relationship between the two concepts (but also had since the early 1970s been of waning influence) as well as with the theory that suggested that socio-economic development and democratization could not occur concurrently.³⁸⁹ The new approach was firstly widely exposed by the World Bank in a 1989 publication on Sub-Saharan Africa.³⁹⁰ The Bank identified authoritarianism and related factors, like arbitrariness in rule implementation and corruption, as key reasons for the failure of development efforts in Sub-Saharan Africa and suggested making ‘good governance’ – in conceptual terms overlapping with the concept of democracy – an essential part of development policies.³⁹¹ Proposed policy tools included conditionality and assistance. At the same time, the new focus on democracy (and human rights) could also help to boost the popularity of development policies and ensure steady aid budgets,

³⁸⁷ See Chapter 1 at section II. 2. a).

³⁸⁸ Burnell, ‘Democracy Assistance: Origins and Organizations’, at 38.

³⁸⁹ *Ibid*, at 40-1.

³⁹⁰ The World Bank, *Sub-Saharan Africa*.

³⁹¹ Burnell, ‘Democracy Assistance: Origins and Organizations’, at 41; The World Bank, *Governance and Development* (1992); The World Bank, *Governance: The World Bank’s Experience* (1994); N. Moller, ‘The World Bank, Human Rights, Democracy, and Development’, 15 *Netherlands Quarterly of Human Rights* 1 (1997), at 27; M. Doornbos, ‘Good Governance?: The Rise and Decline of a Policy Metaphor?’, 37, *Journal of Development Studies*, 6 (2001), at 94. For a definition of governance developed by World Bank staff, which shows the overlapping nature with democracy, see Neumayer, at 917.

after the failure of the policies had led to strong public disappointment and criticisms of the development policies of the previous decades.³⁹²

Secondly, as mentioned, when the Soviet Union refrained from interfering in those CEECs that were undergoing transitions to democracy, the Cold War at last ended. This factor removed previous important obstacles to democracy promotion. Western liberal democracies could now much more openly raise political concerns as regards authoritarian, right-wing developing countries as well as (still) communist regimes and these could no longer play Western states and the Soviet Union against each other.

At the same time, the third wave of democracy increasingly affected the former Communist block, in particular in Central and Eastern Europe. The transitions did not only create favourable environments for democracy promotion activities, but also a strong demand or pull factor for, in particular, assistance in political reform.³⁹³ Democracy promotion in CEECs and some (former) Soviet states not only became possible, but indeed requested.

Finally, the third wave of democracy led to an enormous increase in electoral and liberal democracies worldwide. The worldwide numbers increased from about 40 democracies in the early 1970s to about 76 liberal and even 117 electoral democracies in the mid-1990s.³⁹⁴ This increase not only signified a growing acceptance of liberal democracy as the only legitimate form of government, but in particular gave liberal democracies a more powerful position to demand respect for human rights and democratic principles by increasingly intrusive means.³⁹⁵

In summary, between 1990 and 1992 basically all Western European states started to engage in democracy promotion and to provide democracy assistance. Their policy shift was in particular driven and enabled by a change of the leading approach in development, the transition to democracy in CEECs, as well as the end of the Cold War.

f) The Mid-1990s and Beyond: Consolidation and Challenges

The period since the mid-1990s has been dominated by the consolidation of democracy assistance as tool of democracy promotion as well as its confrontation with numerous challenges.

Democracy promotion has never been the only or the major foreign policy objective of either the US or European states, which always also took economic, energy, security and other

³⁹² R. Sobhan, 'Aid as Catalyst: Comments and Debate (II): Aid Effectiveness and Policy Ownership', 33 *Development and Change* 3 (2002), at 541f.

³⁹³ Carothers, *Aiding Democracy Abroad*, at 44-5; Burnell, 'Democracy Assistance: Origins and Organizations', at 40.

³⁹⁴ Diamond, 'Is the Third Wave Over?', at 20.

³⁹⁵ Diamond and Plattner, 'Introduction', at xii.

factors into account when deciding on foreign policy issues.³⁹⁶ Nevertheless, democracy promotion has for the last two decades kept its place as one foreign policy objective in the case of all liberal democratic states, including new democracies.³⁹⁷

The exact political rhetoric, concrete policies and actions, and preferences for individual tools have of course differed from state to state as well as, in some cases, from government to government.³⁹⁸ The US and, to a lesser extent, the UK have continued to pursue a more assertive and explicit approach and have also been more willing to use negative tools of democracy promotion, in particular military intervention.³⁹⁹ The most notable examples are George Bush's 'freedom agenda', which aimed at bringing democracy and free trade to the Middle East and wider world, and the military intervention in Iraq in 2003.⁴⁰⁰ Overall, this intervention had a highly negative effect for policies of democracy promotion of the US as well as more broadly, as it resulted in the exclusive equation of democracy promotion with regime change by foreign military action. In consequence, a decade later, Barack Obama, while retaining the objective of democracy promotion as foreign policy objective, adopted (and indeed, in order to restore the US's reputation, had to adopt) a much more careful language and approach.⁴⁰¹

European states, besides the UK, have pursued democracy promotion policies less expressively. Many states have published new and updated versions of policy papers during the last decade.⁴⁰² A commonality of these strategies has been the linking of democracy and security, of democracy and socio-economic development, as well as, more specifically, the inclusion of a democracy promotion focus in post-conflict strategies.⁴⁰³ Otherwise, national outlooks, traditions, and personalities appear to be the most influential factors that determine the exact policies of individual European states.⁴⁰⁴ Radical policy shifts have occurred rather seldom. The most notable example thereof is the new role assumed by France in the crisis in Libya in 2011. So far one of the more reluctant actors in democracy promotion, Nicolas Sarkozy has taken a leading role in replacing the Qaddafi regime.⁴⁰⁵

³⁹⁶ See, for example, F. Fukuyama and M. McFaul, 'Should Democracy be Promoted or Demoted?', 31 *Washington Quarterly* 1, at 29-31; R. Youngs (ed), *Survey of European Democracy Promotion Policies 2000-2006* (2006), at 14.

³⁹⁷ Jonavicius; Kucharczyk and Lovitt; Herman and Piccone; Youngs, 'Trends in Democracy Assistance', at 161-2.

³⁹⁸ Azpuru, Finkel, Pérez-Liñán and Seligson, at 151.

³⁹⁹ For the UK see also the Aung San Suu Kyi Lecture at Oxford University of UK Foreign Secretary David Miliband on 'The Democratic Imperative', on 13.2.2008.

⁴⁰⁰ T. Carothers, *U.S. Democracy Promotion During and After Bush* (2007), at 3-4.

⁴⁰¹ T. Carothers, *Democracy Promotion under Obama: Finding a Way Forward*, Carnegie Endowment for International Peace Policy Brief No. 77 (February 2009).

⁴⁰² Youngs, 'Trends in Democracy Assistance', at 12f; See also the various country-fact sheets of the FRIDE project 'Assessing Democracy Assistance' (2010), available at <http://www.fride.org/page/45/democracy-assistance-the-facts> (last accessed on 5.5.2011).

⁴⁰³ Youngs 'Trends in Democracy Assistance', at 14.

⁴⁰⁴ Ibid, at 14-15.

⁴⁰⁵ 'Sarkozy's Libya stance wins widespread backing', Financial Times, 20.3.2011 and 'Exclusive: We fight on until Gaddafi goes', *The Times*, 15.4.2011.

One expression of widespread support to the objective of democracy promotion was the creation, in 2000, of the Community of Democracies, an intergovernmental coalition of about 100 ‘democratic’ UN Member States that have declared their dedication to strengthening democratic values and institutions at home and abroad.⁴⁰⁶ The Community has been viewed with much scepticism, in particular due to unclear criteria and politicised decisions on membership and too broad and unclear set of objectives.⁴⁰⁷ However, its development has kept up momentum, not least due to civil society involvement and support,⁴⁰⁸ changing governmental presidencies that are responsible for the organization of the regular ministerial and working-group meetings, and initiatives suggesting more concrete actions, like the elaboration and sharing of best practices. The UN Democracy Caucus as well the European Democracy Caucus at the European Parliament, which aim at achieving better coordination and consensus as regards democracy promotion topics in their respective institutions, are an offspring of the Community.⁴⁰⁹ However, its most visible outcome⁴¹⁰ is the UN Democracy Fund (UNDEF), established in 2005 as UN trust fund to support democracy-related projects.⁴¹⁰

As part of democracy promotion policies, democracy assistance has remained a core tool of the majority of actors and has undergone a process of consolidation, characterised by higher aid budgets, a stabilisation of actors, and a geographical spread of activities.

Democracy assistance budgets have increased overall over the last two decades.⁴¹¹ USAID expenditure increased from about 121 million US\$ in 1990 to about 900 million US\$ in 2005.⁴¹² USAID data on operating costs show a further increase between 2006 and 2010 from 1,014 million to 1,770 million US\$, which was mainly due to US activities in Afghanistan and Iraq.⁴¹³ The NED’s annual budget long amounted to about 30 million US\$, but rose from about 80 million US\$ in 2004 to 136 million US\$ in 2008.⁴¹⁴ The EIDHR’s annual budget grew from about 17 million Euros in 1991 to 154 million in 2010.⁴¹⁵ The allocations of individual European states

⁴⁰⁶ <http://www.community-democracies.org/> (last accessed on 5.4.2011).

⁴⁰⁷ See, for example, C. Barrios, *The Community of Democracies: Should Europe Engage?*, FRIDE Comment (January 2008), at 5-6.

⁴⁰⁸ See, for example, the meeting schedule of the 2011 meeting of the Community of Democracy in Vilnius, at <http://www.vilnius2011.mfa.lt/> (last accessed on 5.4.2011) and http://www.demcoalition.org/2005_html/home.html (last accessed on 5.4.2011).

⁴⁰⁹ <http://www.democracycaucus.net/html/home.html> and <http://www.democracycaucus.org/4555.html> (last accessed on 5.4.2011).

⁴¹⁰ <http://www.un.org/democracyfund/> (last accessed on 5.4.2011).

⁴¹¹ On the difficulties relating to statistics on democracy assistance and further, more detailed data, see section 6 of this Chapter.

⁴¹² Azpuru, Finkel, Pérez-Liñán and Seligson, at 153.

⁴¹³ USAID Agency Financial Reports for the fiscal years 2007, 2008, 2009, and 2010. Due to different sources, data for the preceding period 1990-2003 cannot easily be combined with this data.

⁴¹⁴ Carothers, *Aiding Democracy Abroad*, at 54; FRIDE, *Democracy Assistance Fact Sheet: The National Endowment for Democracy (NED)* (2010).

⁴¹⁵ EU Budgets for 1991 and 2010. The budget is published in the Official Journal (OJ) of the EU and, since 2007, on the website of DG Budget (<http://eur-lex.europa.eu/budget/www/index-en.htm> (last accessed on 1.6.2012)).

also increased; that of the UK, for example, from about 276 million Euros in 2003 to 508 million Euros in 2006.⁴¹⁶ The budget of each of the major German political foundations, the Konrad Adenauer Stiftung and the Friedrich Ebert Stiftung, amounted to 120 million Euros in 2008.⁴¹⁷ The UNDEF has no stable budget, but operates with voluntary contributions by individual states. Between 2005 and 2010 it received annually between 27 and 8 million US\$.⁴¹⁸

The actors that have entered the field of democracy assistance in the early 1990s have consolidated their positions. Initially, the division of roles and tasks (and distribution of available resources) among all types of actors was not entirely clear and settled. In particular, the position of semi-governmental bodies was questioned when states started to themselves engage in democracy assistance. Both, the German political foundations as well as the NED feared no longer receiving their annual appropriations.⁴¹⁹ However, the advantages of the specific character of semi-governmental bodies, which allowed engagement in sensitive areas without facing immediate critique of interference or partisanship, convinced governments to continue funding them and overall led to an increase in the number of political foundations.⁴²⁰ Civil society organizations, especially NGOs, were from the beginning on recognized as absolutely necessary partners in programme and project implementation, without whom governmental actors could not operate easily.

Further, while assistance in the 1970s and 1980s concentrated on the early third wave countries of Latin America and Southern Europe, since the 1990s it has been provided in basically all world regions. Different donors have of course concentrated on different countries and regions, as well as over time shifting attention from one area to another. For example, France has always been heavily oriented towards Francophone states, while Spain has overall mostly concentrated on Latin America. Most US democracy assistance provided between 1990 and 2003 went to Latin America and the Caribbean (about 24%), although Africa, Eurasia, and Europe also received a considerably large share (18-20%).⁴²¹ During the same period, European democracy assistance was mainly disbursed in Sub-Saharan Africa, Central and Eastern European and the

⁴¹⁶ Youngs, *Survey of European Democracy Promotion Policies 2000-2006*, at 120 and 216.

⁴¹⁷ FRIDE, *Democracy Assistance: The Facts: Friedrich Ebert Stiftung (FES) and Democracy Assistance: The Facts: Konrad Adenauer Foundation (KAS)* (2010).

⁴¹⁸ http://www.un.org/democracyfund/Donors/donors_index.html (last accessed on 5.4.2011).

⁴¹⁹ Mair, at 145-6; T. Carothers, 'The NED at 10', 10 *Foreign Policy* 95 (Summer 1994), at 123; Diamond, *Promoting Democracy in the 1990s*, at 'The National Endowment for Democracy'.

⁴²⁰ French, Meijenfildt, and Youngs, at 7; Fukuyama and McFaul, at 40.

⁴²¹ USAID, *Final Report: Effects of U.S. Foreign Assistance on Democracy Building: Results of a Cross-National Quantitative Study* (study carried out by E. Finkel, A. Pérez-Liñán and M. A. Seligson, with the assistance of D. Azpuru) (2006), at 28-9. See different USAID data, based on different country-groupings, in Carothers, *Aiding Democracy Abroad*, at 51.

former Soviet Union.⁴²² From the late 1990s on and, even more after 2001, both the US and Europe, increasingly focused on Asia and the Middle East.⁴²³

Growing democracy assistance budgets and a geographical spread of activities has, however, also been met by increasing resistance in recipient states. Some dictatorships, like Turkmenistan, have always opposed the implementation of democracy assistance projects on their soil. In addition, since the mid-2000s there has also been a growing number of semi-authoritarian and authoritarian states that have, after initially permitting (at least some) democracy assistance, started to oppose it. The major example is Russia, with former President Vladimir Putin very openly and strongly criticizing foreign political assistance as interference into Russia's sovereignty. But also states in Central Asia (like Kazakhstan and even Kyrgyzstan), the Middle East (like Iran, Bahrain, and Yemen), and Latin America (like Bolivia), have moved in that direction.⁴²⁴

This new backlash has mainly been caused by the colour revolutions, which produced serious concern in many authoritarian countries, even if they lacked many of the features present in those states in which the revolutions took place, and even if the role of outsiders in the revolutions was indeed very minor. Also ideas that these colour revolutions, together with the intervention in Iraq, formed part of a global regime-change strategy of the US, played a role. At the same time, the backlash was facilitated by a strengthened economic position of the authoritarian countries that largely resulted from the rise in energy prices in the early-mid 2000s.⁴²⁵

Countries critical or entirely oppositional to democracy assistance have adopted increasingly sophisticated means for its control or prevention. Initially, general tools, like restrictions to the right of association and complicated NGO registration rules, and relatively blunt instruments, like the harassment of NGO leaders and the destruction of office spaces, were used to prevent the implementation of projects. Eventually more targeted measures were taken, usually foreseen in administrative rules or even laws, even if blunt measures, like the expulsion or even arrest of foreign nationals working in the field, continue to prevail. The newer measures include the downgrading and de-legitimization of independent groups by the creation of governmentally-created and funded so-called 'parallel' or 'Ersatz-' NGOs,⁴²⁶ extremely high taxation for grant recipients, requirements that NGOs must receive prior government permission

⁴²² Youngs, *Survey of European Democracy Promotion Policies 2000-2006*, at 22; European Commission, Annual Report 2000 on the EC Development Policy and External Assistance, at 23.

⁴²³ USAID, *Final Report: Effects of U.S. Foreign Assistance on Democracy Building*, at 28-9; Youngs, *Survey of European Democracy Promotion Policies 2000-2006*, at 22-3.

⁴²⁴ T. Carothers, 'The Continuing Backlash against Democracy Promotion', at 59-61.

⁴²⁵ *Ibid*, at 59; National Endowment for Democracy (NED), at 4, 17, and 26.

⁴²⁶ National Endowment for Democracy (NED), at 4 and 26.

to receive foreign funding, either a single time or on a grant-by-grant basis, that overseas funding must be channeled through governmental agencies or via designated bank accounts that are easily monitored or frozen, and that foreign funding is restricted to a limited percentage of an NGO's total income. These restrictions are – domestically convincingly – presented to be legitimate in order to avoid foreign interference into domestic politics, to improve NGO governance and ensuring their conformity with domestic laws, like taxation and money laundering provisions, or even fighting terrorism. Usually, however, they go beyond acceptable limitations.⁴²⁷

Overall, Western donors have not shown signs of fundamentally changing their approaches in face of the backlash. They applied the same strategies as they had always done in dictatorships that opposed democracy assistance, that is, working quietly and informally within the country or, if that was not possible, from a neighbouring country. They also continued, as much as possible, to retain a political profile rather than shifting to less sensitive topics, as much as this was possible.⁴²⁸ The new backlash to democracy assistance strongly shed light on the question of norms regulating the provision and restriction of democracy assistance, which has so far insufficiently been addressed at the international level.⁴²⁹

In summary, the first six decades of the 20th century witnessed several individual examples of the use of democracy assistance as a tool of external democratization efforts. The US usually stood out as leading actor, in particular during the presidency of Wilson, but also during the presidency of Kennedy, when development policies first included a political component. Decolonization also confronted the UN and European states with the topic, though. However, none of the activities led to a long-term policy of democracy promotion or assistance. Reasons include critique of neo-colonialism, the Cold War, the prevalence of the modernization approach to development, as well as the much more limited prevalence of liberal democratic regimes and the more limited appeal they had than today. The granting of some form of political aid, in particular to party-related institutions and trade unions by the German political foundations, in the early-mid 1970s is widely considered as the start of the current widespread use of democracy assistance. It resulted from the particular character and historical tasks of the foundations, facilitated by the beginning of the third wave of democracy in Southern Europe. In the early 1980s, and therefore before the end of the Cold War, the US took again a leading role and entered the policy field by creating the NED and starting USAID democracy programmes. The reasons for the move were a mix of strong initial anti-communism that eventually gave rise to ideas linked to the democratic peace and Wilsonianism. American activities of the time

⁴²⁷ See the discussion of the legality of democracy assistance further below (Section II.4.a)).

⁴²⁸ Carothers, 'The Continuing Backlash against Democracy Promotion', at 65-7.

⁴²⁹ Ibid, at 67-71.

concentrated on Latin American countries, many of which were then affected by the third wave of democracy. When this wave also reached Central and Eastern Europe and lack of Soviet interference signified the end of the Cold War, European actors also declared democracy promotion as a foreign policy objective. By then, a new development credo had also taken root, which considered democratization a condition or even pre-condition of successful socio-economic development. Moreover, power structures had changed, developing countries were economically weaker to object to foreign activities in the field of human rights and democracy, or had themselves undergone liberalization or democratization processes and were therefore less critical or even welcoming of pro-democracy initiatives. Since the early 1990s, democracy promotion has remained a foreign policy objective of basically all liberal democratic states, even if it has been frequently sidelined by economic, energy-related, and security-related concerns. Democracy assistance has remained a stable instrument thereof, characterized by a growth and stabilization of actors, a rise in aid budgets, and a geographical spread of activities. It has increasingly also been confronted with opposition in authoritarian and semi-authoritarian regimes.

2. Basic Approaches to Democracy Assistance

The numerous and diverse actors in the field of democracy assistance are pursuing different strategies, in particular as regards the thematic or substantive areas of concentration of their projects and programmes. The differences result from a number of factors, including the character of the donor, the target state, and the main rationale for the action, that is, whether democratization is the primary or just a secondary aim. Different underlying conceptions of democracy and of democratization also play an important role, though.

On the basis of several years of experience by donors and some professionalization in the sector, analysts of democracy assistance have suggested ideal types of democracy assistance strategies that encompass the mentioned numerous diverse approaches. These ideal types should assist in getting a clearer picture of the actually pursued approaches as well as in the assessment of their advantages and disadvantages. However, the exercise was in particular also driven by desires to work out differences in and clearly dissociate European and American approaches in the field. The models are useful, however, as they are ideal types they risk to simplifying the strategy of individual actors. In particular, the models tend to associate one actor with one strategy only and to suggest that one actor can exclusively pursue one strategy rather than combining elements of both. In reality, many donors pursue a combination of both approaches.

The currently most known categorization has been outlined by Thomas Carothers, who distinguishes between the political and the developmental approach to democracy assistance.⁴³⁰ Its appeal also stems from the fact that the two categories neatly complement the major models of democracy and democratization. The categorization to a large extent overlaps with the distinction between a product-oriented approach to democracy assistance, which focuses on the elements of the institutional end-state of a liberal democratic government, and a process-oriented approach to democracy assistance, which aims at shaping the underlying processes of democratic change, suggested by Richard Youngs.⁴³¹

a) The Political and the Developmental Approach to Democracy Assistance

The political approach to democracy assistance focuses on core political actors, institutions, and processes and funds projects benefitting political parties, leading politicians, the media, civil rights-focused NGOs, parliaments, and, albeit to a more limited extent, the independent judiciary. One of the key processes it concentrates on is elections, in the case of which aid is provided to central electoral commissions and for civic and voter education projects. The political approach has a short-term focus, putting most stress on the actual period of transition, and recognizes the importance of crucial moments during which targeted aid is assumed to be particularly effective. Assistance of this kind can be strongly challenging to the ruling classes of a non-democratic state, especially if it works with the political opposition, dissidents, and the media, that broadcast into an authoritarian state from abroad. However, political assistance is not necessarily always that confrontational, but usually also carried out with the consent or toleration of the authoritarian regime.⁴³²

The models of democracy and democratization underpinning the political approach are obviously a more narrow, political conception of democracy or, in the extreme case even electoral democracy, and genetic theories of democratization that focus on the actual stage of regime change and highlight the relevance of crucial moments and events.

The developmental approach to democracy assistance rests on entirely different assumptions and pursues a different path. It considers political reform as part of a broader process of development that includes socio-economic and cultural dimensions, and that can only occur in a gradual, bottom-up process involving all sectors. Developmental democracy assistance therefore focuses on state capacity building projects and good governance reform, in particular,

⁴³⁰ T. Carothers, 'Democracy Assistance: Political vs. Developmental?', 20 *Journal of Democracy* 1 (January 2009), at 5f.

⁴³¹ Youngs, 'Democracy as Product versus Democracy as Process', at 67.

⁴³² Carothers, 'Democracy Assistance: Political vs. Developmental?', at 6-8.

in a technocratic and apolitical fashion. Particular attention is therein given to local level reforms and the topic of decentralization. It supports rule of law reform, limited to sectors though, like the economic sector, in which independent courts are less threatening to the political regime. It assists in the development of civil society, however, focusing on NGOs working in the social, economic, and cultural sector rather than such on civil and political rights. Human rights, including social, economic and cultural rights, are key areas of concern. All in all, the developmental approach has a long-term perspective and tries to be non-political, non-confrontational, and to work in partnership with the recipient states' government. In the very extreme case, it might also promote democracy only indirectly, through socio-economic development aid (which lies beyond the here used definition of democracy assistance though).⁴³³

The developmental approach is inspired by a broader concept of democracy, in particular one that also encompasses the social and economic dimension, and by structural theories of democratization.

The political approach has frequently been associated with the US, while the developmental approach has been labeled the European approach. As indicated, this constitutes a simplification, as on both continents a multiplicity of actors with different strategic preferences operates, which makes it impossible to speak of a 'single' European or American way.⁴³⁴ Nevertheless, it seems possible to say that overall the large majority of European actors give preference to the developmental approach, even if there are also examples of political aid, including by the EU itself. At the same time, although also in the US an equally high or even higher amount of funding is used for developmental democracy assistance as for political democracy assistance, there is a stronger interest and willingness to pursue the political approach.⁴³⁵

b) The Advantages and Disadvantages of the Approaches

The main advantage of the political approach is its direct focus on the central elements of a liberal democratic system of government. If the institutions, actors, and processes it supports – free and fair elections, political parties, parliaments, independent media, free civil society organization – are not in place, a system is not (yet) democratic, even if the target state shows positive trends in other sectors of governance, like functioning administrative institutions and low levels of corruption. The political approach thereby also avoids blurring the objective of

⁴³³ Ibid, at 8-9; Youngs, 'Democracy as Product versus Democracy as Process', at 68.

⁴³⁴ A. Gerrits, 'Is there a distinct European democratic model to promote?', in M. van Doorn and R. von Meijenfeldt (eds.), *Democracy: Europe's Core Value?* (2007), at 63.

⁴³⁵ Carothers, 'Democracy Assistance: Political vs. Developmental?', at 13.

democracy assistance, namely democratization rather than only liberalization, some good governance reform, or socio-economic development.⁴³⁶ Further, reforms in the political dimension are widely considered a condition for the successful development of other sectors, like of governance, the rule of law, and the socio-economic domain, and therefore a necessary point of focus.⁴³⁷ Awareness of the existence of crucial moments in regime change renders it better prepared to recognize these and to target assistance adequately, as happened during the electoral or colour revolutions in Serbia, Ukraine, and Georgia.

A major disadvantage of the political approach is that it is more prone to opposition from the authoritarian states' government. It can cause a stronger pushback and lack of further access to the country, like in Burma, Cuba, and Turkmenistan.⁴³⁸ Donors might have to work from abroad only, which is considered to be potentially less effective. A further point of criticism is its limited focus, in particular if it concentrates on elections only. Even if relatively free and fair elections are held, a democratic system can still suffer from weak participation and representation and lack wide inclusion (the so-called 'fallacy of electoralism')⁴³⁹. Finally, the focus on the transition period and crucial moments might lead to single interventions, which can be useful, but also divert attention from the need for longer-time and broader reform, like the judicial branch. All in all, the political approach might therefore be successful in assisting a transition to democracy, but less for achieving its consolidation.⁴⁴⁰

The developmental approach has several advantages. It usually allows access to countries that oppose too politically-oriented activities and therefore provides a first basis for initial action, like in China. Further, it foresees longer-term engagement that is necessary for real and sustainable reform in some sectors, like rule of law development. It brings attention to the link between socio-economic and political reform and therefore has some potential to implement mutually beneficial projects.⁴⁴¹ Further, it bears lower risks of imposing a certain model of democracy but allows the most appropriate domestic democratic system to grow. Due to a stronger focus on civil society development, it renders the democratization process more inclusive than the political approach. Overall it appears to be more beneficial for the successful consolidation of democracy rather than the transition as such.

A major problem of the developmental approach is that it may lead to various reforms in intermediate areas, without however, showing concrete results in the political domain. In the

⁴³⁶ Ibid, at 9.

⁴³⁷ Youngs, 'Democracy as Product versus Democracy as Process', at 70; T. Carothers, 'The "Sequencing" Fallacy', 18 *Journal of Democracy* 3 (2007), at 14-20.

⁴³⁸ Carothers, 'Democracy Assistance: Political vs. Developmental?', at 10.

⁴³⁹ Schmitter and Karl, at 78.

⁴⁴⁰ Carothers, 'Democracy Assistance: Political vs. Developmental?', at 9-10.

⁴⁴¹ Ibid, at 10.

worst of cases, it thereby helps strengthening rather than weakening or replacing authoritarian rule, as the non-democratic leaders can take credentials for successful socio-economic reform and development and in other sectors. Tunisia, Morocco, Egypt, and Vietnam, have long been major aid recipients for governance-reform programmes, however, have shown little signs of regime-led democratization. It remains to be seen if Kazakhstan, which is sometimes cited as example of a successful application of the developmental approach, will successfully democratize. There is also not yet enough knowledge when and how socio-economic development and reforms in the governance sector interlink with and spill over to the political domain.⁴⁴² Similarly, Carothers has warned of ‘the sequencing fallacy’, that is, too rosy assumptions that rule of law reform will fully occur in authoritarian states and eventually spill over to the political domain.⁴⁴³ Another weakness of the developmental approach is that donors might think or pretend to promote democracy, however, are in fact not doing so.⁴⁴⁴ Finally, authors have questioned whether the developmental approach’s focus on civil society can by itself, without concurrent support in the political sphere, lead to changes.⁴⁴⁵

All in all, each basic approach has particular strengths and weaknesses. Carothers has rightly appreciated the existence of diverse approaches, especially as regards an ever more challenging international context for democracy assistance.⁴⁴⁶ Some authors have strongly called for donors to correct their approaches if they were single-sided. For example, Youngs has advised European donors, which are usually much closer to the developmental approach, to more intensively engage with political aid.⁴⁴⁷ In any case, awareness of the diverse approaches and their pros and cons provides important grounds for learning from other actors and better coordinating activities.

3. The Rationale of Democracy Promotion (and Assistance)

Among the numerous rationales that underlie democracy promotion and democracy assistance, a basic distinction can be made between ‘value-based’ motives, which stress the intrinsic worthiness of the goal of action, and ‘instrumental’ motives, which follow instrumental considerations and intend to fulfill donors’ interests rather than those or only those of

⁴⁴² Ibid, at 10-11.

⁴⁴³ Ibid, at 14-18.

⁴⁴⁴ Ibid, at 11.

⁴⁴⁵ Youngs, ‘Democracy as Product versus Democracy as Process’, at 71.

⁴⁴⁶ Carothers, ‘Democracy Assistance: Political vs. Developmental?’, at 18.

⁴⁴⁷ Youngs, ‘Democracy as Product versus Democracy as Process’, at 71.

recipients.⁴⁴⁸ The first are often also referred to as ‘moral’ or ‘ethical’ concerns, although frequently any foreign policy that takes into account human rights, democracy or other ‘ethical’ issues is called ‘ethical foreign policy’, irrespective of whether the underlying motives are indeed of ethical or instrumental nature.⁴⁴⁹ All in all, the differentiation has mainly analytical value as in reality a certain activity is usually based on a blend of motives. Further, actors are often not particularly explicit about their motivations or conceal real intentions while stressing some, politically more acceptable aims. Donors can also be complex entities with sub-units that have different intentions, which can render policy statements very broad and/or incoherent.

a) Value-based Motives

As indicated, in the case of value-rational motives democracy is promoted with the ‘ethical’ aim of assisting a third state or people to establish for itself the only acceptable and the best type of regime, without donors having any or any major self-interests in mind. On the one hand, liberal democracy has over the last decades increasingly emerged as the only legitimate form of rule.⁴⁵⁰ The underlying rationale is that it respects and realizes, more than any other type of government, the values of human self-determination or autonomy and of equal human worth or dignity.⁴⁵¹ Each individual, by being born as human being, has the right to control the decisions about her/his life, including in the political sphere, rather than being subject to the decisions and rule of others and, importantly, each person has this right to an equal degree.⁴⁵²

The claim that democracy is universally the only acceptable form of government has not been without criticism and opposition by (authoritarian) rulers as well as the academic community. It was argued that Asian values, based on Asian religious and philosophical traditions like Confucianism and Buddhism, as well as Islam are incompatible with (certain features of) liberal democracy. Forceful arguments have also been brought forward to refute these arguments though and examples of functioning democratic regimes in East Asia and Muslim states and calls for democratization in these states give support to the universalist claim.⁴⁵³

⁴⁴⁸ Abele and Offe, at 6-10; Burnell, ‘Democracy Assistance: Origins and Organizations’, at 44-8; R. Gillespie and R. Youngs, ‘Themes in European Democracy Promotion’, in R. Gillespie and R. Youngs (eds), *The European Union and Democracy Promotion: The Case of North Africa* (2000), at 8-11; Light, at 83-7.

⁴⁴⁹ See, for example, the volume of Smith and Light.

⁴⁵⁰ A. Sen, ‘Democracy as Universal Value’, 10 *Journal of Democracy* 3 (July 1999), at 3.

⁴⁵¹ M. Dogan, ‘Conceptions of Legitimacy’, in M. Hawkesworth and M. Kogan (eds), *Encyclopedia of Government and Politics* (2004), at 110; L. Diamond and S. M. Lipset, ‘Legitimacy’, in S. M. Lipset (ed), *Political Philosophy: Theories, Thinkers, Concepts* (2001), at 427f.

⁴⁵² D. Beetham, *Democracy and Human Rights* (1999), at 7.

⁴⁵³ Diamond and Plattner, at xvi-xx.

On the other hand, there are suggestions that democracy is the best form of government.⁴⁵⁴ First, by involving basically every (adult) member of a community in policy-making processes, either directly or through representatives, in governmental or civil society functions, the outcome is expected to be better policies, more likely meeting the interests of all or the large majority and therefore rather realizing the ‘public’ or ‘common good’ than other forms of rule. Such view is based on the (disputed) idea that each individual, even if to a different degree, is equipped with intellectual capacities to participate in the political process, that each individual knows her/his interests best, and that the ‘public good’ is what all people in an informed and deliberative process collectively decide it to be rather than that the ability to decide on best policies is reserved to a small, educated class. Opinions of experts are important, but should only be the basis for democratic decisions rather than replacing them.⁴⁵⁵

Secondly, by achieving better policies and realizing the common good, the democratic process leads to a high degree of acceptance of policies and voluntary abidance by the law, even if in some cases the particular preferences of an individual are not followed.⁴⁵⁶ At a more general level, this adds to acceptance of the type of regime and regime stability, which is also benefiting from the possibility to (democratically) dismiss governments in case of policy-failures rather than provoking a regime-crisis as such.⁴⁵⁷ Thirdly, a widely assumed positive feature of democracy is that it more than other types of rule respects and realizes a broad range of human rights, beyond the core civil and political rights that define it and constitute its key procedures and institutions. Human rights violations also occur in democracies, however, in average they are much less frequent than in authoritarian systems.

Value-rational motives are mainly associated with the activities of civil society organizations,⁴⁵⁸ even if a considerable number of NGOs active in the ‘aid industry’ strongly appear to be attracted by Western grants rather than led by moral concerns only. As regards states and governmental organizations value-rational motivations are usually regarded with more suspicion. However, while many conflicts between certain national interests and ethical concerns are continued to be decided in favour of the first,⁴⁵⁹ there is evidence that human rights and democracy-related concerns have increasingly influenced foreign policies of Western governments since the early 1990s.⁴⁶⁰ One of the principal factors for such development seems to

⁴⁵⁴ Beetham, *Democracy and Human Rights*, at 7.

⁴⁵⁵ The contrary conception assumes that the public good is what is objectively knowable only by few, educated or experts, not the average citizen. Ibid, at 11 and 7-10.

⁴⁵⁶ Ibid, at 7 and 13.

⁴⁵⁷ Diamond and Lipset, at 428.

⁴⁵⁸ Abele and Offe, at 8.

⁴⁵⁹ Fukuyama and McFaul, at 29-31.

⁴⁶⁰ See, for example, K. E. Smith and M. Light, ‘Introduction’, in K. E. Smith and M. Light, *Ethics and Foreign Policy* (2000), at 2; Smith, ‘The EU, Human Rights and Relations with Third Countries’, at 185f.

have been the influence of public demand, in particular of civil society groups and networks active at national and international level, however, also a moral conviction of individuals/officials involved in policy-making.⁴⁶¹

b) Instrumental Motives

In the case of ‘instrumental motives’ democracy promotion actors expect some outputs for themselves rather than just for the target country. A first set of positive externalities pertains to the economic sector. First, democratizing states/democracies usually also establish or have a liberal market economic system similar to those prevailing in the West and eventually integrate into the international, market liberal economic order, which allows for and facilitates free trade and foreign investment by the donor.⁴⁶² Some authors consider this to be the real underlying reasons of, in particular US, democracy promotion. These authors additionally argue that the particular concept of democracy that is being promoted is a limited one, void of any social and participatory features.⁴⁶³

Secondly, democracies usually have higher levels of good governance and of the rule of law than authoritarian states. These more stable, predictable, and efficient governmental policies, less complicated regulatory system for business activities, and lower levels of corruption, in combination with a clearer and healthier legal system with laws and contracts that are enforceable in independent courts, facilitate foreign business and investment activities.⁴⁶⁴ There are also examples of authoritarian states, like China and Vietnam, that have carried out some good governance and rule of law reforms and thereby created conditions beneficial for foreign businesses. However, these are exceptions, their actions fall short of comprehensive reforms, and authoritarianism, good governance, and rule of law usually do not go well together, not at least because of conceptual clashes.⁴⁶⁵ The academic literature has also pointed to the difficulties of concurrently pursuing democratic, good governance, and rule of law reforms though, stressing the weak and volatile character of democratic actors, institutions, and processes during transition and consolidation processes.⁴⁶⁶

A second set of self interest-based motivations relates to increased levels of security for Western states. First, a frequently mentioned motivation is the so-called ‘democratic peace theory’, which can be traced back to Kant’s 1795 prediction of an ever-widening pacification

⁴⁶¹ Abele and Offe, at 9; Gillespie and Youngs, at 10.

⁴⁶² Beetham, *Democracy and Human Rights*, at 51.

⁴⁶³ W. I. Robinson, *Promoting Polyarchy: Globalization, United States Intervention and Hegemony* (1996).

⁴⁶⁴ Neumayer, at 917.

⁴⁶⁵ T. Carothers, ‘The “Sequencing” Fallacy’, at 15-17.

⁴⁶⁶ *Ibid*, at 18.

among ‘republican’ states and has been supported by empirical evidence in numerous studies. It suggests that “democracies almost never fight each other” but find other, more peaceful ways of solving their conflicts.⁴⁶⁷ It does not mean that democracies absolutely never go to war against each other or that they are inherently peaceful as regards all types of regimes, indeed, they are as aggressive and war-prone as other forms of government in relation to non-liberal regimes,⁴⁶⁸ but that they usually behave peacefully as regards other democracies and that the overall prospect for peace in the world increases with the number of existing liberal democracies. The democratic peace has been explained by the influence of democratic norms and culture, in particular the need of discussion and peaceful solution of conflicts, as well as the workings of democratic procedures and institutions, like the involvement of parliaments and civil society in decision-making.⁴⁶⁹ Other explanations rather stress factors that are correlated with democracy, like transnational linkages, wealth, trade and economic interdependence.⁴⁷⁰ While the democratic peace theory relates to established democracies, it has been shown that it is not necessarily also true for democratizing states, which appear to have a higher potential for conflicts, even higher than stable autocracies.⁴⁷¹

Secondly, democracies usually, even if not always, fare better in finding long-term solutions to different types of conflicts, like ethnic conflicts. Underlying reasons are, like the with the democratic peace theory, normative as well as institutional/procedural features of democracy. Authoritarian states tend to suppress conflicts until they eventually erupt in strife or civil war, causing waves of refugees or humanitarian crisis with consequences for developed, democratic states.

Further, while the relation between democracy, democratization and economic development is complex, it is established that democracies usually have higher levels of socio-economic development, while authoritarian states are poorer. Poverty, together with lack of political liberties, is a major factor for illegal immigration to the West.⁴⁷²

Finally, while it is now widely accepted that the causes of Islamist radicalism and related terrorism are complex, the absence of political liberalism (together with socio-economic

⁴⁶⁷ M. W. Doyle, ‘Kant, Liberal Legacies and Foreign Affairs’, in M. E. Brown, S. M. Lynn-Jones, and S. E. Miller (eds), *Debating the Democratic Peace* (1996), at 20; B. Russett, ‘The Fact of Democratic Peace’, in M. E. Brown, S. M. Lynn-Jones and S. E. Miller (eds), *Debating the Democratic Peace* (1996), at 58; M. Owen, ‘How Liberalism Produces Democratic Peace’, in M. E. Brown, S. M. Lynn-Jones and S. E. Miller (eds), *Debating the Democratic Peace* (1996) at 116.

⁴⁶⁸ Doyle, at 21.

⁴⁶⁹ B. Russett, ‘Why Democratic Peace’, in M. E. Brown, S. M. Lynn-Jones, and S. E. Miller (eds), at 82f, 90-2, 100-3 and 106; Doyle, at 24-5; K. Rasler and W. R. Thompson, *Puzzles of the Democratic Peace: Theory, Geopolitics, and the Transformation of World Politics* (2005), at 3.

⁴⁷⁰ Russett, ‘Why Democratic Peace’, at 84-90.

⁴⁷¹ E. D. Mansfield and J. Snyder, ‘Democratization and the Danger of War’, 20 *International Security* 1 (Summer 1995), at 5.

⁴⁷² Diamond, ‘Economic Development and Democracy Reconsidered’, at 468.

development) do still feature among its possible origins.⁴⁷³ By supporting the spread of liberal democracy, Western states can therefore contribute to fighting terrorism.⁴⁷⁴

A last, purposive-rational motive of democracy promotion, since the interventions in Afghanistan and Iraq in particular of positive instruments of democracy promotion, is that it provides states, organizations and other actors a stage to promote their own image as supporter of an ethical cause as well as, more generally, to be present internationally and in individual states.⁴⁷⁵

4. The Legality and Legitimacy of Democracy Assistance

While questions of legality and legitimacy of democracy promotion and assistance are frequently – for valid reasons – treated as a single issue, it appears useful to address them separately, as they do not entirely overlap. It can generally be said that, while democracy assistance is nowadays in principle considered to be legal under international law, there remain nevertheless questions about whether the particular model of democracy promoted by a specific donor is acceptable to the recipient government, civil society and citizens of target states.

a) Democracy Assistance in International Law and Allowed Restrictions

The core provision or rule of international law at stake as regards the legality of democracy assistance is the principle or rule of non-interference into the internal affairs of a sovereign state stipulated in Article 2(7) of the UN Charter and customary international law.⁴⁷⁶ It is violated if, first, the interference relates to an issue that lies within the exclusive domestic jurisdiction of a state and, secondly, if the threat or use of coercion is of a degree that can or does indeed restrict the free choice of a state.⁴⁷⁷ Fulfillment of the second criterion can relatively easily be discarded, as democracy assistance – different from negative measures like sanctions – is in principle consensual or at least tolerated, which by definition excludes coercion. Further, even if assistance projects are carried out against the will of the target state government, they will basically never be

⁴⁷³ S. Hamid and St. Brooke, 'Promoting Democracy to Stop Terror, Revisited: The Real Perils of an Undemocratic Middle East', *Policy Review* No. 159 (February 2010).

⁴⁷⁴ Netherlands Institute for Multiparty Democracy (NIMD), *No lasting Peace and Prosperity without Democracy & Human Rights: Harnessing Debates on the EU's future Financial Instruments* (Report commissioned by the European Parliament; Carried out under the auspices of the Netherlands Institute for Multiparty Democracy, July 2005), at 5; See also US policy justifications at <http://www.state.gov/g/drl/democ/> (last accessed on 25.3.2011).

⁴⁷⁵ See, for example, EuropeAid, 'EU Visibility Guidelines for External Action' (September, 2005).

⁴⁷⁶ Pippan, at 96-7.

⁴⁷⁷ Pippan, at 98f.

able to achieve the degree of coercion that is able to restrict the choice of the targeted state's government and therefore amount to the coercion required by Article 2(7)/customary law.⁴⁷⁸

The first criterion is more complex.⁴⁷⁹ Until the late 1980s, the choice of the political regime of a particular state was considered to be one of the fundamental elements of state sovereignty and therefore firmly within domestic and beyond international jurisdiction.⁴⁸⁰ This contrasted with the situation of human rights more generally and, in particular, of civil rights, for which a legitimate concern of the international community was by then accepted. Once states had agreed on UN human rights monitoring mechanisms in the late 1960s/early 1970s and signed and ratified the International Covenant on Civil and Political Rights (ICCPR), they could no longer in principle reject foreign concern about the human rights situation in their territory. The argument was quickly extended to all states.⁴⁸¹ Accepted mechanisms of foreign interference were verbal expressions of concern, monitoring, assistance, as well as increasingly, but with much more opposition and dispute, also coercive measures like conditionality and sanctions.

It is important to recall that some of the human rights already then considered beyond domestic jurisdiction constituted 'core' elements of the liberal democratic model, like the right to freedom of speech and association. However, the central liberal-democratic right, the right to participate in government and to vote in elections remained excluded from the changing definition of the domestic domain. To be precise, the right was expressed in Article 21 of the Universal Declaration of Human Rights (adopted in 1948) and Article 25 of the ICCPR and equally underlay the monitoring mechanism of the ICCPR as other included human rights, however, it was given an interpretation that did justice to most prevailing political systems, especially Communism and authoritarianism, and allowed, for example, single-party systems.⁴⁸² It rightly appeared as more defining of the political regime and more 'threatening' to authoritarian governments to be acceptable.

The relevant changes only occurred in the early 1990s. Since then numerous international lawyers have increasingly suggested that an 'international law of democracy' has developed, which contains a variety of principles and ideas relating to different areas of action.⁴⁸³ Most important for this discussion is the claim of the emergence of a 'right to democracy' or 'to democratic

⁴⁷⁸ Pippan, at 201-3. Only the financial and military support of groups which aim at forcefully overthrowing a government appears as more problematic and illegal, is not of relevance though, as it does not constitute democracy assistance as defined here. Pippan, at 203.

⁴⁷⁹ Lack of fulfilment of the second criterion in principle renders it unnecessary to also analyse the first; however, due to the interest in the issue of sovereignty, it appears highly important.

⁴⁸⁰ Pippan, at 102. See, for example, the judgement of the ICJ in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports 1986, at 392-443.

⁴⁸¹ Pippan, at 99-100.

⁴⁸² White, 'The United Nations and Democracy Assistance', at 73; Fox, at 570; Nowak, 'ARTICLE 25 Political Rights', at 436.

⁴⁸³ R. Burchill, 'Review Article: The Developing International Law of Democracy', 64 *MLRev* 1 (2001), at 126.

governance' in international human rights law.⁴⁸⁴ It implies the treatment of the core political rights like other human rights, in particular like other civil rights, that is, beyond domestic jurisdiction and accepting international 'interference' of various kinds, including monitoring and democracy assistance.

The main basis for the claim is the change in state practices since early 1990s. Since then a majority of states worldwide has a liberal or at least electoral democratic system, many international organizations explicitly embrace democracy as objective and membership criteria, basically all Western states implement democracy promotion policies, and democratizing, semi-authoritarian and even some authoritarian states accept democracy assistance in their territory.⁴⁸⁵ Also the creation, in 2000, of the Community of Democracies and the adoption of an UN General Assembly (UN GA) resolution on 'promoting and consolidating democracy' in 2000, as well as regular UN GA resolutions on "enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization" since the early 1990s, can be cited in support.⁴⁸⁶ On the one hand, it is therefore argued that the right to democracy has emerged as right of customary international law; on the other hand, many authors have referred to the already existing treaty provisions, in particular to Article 25 ICCPR, which have received a widely accepted re-interpretation.⁴⁸⁷

The developments and claims have not been undisputed and remain topics of discussion. Academic critique has especially been expressed as regards the easiness and rapidity with which claims have appeared, without sufficiently elaborating on their basis and, especially, disregarding that in many parts of the world (liberal) democracy has not yet taken root or is theory rather than practice. Further, there is critique on the lack of elaboration on the specific conception of democracy that underlies the emerging right and a too narrow focus on elections and 'electoral democracy' rather than more elaborate versions.⁴⁸⁸ At the same time, authoritarian states have

⁴⁸⁴ Franck, at 46f; Crawford, *Democracy in International Law* (1994); Burchill, at 123; S. Marks, *The Riddle of all Constitutions: International Law, Democracy and the Critique of Ideology* (2000), at 38.

⁴⁸⁵ Early accounts, like Franck in the early 1990s, also tried to trace the right to democracy to the practice and right to self-determination of the de-colonization process. Burchill, at 128; Marks, at 39.

⁴⁸⁶ <http://community-democracies.org/> (last accessed on 11.5.2011); U.N. General Assembly, 'Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization' (A/RES/54/173), 17 December 1999; U.N. General Assembly, 'Promoting and Consolidating Democracy' (A/RES/55/96), 4 December 2000; U.N. General Assembly, 'Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization' (A/RES/56/159), 19 December 2001; U.N. General Assembly, 'Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization' (A/RES/58/180), 22 December 2003; U.N. General Assembly, 'Enhancing the Role of Regional, Subregional and other Organisations and Arrangements in Promoting and Consolidating Democracy' (A/RES/59/201), 23 March 2005; U.N. General Assembly, 'Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization' (A/RES/60/162), 16 December 2005.

⁴⁸⁷ Pippan, at 103-4; Burchill, at 124; U.N. Human Rights Committee, General Comment 25.

⁴⁸⁸ Burchill, at 123-4; Marks, at 40.

continued to insist on their sovereignty as regards their type of government and, more recently, an increasing number of states that is moving towards authoritarianism, is doing so.⁴⁸⁹

On the whole, despite criticism and opposition, democracy assistance is today in principle widely considered a permissive tool under international law. At the same time, it is also widely accepted though that states are allowed to restrict certain types of democracy assistance on their territories. The extent to which such restrictions are permissible have to be determined by applicable regional and international human rights law. More concretely, the human right mostly at stake, in particular as regards donations to political parties and NGOs, is the right to freedom of association. While latter has in principle to be ensured, international law and regional human rights law, like the ECHR, allows for limitations through laws, if these are “necessary in a democratic society” (Article 22(2) ICCPR, Article 11 ECHR). While the question about ‘democratic necessity’ has to be determined for each state and situation separately,⁴⁹⁰ it appears that within the framework of the ICCPR as well as ECHR (outside the EU), restrictions for foreign donations to parties, in particular by states and businesses, are permissible as they ensure a proper democratic process rather than inhibiting it.⁴⁹¹ Also contributions in kind and possibly also advice can constitute forms of ‘donations’ and therefore fall under the relevant provisions. If advice benefits more than one party of the political spectrum though, it might be permissible. The question has to be answered differently as regards the civil society sector and in particular as regards NGOs, which perform a different role than political parties and vitally depend on donations. Restrictions to receive foreign donations, including the total prohibition, high taxes, the need to channel foreign donations through specific (governmental) bank accounts, and other burdensome reporting requirements, are widely considered to go beyond what is ‘necessary in a democratic society’ and are therefore illegal.⁴⁹²

All in all, there have been increasing calls for a more explicit international codification of permissible and non-permissible forms of democracy assistance.⁴⁹³

⁴⁸⁹ Carothers, ‘The Continuing Backlash against Democracy Promotion’, at 60.

⁴⁹⁰ European Commission for Democracy Through Law (Venice Commission), Opinion the Prohibition of Financial Contributions to Political Parties from Foreign Sources, Opinion No. 366/2006, CDL-AD(2006)014, 31 March 2006, at para. 24.

⁴⁹¹ See the explicit recommendation to “limit, prohibit or otherwise regulate donations from foreign donors” by the Committee of Ministers of the Council of Europe, Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe to member states on common rules against corruption in the funding of political parties and electoral campaigns, Art. 7. See also: European Commission for Democracy Through Law (Venice Commission), Guidelines for Financing of Political Parties, CDL-PP (2000)6, which calls for a prohibition of foreign donations.

⁴⁹² See, for example, Committee of Ministers, Freedom of Association: Thematic Report presented by the Secretary General and Decisions on Follow-up Actions taken by the Committee of Ministers, CM/Monitor(2005)1 Volume II, at II.A.4.

⁴⁹³ Fukuyama and McFaul, at 43; Carothers, ‘The Continuing Backlash against Democracy Promotion’, at 71.

b) The Legitimacy of Democracy Assistance

The question of legitimacy refers to the acceptability of a particular actor's project, programme, or broader strategy of democracy assistance. In other words, is the particular model of democracy being promoted by one donor the most suitable and most viable for a particular target state and does the policy, as much as possible just support the development of the domestic model of democracy that would have developed without (intensive) foreign involvement rather than 'imposing' or fostering the development of a 'foreign' system. It should be recalled here that the international dimension has (most likely) always had some influence upon domestic developments. In other words, any 'domestic' democratic model had always been to some degree influenced by external factors and was not the result of domestic factors only, like historical experiences, the type of authoritarianism, the mode of transition, the socio-economic situation, and cultural factors (most of which themselves have been influenced by external developments). Consequently, some external influence has in principle to be accepted as legitimate. However, with the much more intensive and direct forms of democracy promotion and higher (potential) influence upon the domestic system, questions of legitimacy necessarily arise.

The argument is made here that donors in practice, despite frequently claiming the opposite, do not and, indeed, in most cases, cannot restrict themselves to the promotion of the central, general and universally accepted elements (rights) of democracy. Rather, they consciously and/or unconsciously facilitate the development of a specific model of democracy. First, in most projects and programmes the core meaning of the various rights will be given more substance and thereby extent into and suggest a particular conception of democracy.⁴⁹⁴ For example, projects on the freedom of association hardly ever only consist of advising governments and parliaments on or advocating for an NGO law that ensures the freedom to found NGOs. In the overwhelming majority of cases the promotion of this particular right consists of direct support to the civil society sector (next to, but less, to the political society sector) and shapes latter by favouring certain groups before others, like advocacy NGOs before private voluntary organizations, and fosters certain types of activities and behaviours that are core elements of certain democratic systems but not others, like advocacy.⁴⁹⁵ Secondly, donors foster particular models of democracy by focusing to different degrees on the various rights/elements of the right to democracy. For example, a donor who predominantly focuses on elections and political parties

⁴⁹⁴ See, for example, the model underlying US policies, as suggested by Carothers. Carothers, *Aiding Democracy Abroad*, at 86-7 and 91.

⁴⁹⁵ Carothers, at 211-2; B. Challand, *Benevolent Actors? International Donors and Civil Society Support for Palestinian NGOs*, Paper presented at the Sixth Mediterranean Social and Political Research Meeting, Montecatini Terme, 16-20 March 2005, at 20f; For a differentiation among certain civil society groups see Schmitter and Brouwer, at 19-20.

and neglects civil society promotes a form of elitist democracy rather than a more participatory one.⁴⁹⁶ The third way in which donors promote certain models results from their focus on the here so-called supporting or other protected rights of democracy. For example, donors who restrict themselves to core rights and, among these, on elections rather than civil society, and complement such assistance by programmes that develop free markets, facilitate the development of a limited liberal model, while donors who invest efforts into the promotion of social rights, assist in the creation of a form of social democracy.

The suggested solution to the raised issue of promoting certain specific models of democracy rather than just core, universally accepted rights is not to restrict oneself to the promotion of latter. First, by limiting oneself to these core meanings, the range of possible projects will necessarily be smaller and even further reduce the potential impact of assistance policies. For example, assistance to the adoption of NGO legislation that guarantees rights of these groups, which is crucial and even appears as precondition for any civil society activity, does not, however, help NGOs to actually emerge, become professional, and sustain. Latter could only be supported with more elaborate and sophisticated projects and programmes that go beyond the core meaning of the (negative) right. Similarly, legally guaranteeing the freedom to impart information does not necessarily lead to an independent and professional media sector. More elaborate projects and programmes are not only reality and a return to more basic, limited assistance hardly imaginable, but they are also widely considered to be necessary and are requested by recipients. Secondly, even if donors would limit themselves to core meanings, the same problem would arise, as donors would, as mentioned, weigh different – and equally legitimate – core and supporting rights to different degrees, without that it would be possible to prescribe a single acceptable mix.

The solution therefore has to be a different one. It is suggested that legitimacy of democracy assistance can be achieved, while using more elaborate projects and programmes, by a high degree of involvement of recipients in policy and strategy making for individual countries. Involvement is imaginable at least two different levels, the governmental and civil society level, which could separately define country strategies for the particular sectors they represent. Ideally and depending on the particular situation of a state, also a common exercise of the public and private sectors is imaginable. Fostering cooperation among these sectors would itself constitute a valuable exercise in democracy promotion. It needs to be mentioned, that many donors involve third state's government into the strategy-making process, which also represents the 'consensual' nature of democracy assistance. At the same time, civil society has so far largely been left without

⁴⁹⁶ See Chapter 1 for the various models of democracy.

say in the determination of policies and strategies, but has only been involved in the implementation stage.

5. The Effectiveness of Democracy Assistance

One of the most basic questions asked about democracy assistance is whether it can be an effective form of democracy promotion and/or whether democracy assistance, as has been practiced over the last two decades by various donors, has successfully contributed to moving forward liberalization and democratization in individual target countries and is therefore worth continuing and developing. An answer to the first, more general question can only be based on an assessment of actually practiced democracy assistance and therefore depends on answering the second. However, a negative assessment of actually implemented assistance policies over the last decades does not necessarily imply that the instrument of assistance as such is necessarily ineffective, as deficiencies in policy-making and implementation rather than characteristics of the instrument might account for it.

Unfortunately, the answer to both questions is that we do not (yet) know for sure. Despite increasing efforts to develop democracy support evaluation tools, there continue to be many weaknesses in the state of art of evaluating democracy assistance programmes and projects.⁴⁹⁷ Overall, efforts to evaluate democracy assistance and, as one element thereof, to assess the effectiveness of a project or programme, have used methodologies developed in the framework of studying (socio-economic) development issues. They have therefore employed quantitative methods, which have used various statistical programmes,⁴⁹⁸ and qualitative methods, which are mainly retrospective evaluations that base their assessment largely on interviews with individuals that have been involved in a project or programme.⁴⁹⁹ Rarer, but of increasing attraction are participant-observers methods in which a researcher ‘lives’ with a project for a longer period of time during project implementation and more ‘participatory’ methods, which aim at a strong involvement of individuals positively and negatively affected, including as evaluators.⁵⁰⁰ While most of these quantitative and qualitative studies invest much effort into clarifying and justifying their methodologies, most of them remain subject to, often considerable, critique. The two major difficulties facing all studies on democracy assistance appear to be

⁴⁹⁷ P. Burnell, ‘Chapter 1: Methods and Experiences of Evaluating Democracy Support: A Moving Frontier’, in Int. IDEA and SIDA: Evaluating Democracy Support: Methods and Experiences (2007), at 27 and 33.

⁴⁹⁸ See, for example, USAID, *Final Report: Effects of U.S. Foreign Assistance on Democracy Building*; S. Knack, ‘Does Foreign Aid Promote Democracy?’, 48 *International Studies Quarterly* (2004), at 251f; Scott and Steele.

⁴⁹⁹ Carothers, *Aiding Democracy Abroad*, at 286; Burnell, at 18.

⁵⁰⁰ Carothers, *Aiding Democracy Abroad*, at 301; G. Crawford, ‘Promoting Democracy From Without – Learning from Within (Part II)’, 10 *Democratization* 2 (Summer 2003), at 1-20.

determining indicators for democracy, for (successful) democratization, as well as establishing the causality of assistance for changes, given that assistance is just one factor in a very complex system and process.⁵⁰¹

Independent and well-founded studies carried out over the last two decades have come to diverging results as regards the effectiveness of democracy assistance programmes. Qualitative evaluations have largely concluded rather disappointingly on the effects of assistance in individual countries and at most found a limited or moderate impact. For example, Carothers has found that US democracy assistance in Romania in the first half of the 1990s has had some, but overall rather little impact at the meso- or partial regime-level and the macro- or the regime-level, as well as that some projects (the micro-level) had no or even negative impacts.⁵⁰² In a later study, he found that USAID assistance during the 1990s had at best made minor contributions to improvements in some sectors in Guatemala, that none of the projects carried out in Zambia had more than marginal effects, and that US assistance basically had no impact in Nepal.⁵⁰³ A study on foreign aid in South Africa in the second half of the 1990s finds an impact of foreign assistance in the civil society sector, but criticizes the particular type of democracy promoted, more concretely, the absence of social components.⁵⁰⁴ Similarly, Carapico found an impact, but criticised that assistance created conflict rather than cooperation between governments and NGOs in the Middle East.⁵⁰⁵

Quantitative studies have equally produced mixed results. While some have not found any positive effect of assistance on democratization, others have discovered, albeit moderate, positive impacts.⁵⁰⁶ Most notable in this respect is a comprehensive USAID-sponsored study on the effects of American democracy assistance in more than 160 countries between 1990 and 2003, which found that US assistance has overall, although in some regions more than in others, helped to increase democracy above the levels that would have been achieved without it and, in particular, at the meso-levels of elections, political processes and civil society.⁵⁰⁷

Hardly any researcher has concluded that assistance cannot be an effective instrument though. The reasons for the small or lack of impact were rather seen to lie in an insufficient

⁵⁰¹ Carothers, at 282-3; USAID, *Final Report: Effects of U.S. Foreign Assistance on Democracy Building*, at 6-7; Burnell, 'Chapter 1: Methods and Experiences of Evaluating Democracy Support', at 22-5.

⁵⁰² T. Carothers, *Assessing Democracy Assistance: The Case of Romania* (1996), at 89-97; See his slightly more positive tone in 1999 in: Carothers, *Aiding Democracy Abroad*, at 327; USAID, *Final Report: Effects of U.S. Foreign Assistance on Democracy Building*, at 10.

⁵⁰³ Carothers, *Aiding Democracy Abroad*, at 317, 320 and 322.

⁵⁰⁴ J. Hearn, 'Aiding Democracy? Donors and Civil Society in South Africa', 21 *Third World Quarterly* 5 (2000), at 828.

⁵⁰⁵ S. Carapico, 'Foreign Aid for Promoting Democracy in the Arab World', 56 *The Middle East Journal* 3 (2000), at 379f.

⁵⁰⁶ Knack, at 262. For critique of Knack's study see USAID, *Final Report: Effects of U.S. Foreign Assistance on Democracy Building*, at 11; Scott and Steele, at 454.

⁵⁰⁷ USAID, *Final Report: Effects of U.S. Foreign Assistance on Democracy Building*, at 3.

number of projects and failures in programme design and implementation.⁵⁰⁸ At the same time, studies which showed a moderately positive impact also recall that expectations as regard the potential impact of assistance need to remain modest, as it can only support and facilitate processes but not determine political developments in third states.⁵⁰⁹ In any case, despite some suggestions to abandon evaluation in view of the difficulties of measurement, the overwhelming majority of practitioners and scientists rightly continue to invest efforts into improving existing methods or developing new ones.⁵¹⁰

6. Limitations of Quantitative Data and some Statistics on Democracy Assistance

As indicated, democracy assistance is usually measured in amounts spent for projects and programmes. While this does not ultimately provide information about the quality and effectiveness of the tool, it nevertheless has some informative value. Higher commitments (and expenditures) reflect that donors attribute a more important role to the instrument and at least suggest a higher potential impact. This section highlights the problems of currently available data on democracy assistance and provides some statistics on democracy assistance by major international donors.

a) Limitations of Quantitative Data on Democracy Assistance

Currently available quantitative data on democracy assistance by different donors has to be consulted with considerable care as it is impregnated with several limitations. This particularly applies to comparative exercises. The major problem is the question of which type of assistance is considered to be democracy assistance and therefore included in the dataset. As mentioned above, donors can and do define democracy and democratization differently. While they overall agree on several central elements of democracy assistance, like electoral assistance, they do not necessarily have the same view on whether other elements, like rule of law, human rights, civil society, and administrative reform should be included in or excluded from the category of democracy assistance and therefore reported on in the same or separate datasets. A related problem is that hardly any donor is very explicit about its applied or underlying definition of

⁵⁰⁸ Carothers, *Assessing Democracy Assistance: The Case of Romania*, at 91-3. But see also, USAID, *Final Report: Effects of U.S. Foreign Assistance on Democracy Building*, at 3 and 10.

⁵⁰⁹ Carothers, *Aiding Democracy Abroad*, at 308.

⁵¹⁰ Carothers, *Aiding Democracy Abroad*, at 284; Burnell, 'Chapter 1: Methods and Experiences of Evaluating Democracy Support', at 16.

democracy assistance and that it therefore frequently remains obscure what is exactly reported on. Obviously, comparisons of datasets of different donors can therefore be problematic.

A second major and related difficulty concerns the question of categorizing different sub-types of democracy assistance. On the one hand, there is the more basic issue of selecting these sub-types. Donors are using different sub-categories, which, again renders comparisons difficult. Further, individual donors have frequently not used the same sub-categories in different reports on their democracy assistance programmes, have changed their categorizations in subsequent or parallel reports, or have used entirely different sub-sectors in programming and implementation documents, which makes it difficult to present aggregate data, trace evolutions, and assess implementation. On the other hand, there is the question of allocating projects (or even programmes) to different sub-categories. Donors have overall not provided their staff with relevant categorization criteria, which can render attributions slightly arbitrary, especially if individual projects and programmes pursue multiple objectives and more than one categorization is in principle possible or if project names do not really reflect the focus of activities. Clear instructions for those who are categorizing would help ensuring a more precise presentation of actual activities of donors.

Next to these main problems, there are several other issues that need to be born in mind when working with quantitative data on democracy assistance. During the early years of democracy assistance, that is, until the early-mid 1990s, reporting was rare and information is therefore often not available or incomplete. Since then most donors have published regular reports, however, due the growth of the sector and high amount of information, these documents are now often rather general or just provide selective or descriptive data rather than being comprehensive and clearly breaking down data for different thematic foci or for individual regions and countries. Overall, public donors, especially states and international organizations, which underlie stronger accountability rules, are usually better at providing data than private organizations. Some donors provide comprehensive and, as they claim, complete lists of projects funded by the particular donor during a particular period of time. These provide very detailed information, however, in order to give a useful insight into a donor's activities by sector and country or region, which can be used as basis for assessments and/or future policy decisions, they would need to be complemented by analytical sections, which are often missing.

Another problem relates to the fact that donors run various democracy assistance programmes, some of which are more clearly marked as such while others only have smaller democracy assistance components and run under more general titles. In reports reference is often only made to the first type of programme, like the EIDHR, while others are being neglected. This carries a high risk of providing distorted information. Further, data for democracy assistance can

either represent budgetary allocations, that is, (legal) pledges to provide a certain amount of funding during a particular period of time, usually a budget year, or expenditure during a certain period of time, that is, data on actually disbursed funds. Both are imported sources of information and together provide a complete picture of donor activities. Commitments and disbursements should in the long run more or less overlap, however, budget allocations and expenditure differ in individual years due to natural and unnatural delays in project implementation, which renders comparisons difficult. Natural delays result from the amount of time needed to implement projects, while unnatural delays result from inefficiencies in administrative actions. Some budgeted allocations will usually not be spent due administrative mismanagement or due to the fact that difficult situations in target states make implementation impossible. One problem of donor data is that it often does not clearly indicate whether it relates to commitments or expenditures.

A quantitative data source analysts of democracy assistance have increasingly drawn from is statistical databases of the Organization for Economic Co-operation and Development (OECD).⁵¹¹ They contain statistics on aid flows from all international donors to developing countries in different thematic sectors. The data are provided on an annual basis by the various international donors themselves, but are controlled by the OECD to conform to certain definitional standards. They are available online and therefore easily accessible.

Reporting to the OECD on aid flows has not always been covered all flows, but has increasingly done so. The completeness of data on commitments has improved from 70 % in 1995 to over 90 % in 2000 and has nearly reached 100 % from 2003 on. Reporting on disbursements has been around and over 90 % since 2002, since when data on disbursements is available online.⁵¹² For the period since 2000 and 2002, respectively, OECD data therefore provides a reliable and valuable source of information, while data for the preceding period still helps to get insight into donor activities, but has to be read with the awareness of its limitations.

The thematic categories on which aid flows are reported are predetermined by the OECD and include sectors like social infrastructure, economic infrastructure, production (agriculture, industry etc.), and humanitarian aid. The OECD sector that is usually made recourse to when reporting on democracy assistance is ‘governance and civil society’. It forms part of the broader sector on social infrastructure and consists of two main sub-categories, ‘government and civil society – general’ and ‘conflict prevention & resolution, peace & security’. Although studies often provide overall data on both categories, it is more accurate to focus on the first category only and

⁵¹¹ <http://stats.oecd.org/qwids/> (last accessed on 3.5.2011).

⁵¹² OECD – QUIDS – Query Wizard for International Development Statistics – About at <http://stats.oecd.org/qwids/about.html> (last accessed on 31.7.2012).

to leave aside the second, as the latter constitutes a different thematic topic that can clearly be distinguished from democracy assistance.

The category ‘government and civil society – general’ has since 2009 comprised the following eleven sub-sectors: (1) public sector policy and administrative development; (2) public financial management, (3) decentralization and support to sub-national governments; (4) anti-corruption organizations and institutions; (5) legal and judicial development, (6) democratic participation and civil society; (7) elections; (8) legislature and political parties; (9) media and free flow of information, (10) human rights; (11) women’s equality organizations. Before that year it used slightly different sub-categories, in particular, category (1) was reported on in two separate sub-categories (‘economic and development policy and planning’ and ‘government administration’) and categories (3), (4), and (8) were not reported on separately. Lack of data for certain years in statistics is therefore to a large extent due to the new organization of categories in 2009 (as well as, of course, lack of aid flows). While the addition of more specific sub-categories has to be welcomed, the merger of public sector policy and government administration into a very comprehensive category runs counter the aim of providing a more detail insight into donor activities.

It should at this point be stressed that a major problem with the use of OECD data on ‘government and civil society – general’ for democracy assistance is the broad thematic scope of the category. While definitions of democracy assistance definitely vary, most agree that fields like ‘public sector policy and administrative development’, ‘public financial management’, ‘decentralization and support to sub-national governments’, and ‘anti-corruption organizations and institutions’, and ‘human rights’, while overlapping with democracy assistance, go beyond the meaning of the term.⁵¹³ When using OECD data, the broader scope of assistance reported on needs to be kept in mind and, as will be seen below, individual sub-categories can be used to construct the category of democracy assistance.

The geographical coverage of OECD data is slightly complex as it has undergone several changes during the last two decades. Since 2005, the databases only include data on so-called official development assistance or ODA, which are flows to developing countries that are included in the OECD/DAC list of aid recipients.⁵¹⁴ This list includes all least, low and middle income countries, which are countries that, for example in 2008, had an annual per capital GNI

⁵¹³ Carothers considered the sub-sector ‘support to local government’ as part of democracy assistance. Carothers, *Aiding Democracy Abroad*, at 189f. FRIDE, a leading think tank on the topic of European democracy promotion, in its reports on democracy assistance by individual European donors for a World Movement of Democracy project, made recourse to OECD data on the sector ‘government and civil society’, thereby adopting a very broad definition. <http://www.fride.org/project/19/assessing-democracy-assistance> (last accessed on 28.12.2012).

⁵¹⁴ Other definitional elements of ODA are (1) origin from the public sector, (2) objective of economic development and welfare promotion, and (3) have a concessional element (if a loan, a concessional element of at least 25%). See Glossary of the OECD at <http://stats.oecd.org/qwids/glossary.html> (last accessed on 3.5.2011).

of less than about 11500 US\$, are not members of the G8, the EU, or had a firm data for EU accession. Aid flows to, for example, Russia and the CEECs, albeit small or inexistent, are therefore not reported on. The list currently comprises about 155 low- and middle-income countries and territories. During 1993 and 2004, the OECD additionally operated with a second list of aid recipients that received so-called official aid (OA) and comprised of more advanced developing countries and most countries in transition from Communism, in particular the CEECs and the Western NIS Russia, Ukraine, and Belarus. Other former Soviet states had from the early 1990s on been included in the list of ODA recipients. Data for OA is not accessible anymore today which makes it, for example, impossible to identify aid flow to the Ukraine before 2005 from the OECD database. Further, during the last two decades many countries shifted from one group to the other, graduated from the ODA list, or were added to the list. All in all, when extracting data for individual years or periods, it is necessary to keep these changing geographical scopes in mind.⁵¹⁵

b) Some Statistics on Democracy Assistance by Major Donors

The following tables provide data on democracy assistance by the major Western donor countries. Table 2 shows the strong increase in US democracy assistance expenditure during the period 1990-2005, which rose from about 128 million US\$ in 1990 to about 902 million US\$ in 2005. The data represented in the Table was extracted for an academic study from records held in USAID databases, using a clear and specific definition of democracy assistance rather than providing data collected and categorized by the donor itself.⁵¹⁶ It therefore constitutes a highly valuable source, which is, due to the complex and time-consuming collection method, rarely, if at all, available for other donors. Table 3 provides data on US democracy assistance during the period 2006-2010, representing net costs, that is, costs of operating USAID's objectives in the sectors 'democracy and human rights' (until 2006) and 'governing justly and democratically' (since 2007), as provided by USAID itself in its annual financial reports for the years 2006 to 2010.⁵¹⁷ Finally, Table 4 represents the distribution of USAID democracy assistance among the major thematic sectors for the entire period 1990-2005, again using data collected for the just mentioned academic study.⁵¹⁸

⁵¹⁵ See the History of DAC lists of ODA recipient countries at http://www.oecd.org/document/55/0,3746,en_2649_34447_35832055_1_1_1_1,00.html (last accessed on 28.12.2011).

⁵¹⁶ Azpuru, Finkel, Pérez-Liñán, and Seligson, at 151-2. USAID, *Final Report: Effects of U.S. Foreign Assistance on Democracy Building*.

⁵¹⁷ <http://www.usaid.gov/performance/afr/index.html> (last accessed on 4.5.2011).

⁵¹⁸ Azpuru, Finkel, Pérez-Liñán, and Seligson, at 157.

Table 2: US (USAID) Democracy Assistance 1990-2005 (expenditure; in million US\$)⁵¹⁹

Year	1990	1991	1992	1993	1994	1995	1996	1997
US\$ (mill.)		195.70	259.82	352.56	414.37	483.34	418.10	446.30
1998	1999	2000	2001	2002	2003	2004	2005	1990-2005
555.92	520.18	539.59	549.17	753.62	817.22	1134.44	901.94	Total: 8470.35

Table 3: US (USAID) Democracy Assistance 2006-2010 (total costs; in million US\$)⁵²⁰

Year	2006	2007	2008	2009	2010	2006-2010
US\$ (mill.)	1014	1303	1410	1753	1768	7694

Table 4: Distribution of US (USAID) Democracy Assistance 1990-2005 by major Sectors (expenditure; in million US\$)⁵²¹

Sub-Sector	US\$ (mill.)	% of Total
Election	1190.43	14.1
Rule of Law	1611.95	19.0
Governance	2494.20	29.4
Civil Society	3173.77	37.5
Total	8470.35	100

Table 5, available on the next page, provides data on democracy assistance in million Euros by major European donor states during the period 1999 to 2006.⁵²² The data stems from reports by donors themselves and therefore relates to democracy assistance as defined by the individual donors rather than by a standardized definition. Comparisons within the Table are therefore problematic and it should rather serve to give some general indications on commitments (and in the case of Denmark on expenditure) by European states. Blanc fields indicate that no data has been available.

Finally, Tables 6 and 7, printed on the next page, provide data on ODA commitments and expenditure in the OECD sector ‘government and civil society – general’ (excluding the fields ‘conflict, peace and security’) by the major Western donor states of democracy assistance for all developing countries during 2005-2009 and 2002-2009, that is, for those years for which data is available in the OECD statistical databases.⁵²³ As mentioned, the sector ‘government and civil society – general’ is broader than the majority of definitions of democracy assistance. However, it allows comparing the level of engagement of the various actors.

⁵¹⁹ Azpuru, Finkel, Pérez-Liñán, and Seligson, at 153.

⁵²⁰ <http://www.usaid.gov/performance/afr/index.html> (last accessed on 4.5.2011).

⁵²¹ Azpuru, Finkel, Pérez-Liñán, and Seligson, at 157.

⁵²² Data for the Table has been extracted from a FRIDE study: Youngs (ed.), *Survey of European Democracy Promotion Policies 2000-2006*.

⁵²³ <http://stats.oecd.org/qwids/> (last accessed on 25.5.2011).

Table 5: Democracy Assistance by selected European States 1999-2006 (commitments; in million Euros)⁵²⁴

Donor/ Year	Germany (BMZ)	UK (DfID)	Sweden (SIDA)	The Netherlands (MFA)	Denmark (Danida)	Spain (MFA)	France (MFA)
category	democracy, civil society, public adminis- tration	governance	democratic governance	good governance (until 2004 also human rights and peacebuild- ing)	Human rights and democra- tisation	democracy promotion and rule of law	governance
1999			123				
2000	180				90		
2001	250		163		117	70	
2002	290			75	129	97	86
2003	350	276	189	64	153	103	81
2004	360	413		42	162		62
2005		346		158	159		
2006		508		154			

Table 6: OECD ODA Commitments in the Sector 'Government and Civil Society – general' by major Western Donor States for all Developing Countries 1995-2009 (in million US\$)⁵²⁵

Year/ Donor	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Australia	11	82	75	78	180	108	107	116	281	456
Canada	130	147	76	129	142	144	113	160	203	266
Denmark	58	51	71	37	76	47	122	98	128	125
Germany	35	7		33	156	148	185	234	295	348
Japan	312	229	26	16		60		26	140	130
The Netherlands	106	184	65	76	79	189	147	283	315	264
Sweden	104	148	197	140	129	119	163	162	255	292
UK	120	148	107	263	281	424	456	509	550	704
US	1424	416	550	592	503	548	1263	1294	1046	4159

Year/ Donor	2005	2006	2007	2008	2009	Total
Australia	372	512	482	782	820	4462
Canada	388	394	690	554	458	3994
Denmark	228	111	214	344	245	1955
Germany	383	570	823	933	992	5142
Japan	102	309	250	209	82	1891
The Netherlands	228	457	351	494	398	3636
Sweden	529	634	367	454	542	4235
UK	967	804	583	2052	1300	9268
US	3703	1992	3581	3979	4638	299688

⁵²⁴ Youngs (ed), *Survey of European Democracy Promotion Policies 2000-2006*, in particular, at 20, 39, 89, 120, 140, 167, 188, and 216. The acronyms mentioned in the Table refer to the following ministries and development agencies: BMZ (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung); DfID (Department for International Development); SIDA (Swedish International Development Agency); MFA (Ministry of Foreign Affairs); Danida (Danish International Development Agency).

⁵²⁵ <http://stats.oecd.org/qwids/> (last accessed on 25.5.2011).

Table 7: OECD ODA Disbursements in the Sector ‘Government and Civil Society – general’ by major Western Donor States for all Developing Countries 2002-2009 (in million US\$)⁵²⁶

Year/ Donor	2002	2003	2004	2005	2006	2007	2008	2009	Total
Australia	107	176	223	364	469	569	560	483	2951
Canada	94	142	171	250	273	370	430	410	2140
Denmark		80	76	90	114	158	160	213	891
Germany	129	216	275	373	563	700	884	952	4092
Japan	2	147	110	70	243	267	218	98	1155
The Netherlands	170	205	242	256	295	344	397	368	2277
Sweden	155	197	259	274	457	488	498	534	2862
UK	340	430	567	729	891	1125	1391	803	6276
US	1006	1088	2244	3750	1763	2323	2818	3918	18910

III. Conclusion

Chapter 2 has provided an overview of selected, major questions concerning the phenomenon and study of democracy assistance. Familiarization with these topics and the related academic and policy-oriented literature is a precondition for the more detailed study of EU democracy assistance.

The Chapter has first addressed the evolution of democracy assistance at the international level. It pointed to numerous individual examples of democracy assistance throughout the first six decades of the 20th century, like under W. Wilson and J. F. Kennedy and as part of decolonization, which did not amount to long-term policies though. The Cold War, opposition by target states, the prevalence of the modernization theory, as well as the more limited number and appeal of liberal democracy accounted for this lack of development. The provision of political aid by the German political foundations in the early-mid 1970s is usually seen as the start of the current more widespread and long-term use of democracy assistance. The US, which frequently stood out as key actor in the evolution of the policy tool, followed suit in the early-mid 1980s by creating the NED and starting to provide democracy assistance through USAID. Its policy shift was initially the result of strong anti-communism and soon driven, against the background of transitions in Latin America, by Wilsonian ideas. European actors only entered the stage in the early 1990s, once the Cold War was over, the third wave had swept over Central and Eastern Europe, and a new development credo had taken root. Since then, democracy promotion has remained a foreign policy objective of basically all liberal democratic state and democracy assistance a major tool thereof, as evidenced by increasing aid budgets, a stabilization of actors, a geographical spread of activities, and increasing professionalization in the sector. At the same

⁵²⁶ <http://stats.oecd.org/qwids/> (last accessed on 25.5.2011).

time, it has always faced and is again increasingly facing opposition from authoritarian target states that are using various means to hinder the implementation of projects on their soil.

Secondly, Chapter 2 has introduced two ideal typical approaches to democracy assistance, as suggested by Thomas Carothers: the political and the developmental approach. The political approach focuses on the central institutions and processes of a liberal democratic system of government and primarily supports political parties, civil rights focused (advocacy) NGOs, the media, parliaments, and (with limitations) rule of law development. The developmental approach avoids such political work and rather focuses on broader, underlying structures and less politically active bodies. It supports governance reform (leaving aside the political sphere), capacity building, decentralization, rule of law reform, civil society development in the socio-economic sector, and human rights. Both approaches have advantages and disadvantages. For example, the political approach points to the core issues of democracy and democratization, but might be too confrontational for some dictatorial regimes and risk the expulsion of actors. The developmental approach highlights the need of broader and long-term reforms for democracy to take root and survive, while being criticized for doing everything else than promoting democracy. While the first is primarily associated with the US and the second with European policies, in practice, both are found on each continent and major actors usually pursue a combination of both. Donors pursuing the one or the other approach, or mixes thereof, can learn from each other and strive to better coordinate their activities. The diversity is to be considered positive in view of the complexity of democratization processes and lack of knowledge about the best course of action.

Thirdly, Chapter 2 has shed light on the possible motivations underlying democracy promotion and assistance. It has distinguished between value rational/ethical motives and instrumental motives. In the case of value-rational motives donors engage without self-interest but in order to assist people to achieve the only legitimate form of government as well as the best form of government. Democracy is widely considered the only acceptable form of regime as it realizes the values of human self-determination or autonomy and of equal human worth and dignity. Further, it is considered the best form of government as it produces better policies, has higher levels of regime acceptance, and higher levels of human rights protection. In the case of instrumental motivations, donors are led by their own interests rather those or only those of target states. The most known positive externalities of democratic systems are free trade and positive climates for foreign investment, security due to the democratic peace theory, and lower rates of (illegal) migration. In practice, donors will usually be influenced by both types of motivations.

Fourthly, the Chapter has addressed the question of legality of democracy assistance and shown that there is wide agreement that it is nowadays a legal form of engagement under

international law. More specifically, questions concerning types of government are no longer within the exclusive domestic jurisdiction and various forms of external involvement on the topic therefore permissible. A right to democracy is emerging as human right, which rests on both, state practice since the early 1990s, as well as on provisions of the ICCPR (in particular Article 25 ICCPR). At the same time, certain restrictions on external democracy assistance are permissible, like the prohibition of foreign donations to political parties. A different question concerns the legitimacy of democracy assistance or the acceptability of such assistance by the target state and/or its population. As donors always work with a particular model of democracy, legitimacy can be achieved by a strong involvement of the recipient in the design of assistance strategies.

Fifthly, Chapter 2 has addressed questions of the effectiveness of democracy assistance. It has shown that despite increasing efforts in devising evaluation tools, evaluators do still struggle with developing the best methodologies to assess democracy assistance projects and programmes. Problems in particular relate to questions of definitions of democracy and democratization. Existing studies have come to different results on democracy assistance' effectiveness. Qualitative studies have largely only found modest effects or such limited to specific sub-systems of democracy. At the same time, some quantitative studies have shown positive results of programmes, like of USAID democracy assistance during the 1990s.

Finally, Chapter 2 has pointed to some existing limitations in the presentation of quantitative data on democracy assistance. Most notably, donors use different definitions on democracy assistance and therefore do not report on exactly the same phenomenon, which renders comparisons difficult. Additionally, many donors lack to specify what exactly they are reporting on. Similarly, often sub-sectors of democracy assistance differ from donor to donor or even with different donor reports, which makes comparisons difficult. Frequently donors do not specify whether they are reporting on commitment or expenditure data. Finally, while the OECD database on aid provides a valuable source that allows easy access to data of all major donors, democracy assistance is not one of its aid categories, but the broader category of 'governance and civil society' has to be used as most approximate category.

Having these limitations in mind, the Chapter has concluded with some data on democracy assistance by major international donors. The various Tables indicate the constant growth of aid budgets in the sector ever since the early 1990s.

PART II: AN ANALYSIS OF EU DEMOCRACY ASSISTANCE

Chapter 3: Introducing EU Democracy Assistance: The Emergence and Evolution of the Policy Instrument

I. Introduction

Chapter 3 introduces the topic of EU democracy assistance. It adopts a chronological approach and outlines the emergence and evolution of this particular policy instrument from the mid-1980s until today, differentiating between eight subsequent stages. Each stage is dominated by one or more particularly important developments as regards the instrument, which was defined in the framework of various EU policies, like the EU's external human rights and democratization policy, development policy, and regional policies like the European Neighbourhood Policy (ENP). While references to these broader policies are made, the focus of Chapter 3 is mainly on the tool of assistance.

The evolutionary overview sheds light on several more specific questions concerning democracy assistance. It presents the various actors that have played a crucial role in the emergence and development of the instrument and mentions the major disputes and discussions among the numerous EU institutions that have moved the policy instrument forward. It highlights the motivations that underlie EU democracy promotion, including assistance. It introduces the EU structure for providing democracy assistance, that is, the various types of programmes that fund EU democracy assistance projects. Further, it focuses on the EU's approach to democracy assistance and aims to discover whether EU actions can rather be attributed to the so-called developmental or political approach to democracy assistance. Finally, Chapter 3 aims at working out the model of democracy that underlies EU action.

Chapter 3 mainly draws from policy documents published by the various EU institutions over the last decades. The development of EU democracy assistance constitutes an interesting and important topic that should not be missing in a broadly conceived study of EU democracy assistance. At the same time, this chapter addresses many programmes, actors, and issues that will reappear and be discussed in more detail in following chapters and therefore serves as useful introduction to these later chapters.

II. The Major Stages in the Development of EU Democracy Assistance

1. The Pre-1990s: The Late Emergence of EU Democracy Promotion and Assistance

a) The Absence of EU Democracy and Human Rights Promotion before the mid-1980s

Chapter 2 has outlined that the US developed an external human rights policy in the 1970s, even if this policy had a one-sided focus on civil rights and was criticized for incoherence in application in different countries. The major tools of the new US policy were political conditionality and the financing of projects to promote human rights abroad. Inspired by the German *Politischen Stiftungen*, which had started to provide democracy assistance in Southern Europe in the mid-1970s, in the early-1980s the US also began to additionally support democratization processes through assistance. Thomas Carothers identified these latter events as the start of the current ‘wave’ of democracy assistance.⁵²⁷

The EU – then still the European Economic Community (EEC), but usually more simply referred to as European Community (EC)⁵²⁸ – and European states lagged behind these developments. Their political, economic, and development relations with third states overwhelmingly disregarded questions of human rights and of regime type up to the mid-1980s or they responded weakly when in a problematic situation.⁵²⁹ Development aid was basically exclusively of socio-economic nature, lacking tools like conditionality or support for human rights and democratic development. In the case of severe human rights abuses in some African states in the 1970s, like in Uganda in 1977, the EC responded with strong hesitation. It only re-channeled assistance so that it would not contribute to further human rights abuses (referred to as ‘Uganda guidelines’), but did not suspend aid or interrupt trade relations, for which it was criticized.⁵³⁰ Next to a widespread absence of tools and their application, general policy-documents were also not available that would suggest that democracy and human rights mattered in external relations. Overall, it is therefore not possible to identify an EC external human rights and democracy policy in the period before the mid-1980s.

⁵²⁷ Carothers, *Aiding Democracy Abroad*, at 20f.

⁵²⁸ European integration began with the foundation of three ‘European communities’ in the 1950s, of which the European Economic Community (EEC), frequently also just referred to as European Community (EC), was the most comprehensive one. It was formally renamed the EC by the Treaty of Maastricht (1992). The European Union (EU), founded in 1992, encompassed the supranational EC next to its two intergovernmental pillars. The Treaty of Lisbon, simplifying the structure, introduced the EU as the only name of the organization, replacing and succeeding to the EC.

⁵²⁹ Crawford, *Foreign Aid and Political Reform*, at 56; Marantis, at 5.

⁵³⁰ Marantis, at 6.

The only exception to this pattern was political membership conditionality for states wishing to accede to the EC.⁵³¹ The ‘Document on European Identity’ of 1973 by the heads of state and government of the Member States and the ‘Declaration on Democracy’ of 1978 by the – in the meantime institutionalized – European Council rendered explicitly clear that only democratic states could accede to the EU.⁵³² This policy of membership conditionality did not, however, result in a broader policy of democracy promotion beyond the enlargement dimension. Further, unlike during the enlargement process to Central and Eastern Europe in the 1990s, the EC also did not support the democratization processes in Portugal, Spain, and Greece in the 1970s and 1980s with democracy assistance measures, which could have been an early example of EU democracy assistance.

The causes for the different approach and development of human rights and democracy promotion policies in the US and of European states are difficult to ascertain, but appear to be, on the one hand, that European countries lacked the particular driving forces that caused the start of democracy promotion in the US, in particular an equally strong anti-communism, a belief in the democratic peace theory, and a self-perception of having a moral imperative to bring liberty to the world. On the other hand, the memories of the events in Hungary in 1956 and of the Prague Spring of 1968, as well as Europe’s colonial past, rendered European political interference in Communist, Central and Eastern European countries and in developing countries more difficult than in the case of the US.

b) Early, Isolated Examples of EC Democracy Assistance

Despite the absence of a policy of EU democracy and human rights promotion before the mid-1980s, some individual, isolated examples of EC human rights and democracy assistance can nevertheless be identified that should eventually play important forerunner roles. These early initiatives can be traced to the European Parliament, which, as the only democratically – and since 1979 directly – elected EU institution, always considered itself in a prime position to bring questions of human rights and, increasingly, also of democracy, to the table.⁵³³ Arguably, its efforts were not only due to altruistic, normative reasons, but allowed the Parliament to develop

⁵³¹ Pridham, G. (ed), *Encouraging Democracy: The International Context of Regime Transition in Southern Europe* (1991).

⁵³² Document on The European Identity published by the Nine Foreign Ministers (Copenhagen, 14 December 1973), Bull. EC 12-1973, at 118-122; Declaration on Democracy, Copenhagen European Council, 8 April 1978, Bull. EC 3-1978, at 5-6. See also the first stipulation of political conditionality as regards EC membership by the European Assembly in the so-called Birkenback Report of 1962.

⁵³³ K. Smith, ‘The European Parliament and Human Rights: Norm Entrepreneur or Ineffective Talking Shop?’, Dossier El Parlamento Europeo en la Política Exterior No. 11/2004.

its role as an important player in the EU political system.⁵³⁴ The Parliament could create these early human rights and democracy assistance programmes without the need to convince the other institutions due to the budgetary powers it had gained in budget reforms in the early 1970s.⁵³⁵

Reference should first be made to the EC's first human rights programme, 'Subsidies in respect of certain activities performed by NGOs pursuing humanitarian aims and promoting human rights', which first received an, albeit rather small, allocation in the 1978 budget.⁵³⁶ The programme had two tracks. First, there was a Community-internal focus, which mainly financed research activities on the human rights situation in the EC and the Member States⁵³⁷ and, later, also projects on racism and xenophobia.⁵³⁸ Secondly, it foresaw projects concerning third states that focused on the humanitarian field, torture victims, and political refugee organizations. Projects were, however, hardly carried out in the target states but overwhelmingly in the EC and foresaw, for example, support to rehabilitation centres for victims of torture. Both, the geographic as well as thematic focus was therefore much more limited than, for example, projects financed at the same time by the US and despite its strong efforts in developing an external human rights policy, the Parliament overall pursued a rather careful, non-intrusive approach.

The introduction of this first programme showed, on the one hand, that the Parliament carefully observed developments in the US, several of whose policy initiatives it copied, like assistance and reports on human rights that it started to publish in 1983. On the other hand, the focus on the EC-internal dimension reflected the growing importance accorded to human rights in the EC legal and political system. As is well known, in absence of a reference to human rights in the founding treaties, the European Court of Justice (ECJ) started to protect fundamental rights as fundamental principles of Community law from the late 1960s on.⁵³⁹ In 1977 the European Parliament adopted its first major political document on human rights, the 'Declaration on Human Rights', with which the other institutions associated themselves. It confirmed the steps taken by the ECJ and expressed the importance the institutions attached to

⁵³⁴ R. Rack and S. Lausegger, 'The Role of the European Parliament: Past and Future', in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999), at 801.

⁵³⁵ P. Craig and G. de Búrca, *EU Law: Text, Cases and Materials* (3rd ed., 2003), at 18.

⁵³⁶ Budget line 293 of the 1978 budget. For the further development of the line, see Table A in the Appendix.

⁵³⁷ The remarks in the budget envisaged projects with regard to "human rights and the European Community" and "with regard to human rights in the Member States [hic]". Recall here the critical stance the Member State would eventually develop as regards EU human rights activities in the sphere of competence of the Member States, while this first programme envisaged also programmes "with regard to human rights in the Member States".

⁵³⁸ Declaration against Racism and Xenophobia of 1986 by all EC institutions, OJ 1986 C158/1.

⁵³⁹ Craig and de Búrca, *EU Law: Text, Cases, and Materials* (3rd ed.), at 319f; G. de Búrca, 'The Evolution of EU Human Rights Law', in P. Craig and G. de Búrca, *The Evolution of EU Law* (2nd ed., 2011), at 477; B. de Witte, 'The Past and Future Role of the European Court of Justice in the Protection of Human Rights', in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999), at 859f.

human rights as well as their willingness to respect those in the exercise of their powers.⁵⁴⁰ Obviously, the new budget line should assist in the implementation of this objective.⁵⁴¹

Secondly, in 1986, after some years of experience with the human rights programme, the European Parliament inserted the budget line ‘Community Aid to NGOs operating in Chile’ into the EC budget.⁵⁴² The rather brief remarks in the budget for this line only referred to “support of activities carried out by NGOs operating in Chile and economic cooperation in light of political developments in the country” and were therefore ambiguous. Secondary sources mention that the projects were for the most part intended for and used for the support of and the strengthening of local democratic groups.⁵⁴³ Overall, the programme therefore appears to be the EC’s first, at least partial democracy assistance programme. It was endowed with a remarkably high budget, when compared to the human rights budget line (about 22 million ECUs between 1986 and 1990), which underlined the high interest of the Parliament in the programme.⁵⁴⁴ In 1992 it confidently announced the “positive results” of the programme for the democratization process in Chile and used it as important argument for launching more programmes in the sector.⁵⁴⁵ During 1986 and 1990, the line for Chile remained the only form of external democracy support through assistance by the EC. It was to be implemented without the formal agreement with the government of the target states, which should eventually become a core defining feature of the specific democracy assistance programmes. The EC had by that time gained experience with disbursing funds directly to NGOs in the framework of development aid.

The question remains why the EC’s first democracy assistance programme should have been implemented in Chile. Indeed, the EC was not the only supporter, but Chilean opposition within and outside Chile received considerable support from a high number of European and other states as well as international organizations.⁵⁴⁶ The reasons were the intensive contacts between European political leaders and numerous exiled Chilean opposition politicians residing in Europe and the intensive lobbying of these individuals. Further, the widespread condemnation of Augusto Pinochet’s regime and the small geopolitical importance of Chile facilitated the adoption of such a programme, which was in the mid-1980s still inconceivable in many other parts of the world. It was also mentioned that there were no conflicts as regards the model of democracy aspired to by the Chilean opposition.⁵⁴⁷

⁵⁴⁰ European Parliament, Council, Commission, Joint Declaration by the European Parliament, the Council and the Commission, OJ 1977 C103/1.

⁵⁴¹ See the remarks to the budget line in the 1978 budget.

⁵⁴² 1986 EC Budget.

⁵⁴³ Angell, at 191.

⁵⁴⁴ Table A in the Appendix.

⁵⁴⁵ European Parliament, Resolution on a European Democracy Initiative, OJ 1992 C150/281, Point E.

⁵⁴⁶ Angell, at 190.

⁵⁴⁷ *Ibid.*, at 192.

Next to assistance, the Parliament also pushed for the use of political conditionality. It, in particular, called for the inclusion of human rights clauses in external agreements, like the ACP Convention. When the Single European Act (SEA) of 1986 gave the Parliament the right to assent to association agreements, it was willing to use this leverage to insist on an inclusion of such clauses.⁵⁴⁸

c) A Soft Start of the EC's External Human Rights Policy: The Statement on Human Rights within European Political Cooperation in 1986

By the mid-1980s, pressure to make a formal declaration as regards the role of human rights in EC external relations was high, given the international system of human rights protection, US policies, the demands of NGOs and public opinion, as well as the growing importance of fundamental rights within the EC. In July 1986, the first general statement of principle on an emerging external human rights and democratization policy was adopted by the twelve foreign ministers of the EC Member States, meeting within European Political Cooperation (EPC), the forerunner of the Common Foreign and Security Policy (CFSP). The main elements of their first 'Statement on Human Rights' have remained valid until today.⁵⁴⁹

“They reaffirm their commitment to promote and protect human rights and fundamental freedoms and emphasize the importance in this context of the principles of parliamentary democracy and the rule of law...The Twelve seek the universal observance of human rights. The protection of human rights is the legitimate and continuous duty of the world community and of national individually. Expressions of concern at violations of such rights cannot be considered interference in the domestic affairs of a State...The promotion of economic, social and cultural rights as well as of civil and political rights is of paramount importance for the full realization of human dignity.”

The document was definitely groundbreaking as regards the new role human rights should play in external relations and the new limits on state sovereignty it expressed.⁵⁵⁰ The explicit reference to 'parliamentary democracy' in the context of human rights promotion made it clear that democracy promotion was encompassed. At the same time, however, the statement expressed some limitations to the new policy that suggested only a beginning, soft turn, rather than a strong

⁵⁴⁸ Fierro, at 66-7.

⁵⁴⁹ Bull. EC 7/8-1986, para. 2.4.4.

⁵⁵⁰ T. King, 'Human Rights in European Foreign Policy: Success or Failure for Post-modern Diplomacy?', 10 *European Journal of International Law* 2, at 316.

shift. Most importantly, it only envisaged soft forms of human rights and democracy promotion, like monitoring by international organizations, the issuing of declarations, and diplomatic missions. More intrusive instruments like conditionality, sanctions, and assistance were, despite the existing and just referred to programmes, not mentioned. The document also did not yet speak of democracy and human rights as principles of EU external policy, but only generally referred to their promotion.

To sum up, there was no EC external human rights and democratization policy before the mid-1980s. In 1986, a soft turn towards such policy occurred, which, however, initially only envisaged the use of rather soft tools, like diplomatic measures. Additionally, ever since the early 1970s, the European Parliament pursued its own agenda in developing an external human rights policy for the EC. Most notable in this respect was the creation of the first human rights assistance programme in 1978 and the first, at least partial democracy assistance programme in 1986.

2. 1990-1992: The Start of EC Democracy Assistance

a) The European Parliament and Democracy Assistance in Latin America

The ‘Statement on Human Rights of 1986’ did not result in the development of democracy assistance programmes through the EC. Initially the European Parliament remained the main actor pushing the development of the policy instrument ahead. It kept allocating increasing funds to the programme for NGOs in Chile as well as, albeit less, to the human rights line of 1978.⁵⁵¹ Additionally, in 1989 it decided to establish yet another democracy assistance budget line for Latin America. ‘Democracy in Chile and Central America’, which was first mentioned in the 1990 budget, had a very clear and explicit focus on democratization and was initially endowed with – for that time – remarkable 10 million ECUs per year, which soon also increased.⁵⁵² Already from 1991 on, the programme supported democratization-related projects in numerous Latin American states.⁵⁵³

By 1990 the EC therefore financed two democracy support programmes in Latin America and therefore in the same region where US democracy assistance had started. Obviously, the advance of democracy in Latin America and the resulting positive, receptive environment and

⁵⁵¹ Table A in the Appendix.

⁵⁵² Table A in the Appendix.

⁵⁵³ Remarks to line B7-5078 in the 1991 budget.

demand for democracy assistance played the main role for the start of EC democracy assistance in that region, next to the already mentioned specific reasons for aid to Chile.

With the continuing support for existing and the creation of new democracy assistance programmes, the Parliament also confirmed its interest in and support of this policy tool. It is also remarkable that in 1990 the EC spent more for democracy than human rights assistance, although it was the human rights agenda that in the 1970s and 1980s appeared to have developed ahead of democracy promotion – internationally and in the EC.

b) 1990: The Real Beginning of the EC's External Human Rights and Democratization Policy

Before EC democracy assistance should also be provided in regions beyond Latin America, some major developments – entirely unexpectedly – took place between mid-1989 and mid-1990, which created entirely new conditions and caused not only a European, but also an international move to (more or more extensive) human rights and democracy promotion policies. Most notably, as outlined in Chapter 2, the third wave of democracy swept over Europe and parts of Asia and Africa and resulted in numerous new (liberal) democracies that not only welcomed but also asked for democracy assistance. Further, the end of the Cold War allowed open engagement in human rights and democracy promotion and did not longer allow authoritarian states to play Western states and the Soviet Union against each other. At last, a new credo in development policy became – relatively quickly – widely accepted, which suggested good governance, and as part of it, democracy, as a condition or even pre-condition of successful socio-economic development.⁵⁵⁴

It has been mentioned in Chapter 2 that these events were followed by explicit declarations on pursuing external human rights and democracy policies by a large number of European states, beginning with a British statement in June 1990 and one declaration of the Nordic countries in September 1990.⁵⁵⁵ Also at European level intensive discussions took place throughout mid-late 1990 about how to proceed in this considerably changed environment.⁵⁵⁶

The Dublin European Council of June 1990 was preoccupied with decisions on launching an intergovernmental conference (IGC) on Political Union to prepare the next step of EC integration. It mentioned that the future CFSP, to be elaborated in the IGC on Political Union, should, amongst others aim at promoting democracy, human rights, and the rule of law. This was

⁵⁵⁴ See the more detailed account in Chapter 2, with references.

⁵⁵⁵ Crawford, *Foreign Aid and Political Reform*, at 56-61.

⁵⁵⁶ Commission Communication to the Council and Parliament on human rights, democracy and development cooperation, SEC(91) 61 final, 25.3.1991, at 2.

eventually indeed included in primary law. However, the Dublin European Council did not express itself on the immediate consequences of the new international environment for the EC's policy on external human rights and democracy promotion.⁵⁵⁷ It only briefly referred to strengthened support for "human rights" and "sound government management" in the context of developments in South Africa.⁵⁵⁸

It was again the foreign ministers of the EC Member States meeting in the framework of EPC during the Rome European Council in December 1990, which adopted a statement that called for an immediate strengthening of the EU's external human rights and democracy promotion policy. Their new 'Statement on Human Rights' of 1990 repeated the major general guidelines of the homonymous statement of 1986, stressed the relevance of democracy as equally important issue as human rights, and mentioned the "interrelationship between democracy, human rights, and sustainable development" as a new, central idea of the Member States' and the EC's development policies.⁵⁵⁹ It therefore first established the link between development and democracy promotion that was to remain an important framework for the further evolution of both fields.

c) 1991: The Elaboration of Principles and Tools for the New Policy by the EC

Following the crucial human rights document by the EC foreign ministers in December 1990, the EC institutions intensified their efforts in elaborating the new policy agenda. Most EC institution issued a key policy document during 1991, which focused on various issues.

i. The Commission

In March 1991 the Commission published its first communication on 'human rights, democracy, and development' (SEC(91) 61 final), which presented ideas for a "general line of conduct" for the new policy. It incorporated ideas by the Member States and the Parliament, in particular by the latter's then still relatively young Sub-committee on Human Rights. A meeting of all major actors in late 1990 had overall revealed considerable agreement among all actors on the emerging policy.⁵⁶⁰

⁵⁵⁷ An IGC on economic and monetary union had already been agreed in June 1989.

⁵⁵⁸ Dublin European Council, Presidency Conclusions, 25 and 26 June 1990.

⁵⁵⁹ Bull. EC 12-1990, at 138.

⁵⁶⁰ Commission Communication to the Council and Parliament on human rights, democracy and development cooperation, SEC(91) 61 final, 25.3.1991.

In hindsight, the most remarkable feature of SEC(91) 61final is that it, at a very early stage in the development of the policy, addressed a whole range of questions that continued to be crucial until today. Examples include the issue of coherence between different EC policies, consistency with the actions of the Member States, the importance of good governance reform (which it called “transparency and accountability of government”), and the role of civil society. It stipulated that “(D)emocracy cannot be imposed from outside nor can it take root without domestic structures” and that the EC should not aim at promoting a “European ‘model’ of democracy...but should offer those countries the benefit of its own experience”. It suggested that democratization and/or democracy involved the respect for fundamental rights, the opening of political dialogue, free elections, and a pluralist society, which was of course a selective enumeration.⁵⁶¹ As regards motives for the new EC policy, the communication mentioned, quite uniquely, the demand by European public opinion to take human rights seriously.⁵⁶²

COM(91) 61 final also elaborated on the instruments of democracy and human rights promotion. It introduced the distinction between ‘positive’ and ‘negative’ tools that should later also be adopted by the Council and explicitly added political conditionality, dialogues, and human rights and democracy assistance, which it called “support for democratic adjustment”, to the list of tools. It did not go into detail as regards the possible programmes of assistance, their geographical or thematic focus and overall did not really suggest making it a primary tool in the promotion of democracy and human rights.

ii. The European Council

The subsequent June 1991 Luxembourg European Council adopted a ‘Declaration on Human Rights’, which for the first time confirmed that human rights were not only one of the cornerstones of European cooperation but also of the external relations of the EC and its Member States at the level of heads of state and government of the Member States.⁵⁶³ It stressed that this implied an “attachment to the principles of parliamentary democracy and the primacy of law”, confirming that the topic of democracy was part of the human rights agenda.

The declaration gave strong political support to the ongoing real policy-shift and approved of the use of more intrusive policy instruments like political conditionality clauses. It did, however, not elaborate on democracy assistance as new EC tool. It confirmed the link between human rights, democracy, and development and mentioned that respect for human

⁵⁶¹ SEC(91) 61final, at 7.

⁵⁶² Ibid, at 3-4.

⁵⁶³ Bull. EC 6-1991, at 17.

rights and the presence of a democratic system of government was an “essential prerequisite of sustained social and economic development”. While not explicitly providing a definition of democracy it referred to pluralism, a constitutional framework, responsible government, free and fair elections, and the recognition of the “legitimate importance of the individual in a society” as crucial elements of a democratic system.

iii. The European Parliament

In November 1991 the European Parliament largely welcomed the Commission’s communication SEC(91) 61 final, which was in line with its own policy preferences.⁵⁶⁴ Indeed, the Parliament had long called on the Commission to develop such communication.⁵⁶⁵ The most interesting aspects of the resolution was the call on the Commission to elaborate criteria and means for assessing the respect for democracy and human rights and to determine in which circumstances which types of sanctions would be applied.⁵⁶⁶ It thereby highlighted the potential problem of objectivity in the use of negative tools. Surprisingly, the Parliament did not discuss and elaborate on democracy assistance, although it was at that time the main promoter of this tool.

Indeed, the Parliament continued its own efforts of building EC democracy and human rights assistance programmes and envisaged two new programmes in the 1992 budget. First, it established a new budget line for human rights and democracy promotion for developing countries, which should be implemented in view of SEC(91) 61 final. No specific thematic focus was defined. Secondly, it determined that 5 million Euros of the overall amount allocated to the Phare programme, that is, the main socio-economic assistance programme for Central and Eastern European countries that had started in 1990, should to be used for democracy support projects in these countries.⁵⁶⁷ The funds should in particular be used for parliamentary institutions and civic education, however, not for partisan activities or election-related assistance.⁵⁶⁸ The lines constituted the first examples of EC democracy assistance beyond Latin America and marked the beginning of the creation of programmes for all major world regions.

⁵⁶⁴ European Parliament, Resolution on human rights, democracy and development, OJ 1991 C326/259.

⁵⁶⁵ Fierro, at 65-6.

⁵⁶⁶ European Parliament, Resolution on human rights 1991, point 5.

⁵⁶⁷ K. E. Smith, *The Making of EU Foreign Policy: The Case of Eastern Europe* (1999), at 70 and 143.

⁵⁶⁸ Budgetary remarks to line B7-6000 in the 1992 EC budget.

iv. The Council

The various documents and discussions throughout 1991 culminated in the adoption of the 28 November 1991 resolution on 'human rights, democracy and development' by the Council and the 'Member States meeting in the Council'. The resolution should become the guiding policy-making declaration for democracy promotion for the EC and its Member States throughout the following decade and even beyond. It should be mentioned though, that the resolution's main focus was on new aspects of development policy and that it also included sections on good governance and military spending. The Council therefore developed the policy of democracy and human rights promotion as part of development policy. This was, on the one hand, justified by the perceived positive link between two fields and, on the other hand, as discussed in Chapter 4, influenced by questions of EC competence to act in the field of human rights and democratization.

The resolution – further on referred to as 28 November 1991 resolution – was quite comprehensive and included many issues that had also featured in some of the above discussed documents. It confirmed that human rights were cornerstones of EC integration and of EC external relations and stressed that this included an attachment to the principles of 'representative democracy' as well as, as novelty to earlier documents, the rule of law.⁵⁶⁹ It generally noticed the complexity of democratization processes, which could take a long time, was driven by local actors, and could only be supported from abroad.

The largest part of the resolution was devoted to instruments of democracy promotion. Differentiating between the suggested positive and negative approach, it declared a clear preference for the positive, encouraging approach. It elaborated on various instruments that should further be developed, including open and constructive dialogues, conditionality clauses, and incentive conditionality.⁵⁷⁰ It discussed the steps to be taken in the case of grave and persistent human rights violations and interruption of democratic processes, provided a list of negative measures, called for objectivity and confirmed the Uganda guidelines of 1977, that is, the rule to divert aid away from governmental channels to the population.⁵⁷¹

Important for the subject of this thesis, the 28 November 1991 resolution also expressly identified democracy and human rights assistance as major positive tool of the new EU policy. It, however, disregarded the existing budget lines of the Parliament and rather called for the mainstream development programmes to devote funds to the objectives of human rights and

⁵⁶⁹ 28 November 1991 resolution, point 1.

⁵⁷⁰ Ibid, points 4, 6 and 10.

⁵⁷¹ Ibid, point 7; Marantis, at 6.

democratization.⁵⁷² Existing and new assistance regulations should therefore be adjusted to these objectives. The Council stated that both, projects suggested by governments as well as projects suggested and implemented by NGO, would be supported.⁵⁷³ It suggested possible fields of support, like elections, the setting-up new democratic institutions, the strengthening the rule of law, the judiciary, the administration of justice, crime prevention and the treatment of offenders, and for the promotion of the role of NGOs.⁵⁷⁴ A year later, when considering the implementation of the 28 November 1991 resolution during 1992, the Council added the promotion of a free press and other media, the participation of minorities in political processes, and support to political exiles wishing to return to their country of origin to the list, which gave more weight to the 'political' features of EC democracy assistance.⁵⁷⁵

It has been mentioned above that the 28 November 1991 resolution also elaborated on the concept of good governance, which should continue to remain an important element of development policy until today and should later become a core field of democracy promotion. Importantly, the 28 November resolution of the Council and Member States introduced the broad understanding of this concept, which encompassed a democratic system of government, human rights, the rule of law, as well as sound public administration and economic and social policies.⁵⁷⁶

Overall, following the soft turn towards a policy of external democracy and human rights promotion in 1986, in 1991 a much stronger move was made in that direction. Various important statements at the highest political level, including by the European Council and Council, confirmed that democracy and human rights promotion were new objectives of EC external action and should be pursued through a mix of positive and negative tools. It culminated in the express mentioning of the objectives in the Treaty of Maastricht of 1992. Overall, for conceptual reasons as well as for reasons of unclear competences, the EC policy of human rights and democracy promotion was developed within the framework of development policy. Democracy assistance was one of the various tools discussed in 1991, when the new policy skeleton was fleshed out. The Council confirmed its use in November 1991 within the framework of mainstream development programmes. At the same time, the Parliament continued to create external human rights and democracy programmes for specific geographical regions.

⁵⁷² 28 November 1991 resolution, point 10.

⁵⁷³ Ibid.

⁵⁷⁴ Ibid, point 4.

⁵⁷⁵ Report of the Permanent Representative's Committee to the Development Council of 18 November 1992, 12 November 1992, No. 10044/92.

⁵⁷⁶ 28 November 1991 resolution, point 5.

3. 1993-1996: The Parallel Development of Democracy Assistance in Mainstream Development Programmes and Specific Programmes

The 28 November 1991 resolution of the Council and the Parliament's decision to continue inserting human rights and democracy assistance budget lines into the EC budget laid the foundation for the parallel development of democracy assistance programmes within the mainstream development programmes and as part of specific programmes. This parallel system continues to be characteristic of EU democracy assistance today.

a) Democracy Assistance as Part of Development Programmes and within CFSP

Following the Council resolution of 28 November 1991, which had envisaged democracy assistance as part of general development programmes, the various assistance regulations and, in the case of the ACP countries, the external agreements underlying these programmes, started to be adapted to the new policy objectives. The beginning was made with the main assistance regulation for Latin America and Asia of 1992 (the ALA regulation), which was comparatively outspoken on this policy goal and reflected the more easy implementation of the new policy objectives in receptive states and regions.⁵⁷⁷ Most other regulations were endowed with relevant provisions in the mid-1990s. Most notably, Tacis 1996 included an unequivocal reference to democracy promotion;⁵⁷⁸ the revision of Lomé IV in 1995 resulted in strengthened provisions on democracy promotion; and the launch of the 'Euro-Mediterranean Partnership' in 1995 brought a political dimension to EU-Mediterranean relations, with the new MEDA programme (1996) explicitly foreseeing democracy promotion and assistance (even if, only generally and vaguely).⁵⁷⁹ All in all, in 1996 all external assistance regulations and the revised Lomé Convention referred to the objective of democracy promotion and foresaw, albeit to different extents, democracy assistance.

Pending these amendments or the adoption of new regulations democracy assistance could already be provided under the various programmes as long as this could somehow be justified by the text of the regulation, for example, through a broad interpretation of objectives

⁵⁷⁷ Council Regulation (EEC) No. 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America, OJ 1992 L52/1. (From now on referred to as ALA regulation.)

⁵⁷⁸ Council Regulation (Euratom, EC) No 1279/96 of 25 June 1996 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia, OJ 1996 L165/1. (From now on referred to as Tacis 1996 regulation.)

⁵⁷⁹ Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership, OJ 1996 L189/1 (From now on referred to as MEDA regulation); R. Youngs, 'The European Union and Democracy Promotion in the Mediterranean: A New or Disingenuous Strategy?', 9 *Democratization* 1 (2002), at 40.

like institutional reform. At times the Parliament demanded, in its remarks to the respective budget lines, that some of the funds committed for mainstream programmes should be used for democratization-related objectives.⁵⁸⁰ Overall, as shown in Chapter 8, commitments for democracy assistance under the mainstream programmes increased very slowly. Only by 1999 did commitments under the mainstream programmes exceed commitments under the specific programmes established by the Parliament and only by 2004 was there a visible increase in expenditure.

Brief reference should at this point also be made to the very limited democracy assistance activities under CFSP. The TEU, which had entered into force in November 1993 stipulated democracy promotion also as objective of the newly established CFSP. The Council aimed at using the new competences provided by the TEU to become active in the field. It deployed an EU election observation and assistance mission to the first multi-party elections in Russia in December 1993⁵⁸¹ and to the first multi-racial elections in South Africa in April 1994.⁵⁸² Lacking coherence, some of the actions were funded from first, others from second pillar funds.⁵⁸³ Overall, they constituted a third framework for the provision of democracy assistance, which differed from the mainstream and specific programmes. Chapter 4 will show that they were legally problematic due to ex-Article 47 TEU, which demanded the TEU not to encroach upon the supranational pillar. In any case, they remained confined to few examples in the electoral field and to the 1990s.

b) The European Initiative for Democracy and Human Rights (EIDHR)

Next to developing democracy assistance within development cooperation, the European Parliament continued to build its specific democracy and human rights assistance programmes and, in particular, to give it more visibility. This should be done through the creation of a common framework, which would encompass all existing and future specific programmes. The first suggestion for such framework was made in the Parliament's resolution on a 'European Democracy Initiative' of June 1992.⁵⁸⁴ Inspired by the NED and the work of the German political foundations, to which the document referred to, the focus was on democracy rather than

⁵⁸⁰ See e.g. the remarks in the 1993 budget as regards the budget line for Tacis, which called for the allocation of some funds for democracy assistance, like for projects benefiting parliaments. 1992 Budget, line B7-620.

⁵⁸¹ Council Decision 93/604/CFSP of 9 November 1993 Concerning the Joint Action decided on by the Council on the Basis of Art. J.3 of the Treaty on European Union concerning the Dispatch of a Team of Observers for the Parliamentary Elections in the Russian Federation, OJ 1993 L286/3.

⁵⁸² Joint Action 93/678 concerning support for the transition towards a democratic and multiracial South Africa, OJ 1993 L316/45.

⁵⁸³ COM(2000) 191 final, at 25f.

⁵⁸⁴ European Parliament, Resolution on a European Democracy Initiative.

human rights assistance. Human rights were, however, definitely included as well. The resolution was brief and lacked much in substantive content, like the definition of some common principles. It devoted, however, some time to outlining possible fields of support and mentioned support to parliamentary institutions, civic education, human rights, and civil society development. Assistance should be strictly provided on a non-party basis and should also not be disbursed to actors that held views contrary to key declarations of the Parliament, like on racism, xenophobia, women's rights or religious freedom.⁵⁸⁵ NGOs and other non-for-profit groups should be eligible recipients, however, not governmental bodies. Surprisingly, the list was shorter than that of the Council in the 28 November 1991 resolution and its follow-up and, in particular, failed to refer to media support. With the exception of recipients of aid, the thematic focus of the specific and the mainstream programmes did not therefore differ.

Concrete actions to develop the 'European Democracy Initiative' further followed swiftly. The 1993 budget included an Article with the title 'European Democracy Initiative',⁵⁸⁶ without, however, allocating funds or enlisting other lines under this Article, except for a small line on the freedom of expression.⁵⁸⁷ In the following 1994 budget, the 'European Democracy Initiative' was renamed into 'European Initiative for Democracy and the Protection of Human Rights' or EIDHR, which did more justice to the fact that the initiative would also encompass the various existing human rights programmes and that some specific programmes encompassed both human rights and democracy, like the budget line for developing countries. The initiative was also upgraded to a separate Chapter – Chapter B7-52 – rather than just an Article and all existing specific human rights and democracy assistance programmes were shifted into the new Chapter B7-52.⁵⁸⁸ In 1997 the EIDHR was again upgraded to a separate Title – Title B7-7 – and the individual programmes became separate chapters of this title.

Further, the Parliament continued to add new budget lines for democracy and human rights assistance programmes into the budget, or increased the allocations for existing lines. The 1994 budget first included a separate line for the Tacis Democracy Programme benefitting the states of the former Soviet Union⁵⁸⁹ and a Peace-building and Democracy Programme for the

⁵⁸⁵ Ibid.

⁵⁸⁶ A brief note on the structure of the EC budget appears useful. The letter B refers to the Expenditure section of the budget, while B7 relates to the sub-section 'External Relations'. Subsection B-7 contains, in a hierarchical order, Titles, Chapters, Articles, and Items. Before 1994, the large majority of human rights and democracy programmes formed part of Title B7-5 ('Other Cooperation Measures') and of the Chapter B7-50, with the same name. The individual budget lines were either articles or items of B7-50.

⁵⁸⁷ The exception concerns a small line benefitting the European Foundation for the Freedom of Expression (B7-5067), which had existed since 1990 (as line A-3031).

⁵⁸⁸ See Table A in the Appendix.

⁵⁸⁹ The Tacis Democracy programme was created in 1993, but only started in 1994. European Parliament, Resolution on relations between the European Community and the independent states of the former Soviet Union (excluding the Baltic States), OJ 1993 C255/187.

former Yugoslavia. The 1996 budget introduced MEDA Democracy.⁵⁹⁰ By 1996, the Parliament's specific democracy assistance programmes therefore covered all major world regions, with the major exception of Asia, where softer tools were initially favoured⁵⁹¹ and for which a specific democracy assistance line was only created in 1998. Further, next to the regional programmes, during 1993 and 1996 several human rights lines, either concerning specific topics, like torture, or specific countries, like Turkey, were created.⁵⁹² Overall, while the main, regionally focused democracy and human rights programmes were relatively stable, there was some volatility in the case of the second group. During 1993 and 1996 the combined budget of all democracy and human rights programmes nearly doubled and increased from about 44 to 85 million Euros.

While the Parliament was the main driving actor in the development of the specific democracy assistance programmes, the Commission was implementing them and had to develop the necessary procedures. As different units responsible for specific geographical regions and the Commission's Delegations were involved in the implementation processes, within a short period of time very diverse procedures had developed. Differences particularly related to the identification of beneficiaries (spontaneous applications *versus* calls for proposals), applications forms, the requirement of having a European partner or not, and criteria for the examination of projects. In 1994 the Commission started to harmonize some, but not all of these issues, especially by introducing common criteria for the submission of projects and common criteria for selecting projects.⁵⁹³ A leading role in this process was taken by the Standing Inter-departmental Human Rights Coordination Group, that had been founded in 1991, consisted of members of numerous Commission Directorates-General (DGs) and should ensure internal coordination and consistency as regards Community human rights policies.⁵⁹⁴ Next to facilitating the implementation of assistance through the harmonization of procedures, the process had more fundamental implications. It eventually, in the late 1990s/early 2000s, strongly facilitated the transformation of the numerous specific human rights and democracy assistance programmes into a single EIDHR programme.

⁵⁹⁰ For a brief account of the start of EU democracy assistance in the Mediterranean and a more detailed study of micro projects carried out in that region see Bicchi, 'Democracy Assistance in the Mediterranean: An Overview', at 63-5.

⁵⁹¹ Communication from the Commission, Towards a new Asia Strategy, COM(1994) 314 final; Communication from the Commission, Europe and Asia: A strategic framework for enhanced partnerships, COM(2001) 469 final.

⁵⁹² See Table A in the Appendix.

⁵⁹³ European Commission, Report on the implementation of measures intended to promote observance of human rights and democratic principles (for 1994), COM(95) 191 final, at 14-17.

⁵⁹⁴ European Commission, Report from the Commission on the implementation of measures intended to promote observance of human rights and democratic principles (for 1995), COM(96) 672 final, 17.1.1997, at 53.

c) Developing a Strategy for the EC's External Human Rights and Democratization Policy

In the mid-1990s, Commission also for the first time assessed the development of the EC's human rights and democracy promotion policy and aimed to set out a strategy to better achieve its goals.⁵⁹⁵ It published its suggestions, most of which were welcomed by the other institutions, in COM(95) 567 final on 'The European Union and the External Dimension of Human Rights Policy: From Rome to Maastricht and Beyond'.⁵⁹⁶ The document addressed the topic as independent policy, detached from development issues, unlike for example SEC(91) 61 final and other key documents published in 1991. The focus of COM(95) 567 final was rather on human rights, however, democracy promotion was as well encompassed. It did not specifically provide suggestions on how the tool of assistance, referred to as "financial allocations", should further be developed. Nevertheless, the outlined three proposals for further action affected the further development of assistance and, in particular, the EIDHR.

After a reiteration of some basic principles of the policy, like the indivisibility of human rights, the interdependence of human rights, democracy, and development, and the preference for a positive over a negative approach in human rights promotion, the Commission described initiatives under various tools, including assistance. It provided a list of 15-odd fields of engagement, like elections, civil society development, the media, good governance and the rule of law, all of which had already, although never as comprehensively, been mentioned in earlier documents. The list provided the blueprint for the later EIDHR regulations. It was not clarified though, whether some of these topics would only or rather be addressed under the mainstream or specific programmes.

As indicated, COM(95) 567 final made three suggestions for the further development of the policy. First, against the backdrop of conflicts in the Western Balkans, the Commission suggested to engage more strongly in conflict prevention. Some conflict-related projects soon started to be financed under the EIDHR programmes, especially in the budget line for former Yugoslavia and, later, by the Rapid Reaction Mechanism (RRM, 2001).⁵⁹⁷ Additionally, the future EIDHR regulations, first adopted in 1999, encompassed conflict prevention as one of the thematic fields of support. Secondly, in line with the growing international interest in election

⁵⁹⁵ In 1993 the Commission published a general document on the new policy, which was developed by an external consultant and did not express the Commission's own views. European Commission, *The European Community and human rights* (1993).

⁵⁹⁶ Communication from the Commission to the Council and the European Parliament, *The European Union and the external dimension of human rights policy: From Rome to Maastricht and beyond*, COM(1995) 567 final, 22.11.1995.

⁵⁹⁷ Council Regulation (EC) No 381/2001 of 26 February 2001 creating a rapid-reaction mechanism, OJ 2001 L57/5.

support, the Commission argued that electoral support was one of the most effective tools of democracy promotion and made proposals to intensify action on election assistance as well as election observation. The suggestions for election observation were already relatively concrete and should soon give rise to specific activities, like the development of a common framework for EU election observation missions and the training of observers.⁵⁹⁸ Further, in 1997 a new budget line for election assistance and observation was inserted into Chapter B7-7 (EIDHR), whose initially low appropriations soon increased so strongly that the Parliament had to call for a limitation in the use of EIDHR funds for election observation.⁵⁹⁹ In 2000, the Commission published a separate communication on electoral support.⁶⁰⁰

The third and last set of suggestions for further development concerned issues of programming and implementation as well as the improvement of individual tools. The most remarkable aspect of these suggestions is that they have reappeared again and again ever since COM(95) 567 final, including at the present time, suggesting that the underlying problems and concerns have not yet been sufficiently tackled. This in particular refers to the issue of the need for an in-depth analysis of the local situation in order to develop a targeted strategy for a state, the learning from evaluations, mechanisms for more rapid responses, for more transparency and interaction among all institutions at all stages of implementation, as well as the need to ensure consistency between EC and Member States' activities. When speaking about improving individual instruments, COM(95) 567 final called for ensuring complementarity between mainstream and specific human rights and democracy assistance programmes in order to avoid duplication and to ensure continuity, without, however, in detail outlining ways for ensuring complementarity. When reflecting in more detail about their relationship, it suggested the use of the specific programmes for pilot, preparatory measures that could, if successful, be taken over by mainstream programmes. Reference should also be made to the call for an increased use of incentive conditionality, which is a different type of EU democracy promotion instrument, but can imply, however, the increased provision of democracy assistance.

Overall, during the subsequent years the proposals made by the Commission were implemented, like through a stronger focus on crisis management and electoral observation and assistance, the creation of the RRM and contingency reserve in the EIDHR to respond to

⁵⁹⁸ Council Decision 9262/98; Council Decision 2788/99 on EU Guidelines on Common Criteria for the Selection of Electoral Observers; Swedish International Development Cooperation Agency (SIDA), *Handbook for European Union Election Observation Missions*; see also an updated version of 2008 published by the European Commission, *Handbook for European Union Election Observation* (2008).

⁵⁹⁹ B7-709, see Table A in the Appendix.

⁶⁰⁰ COM(2000) 191 final.

unforeseen needs, and the systematic inclusion of human rights clauses in external agreements.⁶⁰¹ Problems in implementation were addressed, but have stayed on the agenda ever since.

In summary, from 1992 on the EC amended development assistance regulations to include the objective of democracy promotion and to foresee assistance. Concurrently, the Parliament continued to develop its specific human rights and democracy assistance programmes, which by 1996 covered all world regions except Asia. It also created a common framework for all these programmes – the ‘European Initiative for Democracy and the Protection of Human Rights’ or EIDHR – that should until today remain the acronym for the EU’s specific democracy and human rights assistance programme. The mainstream and specific democracy assistance programmes had differences, like the role of the target states’ governments, but no distinctive character had yet developed. In particular, their thematic focus would appear to be identical.

4. 1997-2002: The Consolidation of the EIDHR

The late 1990s were crucial for the development of the EIDHR. It first faced a major challenge by some Member States, but was then provided with a legal basis in secondary law, turned into a single programme, and developed a specific character. The Treaty of Amsterdam, signed in 1997 and in force since 1999, strengthened overall the position of democracy and human rights in primary law. It did not have direct consequences for democracy assistance, but provided a stronger basis for EU democracy promotion.

a) Challenging the Legality of the Specific Democracy Assistance Programmes⁶⁰²

Following the creation of a single framework for all specific human rights and democracy programmes, the Parliament wanted to see the next step in the development of the EIDHR. It called on the Commission to provide a legislative proposal for a basic regulation for the various programmes, which had so far been implemented on the basis of the budget only. An act of secondary law would have provided the covered programmes with a more secure, longer-term foundation. The Commission, under no legal obligation to respond, did not act immediately. It was in favour of the programmes, however, in 1995 considered the relevant programmes to be

⁶⁰¹ By 1995 the EC was applying a standard formulation for the clauses. Commission Communication on the inclusion for democratic principles and human rights in agreements between the Community and third states, COM(95) 216 final, 23.5.1995.

⁶⁰² See Chapter 4 for a more detailed discussion of the problems involved in the adoption of the first EIDHR regulations.

pilot actions that could eventually be subsumed under mainstream development programmes.⁶⁰³ As such, they did not necessarily need a legal basis in secondary law, but could be implemented on the basis of the budget only. Lack of a clear legal framework also gave more freedom to the Commission in the implementation of the programmes. However, pressure began to mount, as Member States overall got increasingly critical with the Commission's interpretation of 'pilot' and/or 'preparatory' actions. With a crucial case pending before the European Court of Justice (ECJ),⁶⁰⁴ which concerned EC programmes on poverty within the Member States, the Commission eventually also submitted a proposal for an EIDHR regulation in July 1997.⁶⁰⁵

The proposal, which definitely had several deficiencies and appeared hastily drafted, resulted in a major dispute between the Commission and the Council Legal Service on the scope of EC human rights competences ('EIDHR dispute'). The dispute formed part of broader discussions on this topic, which emerged around the question of EC accession to the ECHR and also led to a case before the ECJ in which EC competence to include political conditionality clauses in external agreements was challenged. Some observers have argued that the crucial issue was EC competence in the field of human rights as regards the Member States, rather than the external dimension.⁶⁰⁶ The complex arguments of both sides in the EIDHR dispute are discussed in Chapter 4. Suffice it to say here that the Council Legal Service, pushed by some Member States and in particular the UK, basically argued that the EC did not have competence to adopt a regulation for independent democracy and human rights assistance programmes, like those under the umbrella of the EIDHR. It could only provide democracy and human rights assistance as part of 'development cooperation measures', in particular, the mainstream programme. Additionally, and going even further, the Council Legal Service also argued that any 'political aid', like electoral assistance, could only be provided under the second pillar – CFSP – and not by the EC in the framework of development policy. Such an interpretation stood in stark conflict to the actual practice of that time, both as regards the EIDHR programmes as well as democracy assistance and mainstream programmes, and definitely put some constraints on the EC's external democratization policy.

The dispute was eventually solved, largely in favour of a broad interpretation of EC human rights and democracy-related competences in EC external relations. In April 1999 the Council adopted two regulations that from then on provided the legal basis for the numerous

⁶⁰³ COM(95) 567 final.

⁶⁰⁴ Case C-106/96 *United Kingdom v. Commission* [1998] ECR I-2729. See Chapter 4 for more details on this case and its consequences.

⁶⁰⁵ Commission Proposal for a Council Regulation (EC) on the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms, COM(97) 357 final, 24 July 1997.

⁶⁰⁶ J. H. H. Weiler and S. Fries, 'A Human Rights Policy for the European Community and Union: The Question of Competences', in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999), at 147.

specific human rights and democracy assistance programmes: Regulation No. 975/1999,⁶⁰⁷ covering developing countries, and Regulation No. 976/1999,⁶⁰⁸ covering all other third countries. The regulations are from now on referred to as 1999 EIDHR regulation for developing and third countries, respectively. The adoption of two identical rather than one single regulation was necessary because of the provisions of the ECT that did not allow for a different option. The decision of the ECJ in the mentioned crucial case on the definition of ‘pilot’ and ‘preparatory’ measures – Case C-106/96 – in 1998 definitely speeded up the adoption process, as it endangered the further provision of assistance without secondary legal basis. The EIDHR regulations were initially valid until 31 December 2004, and then prolonged until 31 December 2006.⁶⁰⁹

The EIDHR regulations did not establish a single EIDHR programme, but constituted a further step in that direction. It was the first major policy-making document of secondary law on democracy assistance, at least as regards the specific programmes, and laid down some principles and common rules, including for the thematic scope of the programmes, eligible applicants, which as well as some procedural issues. The Council refrained from providing a statement of principle on some underlying concept of democracy as well as on some specific approach of democracy assistance to be pursued. Indeed, it did not really strongly develop a specific character of the EIDHR programmes in difference to the mainstream assistance programmes.

b) The Transformation of the EIDHR

By 1999 the EU budget envisaged about twelve different specific human rights and democracy assistance programmes that were implemented under the umbrella of the EIDHR. Some of them had a broad thematic and specific geographical focus and addressed a world region, a more confined region (like Southern Africa, 1998), or a specific country (Nigeria, 1999). Other

⁶⁰⁷ Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development co-operation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, OJ 1999 L120/1.

⁶⁰⁸ Council Regulation (EC) No 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries, OJ 1999 L120/8.

⁶⁰⁹ Regulation (EC) No 2240/2004 of the European Parliament and of the Council of 15 December 2004 amending Council Regulation (EC) No 975/1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, OJ 2004 L390/3; Council Regulation (EC) No 2242/2004 of 22 December 2004 amending Regulation (EC) No 976/1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries, OJ 2004 L390/21.

programmes had a more specific thematic focus, like on electoral support (starting with 1997/1998), international criminal tribunals, and the International Court of Justice (ICJ) (1997). Table A, provided in the Appendix, provides details on the exact development of these numerous programmes.

The EIDHR regulations did not explicitly envisage any change to this structure of numerous programmes based on different budget lines, but was perfectly compatible with it. In other words, the EIDHR regulations did not *per se* create a single EIDHR programme. Nevertheless, already in 1999 the Commission started to embark upon a process of gradually transforming the numerous lines into such a single EIDHR programme with global applicability. The move was accepted by the other institutions. The Commission's main motivation for this process was questions of management and aid implementation, as a single programme, a single programming document, and a single set of procedures would allow a quicker delivery of assistance, while using fewer Commission staff.

The transformation of the EIDHR has in this respect also to be seen as part of a broader reform process in external aid, which had been started by the Commission of Jacques Santer, but was even more vigorously pursued by Romano Prodi,⁶¹⁰ after numerous evaluations published in the late 1990s and 2000 drew a rather negative picture of EU aid programming and implementation.⁶¹¹ Major elements of the reform process were the stronger weight given to strategic programming, including through the introduction of a common framework for regional, country-focused, and thematic Strategy Papers (SPs), the creation of EuropeAid, which was entirely responsible for the implementation of assistance programmes (beyond programming), and the 'devolution' of powers and responsibilities to Commission – or, since Lisbon, Union – Delegations in third countries.

The transformation process of the EIDHR, which took place from 1999 to 2001, expressed itself in three issues. First, the last remaining procedural differences in the implementation of the various programmes were abolished and, basically, the Phare and Tacis Democracy Programme-model was introduced for all. This involved, in particular, the use of calls for proposals⁶¹² and the use of the three project types, namely, macro projects, micro projects, or

⁶¹⁰ Commission, *Reforming the Commission – A White Paper, Part I and Part II – Action Plan*, COM(2000) 200 final; Commission, *Communication to [hic] the Commission on the Reform of the Management of External Assistance*, 16.5.2000 Rev 8; For a discussion of the reform see C. Santiso, 'Sisyphus in the Castle: Improving European Union Strategies for Democracy Promotion and Governance Conditionality', 15 *The European Journal of Development Research* 1 (2003), at 1.

⁶¹¹ Court of Auditors, *Special Report No 12/2000*, on the management by the Commission of European Union support for the development of human rights and democracy in third countries, together with the Commission's replies; Court of Auditors, *Special Report No 21/2000* on the management of the Commission's external aid programmes (in particular on country programming, project preparation and the role of Delegations).

⁶¹² European Commission, *Vade-mecum on Grant Management* (1998), at 19.

targeted projects. In 1999 the first geographically quite comprehensive EIDHR call for proposals for macro projects was held, which covered all world regions except Latin America and the Mediterranean.⁶¹³ It was followed by the first truly global call for macro projects in 2001.⁶¹⁴ In the same year also the micro-project facility, first used in Phare countries in 1994, started to be extended to countries beyond the former Communist world, in particular also to China.⁶¹⁵

Secondly, in 2001 the EU budget for the first time allocated funds to broadly defined thematic fields, like democracy and human rights. As transitional arrangement, only the remarks to the relevant budget lines also allocated funds to individual regions or topics (Title B7-7 - EIDHR). From 2002 on, Title B7-7 only consisted of one broadly defined thematic line – for democracy and human rights – as well as very few, specific lines.⁶¹⁶ The major implication of this change was that decisions on the regional distribution and, in part, on the thematic distribution were no longer taken by the Parliament in the budgetary process, but rather by the Commission and Council during programming.

Thirdly, in 2001 the Commission first published a single EIDHR programming paper that addressed all previous separate lines in a single strategic document.⁶¹⁷ Overall, programming had been neglected in the case of the specific democracy and human rights programmes during the 1990s, with few programmes indeed developing short-to-medium term programming papers. Better, strategic programming, which was also one of the main suggestions of the broader external aid reform agenda, had to be welcomed. The development of a single EIDHR programming document made it very difficult to develop country-specific responses for each and every country covered by the EIDHR, as a single document could impossibly include individual strategies for more than 100 states.

c) Identifying a Distinctive Character for the EIDHR

During the process of transforming the EIDHR also questions on its specific character came to the fore, in particular, after criticism by the European Court of Auditors. In a special report on

⁶¹³ European Commission, European Initiative for Democracy and Human Rights. Guidelines for Applicants 1999, Budget Chapter B7-70, Budget lines B7-700, 701, 7020, 7021, 7022, 704, 706, 707 and 709.

⁶¹⁴ European Commission, European Initiative for Democracy and Human Rights. Call for Proposals 2001 (projects other than centres for the rehabilitation of victims of torture). Guidelines for Applicants, Budget Chapter B7-70, 20.12.2000.

⁶¹⁵ See Table B in the Appendix.

⁶¹⁶ See Table A in the Appendix.

⁶¹⁷ European Commission, Commission Staff Working Paper, Programming Human Rights and Democracy – Exercise 2001, Chapter B7-7 of the Budget. Priorities and Guidelines for the Implementation of the 2001 European Initiative for Democracy and Human Rights (EIDHR). Calls for Proposals, Targeted Projects, Micro Projects, SEC(2001) 891, 6 June 2001; See also Communication from the Commission to the Council and the European Parliament, The European Union's Role in Promoting Human Rights and Democratization in Third Countries, COM(2001) 252 final, 8.5.2001.

EU democracy and human rights assistance of 2000, the Court could not identify a distinct identity of the EC's special democracy and human rights programmes as compared to democracy assistance under mainstream programmes, and called for integrating the EIDHR into the mainstream programmes.⁶¹⁸ Indeed, while the EIDHR programmes from the beginning on had some distinctive features, these had never been accentuated and were, in particular, also not really visible in the text of the EIDHR. In particular, it was hard to discern different thematic foci.

Aiming to preserve the EIDHR, the Commission responded swiftly to the Court of Auditor's critique. On the one hand, it argued, just as in COM(95) 567 final, that the EIDHR could be used for testing assistance in new fields that could then be taken over by mainstream programmes ('pilot projects'). On the other hand, the Commission pointed to specific features of the EIDHR, which had always been present but needed to be developed and expressed more clearly. Most notably, the implementation of the EIDHR did not require a formal agreement with the third state's government, but provided funds directly to NGOs and other recipients.⁶¹⁹ On the contrary, the programming of mainstream programmes envisaged cooperation and agreement with target states' governments. The absence of this characteristic predetermined the EIDHR to work with partners that were not traditional partners in mainstream programmes, namely NGOs and, although secondarily, international organizations. Further, it allowed the EIDHR to fund projects in countries where the government opposed democracy assistance and would not accept it as part of development aid. It also allowed the EIDHR to implement projects where no general development programmes were implemented, for example where they had been suspended or where, due to crisis situations, no agreement could yet be made with a representative government. Finally, due to this feature, it was also the best possible source for the funding of certain activities, like EU election observation missions, which required a strong degree of independence from the third state's government.⁶²⁰

The EIDHR was subsequently developed further in the outlined direction. When the EIDHR regulations were amended and prolonged in 2004, provisions on EIDHR programming were inserted, which explicitly excluded governmental participation in the programming process.⁶²¹ This does not mean though that third states are not aware or informed about the programme, or that the EU does not seek tacit agreement or acceptance in order to facilitate implementation. Further, the nature of the EIDHR as civil society programme was increasingly stressed. Already the EIDHR call for proposals for macro projects of 2001 limited the scope of

⁶¹⁸ Court of Auditors, Special Report No 12/2000, point 9 and 75.

⁶¹⁹ COM(2001) 252 final, at 15.

⁶²⁰ Ibid, at 14-15.

⁶²¹ European Parliament and Council regulation No. 2240/2004, Art. 1(6); Council regulation No. 2242/2004, Art. 1(6).

eligible applicants compared with the 1999 EIDHR call, by no longer mentioning public authorities, even if they were in principle eligible under the 1999 EIDHR regulations. The 2006 EIDHR regulation wrote this shift clearly into secondary law. It stressed that the EIDHR was primarily a civil society instrument, to be implemented and to focus on civil society development, and no longer mentioned public authorities as eligible applicants and restricted the eligibility of parliaments.⁶²² Data on EIDHR implementation throughout the 1990s confirms this development, with increasing flows to civil society development and elections and decreasing flows to sectors like the judiciary, public institutions, anti-corruption measures, and parliaments.⁶²³ However, a strong overlap in the thematic focus of both types of programmes, EIDHR and mainstream programmes, remain characteristic of EU democracy assistance. Despite the elaboration of specific features of the EIDHR, it was also after 2001 not possible to clearly attribute the EIDHR and the political and mainstream programmes to Thomas Carother's developmental approach of democracy assistance.

d) Rendering the EIDHR More Strategic

Beyond the changes to the EIDHR outlined in previous paragraphs, two further modifications were introduced in 2001. Like some of the other reforms, they responded to the critique of the Court of Auditors and of independent experts, who had traced ineffective EC external human rights and democracy assistance policies to an unfocused, broad approach, in particular as regards the EIDHR.

First, rather than covering a large number of third states, the EIDHR should, except for some global campaigns, concentrate on a limited number of focus countries, where most projects should take place. The selection of focus countries did, however, not prove a successful strategy and was soon again abandoned in favour of the earlier broader geographical focus. Secondly, rather than covering a broad thematic spectrum of projects, the EIDHR should focus on a limited number of thematic priority areas. This definition of thematic priorities has remained a feature of EIDHR programming until today, but was not without problems.

The selection of thematic priority areas was useful for those themes, which the EU wanted to promote at a global level through global campaign, like raising support for the International Criminal Court (ICC). It was problematic as regards support to democratization processes in individual countries. The argument, recognized by the EC, that each state faced

⁶²² Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, OJ 2006 L386/1, Art. 10. From now on, this regulation will be referred to as 2006 EIDHR regulation.

⁶²³ See Tables 19 to 21 in Chapter 6.

different problems, followed its idiosyncratic path to democracy, and required a specific response, called for the selection of thematic foci for individual countries rather than the definition of a limited number of global priorities that would then be pursued in all states. Global priorities suggested the use of a one-size-fits-all strategy valid for all countries without sufficient regard being given to the specific needs of the target states.

Without explicitly mentioning them, the Commission addressed these limitations from the beginning. On the one hand, the selection of thematic priorities was not done in a top-down fashion in Brussels, but on the basis of input from Commission Delegations. This should lead to the result that the global priorities were nothing more than the sum of the target states' priorities and that the global EIDHR strategy incorporated the required numerous individual country strategies. In practice, such global strategy could of course never do justice to the required needs of all covered states or replace individual, tailor-made approaches. On the other hand, should the global EIDHR strategy not prove suitable or sub-optimal for a particular state, delegations were given the possibility to adjust the priorities to local circumstance in the case of local calls for proposals. In other words, delegations could identify different priorities from the ones in the EIDHR programming documents. This could also result in weaker actions than intended by the Commission headquarters.⁶²⁴ Overall, this possibility was an implicit recognition of the limitations of the global approach. It should be added that many of the so-called priorities of the EIDHR were not priorities at all, as they were extremely broadly formulated. This, of course, strongly reduced the strategic character of EIDHR programming documents.

The absence of democracy- and human rights-specific country strategy papers that define thematic priorities for particular states has only more recently been a core point of discussion among the EU institutions. The issue is now being addressed through the elaboration of general country-focused 'human rights strategies' for most, and eventually all third states. Their exact impact on EIDHR programming and the question of general priorities cannot yet be determined.

The just outlined suggestions on EIDHR strategy-making were published in the Commission's second major communication on the EC's external human rights and democratization policy: COM(2001) 252 final on 'The European Union's Role in Promoting Human Rights and Democratization in Third Countries'.⁶²⁵ This document did not aim to rewrite the policy, but, again, just to suggest some improvements and to outline reforms already being implemented. It was strongly inspired by the Report of the *Comité des Sages* to the European institutions on the future human rights policy of the EU of 1998 and applied some of that

⁶²⁴ Bicchi, 'Dilemmas of Implementation: EU Democracy Assistance in the Mediterranean', at 984-89.

⁶²⁵ COM(2001) 252 final, 8.5.2001.

report's core ideas specifically to the external dimension.⁶²⁶ Both, Council and Parliament highly welcomed the Commission's suggestions.

While a major part of the communication was indeed concerned with the EIDHR and proposals to render it more strategic, other sections dealt with the questions of coherence and consistency in EU human rights and democratization policy, that had already been raised in 1991 and 1995. The term coherence was applied to the EC context, that is, to the consistent use of different EC instruments of democracy promotion and to consistent EC policies. The term consistency rather applied to the relationship between EC and Member States' policies. Means to ensure both were more intensive cooperation by institutions and other actors at all stages. Further, COM(2001) 252 final introduced the idea of "mainstreaming" human rights and democracy concerns into all EC policies. This should, initially, in particular be realized through increasing activities under two existing democracy promotion instruments: dialogues and assistance. Existing political dialogues should systematically address human rights issues and more specific human rights dialogues should be set up. Purpose, procedure, and principles for these dialogues were in more detail laid down in special guidelines by the Council.⁶²⁷ Importantly, dialogues should also serve for identifying possible fields for democracy and human rights assistance. Mainstreaming as regards assistance mainly called for increasing commitments for the field under the general development programmes. COM(2001) 252 final also called for an increasing use of the tool of incentive conditionality, that is, to reward positive performance as regards the protection of human rights with more aid. Finally, it rejected the idea of setting up a separate European Human Rights Agency, either as monitoring or implementing body in the field of external human rights and democracy promotion. The Commission considered existing sources of information as sufficient and the newly founded EuropeAid Cooperation Office as a more appropriate body to implement EC assistance programmes.

It has been mentioned above that the European Parliament and the Council welcomed COM(2001) 252 final and supported its proposals. Going beyond the text of this communication, the Council stipulated to explore the idea on an EU 'Common Strategy on Human Rights and Democratization', which would, as common strategy by the European Council in the sense of ex-Article 12 and 13 TEU, outline principles and guidelines for the common foreign and security policy that would, however, also affect all external policies. It was never adopted, but the idea would later resurface.

⁶²⁶ *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000. Agenda of the Comité des Sages and Final Project Report. A Project of the European University Institute funded by the European Commission marking the fiftieth anniversary of the Universal Declaration of Human Rights* (1998). The Committee consisted of A. Cassese, C. Lalumière, P. Leuprecht and M. Robinson.

⁶²⁷ Guidelines on Human Rights Dialogues 2001 and Guidelines on Human Rights Dialogues 2009.

e) Focusing on Election Support

While the EC started to embark upon the mentioned major reform of the management of external assistance in the late 1990s, it hardly engaged in more detail with thematic issues and/or individual sub-fields of democracy assistance. For example, it aimed at promoting civil society but did not elaborate on the concept in order to devise clearer strategies on how to proceed. Such exercises, a foundation for informed policy-making and implementation, only gradually and in an unsystematic fashion started to be carried out during the 2000s.⁶²⁸

An exception to the lack of more detailed thematic engagement in the late 1990s was the EC's intensive discussion of election support, which COM(95) 467 final had identified as a major future priority.⁶²⁹ By the late 1990s, commitments for election assistance had increased and more and more EU Election Observation Missions (EU EOMs) were deployed, however, in an *ad hoc* and inconsistent fashion, which increasingly led to critique and also had some negative international repercussions.⁶³⁰ COM(2000) 191 final provided a plan on how both types of democracy support, which were by then conceptually clearly distinguished, should be developed further and improved.⁶³¹ Overall, the publication more strongly focused on election observation, for which the Council had already decided some policy guidelines in 1998 and early 1999.⁶³² While making numerous suggestions on individual features of election observation, the Commission also suggested 'supranationalizing' EU EOMs and concentrating its management in the Commission's hands. The Council was critical of the prospect of a reduced role in EU EOMs and only approved the reforms after ensuring its participation in the selection of countries to which EU EOMs would be sent and stipulating that it retained the right to become active under CFSP.⁶³³ Similarly, the Parliament insisted on one of its members acting as chief observer in EU EOMs.⁶³⁴ Overall, the discussions were reminiscent of the EIDHR dispute. A further consequence of the reforms was the exclusive use of EIDHR funds for EU EOMs.⁶³⁵ The

⁶²⁸ Handbooks or guides for Commission officials or other interested and involved actors are now available for election assistance, election observation and parliamentary support.

⁶²⁹ COM(2000) 191 final; Commission Staff Working Paper Implementation of the Communication on Election Assistance and Observation, SEC(2003) 1472, 19.12.2003.

⁶³⁰ COM(2000) 191 final, at 7.

⁶³¹ COM(2000) 191 final.

⁶³² Council Guidelines – EU Policy on Electoral Observation, 9262/1998 and EU Guidelines on Common Criteria for the Selection of Electoral Observers, Council Decision 93/604/CFSP. Both also reprinted in Annex III and IV of COM(2000) 191 final.

⁶³³ Council Conclusions on Election Assistance and Observation of 31 May 2001, Doc 9990/01, 31.5.2011; European Parliament Resolution on the Commission Communication on EU Election Assistance and Observation (COM(2000) 191- C5-0259/2000-2000/2137(COS)).

⁶³⁴ SEC(2003) 1472, at 10.

⁶³⁵ *Ibid.*, at 10-24.

growing commitments for election observation had negative consequences for EIDHR democracy assistance, as its relative share of the EIDHR consequently decreased.

The Commission envisaged a similar structure for election assistance as for EU EOMs, that is, the deployment, upon request, of a team of experts that would ‘assist’ the government of a third state or its central election commissions in the preparation and execution of different types of electoral processes. The Council, however, preferred election assistance to be part of mainstream development programmes and to be planned and implemented in the framework of existing tools and procedures. The Commission’s intervention module and guidelines for election assistance therefore never became operational. A delayed result of the conceptual engagement with election assistance was the development of a guidebook on election assistance by EuropeAid, that should assist Commission staff in the formulation and identification of election assistance programmes.⁶³⁶

To defend itself from criticism of electoral ‘fallacy’, the Commission clarified from the start that free and fair elections were just one – albeit an important – step in democratization processes, but would not suffice to make a country democratic.

f) Addressing Conceptual Issues (in the ACP Context)

So far, none of the institutions had explicitly and intensively addressed conceptual questions concerning the ideas the EC was promoting, in particular as regards democracy. Numerous core documents in the field had made references to elements or basic principles of the democratic system of government the EU envisaged to support in third states, like to elections, civil society, free media, political pluralism, human rights, and the rule of law, without, however, defining some of these partly ambiguous sub-concepts further or elaborating on their relationship and comparative relevance.⁶³⁷ Some documents mentioned qualifiers, like ‘parliamentary’ or ‘representative’ democracy, again without defining them in more detail.⁶³⁸ A major reason for the hesitation appears to be the fear of being criticized for promoting a specific, in particular, a ‘European model’ of democracy, which the Commission declined to do already in 1991 and to which the other institutions agreed.⁶³⁹ Rather, each country was to develop its own model, which best suited local circumstances.⁶⁴⁰

⁶³⁶ EuropeAid, *Methodological Guide on Electoral Assistance*, 2006.

⁶³⁷ SEC(91) 61 final; Luxembourg European Council, Declaration on Human Rights, June 1991; 1999 EIDHR regulations.

⁶³⁸ Declaration on Human Rights, June 1991 Luxembourg European Council; 28 November 1991 Council resolution.

⁶³⁹ SEC(91) 61 final.

⁶⁴⁰ 28 November 1991 resolution.

In a hitherto unique exercise, the Commission embarked upon elaborating the four concepts democracy, rule of law, human rights, and good governance in some more detail in 1998.⁶⁴¹ The result was not necessarily entirely clear, comprehensive, and unambiguous, however, it exposed the concepts in a clearer way than any earlier document. The Commission aimed particularly at clarifying the concepts for EC-ACP relations in view of the revised Lomé IV Convention (of 1995) and the planned Cotonou Agreement (of 2000). The latter eventually indeed included many provisions that could be traced back to the Commission's deliberations. However, it strongly appears that the Commission intended its statements to have broader relevance and application.⁶⁴²

As regards democracy, the Commission first clarified that it was preferable to speak of 'democratic principles' rather than 'democracy' in order to stress that there were more models of democracy, all of which were based on a set of core principles which could be considered universally recognized. The EC aimed at promoting these underlying principles rather than a specific model. Differentiating between three 'fundamental characteristics' – legitimacy, legality, and effective application – the Commission proceeded with outlining the essential principles of democracy, which can be summarized as follows:

Legitimacy: Public authority derives from citizens selecting leaders in free and fair elections;

Legality: refers to the rule of law, which implies that there is an appropriate, constitutional and regulatory system that applies to all citizens, and that all internationally recognized human rights are protected;

Effective Application: involves human rights promotion and protection, there is a separation of powers, participation at national, regional, and local level (consultation and administrative decentralization), political and institutional pluralism (political parties, civil society, independent media), and transparency and integrity of public institutions.

A separate section elaborates on the concept of the rule of law in more detail. It suggests a broad meaning, encompassing the formal and material dimension, and refers to the division of power, an independent judiciary, access to justice, a prison system respecting the human rights, and a police force acting within the law. Human rights are broadly and generally defined as all rights included in international and regional agreements. Good governance was defined as broadly as in the 28 November 1991 resolution of the Council and Member States. It encompassed a democratic, human rights-protecting system of government, next to the management of "public

⁶⁴¹ Commission Communication to the Council and the Parliament, Democratization, the Rule of Law, Respect for Human Rights and Good Governance: the Challenges of the Partnership between the European Union and the ACP states, COM(98) 146.

⁶⁴² Ibid, at 1.

affairs in a transparent, accountable, participative and equitable manner showing due regards for human rights and the rule of law”.⁶⁴³

Overall, the outline of the concept of democracy did not reveal any new, surprising issues. The large majority of the elements had already featured in earlier publications. The only issues that had not been accorded a prominent position before was the idea of decentralization, in particular, the participation in policy-making processes not only at national, but also regional and local level. In the development context, the idea of decentralization was considered central for increasing the effectiveness of socio-economic assistance, as involving the local population in policy-decisions should improved assistance projects. However, in other dimensions, like in the context of the Council of Europe, which elaborated a separate Charter on local self-government, decentralization has a much more fundamental purpose and is seen as realizing the idea of democracy.⁶⁴⁴

In the same document in which the Commission outlined the concept of democracy, it also made some statements on EU democracy assistance. It mentioned that democratization was a long and complex process involving all forces in society and requiring reform at different levels – the state and civil society. It also required a genuine political resolve by leaders and ownership by citizens or, at least, their substantial participation.⁶⁴⁵ It stressed differences in various states, which needed to be taken into account in specific, targeted programmes.⁶⁴⁶ However, the Commission also argued that several issues may be considered priorities in all states and can therefore be considered a standard block of EU democracy assistance. The provided list enumerated more or less the same topics that had been mentioned in other documents before: constitutional reform, judicial reform, administrative decentralization, support for legislative power, budget supervision and monitoring, regional human rights systems.⁶⁴⁷

In summary, the period of the late 1990s and early 2000s was crucial for the development of the EIDHR. During that time, it was confirmed as a crucial external democracy promotion instrument and some of its features were accentuated and further developed to give it a unique identity. By 2001, the EIDH operated as single, external programme covering all world regions. While this increased its visibility and simplified its management, it had the disadvantage that it further removed EC practice from the development of individual country strategy papers for democracy and human rights assistance.

⁶⁴³ COM(98) 146, at 7.

⁶⁴⁴ European Charter of Local Self-Government (1985).

⁶⁴⁵ COM(98) 146, at 10.

⁶⁴⁶ *Ibid*, at 12.

⁶⁴⁷ *Ibid*, at 12-13.

5. 2003-2006: The Growth of Democracy Assistance in Mainstream Programmes

In November 1991 the Council had decided that democracy assistance would be provided as an element of mainstream development programmes. Subsequently, assistance programmes were adjusted accordingly and commitments under mainstream programmes increased, albeit rather slowly. Between 2000 and 2005 EU democracy assistance as part of mainstream programmes surged as part of a new interest in good governance and special initiatives to that end.

a) Confirming the Role of Democracy in Development

Two crucial policy documents in the field of the EC's development policy published in 2000 and 2006 confirmed the EC's belief that democracy mattered for successful socio-economic development. First, in November 2000 the Council and the Commission adopted a joint statement on '[T]he European Community's Development Policy', which became the crucial policy document for the subsequent years.⁶⁴⁸ It mentioned that the EC aimed at promoting 'sustainable, equitable and participatory human and social development', which included the 'promotion of human rights, democracy, the rule of law and good governance'. The statement did not elaborate in detail on democracy assistance, but identified 'institutional capacity building', including support for the working democratic institutions, good governance, the fight against corruption, and the rule of law, as one of six priority areas of EC assistance.

Secondly, in early 2006 the Council, the Member States meeting within the Council, the Parliament and the Commission adopted the 'European Consensus on Development', which was to become the guiding policy document for the EC's and the Member States' development policies from that date.⁶⁴⁹ The first part of the document more generally outlined the EU's vision of development; the second part more specifically concerned EC development policy. Democratization was seen as element of sustainable development and as essential condition for successful socio-economic development. Democracy was declared to be a 'common value' of the relations between the EU and developing countries that should be promoted in various ways. Some of the more specific policy suggestions related to the stronger use of dialogues, including for the purpose of identifying fields of democracy assistance, the importance of the participation of civil society in democracy promotion, and the increasing 'mainstreaming' of human rights and

⁶⁴⁸ Statement by the Council and the Commission: The European Community's Development Policy, 2304th Council Meeting, Doc. 12929/00, 10.11.2000.

⁶⁴⁹ European Parliament, Council, Commission, Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus', OJ 2006 C46/1.

democracy, in particular through increasing commitments for democracy assistance under mainstream development programmes. The Consensus did not specifically address democracy assistance, but referred to election and parliamentary support as examples thereof. Overall, the Consensus provided a very strong basis for EC democracy promotion and its further development, especially as part of mainstream development programmes.

b) The Governance Agenda

Next to the just discussed general documents in the field of EC development policy, the increasing focus on good governance from 2003 on played an important role for the increase in commitments for democracy assistance as part of mainstream development programmes during the nouthies and beyond. The topic of governance and good governance was of course not a new one, but had formed part of EC development policy since 1991. Many subsequent policy documents had referred to it and some external agreements accorded it a prominent position, like the Cotonou Agreement of 2000, which made it a ‘fundamental element’ – not an essential element though.⁶⁵⁰ Influenced by the new focus on governance by many international development actors as well as the discussion on governance reform within the EU in the early 2000s, in 2003 the Commission elevated the issue to a core new topic in the EC’s development policy, which was welcomed by the Council and the Parliament.⁶⁵¹ Good governance should be promoted through several existing tools, such as increased discussions of governance issues in political dialogues, or through increased assistance for reforming key aspects of governance. Additionally, important new initiatives were launched, like specific governance initiatives and facilities that combined elements of incentive conditionality and assistance and, in part, reserved fixed shares of available development budgets for assistance in the field of governance reform. Another important feature of these new initiatives was a more intensive engagement with the thematic elements of governance and, consequently, the fields of assistance.

⁶⁵⁰ 28 November 1991 resolution; COM(98) 146; Agreement amending the Fourth ACP-EC Convention of Lomé signed in Mauritius on 4 November 1995, OJ 1998 L156/3; Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, OJ 2000 L317/3 (from now on referred to as Cotonou Agreement); Council and Commission Statement on Development 2000. P. Hilpold, ‘EU Development Cooperation at a Crossroads: The Cotonou Agreement of 23 June 2000 and the Principle of Good Governance’, 7 *European Foreign Affairs Review*, 1 (2002), at 53f.

⁶⁵¹ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, Governance and Development, COM(2003) 615 final; Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, Governance in the European Consensus on Development: Towards a Harmonized Approach within the European Union, COM(2006) 421 final, 30.8.2006; Council, Governance on the European Consensus for the Development – Towards a harmonised approach within the European Union, Conclusions of the Council and the Representatives of the Governments of the Member States meeting within the Council, 14024/06, 16.10.2006.

The reason why democracy assistance benefited from this new focus on good governance was the conceptual overlap of the two topics. Good governance had always been defined broadly and thereby encompassed a democratic system of government, even if the concepts in many documents feature alongside each other and therefore suggest more separate meanings. COM(98) 146, which not only intensively engaged with the concept of democracy but also with governance, defined governance as describing “the exercise of political, economic and administrative power in the management of public affairs”. Based on this definition, good governance was the management of “public affairs in a transparent, accountable, participative and equitable manner showing due regard for human rights and the rule of law”. It was considered to have two dimensions, the so-called ‘political dimension’, which related to strictly political action, including the system of government, and the – somewhat ambiguously called – ‘institutional dimension’ that related to the management of economic and social resources.⁶⁵² Documents developed in the framework of the mentioned governance initiatives in the mid-2000s explicitly enumerated principles of constitutional democracy (including the separation of powers, the role of parliaments, political pluralism), electoral processes, and fundamental democratic freedoms as core fields of good governance.⁶⁵³ Overall, the promotion of good governance therefore includes the promotion of democracy.

i. The Democracy Facility

The development of governance facilities was preceded by one very specific effort for promoting democracy and human rights in the Mediterranean that had a very short life span. In 2003, following a relatively negative report on the state of democracy in the Arab world by UNDP, the Commission made several proposals for rendering its democracy promotion policy in the region more effective.⁶⁵⁴ Many of the issues were repetitions of earlier ideas, like more discussions on human rights issues in dialogues, more democracy assistance under MEDA, and more coherent and consistent policies. The Commission also made two important new proposals, however. First, it called for a better assessment of the situation in third states and called on heads of Delegations to draw up so-called Human Rights Fact Sheets, which would also receive input from the Council Working Group on Human Rights (COHOM). Secondly, it suggested a new incentive conditionality tool that would provide additional assistance to those states that

⁶⁵² See e.g. COM(98) 146, at 7.

⁶⁵³ Commission Staff Working Paper, Supporting democratic governance through the Governance Initiative: A review and the way forward, SEC(2009) 58 final; Council, Council Conclusions on support to democratic governance – Towards an enhanced EU framework, 9908/09, 18.5.2009.

⁶⁵⁴ Communication from the Commission to the Council and the European Parliament, ‘Reinvigorating EU Actions on Human Rights and Democratization with Mediterranean Partners’, COM(2003) 294 final, 21.5.2003.

committed themselves to carry out reforms in the field of human rights and democratization. The implementation of this – later – so-called Democracy Facility involved the drafting, in cooperation with the national authorities of the target states, of national Action Plans or Strategies on Human Rights and Democracy. These plans were to identify reform needs, goals, and clear guidelines and benchmarks for reaching them.⁶⁵⁵ Countries willing to agree on such plan and to implement them would receive extra funding on top of regular MEDA funds. The Democracy Facility was only implemented during the last year of operation of the MEDA programme, when two countries received additional funding (Morocco and Egypt).⁶⁵⁶ It was already repealed in 2007 by the ENPI Governance Facility.⁶⁵⁷

ii. The ACP Governance Initiative

In 2006 the Commission first outlined details on ongoing efforts to establish a so-called ACP Governance Initiative that should, similar to the Democracy Facility, provide additional assistance to states willing to carry out reforms in key areas of – this time – governance.⁶⁵⁸ Incentive conditionality or the promise to receive more assistance in exchange for reforms was not new in EC-ACP relations. Already between 1995 and 2000 the EC provided extra funding for ‘institutional and administrative reform’ under the EDF for countries willing to engage in such reforms.

The ACP Governance Initiative, which is still being used, operates in a similar way as the outlined Democracy Facility. The Commission establishes a so-called governance profile for a third state, which outlines the situation and trends in a particular state in nine core areas of governance. The template for such profile has been developed by the Commission, which drew from a similar model used in the World Bank. The finalized profile is then discussed with the government of the target state, which should consequently elaborate a ‘development plan’ – now, a so-called ‘Governance Action Plan’ (GAP) – that identifies the recipient state’s reform strategy.⁶⁵⁹ The GAP is annexed to the EU’s general aid programming document for that particular state, the Country Strategy Paper. The Commission’s decision on whether and how much extra funding a state receives is based on the governance profile and the GAP. The additional funds have to be used for the suggested reforms in the field of governance. The

⁶⁵⁵ *Ibid.*, at 16 and 19; Communication from the Commission to the Council and the European Parliament, Tenth Anniversary of the Euro-Mediterranean Partnership: A Work Programme to Meet the Challenges of the Next Five Years, COM(2005) 139 final, 12.4.2005.

⁶⁵⁶ Principles for the Implementation of a Governance Facility under ENPI, at 2.

⁶⁵⁷ COM(2003) 294 final, at 14; Principles for the Implementation of a Governance Facility under ENPI, at 2.

⁶⁵⁸ SEC(2009) 58 final; Council Conclusions on support to democratic governance, 9908/09.

⁶⁵⁹ COM(2006) 421 final, at 11-12.

Commission has stressed the element of discussing the reform agenda of GAPs, which it considers a crucially important exercise in the process. Accordingly, it has also not stressed the incentive part of the tool, but spread assistance broadly among most countries, so that they can implement the agenda of the GAP.

Overall, while the ACP Governance Initiative is an incentive instrument, its implementation renders it highly important for the instrument of democracy, human right, and good governance assistance. It reserves a stable share of the EDF for governance reform and, moreover, elaborates a detailed strategy for each state. Indeed, between 2008 and 2013 about 2.7 billion Euros were earmarked for the Governance Initiative.

iii. The ENPI Governance Facility

In parallel to the development of a governance tool for ACP states, the Commission also elaborated a specific governance tool for the states covered by the European Neighbourhood Policy (ENP) that was launched in 2003.⁶⁶⁰ As incentive tool that promises more assistance as reward for implemented reforms, the ENPI Governance Facility shares several features of the ACP Governance Initiative, but also has some special, different elements. It stresses the incentive component over assistance and the rewards progress over planned reform agendas.

The Governance Facility is firmly integrated into the ENP and largely operates on the basis of the various ENP documents. Rather than developing specific GAPs, the ENP Action Plans take their place. These document outline the reforms an ENP partner state intends to implement in the medium-term. They do not include separate sections on governance reform, however, address governance issues in various chapters, in particular in the section on 'Enhanced political dialogue and reform'.⁶⁶¹ When deciding whether a country should receive extra funding in addition to its general share of ENPI funds, the Commission primarily analyses its regular Progress Reports on ENP Action Plans in order to assess a country's progress. Because, as mentioned, ENP Action Plans and Progress Reports do not systematically address governance issues, the Commission uses a set of 50-odd indicators for governance and checks the situation in each.

Between 2007 and 2013 about 300 million Euros were earmarked for the ENPI Governance Facility. Unlike the case of the ACP Governance Initiative, funds are not spread widely, but, out of principle, not more than two states should benefit under the programme in

⁶⁶⁰ European Commission, On Strengthening the European Neighbourhood Policy, COM(2006) 726, at 12.

⁶⁶¹ Principles for the Implementation of a Governance Facility under ENPI (published at the ENP website of the Commission, no date provided).

one year. The envisaged extra funding is therefore considerably higher than under the ACP initiative. Moreover, while it is encouraged to use the funds for governance reform, this is not a precondition for the receipt of the incentive tranche.

iv. Democracy as Part of Governance Profiles and Indicators

It has been argued that the ACP Governance Initiative, while being an incentive instrument, can also be considered a democracy, human rights, and good governance assistance tool. It reserves a stable and considerably high share of EDF funds – between 2007 and 2013, about 12% of the entire amount – for governance assistance projects. Further, it provides this assistance on the basis of detailed strategic documents, elaborated by the target states' governments, on the basis of assessments by the Commission.

The mentioned governance profiles elaborated by the Commission give quite a detailed insight into the Commission's idea of what a democratic system of government, which the EC assists to develop and consolidate, entails. Further, compared to the Commission's elaboration of the concept of democracy in COM(98) 146, the governance profiles is less abstract, but very concrete. Overall, the Commission assesses the situation in nine fields of governance. Two of the nine core fields of governance relate directly to democracy: (1) 'Political/democratic governance' and (2) political governance/rule of law. Both are subdivided into various thematic sub-sections. In the case of the first, the Commission assesses a country's situation as regards: (A) human rights, asking, amongst others, whether the major international and regional human rights conventions have been signed and ratified and whether public "watchdog" institutions, like Ombudsmen, function effectively; (B) fundamental freedoms, asking whether freedoms like the freedom of movement, expression, thought and religion, assembly and association are guaranteed and exercised; (C) the electoral process, analyzing, in quite some detail, elements of the last major election, like the voter registration system, the validation of election results, and the existence of local observer organizations; (D) principles of constitutional democracy, encompassing questions regarding the constitutional separation of powers, the exercise of powers by the parliament (control of executive, budgetary and legislative powers), the existence of political pluralism, in particular through representative political parties, and the civilian and democratic control over the security apparatus. The second block, relating to the rule of law, assessed the situation as regards the type or types of judicial systems, the independence of the judiciary, the performance of the judicial system, access to justice and the rights to a fair trial.

Other identified core fields of governance relate to government effectiveness, economic governance, internal and external security, social governance (assessing whether eight

fundamental ILO conventions had been ratified, whether there were HIV/Aids policies, and whether there were efforts in the sector of gender equality), the regional and international context (for example, migration policies), and the quality of dialogue with the EU (which mainly relates to aid programming, including the involvement of civil society). Some of these other sectors may touch on the democratic system, in particular the social dimension and the dialogue, but do not define it.

The 50-odd indicators used in the case of ENP states overall cover the same sectors. Overall, the enumeration of the elements of democracy as part of good governance reveals no surprising features, except for its comprehensiveness and detail. At its core, the EU envisages the construction of liberal democracies that consist of the minimum procedural conditions identified by Robert Dahl: free and fair elections, freedom of information and expression, and the freedom of association, which are guaranteed in a rule of law system that consists of an independent judiciary and protects a broad range of human rights. Different from documents more closely related to the EIDHR, the governance profiles do not put a particular emphasis on the role of civil society in democratic processes.

From 2003 on the foundations were laid for a further increase of democracy assistance under mainstream development programmes. This happened in the framework of a renewed, strong interest in good governance, which, conceptually, incorporated a democratic system of government. The EU developed and put in place at least two major new governance tools: the ACP Governance Initiative and the ENPI Governance Facility. Both are incentive tools that promise for assistance in exchange for reforms in clearly defined fields of governance. The ACP Governance Initiative is highly important for democracy assistance, as it envisages a considerable share of EDF funds (about 12% or 2.7 billion Euros during 2008 and 2013) to be used for good governance reform, including democracy assistance and works on the basis of detailed country strategies for governance reform.

6. 2007: Overhauling External Assistance Programmes

a) A Simplification of the EU's External Aid Programmes

The reduction in the number of assistance programmes was one of the last items on the list of the major reform of EU aid policy implemented since 2000. Throughout 2004 and 2006 the new, future structure of external assistance programmes was discussed within and among the major EU institutions. Several different models circulated, sometimes also within one institution.⁶⁶² One of the major disputes concerned the scope of the new neighbourhood programme, which was deliberated as part of the then emerging European Neighbourhood Policy (ENP). Changing ideas for this programme also required an adjustment of some of the others in order to form a coherent system. Eventually, legal questions with regards to competence were solved, and political agreement was reached on each of the new programmes. On 1 January 2007, the whole set of new regulations entered into force.

The new, considerably simplified structure operates with seven major assistance regulations. Four new geographical programmes replace the older development programmes, in particular Tacis and MEDA, and together cover all third states: the Instrument for Pre-Accession (IPA),⁶⁶³ the European Neighbourhood and Partnership Instrument (ENPI),⁶⁶⁴ the Development Cooperation Instrument (DCI),⁶⁶⁵ and the Instrument for Cooperation with Industrialized and Other High-income Countries and Territories (ICI).⁶⁶⁶ Additionally, the Council and Commission adopted a new thematic programme, which applies to all third states and is mainly defined by its substantive focus: the Instrument for Stability (IfS).⁶⁶⁷ Existing regulations for two further thematic programmes, macro-economic and humanitarian assistance, remained in force. Assistance to ACP countries remained covered by the Cotonou Agreement, signed in 2000, and financed by the EDF.

⁶⁶² Communication from the Commission to the Council and the European Parliament, Building Our Common Future: Policy Challenges and Budgetary means of the Enlarged Union 2007-2013, COM(2004) 101 final/2; Communication from the Commission to the Council and the European Parliament, Financial Perspectives 2007-2013, COM(2004) 487 final.

⁶⁶³ Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an instrument for pre-accession assistance (IPA), OJ 2006 L210/82. From now on referred to as IPA regulation.

⁶⁶⁴ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European neighbourhood and partnership instrument, OJ 2006 L310/1. From now on referred to as ENPI regulation.

⁶⁶⁵ Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation, OJ 2006 L378/41. From now on referred to as DCI regulation.

⁶⁶⁶ Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories, OJ 2006 L405/41.

⁶⁶⁷ Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability, OJ 2006 L327/1.

Chapter 7 analyses the democracy promotion-related provisions of these regulations in more detail and shows that the topic features prominently in each, except for the ICI regulation. The new regulations therefore continued the trend of increasingly anchoring democracy promotion and assistance in mainstream development assistance programmes.

b) The European Instrument for Democracy and Human Rights (EIDHR)

As part of the reform of the external aid programmes the EIDHR regulations also needed to be addressed. After having been prolonged in 2004, they were due to expire at the end of 2006. Their future or rather *its* future, as an amendment to primary law by the Treaty of Nice, made the adoption of a single regulation for all third states possible and caused major disagreements between the EU institutions in the process of reforming the external aid structure.

Taking the call for a simplification of the system of assistance programmes seriously, in 2004 the Commission proposed to no longer adopt a separate EIDHR regulation but to continue the programme as one of the new, so-called thematic programmes under the DCI.⁶⁶⁸ Consequently the EIDHR programme would have been based on the DCI regulation, which would have defined all relevant aspects of the EIDHR, like its thematic scope and programming process, just like the DCI regulation currently regulates five thematic programmes, including migration, the environment and food security.⁶⁶⁹ Obviously, due to lack of space the provisions would not have been as detailed as in the EIDHR regulations. In principle, such an arrangement would have allowed the Commission to continue with the implementation of the EIDHR, just as before. There would have been a separate programming process for the EIDHR without involvement of the target states' authorities, albeit with the involvement the DCI committee in the programming process rather than the separate Democracy and Human Rights committee established by the 1999 EIDHR regulations. As thematic programme under the DCI regulation, the EIDHR would have applied to all third states and not only to those under the mainstream DCI programme.⁶⁷⁰

However, the European Parliament was strictly against the proposed structure and in mid-2005 called for the adoption of a separate EIDHR regulation.⁶⁷¹ It argued that the absorption of the EIDHR by the DCI would lead to a “dismantling and dilution” of the

⁶⁶⁸ COM(2004) 101 final/2, at 33; COM(2004) 487 final, at 23; Communication from the Commission to the Council and the European Parliament, External Actions through Thematic Programmes under the Future Financial Perspectives 2007-2013, COM(2005) 324 final, 3.8.2005, at 2 and 5.

⁶⁶⁹ Art. 11f of the DCI regulation.

⁶⁷⁰ DCI regulation, recital 12 of the preamble.

⁶⁷¹ Temporary committee on policy challenges and budgetary means of the enlarged Union 2007-2013, Report on Policy Challenges and Budgetary means of the enlarged Union (2004/2209(INI)), A6-0153/2005, Rapporteur R. Böge, 19.5.2005.

programme and that it would no longer be able to operate independently from the target states' governments.⁶⁷² While these were the official arguments of the Parliament, its critical stance also derived from the fact that the EIDHR was *its* creation that it intended to preserve as important flagship of the EU's external democratization policy. Arguably, a separate legal basis would strengthen the position of the EIDHR in EU external policies and give it more visibility. Further, the Parliament lamented the considerable reduction in numbers of assistance regulations that decreased its possibilities to influence and control legislative acts.

As the Parliament could co-decide many of the new assistance regulations, like the DCI, it had considerable leverage over the Commission and Council to accept at least some of its demands concerning the EIDHR. The Commission did not, however, respond immediately to the Parliament's request. It first proceeded with the publication of COM(2006) 23 final on the 'Thematic Programme for the Promotion of Democracy and Human Rights Worldwide' that provided the first more detailed account of the objectives, scope and operation of a *thematic* programme on democracy and human rights.⁶⁷³ Concurrently, a consultation document on the future EIDHR was published for the interested public, in particular civil society. It did not, however, invite for discussion on the EIDHR's character as independent or thematic programme, but rather focused on the substantive focus of the EIDHR programme.⁶⁷⁴ Discussions among the institutions on the overall structure of future external assistance and on the character of the EIDHR continued throughout the first half of 2006. Finally, as part of an overall package, the Parliament was successful in ensuring the adoption of a separate EIDHR regulation, and in June 2006 the Commission submitted a relevant proposal.⁶⁷⁵ The new EIDHR regulation was adopted in December 2006 after the Parliament's first reading and with the Council accepting most of the Parliament's suggested amendments.⁶⁷⁶

In line with all other new geographical and thematic assistance programmes, the new EIDHR regulation renamed the programme in 'European *Instrument* for Democracy and Human Rights'. The same acronym as before could be retained – EIDHR. Overall, the new regulation did not lead to a shift in EIDHR policy, but rather wrote into secondary law what had been

⁶⁷² European Parliament resolution on Policy Challenges and Budgetary Means of the enlarged Union 2007-2013 (2004/2209(INI)) P6_TA(2005)0224, at point 71.

⁶⁷³ Communication from the Commission to the Council and the European Parliament, Thematic Programme for the promotion of democracy and human rights worldwide under the future Financial Perspectives (2007-2013), COM(2006) 23 final, 25.1.2006.

⁶⁷⁴ Consultation Paper Thematic Programme for the promotion of democracy and human rights worldwide, DG RELEX/B/5.12.07.

⁶⁷⁵ Communication from the Commission to the Council and the European Parliament, Proposal for a Regulation of the European Parliament and of the Council on establishing a financing instrument for the promotion of democracy and human rights worldwide (European Instrument for Democracy and Human Rights), COM(2006) 354 final, 26.6.2006.

⁶⁷⁶ Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, OJ 2006 L386/1.

pursued under the EIDHR during years preceding its adoption and what had been envisaged in COM(2001) 252 final. Most importantly, the new regulation more explicitly addresses the specific character of the EIDHR as instrument complementary to the mainstream development programmes. It stresses its independence from target states' governments, which are not involved in programming (recital 1) and its focus on civil society as target and partners in implementation (amongst others, Article 1(a) and (b)).

c) Initiatives of the European Parliament

Next to the Parliament's efforts concerning the EIDHR and numerous specific policy recommendations made in resolutions, especially the Parliament's annual resolution on human rights in the world, two further specific efforts by that institution warrant mention.⁶⁷⁷

In February 2006 the 'Democracy Caucus of the European Parliament', an informal, all-party group of Members of the European Parliament (MEP) founded in 2005 and interested in and committed to the promotion of democracy worldwide, initiated actions to explore the establishment of a 'European Foundation for Democracy through Partnership'. It should draw on existing models in Europe and the US, in particular the NED, but be adjusted to the particular circumstances of the EU.⁶⁷⁸ Similar to the NED, it was envisaged to serve as knowledge hub for activities related to European democracy assistance and as additional grant-making institution, in particular for complementary measures that are not covered by existing EU programmes, including the EIDHR and mainstream programmes. The MEPs especially thought of more 'political' assistance', such as work with political parties.

Although the Caucus had envisaged a body with stronger links to the European Parliament, European civil society actors, which were asked to elaborate a more concrete proposal for the new body, preferred a more independent structure.⁶⁷⁹ In April 2008, private individuals active in various political foundations or civil society organizations in different EU Member States founded the 'European Partnership for Democracy', mentioned in Chapter 2, as independent foundation under Dutch law. The idea for the establishment of a 'European Endowment for Democracy' would resurface some years later upon the initiative of some of the Member States, in particular Poland, and be realized.

⁶⁷⁷ European Parliament, Report on the Annual Report on Human Rights in the World 2009 and the European Union's Policy on the Matter (2010/2202(INI)) PE 448.819v02-00 A7-0339/2010.

⁶⁷⁸ French D., von Meijenfeldt R. and Youngs R., *A European Foundation for Democracy through Partnership: A Proposal for a New Initiative in EU Democracy Assistance World-wide* (December 2006); <http://www.democracycaucus.org/42904.html> (last accessed on 1.5.2012).

⁶⁷⁹ Ibid.

In 2007 the European Parliament decided to add a further component to its portfolio of activities: direct engagement in parliamentary support. It established the Office for Promotion of Parliamentary Democracy (OPPD),⁶⁸⁰ which, since 2008, assists in the establishment and development of parliaments in newly emerging democracies as well as regional parliaments, in particular through capacity development measures.⁶⁸¹ Support is provided upon demand, following a needs assessment mission, and in dialogue with the target parliament. It can consist of advice and technical assistance, tailored training, exchanges of experiences, seminars, study-visits, and longer-term fellowships. The main target groups are parliamentary officials and, albeit to a lesser extent, parliamentarians. The body also financed studies, reports and other publications and publishes them on-line. To some extent the OPPD therefore carries out similar activities as the American NED.

In 2007 a whole set of new external assistance programmes entered into force. With few exceptions, the new regulations mentioned the objective of democracy promotion and envisaged democracy assistance, thereby confirming the provision of such assistance through mainstream development programmes. At the same time, the new EIDHR regulation also entered into force. It renamed the programme into European *Instrument* rather than European Initiative for democracy and human rights. Overall, the new regulation did not lead to fundamental changes in the programme, but just wrote into secondary law what had been policy since about 2001.

7. 2009: Putting Democracy Promotion on the Agenda

During 2009 EU democracy promotion was discussed with an intensity hardly experienced before. Remarkably, the focus was nearly entirely on EU *democracy* promotion as a separate, independent objective, disassociated from development, good governance, and human rights. It should result in the first Council conclusions exclusively devoted to the topic.

a) 2009: A Consensus on EU Democracy?

The reason for the sudden focus on EU democracy assistance is difficult to ascertain, but seems to have been caused by increasing reports of a backlash against democracy promotion efforts by Western actors, in particular by rising powers like Russia and China. Further, it was feared that

⁶⁸⁰ <http://www.europarl.europa.eu/parliament/public/staticDisplay.do?language=EN&id=198>.

⁶⁸¹ Office for Promotion of Parliamentary Democracy, *Strengthening Parliaments Worldwide. The European Parliament and the Promotion of Democracy* (2009).

the financial crisis would weaken the role of democracy promoters as compared to these powers. Additionally, the EU had built an increasingly comprehensive range of democracy promotion instruments, which were more and more difficult to grasp and to coordinate with each other. Questions of ensuring consistency, albeit a topic since 1991 and highlighted in COM(2001) 252 final, appeared particularly critical in view of the Lisbon Treaty, which changed provisions as regards the pursuit of objectives under the supranational and the CFSP pillars.

Against this backdrop, the French Presidency proposed the adoption of a comprehensive document on ‘European democracy support’ that would outline an overarching policy framework for EU democracy promotion for all pillars, instruments and institutions and provide common principles and guidelines to ensure better coherence and effectiveness of EU policies.⁶⁸² Such ideas had last circulated in the aftermath of COM(2001) 252 final, when the Council had deliberated a Common Strategy on the policy. The Czech and the Swedish Presidencies developed the French idea further, in particular during a special conference on the issue convened in Prague in March 2009, which involved various EU institutions and non-state actors.⁶⁸³ At that occasion the idea of an ‘EU Consensus on Democracy’ as tripartite agreement by the Member States meeting in the Council, the Commission, and the Parliament and similar to the European Consensus on Development also emerged.

Upon the request of the Czech Presidency, in July the Commission and the General Secretariat of the Council together presented a joint paper on ‘Democracy Building in EU External Relations’.⁶⁸⁴ It provided a comprehensive overview of all current EU democracy promotion activities und all former pillars and made some, albeit few, recommendations for improving the policy. Basically all of these had been mentioned in earlier communications, like the need for an in-depth analysis of the local situation, tailor-made strategies rather than a one-size-fits-all solution, the importance of dialogue and better coordination though intensive interaction.⁶⁸⁵ The most striking message of the joint paper was the explicit recognition that democracy was not the only objective of EU external action. Other objectives, like security or trade, could trump the democracy agenda, however, only if these were not just short-term objectives. In any case, even if the EU did not push for democracy in particular circumstances, it should avoid harming or undermining the prospects of democratization in a particular region.

⁶⁸² European Partnership for Democracy, *Report from Roundtable on European Consensus on Democracy* (8.12.2008).

⁶⁸³ Joint Swedish/Czech Issues Paper, *Democracy Building in EU’s External Relations*, Informal Meeting of EU Development Ministers, Prague, 29 January 2009; Ministry of Foreign Affairs of the Czech Republic, Conference “Building Consensus about EU Policies on Democracy Support”, 27.2.2009; European Partnership for Democracy, *Report from the Conference “Building Consensus about EU Policies on Democracy Support”*, March 9 and 10 2009, Prague, Czech Republic (2009).

⁶⁸⁴ European Commission, *Joint Paper Commission/Council General Secretariat on Democracy Building in EU External Relations*, SEC(2009) 1095 final, 27.7.2009.

⁶⁸⁵ *Ibid.*, at 18-23.

The Parliament highly welcomed the ongoing debates and made several suggestions for the further development of the policy.⁶⁸⁶ Several thereof had featured in earlier resolutions by that institution. Most notably, it called for a concrete definition of democracy as reference point for EU action. Based on suggestions by OPPD, it argued that the EU should employ the ‘definition’ adopted by the UN General Assembly in one of its resolutions on democracy promotion of 2004.⁶⁸⁷ This would have the advantage of making EU action part of worldwide efforts for democracy promotion and would not allow criticism for a Euro-centric approach. The Parliament did not agree with the Commission and Council General Secretariat on priorities in EU external action and, while not going into detail, stressed the positive externalities of democratization for other priorities, like development, security, and stability.

The Parliament also made some very specific suggestions, which would later indeed be followed up. Following up on requests by the Commission and Council Secretariat for better country analysis and tailored strategies, it called for the elaboration of ‘Country Strategies on Human Rights and Democracy’ for each state that would guide all EU actions on democracy promotion in a particular state. Further, it called for a stronger focus on political aid as part of EIDHR assistance, in particular, by increasing support for civil society, political foundations, the media, the independent judiciary, post-EU EOM support, and for political parties and parliaments. Parliaments of target states as well as local and regional authorities would be more strongly involved in the programming exercises of the EIDHR and mainstream programmes.

The final result of the intensive discussions, which also caused much interest within European civil society engaged in democracy promotion, fell short of the proposed idea of an ‘EU Consensus on Democracy’. After intensive discussions in the Council working parties,⁶⁸⁸ in mid-November 2009, the Council adopted conclusions on ‘Democracy Support in the EU’s External Relations’ as well as an ‘EU Agenda for Action on Democracy Support in EU External Relations’.⁶⁸⁹ The document definitely aimed at becoming some kind of central policy guiding instrument for EU democracy promotion, as it provided a list of ‘main common values, norms and central principles’ and some details on procedural issues in the implementation of democracy promotion efforts. For a central policy document the conclusions were, however, too incomprehensive, vague, unstructured, and lacked to comprehensively address core issues, like motivations and conceptions.

⁶⁸⁶ European Parliament resolution of 22 October 2009 on democracy building in the EU’s external relations, P7_TA(2009)0056.

⁶⁸⁷ Office for the Promotion of Parliamentary Democracy (OPPD), *Democracy Revisited: Which Notion of Democracy for the EU’s External Relations?* (2009).

⁶⁸⁸ Council, Working paper on Democracy support in EU external relations - towards a more coherent European approach (30 June 2009), 14310/09, 19.11.2009.

⁶⁸⁹ Council, Council Conclusions on Democracy Support in the EU’s External Relations, 2974th External Relations Council Meeting, 17.11.2009.

The Council did not follow the Parliament's suggestion of adopted a guiding definition of democracy. It re-stipulated, as it had done before, that there is no single model of democracy and that the EU would not promote a specific model. At the same time, it declared democracy to be a universal value. Obviously, its terminology was here influenced by the Treaty of Nice, which largely replaced the earlier used term 'principles' by the term 'values'. Further, as common value, all democracies share common features. The Council did not provide a comprehensive enumeration of these features, but only referred the respect for a broad range of human rights, including on anti-discrimination, as such common element. Some other paragraphs, included in different parts of the conclusions, apparently also refer to elements of democracy and mention elections, accountable rulers, parliaments, political parties, the independent media and civil society.

The Council addressed other principal issues of the policy. It stressed the principle of partnership and dialogue with the target state, which should ensure a shared understanding of the concepts and agreement on measures. Further, the principles of local ownership applied. The aim should therefore be to support locally driven processes and to involve all parts of society in third states in democracy building. Also, in difficult partnerships the EU should seek dialogue and find entry points for action. As regards democracy assistance, the Council called for a special focus on parliaments, political parties and institutions, the independent media and civil society, which suggested a slight shift to the political approach, just as called for by the Parliament. The Council mentioned the instrumental character of democratization for poverty reduction and sustainable development as the main motivation for EU democracy support, while neglecting to mention ethical motives.

Based on these more general stipulations, the Council identified six fields for further action, basically all of which have featured in earlier documents. It recalled the existence of various documents that provided detailed assessments of the local situation, like ACP governance profiles, and called for improving country analysis, in particular in Country Strategy Papers (CSPs), drawn up for the mainstream assistance programming documents. It did not, however, envisage specific human rights and democracy strategy papers. It called for a regular discussion of democracy-related issues in political dialogues, a more coherent use of different dialogues in cases where different types of dialogues are held, and the increased involvement of non-state actors in dialogues. It called for more coherence between different actors and instruments at all levels, headquarters and at country level, as well as from country analysis to evaluation, without, however, providing concrete suggestions. It particularly mentioned the need to ensure coherence between thematic and mainstream assistance programmes, which is relevant for democracy assistance. The Council called for an increased mainstreaming of the topics of democracy, human

rights, and rule of law in all possible external activities, for more efforts in democracy promotion in the international dimension, like the UN, and for more EU visibility in the field of democracy support.

A year after the conclusions were adopted, the Council accepted twelve pilot countries in which the Agenda for EU democracy support should initially be implemented.⁶⁹⁰ Overall, given that hardly any of the proposed actions constituted a major novelty or effort that had not, at least to some extent, being pursued before, it appears questionable why the Agenda needed to be tested in pilot countries rather than being implemented in all third states immediately.

The initiative of the French Presidency of late 2008 concerning democracy promotion was important as it focused on the policy to a degree not achieved before. The suggested improvements for the policy were not new, however, should from then on be pursued with more rigour. As regards democracy assistance, the Council conclusions on democracy support envisaged a stronger focus on sectors that can be attributed to the political approach and called for a more complementary use of EIDHR and mainstream funds.

8. The Repercussions of the Arab Spring

a) New Initiatives for Core Regions

The immediate response of the Commission and High Representative to the Arab Spring was the proposal for a ‘Partnership for Democracy and Shared Prosperity for the Southern Mediterranean’, published in COM(2011) 200 final in early March 2011.⁶⁹¹ It called for a “qualitative step forward in the relations” between the EU and the Mediterranean states and made several suggestions to this end, like the conclusion of agreements on trade liberalization on still protected areas (agriculture, fisheries) and on trade in services.⁶⁹² The offers were, however, conditional upon efforts and progress in democratic and broader governance reform.

Democracy and democratization occupied an important role in the communication. First, the envisaged ‘Partnership’ was based on and should uphold and promote the common values of

⁶⁹⁰ Council, Council Conclusions on Democracy Support in the EU’s External Relations – 2010 Progress Report and List of Proposed Countries, 3058th Foreign Affairs Council meeting, 13.12.2010.

⁶⁹¹ Commission and High Representative for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions, A Partnership for Democracy and Shared Prosperity for the Southern Mediterranean, COM(2011) 200 final, 8.3.2011. See also: European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Staff Working Paper: Follow-Up to the Joint Communication on a Partnership for Democracy and Shared Prosperity with the Southern Mediterranean, SEC(2011) 638, 25.5.2011.

⁶⁹² COM(2011) 200, at 9.

the EU and the partner states, including, democracy.⁶⁹³ Secondly, the holding of monitored, free and fair elections should be an ‘entry qualification’ and therefore minimum condition for entry into the Partnership.⁶⁹⁴ Finally and relevant for democracy assistance, COM(2011) 200 final envisaged increased assistance in the sectors of democracy and human rights, especially on the already known topics of elections, civil society, judicial reform, constitutional and administrative reform. Highlighting the role of civil society in the Arab Spring, the maximization of assistance for civil society organizations was particularly stressed and also immediately implemented through two local calls for proposals in Tunisia and Egypt in March 2011.⁶⁹⁵ Reference was also made to a special ‘Civil Society Neighbourhood Facility’ that should slightly later be presented in more detail in a separate communication concerning the ENP, and should, in particular, develop the advocacy capacity of civil society organizations in order to play a crucial role in the ongoing reform processes in the target states.⁶⁹⁶ COM (2011) 200 final also referred to the importance of political parties and platforms of civil society, political parties, trade unions and associations. It stressed that Member States and EU political parties, foundations and NGOs should support such efforts, but suggested that possibly this could also be done by the EU. It was one of the examples of the recent more explicit recognition of the importance of political parties in democracy and the willingness of the EU to also engage in party support, albeit on a non-partisan basis. The new Partnership would mainly be financed from the ENPI budget.⁶⁹⁷

Many of the basic features of the approach outlined in COM(2011) 200 final reappeared in the geographically more broadly-focused communication of May 2011 on reforming the ENP: “A new response to a changing Neighbourhood” (COM(2011) 303.⁶⁹⁸ It aimed at reforming the ENP that had lost appeal and appeared to be widely ineffective. Basic features of the new ENP were a differentiated, incentive-based approach that promised, among others, more assistance for socio-economic and political reform, trade, investment, and people mobility in exchange for commitments and real progress in political reforms.

Again, democracy played a key role in the communication. The Commission introduced a new term: ‘deep democracy’. ‘Deep democracy’ was defined as that kind of democracy “that lasts because the right to vote is accompanied by rights to exercise free speech, form competing political parties, receive impartial justice from independent judges, security from accountable

⁶⁹³ Ibid, at 2.

⁶⁹⁴ Ibid, at 5.

⁶⁹⁵ Ibid, at 4 and SEC(2011) 638 final, at 3.

⁶⁹⁶ Ibid, at 6.

⁶⁹⁷ Other sources are the so-called Flexibility Instrument and the Emergency Aid Reserve, which can provide funds in unforeseen circumstances. See the website of DG Budget for a short explanation of the instruments.

⁶⁹⁸ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A New Response to a Changing Neighbourhood, COM(2011) 303, 25.5.2011.

police and armed forces, access to a competent and non-corrupt civil service – and other civil and human rights that many Europeans take for granted, such as the freedom of thought, conscience and religion”. A separate paragraph added “freedom of association, expression and assembly and a free press and media” and the “right to a fair trial”. Overall, the provided definition of deep democracy was quite comprehensive and clear, in particular in comparison to earlier documents. The adjective ‘deep’, however, does not really seem to have added anything new to earlier definitions of democracy. The text of COM(2011) 303 suggests that the Commission wanted to stress that efforts need to go beyond the establishment of electoral democracy; however, the EU had never only concentrated on elections and building electoral democracy. Overall, the usage of the term ‘deep’ democracy is therefore largely a catchword that aims to underline the renewed efforts under the ENP.

COM(2011) 303 suggested four further developments of existing tools of democracy promotion, at least two of which concerned democracy assistance. First, it highlighted the role of civil society for democratization and suggested the creation of the already mentioned special Civil Society Facility. It should support civil society organizations to emerge and play their foreseen role in democracy (i.e. to hold governments accountable, contribute to policy making, and express concerns). The Commission stressed the need to develop advocacy and monitoring capacities of NGOs, which suggests a stronger focus on the political approach of democracy assistance. Secondly, COM(2011) 303 stressed the role of political parties, non-registered NGOs and trade unions. It preferred, however, that work with political parties should be carried out by other actors than the Commission, in particular the envisaged European Endowment for Democracy. The third suggestion related to the role of new technology and social networks in democratization. It called for the development of news tools in order to assist civil society, in specific cases, to have access to the internet and independent media. The fourth recommendation of COM(2011) 303 envisaged – as several times before – a reinforced political dialogue with third states’ governments.⁶⁹⁹

b) 2011: European Parliament Resolution on EU External Policies in
Favour of Democratization

Ever since the intensive efforts in 2009 concerning the EU consensus on democracy promotion, the topic had remained on the agenda of the European Parliament. In 2010 its Sub-committee on Human Rights decided to launch a comprehensive review of the EU’s actions in the field. It was then, in the middle of this exercise, overtaken by the events in the Arab world that would not

⁶⁹⁹ Ibid, at 4-5.

only encourage carrying out its review, but also fundamentally affect its assessment. The Parliament concluded its review with a strong critique of the EU's weak engagement in the Mediterranean, which had favoured security and stability over democracy promotion, especially in view of fighting migration. Further, it demanded a 'paradigm shift' in EU policies to the region as well as more generally as regards democracy and human rights promotion.⁷⁰⁰

The so-called 'paradigm shift', which definitely contained some innovative elements but was far from suggesting fundamental changes, referred to two issues. First, the Parliament called for democracy and human rights promotion to become real and sincere priorities in EU external relations, underpinned by serious human rights policies within the Union. Secondly, it demanded that EU democracy promotion – or rather democracy assistance – pursued a double-track approach: the developmental and the political approach. As regards the first approach, the EU should support socio-economic development and, using the example of some Mediterranean states, ensure that this did not only lead to a higher national GDP but to more social justice and a more equal distribution of wealth. It did not intend such assistance to be provided through the EIDHR, but through mainstream programmes. As regards the second approach, the Parliament called for more support for newly and democratically elected parliaments, non-extremist social movements, political parties, the independent media, and civil society organizations. It argued that the EU itself should also engage in more sensitive political fields of support, like political party development, in particular through the EIDHR. The Commission and High Representative had only two months earlier expressed a different view. The Parliament obviously borrowed the notions 'political' and 'developmental approach' from Thomas Carothers, however, gave them partly a different meaning than that analyst.⁷⁰¹ In particular, Carother's understanding of developmental approach not only encompassed socio-economic support, but also support to civil society and state institutions, as long as they aimed at a gradual and controlled democratization process.

Next to these two major demands the resolution contained a whole range of other, individual suggestions on policy developments, most of which had been voiced before, like use of a differentiated approach while retaining objective criteria for assessing countries' performance, the call for dialogues with target states even in cases of difficult partnerships, the increased involvement of civil society in dialogues and strategic planning for assistance, the use of tailor-made approaches and the drafting of 'human rights strategy papers', that should be general policy-making documents for EU policies in individual countries. Additionally, the Parliament

⁷⁰⁰ Committee on Foreign Affairs, Report on EU External Policies in Favour of Democratization, 2011/2032 (INI), Rapporteur V. de Keyser (A7-0231/2011).

⁷⁰¹ Carothers, 'Democracy Assistance: Political vs. Developmental?'. Rapporteur V. de Keyser was rendered aware of these two approaches by OPPD.

deplored the fact that sanctions and other ‘negative’ tools, like the reduction of aid, were rarely used, even if there was clear evidence of human rights violations or violation of democratic principles.

c) The European Endowment for Democracy (EED)

This evolutionary account has shown that the US has frequently played a leading role in developing tools for the policy of democracy and human rights promotion, like reports on human rights and conditionality. European governments and the EU have definitely been inspired by the US to develop similar tools. A European Endowment for Democracy (EED) is the most recent addition to these examples, even if the final shape of the EED, as it appears now, is in some respects different from the NED. Ideas on creating a European endowment for democracy already circulated in the early-mid 2000s, but lost force when European civil society preferred the creation of a more independent, civil society-dominated organization, the EPD. More recently, following pro-democracy struggles in Tunisia and Egypt as well as the ‘last dictatorship in Europe’, Belarus, the Polish Foreign Minister Radoslaw Sikorski made new suggestions concerning the establishment of an EED during the Polish EU Presidency in the first half of 2011.⁷⁰² Due to the Arab Spring, the idea was met with much interest and the Foreign Affairs Council endorsed it in June 2011 and asked the Commission to elaborate a more detailed proposal. On 1 December 2011 the Council endorsed the elaborated plans and on 15 December 2011, after a final round of discussions in Coreper, the Member States agreed on the creation of the European Endowment for Democracy.⁷⁰³

As decision-making by the Member States suggests, the EED is planned to be created outside the EU institutional structure, as an international trust fund with legal personality under the law of one of the Member States. Unlike the American NED, which receives an annual budget from Congress, the EED will be funded from voluntary contributions by the Member States, but will also be able to apply for funding from the EU budget. It will be governed by a board, composed of Member States representatives and, upon invitation, of relevant EU institutions, in particular the Commission and the Council. Similar to the NED, it should mainly provide grants, directly or via partners, like political foundations and will operate a ‘European invitation programme’ for young leaders from democratizing states. Regular exchanges between

⁷⁰² Open Society Institute – Brussels, *How Could a European Endowment for Democracy Add Value?*, Discussion Paper1 (September 2011), R. von Meijenfeldt, *A European Foundation for Democracy: What is needed*, FRIDE Policy Brief No. 93 (September 2011).

⁷⁰³ Council of the European Union, Council conclusions on the European Endowment for Democracy, 3130th Foreign Affairs Council meeting, 1.12.2011.

the EED, EU institutions, and other actors should ensure complementarity and cooperation and avoid conflict and duplication in activities. The major novelty of the EED, next to its set-up, lies in the planned focus of its assistance.

The focus of EED assistance will be different from that of the EIDHR and mainstream programmes. It has a more targeted and short-term focus and should specifically address the transition process and societies struggling for democratization, initially, mainly in the ENP region. Similarly, although a wide range of groups can receive funding, the EED should specifically target actors centrally involved in the democratization process. The Council mentions, in particular, pro-democracy movements and pro-democracy actors “in favour of a pluralistic multiparty system on democratic ground”, young leaders, independent media and journalists including bloggers, social media activists – a focus that directly resulted from the events during the Arab Spring – and NGOs and foundations in exile, as primary target groups, provided that all adhere to the principle of non-violence and that assistance is non-partisan.⁷⁰⁴

All in all, the EED can, if implemented in the planned way, fill a gap in EU external assistance that could, however, also have been filled through projects under the EIDHR. Apparently, political projects should also continue to be kept apart from EU activities, while at the same time retaining some link with the Union through allowing funding by the Union and having the EU institutions on the governing board. It remains to be seen whether the EED will be able to achieve a profile similar to the NED and does not just become one further actor in a sector that is struggling for funding and having its view heard.

d) COM(2011) 886 final: Human Rights and Democracy at the Heart
of EU External Action

In December 2011, the Commission published its first major communication on the EU’s external human rights and democratization policy since COM(2001) 252 final: Human Rights and Democracy at the Heart of EU External Action.⁷⁰⁵ The name of the document shows that, unlike the various documents in the field published since 2009, the Commission has again adopted the more traditional terminology of a human rights and democracy policy. The publication was caused by several factors, in particular the time span of ten years since the last major Commission communication on the policy, the more limited role played by the Commission in the course of

⁷⁰⁴ Council of the European Union, Note from the Presidency to the Delegations on the Declaration of the Establishment of a European Endowment for Democracy, No.18764/11, 20.12.2011, at 3.

⁷⁰⁵ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council, Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach, COM(2011) 886 final, 12.12.2011.

the discussions on EU democracy support in 2009, the increased awareness of new challenges to democracy promotion in the form of attacks on the universal nature of human rights, and technical advances that allow censorship and surveillance and might compromise human rights, the critique of weak EU democracy promotion in the Arab countries during the 1990s and 2000s, and the adoption of the Lisbon Treaty, which created a stronger legal basis in primary law for EU democracy promotion. It aimed at starting a discussion on how the EU's policy could be improved and, in particular, in the Commission's terminology, be rendered more coherent, effective, active, clear and strategic.⁷⁰⁶ Obviously, it applied to human rights and democracy promotion more generally, not only to democracy assistance. However, several of the issues were of particular relevance for the development of the tool of assistance.

Initially, the Commission briefly addressed some basic and conceptual issues and questions of motivations for the policy. In response to the mentioned challenges to human rights, it called for the EU to reaffirm its commitment to the universality, indivisibility, and interdependence of human rights, in particular, as regards those rights laid down in the international bill of rights. Human rights and democracy "should be taken into account in foreign policy decision making at every stage" and must run as "silver thread" throughout EU external policies.⁷⁰⁷ This does not call for an absolute prioritization, but accords the objective of democracy and human rights promotion a more important position than other foreign policy objectives. Overall, the Commission therefore moved back from the statements made in the Joint document with the Council General Secretariat published in summer 2009, in which the overall role of human rights and democracy promotion was somewhat compromised by the explicit recognition of the importance of other objectives. Further, COM(2011) 886 final defined democracy as "universal value based on the freely expressed will of the people to determine their own political systems", that was underpinned by the three "empowering freedoms" of expression, association and assembly. The rule of law was essential for not only the protection of human rights, but also of democratic principles.

The suggestions for improving EU action and performance largely repeated earlier approaches and efforts. The Commission proposed changes in three dimensions. First, it suggested overhauling delivery mechanisms. The most important innovation here was the drafting of so-called 'human rights strategies' for individual states. These aim at outlining country specific priorities and objectives and should become something like a guiding source for EU action in a particular third state, either for democracy and human rights-specific action, like assistance and dialogues, as well as in the implementation of other policies, like trade and security

⁷⁰⁶ Ibid, at 4 and 6.

⁷⁰⁷ Ibid, at 7.

policy. No details were provided on the exact process for drafting the human rights strategies, but by December 2011 the Commission was already in the process of drafting about 150 of these papers. It was only mentioned that the papers should bring together all resources of EU Delegations as well as the Member States and also take account of the views of civil society. According to the Commission, the papers should replace or complement a “top-down approach” that established worldwide priorities for a human rights strategy in Brussels and then applied them throughout the world by a more targeted, “tailor-made approach”. This did not mean that the overall objectives or principles of the EU’s policy were changed or altered, but just that more attention was given to the local context. It remains to be seen to which extent the existence of these strategies will also lead to changes in EIDHR programming.

At the same time, some global campaigns should continue to be carried out. The High Commissioner suggested focusing on judicial reform and the right to fair trial, the rights of women, and the rights of the child during the period 2013-2015. Further COM(2011) 886 final stressed the role of civil society in third states and the EU and called for continuing support to civil society groups in democratizing states and, in particular, also in states where there was no democratic progress. Interestingly, the communication also called for EU engagement with “peaceful political opposition”, which forms part of the more recent shift to a more political approach. Specific protection and action for human rights defenders along the lines of the relevant EU Guidelines on human rights defenders was also envisaged.

The second set of suggestions for improving EU action was termed “a joined up approach to policy” had two main purposes. On the one hand, it aimed at ensuring that the objective of human rights and democracy promotion was seriously taken into account in various external policies or internal policies with an external dimension. On the other hand, it called for a more coherent use of the various instruments of democracy and human rights promotion. Particular emphasis was laid on creating synergies between political and developmental aspects of democracy assistance.⁷⁰⁸

e) Proposal for a New EIDHR Regulation Post-2013

In December 2011, the Commission also published its first proposal for a new EIDHR regulation under the future financial framework 2014-2020 that will have to be adopted before the end of 2013.⁷⁰⁹ The envisaged new regulation is relatively short, in particular as regards the

⁷⁰⁸ Ibid, at 10-15.

⁷⁰⁹ European Commission, Proposal for a Regulation of the European Parliament and of the Council, Establishing a financing instrument for the promotion of democracy and human rights worldwide, COM(2011) 844 final, 7.12.2011.

current legal instrument, and leaves many questions as regards how the Commission envisages the EIDHR to develop open. In any case, it suggests a considerable increase in annual budgetary commitments for the EIDHR: an overall amount of 1 578 million Euros should be available for the period 2014-2020, that is, 225 million Euros annually for the EIDHR compared to about 158 million in 2011. Further, while it intends to retain the current thematic scope for activities, it also suggests to implement some of the reform ideas suggested in COM(2011) 886 final, like a more flexible use of the available funds, the focus on specific worldwide campaigns, an increased focus on human rights defenders through the use of a specific EU Human Rights Defenders Mechanism, and a more coherent use of various types of support provided under the EIDHR, like of electoral observation and assistance. All in all, it remains to be seen though how the Parliament and the Council will shape the Commission's proposal and how the instrument will continue to develop.

III. Conclusion

Chapter 3 has introduced the tool of EU democracy assistance and has shed light on several crucial issues on the topic, which should be summarized here. Initially, it appears useful to mention that the reconstruction of the emergence and evolution of EU democracy assistance is rendered difficult by the fact that the various crucial policy documents do not all form part of a single 'discursive framework', that is, a body of discussions and documents that focus on a specific topic and aim at its development and regulation. Rather, democracy promotion and democracy assistance have been developed in the context of various such discursive frameworks or more specific sub-frameworks thereof. First, there is a body of texts relating to the EU's external human rights and democratization policy. Many of the central policy documents on EU democracy assistance, like the Commission's three major communications on the EU's external human rights and democratization policy⁷¹⁰ and the legal texts of the EIDHR regulations, pertain to this framework (only). It concerns, as expressed in its title, not only democracy, but also human rights. Some of the early documents of this framework indeed only referred to human rights issues in the title, but then clearly also covered democracy promotion in the text. In the 1990s and, even more from 2009 on, a sub-framework of this broader framework has developed, which specifically concentrates on democracy promotion. This sub-framework comprises, for example, the Council conclusions on 'Democracy Support in EU's External Relations' of November 2009. It obviously constitutes the thematically most focused framework for external democracy promotion. Secondly, for several reasons that relate to a conceptual overlap, questions

⁷¹⁰ SEC(91) 61 final; COM(95) 567 final; COM(2001) 252 final; COM(2011) 886 final.

of EU competences, and the structure and language of primary law, also the discursive framework on development has from the beginning on been highly important for EU democracy promotion and assistance. Some of the most crucial documents on democracy promotion, like the 28 November 1991 resolution on ‘human rights, democracy, and development’, pertain to this discursive framework on development. From the early-mid 2000s on, a sub-framework of development has increasingly been given attention, which is also of relevance for EU democracy assistance: good governance. It has, more than any other framework, identified elements of democracy and (potential) democracy assistance and reserved stable budgets for good governance support and, as part of it, possibly democracy assistance. Finally, to cover democracy promotion and assistance comprehensively, it is necessary to also look at individual, specific external policies, like the ENP, in the framework of which specific actions for democracy assistance have been devised. A recent case in point is the suggested Civil Society Facility for the Mediterranean. Overall, Chapter 3 has drawn from all these discursive frameworks in order to construct the evolution and major elements of EU democracy assistance.

Before looking at democracy assistance in more detail, some comments should be made on EU human rights and democracy promotion more generally. Chapter 3 has in some sections made reference to the development, to various instruments, and to central principles of this policy. It has shown that the European Parliament started to be interested in human rights-related topics in the EC and abroad in the 1970s and initiated a human rights-related programme in 1978. Overall, the EC did not, however, pursue an external human rights and democracy promotion policy until the late 1980s/early 1990s. A soft shift was performed in 1986, which declared human rights violations in third states to be of concern to the EC, but was not backed up by strong instruments. A real policy shift only occurred in 1990/1991 and therefore after the fall of communism in Central and Eastern Europe, the end of the Cold War, and the emergence of the new development credo that linked socio-economic and political development. The EC was very quick in putting the numerous tools it still uses to pursue the policy in place: sanctions, conditionality, and various positive measures, and has developed them further during the subsequent years. Some new tools were added later, like Special Representatives, others were strongly upgraded, like incentive conditionality. Overall, the policy has remained an important external field of engagement ever since, pursued through the use of the numerous mentioned tools. Democracy and human rights concern were never intended to always trump other external, potentially conflicting policies, like trade and security. At the same time, it should always be taken into account. In effect this meant that the policy would be pursued with different intensities, that is, in particular through the use of and stress on different instruments, depending on the presence of other EU interests in target states.

The EU has expressed some principles to underlie its actions in the field of human rights and democracy promotion: (1) the universality of human rights, which has been reconfirmed more recently in response to attacks on the universal nature by numerous actors; (2) the interdependence of all kind of rights, even if there is little evidence that social rights have been given as much attention as civil rights; (3) democracy as universal value, without, however, elaborating on it in more detail; (4) the linkage between socio-economic and political development, which has mainly justified the complementation of socio-economic development aid by a politically-focused component rather than vice versa; (5) successful democratization needs to be a locally-carried and -driven process that can only be facilitated and not imposed by external actors; (6) there are numerous legitimate models of democracy and each state has to find its own version; the EU does not impose a specific model, in particular not a European model; (7) to give preference to a positive, encouraging approach, that is, to prefer tools like assistance, dialogue, incentive conditionality, and diplomatic measures, over a negative approach, that should only exceptionally be applied; and (8) the principle of partnership and dialogue with target state's governments and civil society, which builds on principles (5) and (7). Actions against the will of target state's governments are not excluded in difficult partnerships, but are the exception rather than the rule.

Many documents of various EU institutions refer to individual motives that underlie EU democracy and human rights promotion. Hardly any thereof, however, neatly summarizes these various motivations or provides a more detailed discussion of individual factors and their exact relation with democracy and democratization. Overall, the EU therefore makes relatively simplified, general arguments about these links. There are also no real differences visible among the various institutions. The most frequent reference relates to the positive relations between sustainable socio-economic development, including the EU's primary objective of poverty reduction, and democratization. Democracy and/or democratization are considered necessary conditions of successful development. The EU also frequently states that democracies are more peaceful, politically stable, and secure partners, which solve conflicts in civil and democratic ways and are therefore less prone to conflicts or wars. Both of these factors include instrumental and normative motivations, that is, expected positive externalities for the EU itself as well as positive results for the local population. It is hard, from the available documents, to determine which prevails. References to purely moral motivations are less frequently made. The Commission only once explicitly mentioned "moral imperatives" to promote democracy in third states.⁷¹¹ At the same time, however, the ethical motives appear to be inherent in the discourse of the universality of human rights and democracy, which is one of the principles of EU human rights and

⁷¹¹ COM(2000) 191 final, at 3.

democracy promotion. In 1991 the Commission also mentioned the demand of European public opinion for the start of an external human rights and democracy policy as one factor. Additionally, the EU has definitely also been pushed into its role by the fact that all major international donors are active in democracy promotion. It therefore also puts particular emphasis on ensuring sufficient visibility for its actions. Finally, it has also been suggested that some actors, in particular the Parliament, have strongly pushed for action in the field to promote its own role and position. In any case, just like in the case of many actors, EU democracy promotion appears to be driven by various motivations of instrumental and normative origin.

The following paragraphs should be devoted to democracy assistance and address the most crucial issues on the democracy assistance exposed in Chapter 3. First, the chapter has shown that the European Parliament has created the first – at least partial – external democracy assistance programme in 1985 and therefore before the official start of EC external democracy and human rights promotion. Various factors played together to make this programme – an NGO programme for Chile – real, including lobbying by Chilean opposition politicians, the interest in human rights promotion by the Parliament, the examples of the US, and the budgetary power of the Parliament to devote funds to such programme. EC democracy assistance provided upon the agreement of all institutions, in particular also the Council, was only envisaged in late 1991, as one of the tools of the then new external human rights and democratization policy.

Ever since 1991 democracy assistance has remained an important element of the EU's portfolio of instruments of external democracy promotion. Indeed, there has never been a time when democracy assistance, in particular its character or mode of operation to facilitate democratic change, has been questioned as such. At the same time, none of the institutions has ever in more detail elaborated on the particular characteristics and value of democracy assistance, except that it pertained to the EC's preferred 'positive' approach to democracy promotion. The constant and also increasing interest in democracy assistance has expressed itself in a geographical spread of activities. By the mid-1990s democracy assistance could be provided on the basis of all geographically-focused mainstream development programmes and by 1998 specific EIDHR democracy assistance programmes were in place for all major world regions. Over the last years, the EU has also started to set up several new facilities to provide, amongst others, democracy assistance, like the ACP governance initiative. The geographical spread and growth in programmes has been accompanied by a strong increase in aid budgets for democracy assistance, which can, at least as regards the EIDHR, be expected to also grow in the coming years.

The fact that democracy assistance did not lose appeal since 1991 did not mean that individual elements did not give rise to discussion and, at times, major disputes between the EU

institutions involved in the development of the instrument. Chapter 3 has highlighted two major disputes between the institutions that directly concerned EU democracy assistance. In 1997 the Council Legal Service and the Commission fought over the scope of EC competences to carry out democracy assistance programmes and in 2006 the Commission and the Parliament disagreed on the future legal basis for the future EIDHR. Both were solved in favour of a stronger basis for democracy assistance. Additionally, several other issues on the instrument gave rise to discussion and subsequently to reforms of the tool. A major topic was the structure of EU democracy assistance, that is, the number and types of programmes, initiatives, and facilities used to fund democracy assistance projects and their relationship with each other. Further, in the late 1990s a series of evaluations painted a rather gloomy picture of the impact of EU development aid efforts, including democracy assistance. A major reform followed that affected many aspects of democracy assistance, in particular the programming process and aid implementation. Finally, the question of the approach to be followed in EU democracy assistance has become increasingly discussed during the late 2000s, after having been neglected for many years.

Overall, the evolution of democracy assistance since the early 1990s has not followed a master-plan but was rather characterized by gradual, step-by-step developments, caused and influenced by various factors. Many developments can be traced to ideas and preferences of individual actors and the persistence of these actors to pursue a certain path. For example, the role of the European Parliament was crucial for the initiation and development of the EU's specific democracy assistance programmes and that of the Council for the policy changes in 2009. Evaluations by external experts, contracted by the Commission to carry out assessments of EU programmes, and reports by the European Court of Auditors played a crucial role for many reforms concerning democracy assistance, like the major reform in aid management from 2000 onwards. Next to these evaluations, the Commission also suggested reforms as result of its own experiences in the implementation of assistance programmes ('learning by doing'), like the need for quick response mechanisms, which were introduced in 1999. Developments in target states or regions at times had an impact on policy developments, like the focus on conflict-related issues as result of the Balkan crisis in the early 1990s and the numerous policy initiatives following the Arab Spring. At times, the role of other actors in democracy promotion was influential, like to concentrate on specific topics due a declared preference by the UN. The structure and focus of US democracy assistance, in particular the existence of the NED, has several times caused high interest in the EU. More recently, it has also been possible to identify an impact of academic and policy analysis on the further development of EU democracy assistance.

Secondly, numerous actors have been involved in the start and development of EU democracy assistance. In the phase before 1990 the European Parliament played a crucial role.

Once democracy promotion had become an accepted EC external policy in 1990/1991, it was developed further within the EC framework – and soon the EU framework – by all EC/EU institutions. On the one hand, each institution pursued its constitutionally foreseen role in the development of the policy tool and shaped it in this way, like the Commission as executive institution and initiator of policy reforms and implementing institution and the Council and Parliament as legislative bodies, which adopted assistance regulations. On the other hand, several institutions have at times expressed an enhanced interest in the topic and made special efforts to develop democracy promotion and, as part of it, assistance further. This is not only true of the Parliament, which has ever since the mid-1980s remained interested in the topic and not only made comments on the policy in its annual report on human rights but also in several special reports and resolutions on individual topics, but also for the Council, which has launched the intensive discussions on democracy promotion that led to the conclusions on democracy support in 2009. All in all, while the role of particular institutions has been outstanding during certain times in the development of EU democracy assistance, overall the development of the tool is the result of the engagement of all institutions.⁷¹²

Thirdly, Chapter 3 has exposed that there are two major types of programmes that fund democracy assistance projects. Additionally, more recently, some specific facilities or initiatives were devised or envisaged that operate under one of the basic programmes. On the one hand, there is the European Instrument for Democracy and Human Rights (EIDHR). It can be traced back to the mentioned NGO programme for Chile of 1986. Convinced of the positive results of that programme the Parliament created numerous similar budget lines for other states and regions from 1990 on. By the mid to late-1990s specific democracy and human rights assistance programmes existed for all major world regions. In 1993 the Parliament began to assemble all these lines in a separate Chapter and, later, a separate Title of the EU budget under the heading: European Initiative for Democracy and the Protection of Human Rights (EIDHR). In April 1999 the numerous specific programmes first received a legal basis in secondary law. In 2006 the second EIDHR regulation was adopted and the programme re-named into European Instrument for Democracy and Human Rights, retaining the same acronym. In December 2011 the Commission published a proposal for a successor regulation that will overall continue along the same lines. A key characteristics of the EIDHR programme(s) was from the beginning the lack of need for agreement with a target state's government and the direct cooperation with assistance recipients.

⁷¹² The role of European and local civil society, that is, civil society in target states, in policy-making and implementation is discussed in Chapter 5.

On the other hand, in November 1991 the Council decided to provide EC democracy assistance as part of mainstream development programmes. From 1992 on, the numerous mainstream development assistance regulations started to be adjusted to this new objective, which was completed in 1996. Expenditure for democracy assistance under mainstream programmes, however, increased rather slowly. From 2001 on increasing efforts were therefore made to ensure more engagement. The idea of ‘mainstreaming’ was born to ensure, amongst others, the increasing devotion of funds to democracy assistance under mainstream programmes. It was facilitated by the introduction of uniform programming documents for all assistance programmes – the so-called Country Strategy Papers (CSPs) – that necessarily included a section on political developments and thereby regularly put the issue on the agenda. At the same time, the tool of (political) dialogue was increasingly used and should contribute not only to regularly discuss issues of (lack of) democratization but also to identify democracy assistance projects. Overall, as Chapter 8 will show in more detail, in terms of financial commitments and expenditure, mainstream programmes eventually started to by far outweigh funding under the EIDHR.

Besides the EIDHR and mainstream programmes, the EC has started to develop specific facilities that envisage democracy assistance. Most notably, these are the ACP Governance Initiative, the ENPI Governance Facility, and the recently envisaged Civil Society Facility. While the last is a democracy assistance tool, the first two instruments combine features of incentive conditionality and good governance assistance, including democracy assistance. Both good governance tools are funded from mainstream development budgets and operate with the agreement and cooperation of the target states’ government.

As indicated above, the parallel development of democracy assistance as part of the EIDHR and the mainstream development programmes, as well as later the addition of specific facilities, had not been planned *a priori*. It was the result of separate decisions by the Parliament – in 1986 and, especially, from 1990 on – to create specific budget lines for democracy (and human rights) assistance and by the Council – in 1991 – to devote funds available under mainstream programmes to the same end. Once institutionalized, it proved to be very difficult to abolish the system, in particular the various specific programmes. Attempts to do so, like the challenge to the EIDHR by the Council Legal Service in 1997, failed.

In order to justify the parallel existence of the EIDHR programmes and democracy assistance under mainstream programmes, their relationship and distinctive features had to be developed. To a certain extent distinctive characteristics were present from the beginning on, in particular the fact that EIDHR programmes did not envisage involvement of the target state’s government during the implementation phase, while such involvement formed a central part of

development policy. The thematic focus of both types of programmes did not, however, differ fundamentally during the first decade of democracy assistance and as late as in 2000 the Court of Auditors called for the transfer of the EIDHR into the mainstream programmes due to the lack of distinctive characteristics. In order to retain the EIDHR, such special characteristics had to be worked out and stressed and the lack of involvement of target states was taken as starting point for this process: the focus on civil society was further strengthened and focus on state institutions and the rule of law reduced.

Fourthly, Chapter 3 has in various sections touched the question of the EU's preferred approach to democracy assistance. Chapter 2 has introduced Thomas Carother's distinction between the developmental approach and the political approach to democracy assistance, which mainly makes distinctions on the basis of the thematic focus as well as the time perspective of assistance and which provides a useful structure to also analyze EU policy. Preliminarily it should be observed that there have of course been discussions on the thematic focus of EU assistance and on the capacity to be able to intervene quickly, which relate to questions of the EU's approach to democracy assistance. However, these discussions have not used the language of different 'approaches' and have also lacked a real awareness of fundamental differences in various paths. A change has occurred more recently, when the European Parliament started to explicitly employ the terms 'political approach' and 'developmental approach' coined by Thomas Carothers – although defining them in part differently – and all institutions began discussions on the need for a more political focus of EU assistance.

Overall it is rather difficult to extract a clear EU approach to democracy assistance or clear EU approaches for individual types of programmes from the policy documents analyzed in Chapter 3, in particular due to the above mentioned lack of an explicit EU language on approaches until more recently and in part due to the lack of details on thematic focus areas in the analyzed documents. From the available information it nevertheless seems possible to argue that the EU has overall – as regards mainstream development programmes and the EIDHR – strongly favoured the developmental approach over the political approach. It has envisaged assistance to a broad range of actors and thematic areas, including various types of civil society organizations, state institutions at local, regional, and national level, and rule of law reform. Democracy assistance has overall been closely linked to human rights promotion and good governance reform, as programmes frequently covered all. Although mid-term reviews and annual action programmes are foreseen that allow adjustments to changing situations, democracy assistance as part of mainstream development programmes is planned for a period of seven years ahead and the EIDHR is planned for period of three to four years ahead. Further, overall the EU aims at working in partnership and in cooperation with the target state's governments rather than

in confrontation with it. All these features suggest that EU democracy assistance should lead to and support a slow and gradual process of democratic change, carried by a large range of actors within civil society and the state apparatus, which is typical for the developmental approach. It should also be stressed though that EU democracy assistance has since 1991 been separate from socio-economic assistance and the developmental approach in EU democracy assistance is not one of the more extreme forms related to the modernization approach.

The preference for the developmental approach and distance to a clearly political approach became also strongly visible during the last years, when several actors, in particular the Parliament, pushed for a stronger political focus of democracy assistance, in particular support to developing political party systems, and when the Arab Spring called for support for politically active civil society organizations and for the quick disbursement of funds to respond to unforeseen events. The Commission made some hints to possibly start engaging in political party work. The Council preferred establishing the European Endowment for Democracy (EED), which is planned to focus on the 'political approach', outside the EU structure, thereby confirming its preference for the EU to retain some distance to this approach.

The political approach has, however, not been entirely absent during the last decades, in particular in the case of the EIDHR. It mainly envisaged assistance to be provided to civil society organizations and for their development, which included assistance to regime-critical organizations working for the promotion of civil and political rights. From the mid-2000s on the EIDHR funded specific support actions for human rights defenders, which includes individuals fighting for political change. From 2006 on political foundations, which are involved in political party development, were explicitly mentioned as eligible recipients of EIDHR funds. Further, the EIDHR has since 1999 foreseen procedures for the quick disbursement of funds, which allows the EU to provide aid quickly in times of (unforeseen) regime changes, like during the colour revolutions and the Arab Spring. Some EU programmes were specifically established to allow for quick reaction in times of crisis, including changes of political regimes. Overall, all these elements point to the existence of the political approach in EU democracy assistance. It was, however, without doubt secondary and not very much stressed by the EU.

Fifthly, Chapter 3 has also shed light on the model of democracy underlying EU action. Primarily it needs to be said that, while the EU institutions have always agreed on the elements of democracy the EU promotes abroad, there has been much discussion on whether it should publicly express a definition of democracy. At times the demands for such publication were stronger, at times, in view of lack of agreement, some voices called for an abandonment of the idea in favour of a concentration on implementing the policy of democracy promotion. The European Parliament has overall favoured a clear statement on the model of democracy the EU

intends to promote abroad. Rather than developing a notion by itself, in 2009 it suggested that the EU should adhere to a ‘definition’ proposed by the UN General Assembly, which, however, unsurprisingly was relatively broad and general. The Council has overall distanced itself from the idea of expressing a clear definition and usually, as much as this was possible, tried to avoid it. Rather, it has preferred to speak of universal, common principles that all democracies share and that the EU promotes. The Commission has pursued some middle-path as regards stipulating a clear definition of democracy. It has, due to its role as executive institution tasked with the implementation of democracy assistance programmes more than other institution engaged with definitional elements of democracy and has therefore in numerous occasions defined it, but has refrained from explicitly presenting its conceptions as EU definition or model of democracy.

The main reason for the uneasy approach to the question of the EU’s notion of democracy in external democracy promotion derives from the basic idea or principle of EU democracy promotion that the EU should not and does not intend to develop or even impose a specific model in a third states, in particular not a “European model”, but that there are many equally legitimate democratic models and that each state has to choose and develop the model that best fits its historical, cultural, social, economic and other characteristics. In this sense, the EU just intends to facilitate locally rooted processes of change. At the same time, however, the EU has an interest in a delimited range of possible models it is willing to support in third states, as not every model a third state considers as democracy is necessarily also judged as democratic by the EU or by international, like UN, standards. Additionally, democracy assistance, defined as direct assistance to actors, institutions and processes of an emerging or new democratic system of government, also requires the selection of certain topics that will be supported.

The Council tried to reconcile this principle and the mentioned constraints by arguing that all democracies shared common features, the development of which the EU supported. While the Council refrained from explicitly providing a clear and comprehensive list of these features, in some documents it referred to elections, accountable rulers, parliaments, political parties, the independent media, civil society, and the respect for a broad range of human rights.

It has been mentioned above that the Commission has exercised less constraint in publishing lists of thematic features of democracy that underlie EU action in democracy promotion and, in particular, assistance. To some extent it needed to further develop elements of democracy in order to implement specific programmes and, in particular, facilities, like the ACP Governance Initiative, which requires a detailed analysis by the Commission of all aspects of democracy in a particular target state. In COM(98) 146 the Commission provided a rather ‘academic’ definition of democracy that defined it via three ‘fundamental characteristics’, legitimacy, legality, and effective application, each of which referred to more concrete actors or

processes in democracy. More recent documents contain more direct definitions, but their comprehensiveness varies (COM(2011) 303 final and COM(2011) 886 final). Overall, the following elements appear in the majority of definitions of democracy by the Commission: free and fair elections, parliaments, the freedom of expression (including the free press and free media), freedom of association (or political pluralism) which gives rise to civil society and political parties, the freedom of assembly, the rule of law (including the independence of the judiciary and access to justice), accountable governments, the separation of powers, and transparent and non-corrupt administrations. Reference is often also made to the protection of a broader range of human rights than those central for a democratic system, in particular civil rights.⁷¹³ Some definitions, but not all, have also made reference to the concept of decentralization.

It should also be mentioned that some, albeit few, EU documents refer to specific models of democracy, in particular parliamentary democracy,⁷¹⁴ representative democracy,⁷¹⁵ and participatory democracy⁷¹⁶. They lack defining these conceptions of democracy though, which renders it difficult to exactly determine their meaning, given various possible interpretations in the academic literature and examples in practice. Further, the relationship between the mentioned models, which partly appear in conflict with each other, is unclear. Overall, these expressly mentioned terms do therefore not really inform about notions of democracy used by the EU.

Both the notion of democracy suggested by the Council's common principles of democracy and the various definitions provided by the Commission point to the basic liberal model of democracy. There is no evidence that it intentionally promotes any of the other, more specific models that have been presented in Chapter 1, nor any others models suggested in the academic literature more broadly. It has explicitly excluded a preference for the elitist model of democracy and has introduced safeguards to limit election-related support, in particular for EU EOMs. Further, the importance accorded to civil society strongly suggests a rejection of the elitist model. At the same time, despite the strong focus on civil society development, in particular by the EIDHR, the recent call for a Civil Society Facility, and the call for involving civil society in the implementation of EU assistance, it does not appear that the EU is promoting some form of participatory democracy or pluralist democracy as outlined in Chapter 1. It intends to develop civil society in order to perform its role in liberal democracy, such as contributing to policy-making and operating as watch-dog, and to work next to parliament and government, rather than

⁷¹³ See in particular COM(98) 146, COM(2011) 200 final and COM(2011) 886 final.

⁷¹⁴ Luxembourg European Council of June 1991; 2006 EIDHR regulation, Art. 2(1)(a); The 'Office for the Promotion of Parliamentary [hic!] Democracy' in the European Parliament.

⁷¹⁵ 28 November 1991 resolution; 2006 EIDHR regulation, Art. 2(1)(a).

⁷¹⁶ 2006 EIDHR regulation, Art. 2(1)(a).

to push back or replace these institutions.⁷¹⁷ Finally, there is no evidence of the promotion of social democracy through democracy assistance. There are some hints to the social dimension of EU action in the principle of the universality of human rights as well as in the good governance programmes, however, the EU has not established clear enough links between the social and political dimension to suggest that it promotes social democracy.

Finally, brief reference should be made to the most important unresolved problems in EU democracy assistance. Many questions and reform suggestions concerning EU democracy promotion have occurred again and again during the last two decades of policy implementation. One recurring issue has been the need for a better informational basis of the local situation in order to devise responses in policy, including assistance. The EU has always had knowledge of local situations in its headquarters and its Delegations, however, it was not collected and presented systematically and therefore risked getting lost with changes in the administrative structure and personnel. In 2001, the Commission rejected drafting uniform reports on human rights like the US State Department. Since then, various formats for the systematic presentation of the local situation have emerged in different geographical framework, like human rights fact sheets, ACP governance profiles, and ENPI country reports. Only most recently, in 2011 has the Commission started to draft so-called human rights strategies for individual countries that should provide a common framework for EU policies.

A second major recurring problem has been the need to ensure coherence between different EU policies and EU democracy promotion and between different EU democracy promotion instruments. On the one hand, the problem has become more pressing over the last decade with the growing number of tools of democracy promotion and/or more intensive use of individual tools within the supranational as well as the CFSP pillar. On the other hand, increasing attention given to the topic and increasing calls for ensuring consistency have led to a larger awareness of the issue among Commission staff involved in the implementation of democracy promotion. The requirement that strategic papers for individual programmes mention activities under different tools has helped to take action under different tools or programmes into account. The human rights strategies will hopefully further add to these efforts.

The last existing challenge identified in Chapter 3 is the lack of country-focused programming documents in the case of the EIDHR. Ever since the early 2000s, when the programme was implemented on the basis of EIDHR strategic programming documents, it envisaged global priorities that should be pursued at a global level as well as in all target states. The global priorities were established on the basis of input from Delegations in the numerous target states, were formulated broadly to allow adjustments to local priorities, and allowed

⁷¹⁷ See e.g. COM(2011) 303.

Delegations to adjust priorities. Real EIDHR country-focused strategy papers were not drafted and country-focused EIDHR strategies therefore absent. It remains to be seen to what extent the new country-focused human rights strategies will affect this issue. In any case, EIDHR country strategy papers are needed as long as the EIDHR is providing assistance that also forms part of the developmental approach, that is, assistance envisaging gradual reform.

Chapter 4: Competence and Legal Bases for EU Democracy Assistance

I. Introduction

Chapter 4 concentrates on major issues surrounding EU competence for the provision of democracy assistance, that is, the existence and scope of EU powers to act in the field, and the relevant legal bases or concrete provisions in primary law that give, in various ways, rise to those powers and regulate their execution. The importance of competence questions in EU law is well known: as organization of ‘attributed competences’ or of ‘conferred powers’ the EU can only act within the powers transferred to it from the Member States.⁷¹⁸ As such, competence constitutes a fundamental condition of the legality of EU law and its absence can lead to the annulment of an act by the ECJ.⁷¹⁹ Further, Chapter 3 has already shown that disputes on competence, that is, on powers and influence, have been a frequent feature of the development of EU human rights and democratization policy throughout the 1990s.

Chapter 4 has two main aims. First, it constitutes the legal complement to the evolutionary account on EU democracy assistance given in Chapter 3 and provides, in particular, a more detailed discussion of the there referred to EIDHR dispute. Secondly, it adds to the construction of the strategy of EU democracy assistance by analyzing the contribution primary law has made and makes in this respect. In pursuing these aims, Chapter 4 broadly follows a chronological approach and first discusses the pre-Lisbon legal framework and then the currently applicable provisions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Detailed treatment of the pre-Lisbon framework does not only result from the evolutionary perspective of the Chapter, but also allows a much better understanding of the current legal framework, its novelties and continuing shortcomings, which can to a large degree be explained by the gradual development of EU competences in the sector since the early 1990s.

⁷¹⁸ Art. 5 (1) TEU (As mentioned above, if not explicitly stated otherwise, references are to the currently applicable provisions, that is, to the TEU, as amended by the Treaty of Lisbon, and the TFEU). The ECJ stressed the relevance of the principle for the internal and the external dimension in, amongst others, Opinion 2/94, *Accession to the ECHR* [1996] ECR I-1759.

⁷¹⁹ Art. 263 TFEU. The ECJ’s powers continue, also after Lisbon, to be limited as regards the CFSP. See: Art. 275 TFEU.

The following further delimitations in analysis apply. As the Treaties do not explicitly distinguish between assistance and other instruments but only refer to democracy promotion as such (or rather to “developing and consolidating democracy”), the discussion frequently relates to this broader concept. It does not, however, in detail discuss competences for tools other than assistance, which has been done in other works.⁷²⁰ Similarly, as the Treaties usually treat democracy, human rights, and the rule of law together, so too does the discussion in this Chapter frequently, without, however, providing a detailed treatment of EU competences beyond democracy assistance. Further, the focus of the Chapter is on the supranational provisions as EU democracy assistance is primarily provided in this dimension. CFSP provisions are only briefly addressed and then, in particular, with a view to inter-pillar relations. Finally, when discussing the pre-Lisbon framework, Chapter 4 more precisely distinguishes between competences under the EC-Treaty (ECT) and the EU-Treaty than other Chapters, which usually only refer to EU democracy assistance.

II. The Pre-Lisbon Legal Framework

1. The EC-Treaty

a) An Overview of the Legal Bases relevant for Democracy Assistance

From the early 2000s on, the EC-Treaty contained two express substantive legal bases for the provision of EU democracy assistance: Article 177(2) ECT and Article 181a(1) ECT. Additionally, each of these Articles had a related procedural provision that provided details on the applicable procedures in law-making (Article 179 ECT and Article 181a(2) ECT). Article 177(2) ECT was introduced by the Treaty of Maastricht (signed in February 1992/in force since November 1993) and remained, with the exception of its related procedural rules,⁷²¹ unchanged until the Treaty of Lisbon (signed in December 2007/in force since December 2009). Article 181a(1), basically copying Article 177(2) ECT, was inserted into the ECT by the Treaty of Nice (signed in February 2001/in force since February 2003) and also remained unchanged until the Treaty of Lisbon.

The two provisions did not form part of a separate, specific section on democracy promotion, but of two different, broader policies, namely, of ‘development cooperation’ (Title

⁷²⁰ B. Brandtner and A. Rosas, ‘Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice’, 9 *EJIL* (1998), at 469f. For human rights conditionality clauses, see in particular L. Bartels, *Human Rights Conditionality in the EU’s International Agreements* (2005), in particular at 167f and Fierro, at 245f.

⁷²¹ For the discussion of the procedural rules see section II.1.b) iv. below.

XX ECT) and of ‘economic, financial and technical cooperation’ (Title XXI ECT), which together regulated, except for the Overseas Countries and Territories (OCTs), basically all external assistance and/or cooperation policies.⁷²² The general substantive scope of both Titles is in principle equal, including as regards democracy promotion, and their major difference relates to their geographic or geo-political scope (or *ratione “personae”*): Title XX relates to ‘developing countries’ and Title XXI to ‘third’ countries.⁷²³

For the following detailed discussion of the provisions, it is useful to cite Titles XX and XXI of the ECT in some length:

“TITLE XX
DEVELOPMENT COOPERATION

Article 177

1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:
 - the sustainable economic and social development of the developing countries,...
 - the smooth and gradual integration of the developing countries into the world economy,
 - the campaign against poverty....
2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.
3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organizations.

Article 178

The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.

Article 179

- 1....the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.
- 2....
3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.

Article 180

1. The Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes,...
2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Article 181

⁷²² The EC’s relations with the OCT’s were regulated in Part Four of the ECT (Arts. 182-188 ECT). Although no provision of that part explicitly referred to democracy and human rights promotion, it could be provided due to a broad interpretation of ‘economic and social development’, as suggested by the ECJ in Case C-268/94, *Portugal v. Council* [1996] ECR I-6177 (see below, at II. 1) b) i). In practice, EU democracy assistance was hardly provided in OCTs, as they frequently had, due to their constitutional links with EU Member States, (some) democratic structures. (http://eeas.europa.eu/oct/index_en.htm (last accessed on 19.1.2011)).

⁷²³ On the equal substantive scope of Titles XX and XXI, see the discussion below at II. 1) b) iii..

Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.”

“TITLE XXI
ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD
COUNTRIES

Article 181a

1. Without prejudice to the other provisions of the this Treaty, and in particular of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community.

Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.

2. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt the measures necessary for the implementation of paragraph 1...”

It is important to stress that besides Articles 177(2) and 181a(1) ECT, the EC-Treaty lacked a more general reference to democracy and human rights promotion and protection in third states. Indeed, Articles 177(2) and 181a(1) ECT were the only ECT provisions that expressly mentioned the concepts. On the one hand, the EC-Treaty did not mention democracy promotion as ‘general objective’ of EC external action, as was alluded to in Article 177(2) ECT (...“shall contribute to the general objective of developing and consolidating democracy”...) and as did Article 11(1) TEU (pre-Lisbon)⁷²⁴ for the EU’s Common Foreign and Security Policy (CFSP). In fact, the EC-Treaty did not include any provision, which concisely and comprehensively listed all objectives of EC external policy. Further, it did not even contain a separate Title on ‘EC external policies’, but the various provisions on external action were spread out all over the Treaty.⁷²⁵ On the other hand, more generally, democracy and human rights promotion and protection were not enumerated among the tasks and activities of the Community, usually referred to as ‘objectives’, listed in Articles 2 and 3 ECT.⁷²⁶

⁷²⁴ If references are made to the TEU before the reforms introduced by the Lisbon Treaty, this is indicated by mentioning the term ‘(pre-Lisbon)’ after the respective Article.

⁷²⁵ For example, Art. 133 ECT (the common commercial policy), Art. 310 ECT (association agreements), Art. 182 ECT (the association of overseas countries and territories), Art. 170 ECT (research and technological development), and Art. 174 ECT (environment). See: A. Dashwood, ‘The Attribution of External Relations Competence’, in: A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000), at 119.

⁷²⁶ On the reasons for this absence and general development of the EU’s human rights policy since the 1950s see: Craig and de Búrca, *EU Law: Text, Cases and Materials* (3rd ed.), at 317f; de Witte, ‘The Past and Future Role of the European Court of Justice in the Protection of Human Rights’, at 863; P. Eeckhout, *External Relations of the European Union: Legal and Constitutional Foundations* (2004), at 465f; P. Alston and J. H. H. Weiler, ‘An ‘Ever Closer Union’ in

It should be mentioned that one provision, albeit with important limitations, extended the objective of democracy promotion beyond Title XX: Article 178 ECT, which required the EC to take the objectives stipulated in Article 177 ECT into account in all internal and external policies that were likely to affect developing countries, like in its agricultural policy and commercial policy. However, ‘taking into account’ indicated a weaker obligation, in the sense of ‘considering’ or ‘thinking of’, than contributing to achieving an objective as stipulated in Article 177(2) ECT.⁷²⁷ Articles 178 ECT did therefore not create an EC obligation to actively pursue democracy promotion and could not provide the legal basis for any self-standing democracy promotion measures. Further, it was restricted to developing countries, as Title XXI, albeit surprisingly, lacks a similar provision.

For the further discussion it is important to mention that before the insertion of Articles 177(2) ECT (at Maastricht) and 181a(1) ECT (at Nice) into the EC-Treaty, EC-lawmakers had, in the absence of the existence of express or implied legal bases, to make recourse to the subsidiary powers provision of Article 308 ECT.⁷²⁸ The latter Article, which played a gap-filling role without extending the scope of EC competences,⁷²⁹ provided powers

“(I)f action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers...”.

The provision served, for example, as legal basis for the EIDHR regulation concerning non-developing countries, adopted in April 1999.⁷³⁰ Moreover, in absence of an express and implied basis for general (socio-economic) assistance regulations, with or without a democratization-related focus, Article 308 ECT also provided the relevant basis for such acts, like the ALA-regulation,⁷³¹ adopted in February 1992, as well as the various Tacis regulations adopted between 1993 and 2000.⁷³²

Although the focus of this section is on the EC-Treaty, the EU-Treaty cannot be entirely disregarded, as, on the one hand, its ‘common provisions’ (Title I, Articles 1-7 TEU) and ‘final provisions’ (Title VIII, Articles 46-53 TEU) were of relevance for all three pillars, therefore also

Need of a Human Rights Policy: The EU and Human Rights, in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999), at 6.

⁷²⁷ In *Portugal v. Council* the ECJ equated the phrases ‘to contribute to the general objective...’ and ‘to take into account’. Such reading was widely criticized though in the academic literature and can only be explained by the strong dispute surrounding the question on human rights-related competences. Case C-268/94, *Portugal v. Council*, para. 23.

⁷²⁸ In the case of implied powers, EC competence flows from the existence of a given power, or in a – by the ECJ also accepted – broader view from a given objective or function, which implies the existence of any power reasonably necessary to attain it. See Craig and de Búrca, *EU Law: Text, Cases and Materials* (3rd ed.), at 123f.

⁷²⁹ Opinion 2/94, paras 30 and 35.

⁷³⁰ 1999 EIDHR regulation for developing countries.

⁷³¹ Council Regulation No 443/92.

⁷³² For example, the last Tacis regulation: Council Regulation (EC, Euratom) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia, OJ 2000 L12/1.

for the supranational EC, and, on the other hand, the provisions of the intergovernmental pillars proved relevant in the interpretation of EC law.

All in all, it is well known that the EU-Treaty, in particular since the reforms introduced by the Treaty of Amsterdam (signed in October 1997/in force since May 1999), was more outspoken on the topic of human rights, democracy and other related concepts than the EC-Treaty.⁷³³ Various EU-Treaty provisions referred to the concepts. In particular, Article 6(1) TEU (pre-Lisbon) broadly declared, since Amsterdam, that

“(T)he Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”

Article 6(2) TEU (pre-Lisbon) established, already since the Treaty of Maastricht,⁷³⁴ the obligation that

“(T)he Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law”.

Only the Treaty of Amsterdam, through Article 46(d) TEU (pre-Lisbon), formally endowed the ECJ with the necessary powers to ensure the observance of Article 6(2) TEU (pre-Lisbon) within the sphere of its jurisdiction. However, while these express legal mandates in primary law were important, in practice, the ECJ had already since the late 1960s/early 1970s, without any constitutional foundation, started to protect ‘fundamental rights’ as ‘general principles of Community law’ and thereby with its jurisprudence, in general with the approval of the political institutions and Member States, established and developed an important element of human rights protection in EC law.⁷³⁵ At the same time, as mentioned in Chapter 3, the political institutions themselves expressly declared their intention to maintain self-restraint and to respect fundamental rights in the exercise of their powers in 1977.⁷³⁶

Further, Articles 49 TEU (pre-Lisbon) stipulated, since the amendments by the Treaty of Amsterdam, that only European states that respected “the principles set out in Article 6(1) may apply to become a member of the Union” and therefore provided the formal, legal foundation for ‘EU political membership conditionality’, which had since the first enlargements been applied

⁷³³ See, for example, Nowak, ‘Human Rights ‘Conditionality’ in Relation to Entry to and Full Participation in, the EU’, at 697f.

⁷³⁴ Art. F(2) TEU (pre-Amsterdam).

⁷³⁵ See, for example, de Witte, ‘The Past and Future Role of the European Court of Justice in the Protection of Human Rights’, at 864f; Craig and de Búrca, *EU Law: Text, Cases and Materials* (3rd ed.), at 319f.

⁷³⁶ Joint Declaration by the European Parliament, the Council and the Commission (Luxembourg, 5 April 1977), OJ 1977 C103/1.

but had been never explicitly included in the Treaty.⁷³⁷ Article 7 TEU (pre-Lisbon), introduced by the Treaty of Amsterdam and refined by the Treaty of Nice, provided the Member States and the EU institutions with a quite complex mechanism that aimed at ensuring the continued respect of the principles outlined in Article 6(1) TEU (pre-Lisbon) by EU Member States.⁷³⁸

Finally, the TEU's Title on CFSP (Title V, TEU pre-Lisbon) listed in Article 11 TEU (pre-Lisbon) the goals of this common foreign and security policy, which included, in paragraph 1, fifth indent, the objective

“to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms”.

Despite the numerous provisions referring to human rights and democracy in the TEU (pre-Lisbon) it needs to be stressed though that also the EU-Treaty, just like the EC-Treaty, did not mention democracy promotion as one of the general objectives of the Union, which are listed in Article 2 TEU (pre-Lisbon).

All in all, the overview of democracy-related provisions in pre-Lisbon primary law exposes that, despite the very limited references to the concepts of democracy and human rights in the EC-Treaty and, in particular, the fact that democracy and human rights were not expressly mentioned as objectives of the EC or of its external policies, there were nevertheless two Articles that expressly authorized the provision of EU democracy assistance: Articles 177(2) and 181a ECT. Additionally, successive Treaty reforms gradually increased the number of references to the concepts of democracy and human rights in the EU-Treaty, thereby, as will be seen further below, facilitating an interpretation that suggested broader human rights and democracy-related competences of the EC and EU.

The following Table, based on the pre-Lisbon three-pillar model, summarizes the mentioned legal bases of the EC- and EU-Treaties, relevant for democracy promotion (and assistance).

⁷³⁷ Document on The European Identity published by the Nine Foreign Ministers on 14 December 1973; Declaration on Democracy, Copenhagen European Council; G. Pridham, 'The Politics of the European Community, Transnational Networks and Democratic Transition in Southern Europe', in G. Pridham (ed.), *Encouraging Democracy: The International Context of Regime Transition in Southern Europe* (1991), at 215; L. Whitehead, 'Democracy by Convergence and Southern Europe: A Comparative Politics Perspective', in G. Pridham (ed.), *Encouraging Democracy: The International Context of Regime Transition in Southern Europe* (1991), at 50; M. Bulterman, 'European Union Membership and Political Conditionality', in M. Bulterman, A. Hendriks, and J. Smith (eds), *To Beabr in Our Minds: Essays on Human Rights from the Heart of the Netherlands* (1998), at 128.

⁷³⁸ Nowak, at 690.

Table 8: Democracy Promotion-relevant Provisions of the ECT and TEU

TEU		
Article 6(1): foundational principles of the Union		
Article 6(2): fundamental rights as general principles of EC law		
Article 7: mechanism to ensure Member States' respect for foundational principles		
Article 49: respect for foundational principles as condition for EU membership		
ECT	CFSP (TEU)	JPCC (TEU)
Article 177(2): development cooperation shall contribute to the general objective of developing and consolidating democracy	Article 11(1): democracy promotion as goal of CFSP	
Article 181a: economic, financial and technical cooperation shall contribute to the general objective of developing and consolidating democracy		

b) An Analysis of the Legal Bases relevant for Democracy Assistance

i. Democracy Assistance as Tool of EC Democracy Promotion under Articles 177(2) and 181a(1)?

Because Articles 177(2) and 181a(1) ECT only referred to the wider concept of democracy promotion without systematically listing tools or instruments (...“shall contribute to the general objective of developing and consolidating democracy”...), the question emerges whether the tool of democracy assistance was indeed, as suggested above, covered by the provisions.

As will be seen throughout the Chapter, the broad formulation of Article 177(2) ECT⁷³⁹ allowed and gave rise to various discussions and disputes on different aspects of its scope, in particular also on the tools it covered. Most notably, in Case C-268/94 *Portugal v. Council*, Portugal challenged the use of Article 177(2) ECT (and 181 ECT) as legal basis for a political conditionality clause in a development agreement with India. Portugal's main legal argument was that ‘essential element clauses’, which was the type of EU conditionality clause used from the mid-1990s on,⁷⁴⁰ may lead to “certain means of action” that lay beyond the only ‘general objective’ of human rights protection foreseen in Article 177(2) ECT and that could only be based on the subsidiary power clause of Article 308 ECT.⁷⁴¹ It is known that Portugal's motivations in the case were political: it hoped to be able to veto a planned agreement with the Association of Southeast Asian Nations (ASEAN) for one of its member's – Indonesia's – human rights abuses in East Timor. For the veto it required the use of unanimous voting rules

⁷³⁹ Much of the following discussion focuses on the provisions of Title XX only, as Title XXI was only inserted into the ECT by the Treaty of Nice.

⁷⁴⁰ COM(95) 216 final.

⁷⁴¹ Case C-268/94, *Portugal v. Council*, para. 17.

that the use of Article 308 ECT would involve. *Portugal v. Council* was eventually decided in favour of a broad interpretation of Article 177(2) ECT, which accepted that the provision could be used as basis for ‘essential element clauses’.⁷⁴² Nevertheless, the very complex legal argumentation in the judgment by the ECJ and the decision in full Court were proof of an existing, deeply-rooted disagreement on the scope of EU human rights competences, which included real and fundamental questions on the tools covered by such a policy, and did not simply concern the individual interests of one Member State on one issue.

However, different to the conditionality clauses, it was never challenged that the EC could in principle provide democracy assistance under Article 177(2) ECT. The famous dispute surrounding the adoption of the EC’s first democracy assistance regulations, the EIDHR dispute, discussed in more detail below, concerned the question of which kinds of democracy assistance projects could be financed under Article 177(2) ECT and whether Article 179 ECT could provide the basis for a separate, independent democracy assistance programme or required a link to a development measure. Also those Member States, in particular the UK, and the Council Legal Service, which overall favoured a more limited interpretation of Article 177(2) ECT in the EIDHR dispute, did not contest that the provisions of Title XX in general covered the tool of assistance.

The text of the EC-Treaty gave also support to the argument that Article 177(2) ECT covered EU democracy assistance. Articles 179 ECT expressly referred to the possibility of adopting ‘multiannual programmes’ and Article 180 ECT referred to the obligation of the EC and its Member States to consult on ‘aid programmes’, thereby suggesting that democracy assistance, which consisted of projects and programmes, was covered by the Treaty. It should be said that, during the EIDHR dispute, the Council Legal Service attempted to show that Article 179 ECT did not apply to Article 177(2) ECT but to Article 177(1) ECT only, remained, however, unsuccessful in such interpretation of the provisions of Title XX.⁷⁴³

At the same time, however, the Treaty did not create an obligation of the EC to use certain democracy and human rights promotion instruments, like democracy assistance. Articles 177(2) and 181a ECT created a general EC obligation to contribute, within its cooperation policies, to the democratization of target states. In other words, while not all development cooperation measures had to pursue human rights- and democracy-related objectives, the EC had

⁷⁴² On the case see: S. Peers, ‘Case C-268/94, *Portugal v. Council*, (development policy) [1996] ECR I-6177 (Full Court)’, 35 *Common Market Law Review* (1998), at 541 and S. Peers, ‘Fragmentation or Evasion in the Community’s Development Policy? The Impact of *Portugal v. Council*’, in A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000), at 100.

⁷⁴³ The Council Legal Service, Opinion of the Legal Service, Subject: Commission proposal for a Council Regulation (EC) on the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms, Doc.10597/97, 16.10.1997, para. 6. See the discussion below, at section II.1.b) v.

to actively engage in some form of democracy promotion.⁷⁴⁴ How it pursued the objective of democratization, that is, through which tools or to which extent, was left to the discretion of EU policy-makers and was not predetermined in primary law. As regards the use of instruments, the EU could therefore choose to facilitate democratization through various instruments, as it has done since the early 1990s, but also to concentrate on one or fewer tools. Also Articles 179 ECT and 180 ECT, through their reference to programmes, did not create an obligation to necessarily use the tool of democracy assistance. Article 179 ECT only speaks of the possibility of multiannual programmes. Article 180 ECT, which creates an obligation of consultation among donors, presupposes the implementation of aid programmes and therefore strongly suggests their use, however, cannot be interpreted as necessarily requiring the implementation of democracy assistance, as assistance can also be socio-economic assistance or as there may be important reasons that during a particular period of time no democracy assistance is being provided.

The hesitance to provide an explicit and systematic enumeration of the instruments of democracy promotion in Article 177(2) ECT and, consequently in Article 181a ECT, appears to be less the result of the early stage of development of the policy in the early 1990s, but rather the deliberate choice of the Treaty-makers. The large majority of tools was known in the early 1990s and could therefore have been expressly mentioned. However, as the policy was relatively new, the Treaty-makers preferred to give considerable freedoms to policy makers to allow adjustments to international developments in the field should they occur. Further, other external policy fields were also not in detail regulated in primary law, like socio-economic development cooperation, the main topic of Title XX. The use of individual tools, like ‘programmes’ (Article 179 and 180 ECT) and agreements (Article 181 ECT), is only unsystematically and nearly accidentally mentioned in different provisions.

All in all, while the EC-Treaty did not expressly enumerate the various tools the EC could and/or should use to promote democracy abroad, it was never disputed that it could in principle fund democracy assistance programmes and projects. At the same time, primary law did not impose an obligation on policy makers to use the tool of assistance, but left a large margin of discretion in the choice of the tools. From the viewpoint of democracy promotion policy, a clearer and more detailed, non-exhaustive enumeration of tools, including assistance, would have been preferable, not only to avoid disputes like in *Portugal v. Council*, but also to ensure the employment of the tool.

⁷⁴⁴ Some authors have interpreted Art. 177(2) ECT more restrictively and suggested that the provisions only means that development policy measures may not violate human rights objectives. Bartels, at 179.

ii. Explaining the Double-Track Legal Basis and Absence of a Separate, Specific Section on Democracy Promotion

The reason why the EC-Treaty contains two separate legal bases for democracy assistance rather than a separate Title or Chapter on democracy promotion and therefore a single legal basis with an international geographical scope is less the result of a specific plan of the Treaty-makers than the nearly accidental consequence of a choice made, influenced by various conditions, at Maastricht in the early 1990s.⁷⁴⁵

As indicated, in response to the widely celebrated third wave of democracy and the start of international and EU democracy promotion activities, the Treaty of Maastricht firstly introduced an explicit reference to democracy and human rights promotion into the EC-Treaty. Rather than creating a separate Title though, the relevant provision was placed, as ex-Article 130u(2) ECT (later Article 177(2) ECT), in the equally new Title on development policy (ex-Title XVII, later Title XX).

Several factors appear to have determined this choice. First and most importantly, there was a lack of political acceptability for a separate EC-Treaty Title on democracy and human rights promotion in external relations. The main reason for this seems to have been the – for Member States more disputed – question on the scope of EC-*internal* human rights-related competences.⁷⁴⁶ Inserting the provision on democracy promotion in the Title on development cooperation, next to using an ambiguous wording (‘contribute...to the general objective’), conveniently allowed – at least initially – the circumvention of the problem of being too expressive on EC human rights competences while taking into account the political imperative of an explicit recognition of democracy promotion.

Secondly, the structure of the Treaty, in particular the absence of a separate Part or Title on ‘external policies’, definitely also inhibited the creation of a separate Title or Chapter on democracy and human rights promotion. Had external policy-relevant provisions been encapsulated in a single section (Part or Title), the Treaty-makers could more easily have inserted a reference to democracy promotion with world-wide geographic scope and therefore (possibly) created a single legal basis for democracy assistance acts already in 1992. Hesitations about too explicit a set of references to EC human rights competences might also, however, in this case have led to a slightly unclear wording of the provision.

⁷⁴⁵ The structure of the EC-Treaty, which was divided into Parts, Titles, and Chapters, would have required a separate Title on democracy and human rights promotion. Only, if there had been a separate Title on ‘external policies’, it would have been possible to introduce a separate Chapter on democracy and human rights promotion.

⁷⁴⁶ Weiler and Fries, at 147f.

Thirdly, conceptual and practical links between the concepts of development and democratization made the inclusion of the reference to democracy promotion in ex-Title XVII an acceptable choice. This choice was, fourthly, supported by the fact that the Title on development cooperation was being newly inserted. Inserting a reference as part of a new Title was, as less extensive intrusion into the Treaty, more easily acceptable than inserting an entirely new Title.

The – for this discussion – most important consequence of the treaty makers' choice to insert the reference to democracy and human rights promotion into ex-Title XVII (on development cooperation) was the creation of a double legal basis for EC democracy assistance. As Ex-Title XVII could only be used for developing countries, democracy assistance for third countries had, in absence of express or implied powers, to be based on the residual powers provision of ex-Article 235 ECT (Article 308 ECT) – recall that Article 181a ECT was only inserted in 2001 (Treaty of Nice). Subsequent Treaty reforms have only consolidated this bifurcation.

Initially, the amendments introduced by the Treaty of Maastricht were widely applauded though, in particular because ex-Article 130u(2) ECT constituted the first (and till Nice only) explicit mentioning of the terms human rights and democracy in the EC-Treaty. Even the use of the residual powers clause for democracy assistance to third countries and the related differences in the applicable procedural provisions, discussed shortly below in sub-section iv.), appeared justified by the longer history of EC development policy as compared to the relatively novelty of engagement in other states, like former Communist countries. Only the enormous growth of assistance to third countries throughout the 1990s, which increased the awareness of the gap in the ECT of an express legal basis for cooperation with these states, and the introduction of the co-decision procedure in Article 179 ECT by the Treaty of Amsterdam, which accentuated the different procedures used for Article 179 and 308 ECT, eventually created pressure for changes.

Eventually, in 2001, the Treaty of Nice introduced a separate, express Title on 'economic, financial and technical cooperation with third countries' (Title XXI). By basically copying Article 177(2) ECT in Article 181a(1) second paragraph ECT, it expressly consolidated the double legal basis for democracy assistance. The creation of a separate Title on democracy promotion was not contemplated at Nice, as, on the one hand, the Treaty-makers appeared satisfied with the existing double-track structure, and, on the other hand, the Treaty of Nice only constituted a minor treaty reform.

All in all, it was the initial contingent choice, taken at Maastricht in 1991, of *not* creating a separate Title on democracy promotion but of inserting an explicit reference to democracy promotion into the EC-Treaty's Title on development policy, which was consolidated by the

insertion of Title XXI through the Treaty of Nice in 2001, that led to the existence of two separate legal basis for democracy assistance in primary law rather than the existence of a separate Title on democracy promotion (including assistance) with a universal geographical scope. The discussion of the Treaty of Lisbon will show that Maastricht had an enduring legacy as also the current legal framework continues along these lines.

iii. The Geographical Scope (*ratione personae*) of Articles 177(2) and 181a(1) ECT

As indicated, the EC-Treaty differentiated between two types of ‘states of cooperation’: ‘developing countries’ and ‘third’ countries, for which different treaty provisions applied.⁷⁴⁷ Unfortunately, the EC-Treaty neither listed the countries with respect to each category nor provided a definition that would allow a clear allocation. Attempts to develop a definition from the stipulated objectives of development cooperation (Article 177(1) ECT), like that countries had to be ‘*not* economically and socially developed’ and ‘*not* integrated in the world economy’ were not able to provide concrete results.⁷⁴⁸ The wording of Titles XX and XXI only suggested that Title XX was the primary category, while Title XXI, as catch-all or residuary title, comprised all states that did not fall within Title XX.

Given the lack of a clear definition in the Treaty and ECJ ruling on the question, it is necessary to analyze how the EU institutions used the relevant provisions in practice in order to develop a categorization and to induce some underlying principles.⁷⁴⁹ This exercise shows some minor, but nevertheless relevant changes in EU practice since the reform of external assistance instruments, which applied from January 2007 on.

It is also important to mention, that the general substantive scopes of Titles XX and XXI are in principal equal, that is, the Titles only differ in their geographical and not in their material scopes.⁷⁵⁰ There is therefore just one line and not two lines of division between the two Titles.

⁷⁴⁷ When speaking about countries covered by Title XXI, it is preferable to use the term ‘third country’ to ‘non-developing’ country that is also sometimes used in the literature. The reason is that several of the countries falling into the group of Title XXI are indeed ‘developing’ according to most international definitions of ‘development’ and are also in other EC-policies, like the GSP-system, treated as such rather than being non-developing countries.

⁷⁴⁸ E. Riedel and M. Will, ‘Human Rights Clauses in External Agreements of the EC’, in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999), at 733-4.

⁷⁴⁹ The following numbers are provided on the basis of analysis of EC assistance acts as well as information on the Commission website.

⁷⁵⁰ While structure and wording of the ECT allowed two different interpretations of the general substantive scopes of Titles XX and XXI – equal scopes or two distinct, even if largely overlapping, scopes – the issue was expressly addressed during reform of the EC external assistance instruments in the early-mid 2000s and solved in favour of an equal interpretation of the scopes. The Commission had suggested different scopes, arguing, in particular, that ‘economic cooperation’ with developing countries was not covered by the concept of development envisaged in Title XX but required the use of Title XXI. However, Council and Parliament favoured the interpretation that the material scope of Titles XX and XXI was identical. See: Proposal for a Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation and economic cooperation, COM(2004)

Specific development cooperation and economic, financial, and technical cooperation policies and measures may still differ in practice.

Before the Reform of EC External Assistance Instruments (before 1 January 2007)

Until the recent reform in EC external assistance the EC by and large attributed the following states to the group of Title XX or developing countries:⁷⁵¹ 48 African, 15 Caribbean, and 15 Pacific states (that is, in total, 78 ACP states), 18 states in Central and Southern America, between 20 and 24 states in Asia, as well as some countries in the Near and Middle East. All others were (consequently) Title XXI or third countries. Of these third states, the following were assistance-recipients: all – until their accession to the EU – approximately 14 former Communist states of Central, Eastern and South-Eastern Europe, the 12 – non-CEEC –⁷⁵² successor states to the Soviet Union, as well as the approximately ten Middle-Eastern and Mediterranean states of Northern Africa. A second group of third states was constituted by six industrialized states, that is, the US, Canada, Australia, New Zealand, Korea, and Japan, in which the EU implemented cooperation projects but which did not receive democracy or other assistance.

Unfortunately, no single factor determined this division in EC practice before 2007, but several factors appeared influential. It is clear that the EU did not strictly apply any concrete and objective criteria, like GDP or GNI per capita levels, in order to allocate countries to one group or the other.⁷⁵³ At the same time, however, levels of socio-economic development played some, even if not always a decisive role in the allocation. The overwhelming majority of states in the group of Title XX (developing) countries were indeed widely considered to be developing countries, for example according to the OECD/DAC list of ODA recipients, and clearly

629 of 29.9.2004; European Parliament, Committee on Development, Second Report on the proposal for a regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation and economic cooperation (COM(2004)629), A6-0109/2006final, in particular the Opinion of the Committee on Legal Affairs on the Legal Basis, at 68-71; Communication from the Commission to the European Parliament pursuant to the second subparagraph of Article 251(2) of the EC Treaty concerning the common position of the Council on the adoption of a Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation, COM(2006) 628 final, 24.10.2006, at 4; Council of the European Union, Statement of the Council's Reasons, Subject: Common position adopted by the Council on 23 October 2006 with a view to the adoption of the Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation (11944/06 ADD1, 23.10.2006), at 4; European Parliament, Committee on Development, Draft Recommendation for Second Reading on the Council common position for adopting a regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation (11944/2/2006-C6-0357/2006-2004/0220(COD)), PROVISIONAL 2004/0220(COD), 26.10.2006, at 7.

⁷⁵¹ In some cases only approximate numbers can be given or the given numbers might vary in individual years over the entire period, in particular if there was unclear EC practice, like if an adopted legal act predated the Treaty of Maastricht and was therefore based on ex-Art. 235 ECT, and/or if political changes led to the creation of new states in a particular region.

⁷⁵² Estonia, Latvia, and Lithuania were from the early 1990s on treated as part of the group of CEEC.

⁷⁵³ S. Peers, 'EC Frameworks of International Relations: Co-operation, Partnership and Association', in A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000), at 171.

industrialized or developed countries, like Western states, were never subsumed under Title XX. At the same time, however, also many developing countries, and also many with lower levels of development, were allocated to Title XXI, like states in Central Asia.

One further factor was the evolution of EC development policy and the gradual emergence, over several decades, of a group of countries that was the focus of this policy.⁷⁵⁴ When Title XX was inserted into the EC-Treaty in 1991, it was clear that this group consisted of the ACP, Latin American, and Asian states. Assistance to former Communist states was a new phenomenon and the countries were internationally conceived as countries ‘in transition’ rather than as traditional developing countries, suggesting different problems and requiring different solutions.

This historical-conceptual explanation cannot explain though why the Mediterranean states, which had received EC support from the early 1980s on, were excluded from Title XX. Differences in the form of granting aid – Mediterranean countries received assistance on the basis of bi-lateral protocols rather than assistance regulations – appear unable to explain it. One possible reason for their exclusion in 1991, but also for a general tendency to keep Title XX limited to the EU’s traditional aid recipients, were power-related considerations linked to different procedural rules of Titles XX, Article 308 ECT, and (much later) Title XXI and the desire of (individual) Member States to keep as much control of aid policies as possible.⁷⁵⁵

Finally, there was a tendency to keep individual regions homogenous and to treat countries of the same region, which were addressed by a single regional instrument, like Tacis or MEDA, as part of the same group, thereby creating a simple and clear structure or pattern in EU external relations. The case of Palestine is particularly demonstrative here: While Palestine had been treated as ‘developing’ in individual acts,⁷⁵⁶ it was made a Title-XXI state under the MEDA-programme.⁷⁵⁷

All in all, before 2007, the EC’s differentiation between Title XX and Title XXI countries was based on a mix of socio-economic, historical, conceptual, power-related and structural factors.

⁷⁵⁴ On the history of development policy see, for example, K. Arts, *Integrating Human Rights into Development Cooperation: The Case of the Lomé Convention* (1998), at 97f, and L. Bartels, ‘Trade and Development Policy of the European Union’, in M. Cremona, *Developments in EU External Relations Law* (2008), at 128f.

⁷⁵⁵ See sub-section iv. for the detailed discussion of procedural issues.

⁷⁵⁶ Council Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories, OJ 1994 L182/4, last amended by Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance, OJ L 2005 L344/1.

⁷⁵⁷ As will be discussed in more detail below, the MEDA regulation could impossibly have been based on ex-Arts 130w and 235 ECT, as their procedural rules were incompatible. This did not justify a simple transfer to Palestine to the group of non-developing countries though. The correct procedure would have been to adopt a separate ‘MEDA’ regulation for Palestine alone, next to the main regulation for the other states.

After the Reform of EC External Assistance Instruments (since 1 January 2007)

The adoption of a whole series of new assistance instruments in late 2006 revealed a slightly different division between developing (Title XX) and third (Title XXI) states. The following countries are now considered developing countries: the 78 ACP states, four to six countries in the Near and Middle East,⁷⁵⁸ 18 in Central and Southern America, 19 in Asia, as well as, as most remarkable novelty, the five former Soviet states of Central Asia.⁷⁵⁹ The following countries are considered third countries: the seven to eight pre-accession states in South-Eastern Europe,⁷⁶⁰ Russia, Israel, and 17 so-called ‘industrialized and other high income states’, which include four Western countries, including the US, seven states in Asia, including Japan, Korea and Singapore, and six states in the Middle East, including Kuwait and the United Arab Emirates.⁷⁶¹ The main novelty in this category of industrialized states is the clear allocation of countries that have passed a certain level of development, like Singapore, to the group of third countries. At the same time, however, it is unclear into which group the three Southern Caucasian states, the three western NIS (without Russia), and nine states of the Mediterranean and Near East fall under the new system.

The reason for the lack of clarity as regards the classification of the just mentioned states derives from the fact that no individual acts have been adopted toward these countries on the basis of either Article 179 or 181a ECT and that the ENPI regulation, which regulates assistance to these states, is based on both, Articles 179 and 181a ECT, without specifying which country belongs to which group. On the one hand, it could be that the mentioned countries were from 2007 on considered to be developing countries and that the use of Article 181a ECT was necessitated by the inclusion of Russia and Israel in the ENPI.⁷⁶² In support of such interpretation reference can be made to the fact that, first, also the five Central Asian States, which had so far been in the same group as the other former Soviet states, had been shifted to the group of developing countries, secondly, that the reference to Article 179 ECT in the ENPI regulation would otherwise have been unnecessary as all 15 mentioned states were previously, as aid recipients under Tacis and MEDA, considered to be third states, and thirdly, that the EU, as will be discussed in some more detail shortly below, has from 2007 on established a link between Title XX and the OECD/DAC list of aid recipients, which includes all 15 states.

⁷⁵⁸ Saudi Arabia had to leave the category of Title XX in 2008, while Oman could no longer be included from 2011 on. See below.

⁷⁵⁹ Annex I of the DCI regulation.

⁷⁶⁰ Annex I and II to the IPA regulation.

⁷⁶¹ Annex to the ICI regulation.

⁷⁶² This interpretation is suggested by S. Blockmans, ‘EU–Russia Relations Through the Prism of the European Neighbourhood and Partnership Instrument’, 13 *European Foreign Affairs Review* (2008), at 180.

On the other hand, and this seems to be the more likely situation, it could be that all mentioned 15 states (with some special rules for Palestine) continue to be considered third, Title XXI countries. There is simply no real evidence for a shift of the mentioned states to Title XX and there are important counterarguments to be made against the above arguments supporting such shift. First, the fact that the five Central Asian states were moved to the category of Title XX states does not necessarily imply that all other former Soviet states and the Mediterranean states were moved as well. Rather, Central Asia had to be moved to the category of developing countries to adjust the categorization of states to the (new) system of external assistance instruments and to retain homogeneous groups: the DCI (used for developing countries only) was the only possible assistance instrument for Central Asia, as it was excluded from the ENP. At the same time, there was a strong wish to base the DCI regulation on Title XX (development policy) only.⁷⁶³ All in all, the shift of Central Asia constituted an exception rather than a new rule of treating all former Soviet and Mediterranean states as developing countries.

Secondly, the decision to base the ENPI regulation on both, Article 181a ECT and Article 179 ECT, was not necessitated by the fact that the Caucasian, western NIS and Mediterranean states were developing countries, but was rather a political choice of the EU institutions to more extensively involve the European Parliament through the co-decision procedure (envisaged in Article 179 ECT but not in Article 181a ECT). This concession to the Parliament was important in view of the relevance of the ENPI, the Parliament's overall critical view on the limitations of its powers due to the reduction of external assistance instruments, and the planned increase of parliamentary powers in the case of cooperation with third countries in the draft Constitutional Treaty. The – albeit nowhere expressly mentioned – legal justification for basing the ENPI regulation on both, Article 179 ECT and 181a ECT, rather than on Article 181a ECT only, can only have been the inclusion of Palestine, which had been treated as developing country in individual EU acts, that were also repealed by the ENPI regulation.⁷⁶⁴

Finally, the mentioned link between the OECD/DAC list of aid recipients and Title XX is not as far-reaching as suggested above. It is true that the DCI regulation for the first time explicitly established a set of linkages between EU development aid and OECD criteria for development policies.⁷⁶⁵ One element thereof is the requirement that recipients under the DCI

⁷⁶³ Reference should be made to the disagreements between the Commission and the Parliament on the legal bases in the preparation of the DCI and ENPI. Suffice it to say that the classification of the Central Asian states as Title XX or XXI-countries was not the reason for the disputes.

⁷⁶⁴ Recital 23 and Art. 31 of the ENPI regulation.

⁷⁶⁵ For example, Art. 2(4) of the DCI regulation. The European Parliament pushed for these reforms. See European Parliament, Committee on Development, Draft Recommendations for Second Reading, at 8.

need to be listed as developing countries in the OECD/DAC list of ODA recipients.⁷⁶⁶ In other words, in order to receive assistance under the DCI and by implication, to be developing in the sense of Title XX, countries have to be included in the OECD/DAC list. Once they graduate from this list, they are no longer eligible under the DCI and, by implication, also no longer developing countries in the sense of Title XX but third states in the sense of Title XXI.⁷⁶⁷ However, the created link between the OECD/DAC list and the DCI does not at all suggest that all countries on the OECD/DAC list are necessarily developing countries in the sense of Title XX. Rather, the OECD/DAC list includes both, countries pertaining to Title XX and countries pertaining to Title XXI, like the applicant states for EU-membership. All in all, it therefore rather seems that Ukraine, Belarus, and Moldova, the Southern Caucasian states, and the nine states of the MEDA area are Title XXI countries.

On the whole, under the EU's new system of differentiating between Title XX and Title XXI states objective factors play a more important role than before. As mentioned, in order to be a developing country (Title XX), a country has to be included in the OECD/DAC list of ODA recipients. If a country is excluded from that list, it is also excluded from Title XX. However, this rule does not entirely determine the EU's categorization, as not all states included in the OECD/DAC list are Title XX states. Whether a state is therefore developing or a third country, continues also to be determined by the mix of historical, conceptual, structural, and (inter- and intra-institutional) power-related factors outlined above. The reform of 2007 has therefore only partially introduced clearer and more objective factors.

Although of more general interest than for democracy assistance only, the discussion necessarily provokes the questions regarding the necessity and usefulness of separating between two groups of countries in primary law. A single category of 'third states', established by a single Title, possibly called 'cooperation policies' or 'development and other cooperation policies', would avoid the need to differentiate between states, while still allowing to pursue separate, targeted policies towards individual countries or regions. Some external policies, like trade policy, do also not operate with different categories of countries, even if they adjust trade instruments to the particularities of the targeted states, like in the case of agreements and the general system of preferences (GSP).

⁷⁶⁶ Art.1(1) and Annex II of the DCI regulation and http://www.oecd.org/document/45/0,3343,en_2649_34447_2093101_1_1_1_1,00.html (last accessed on 26.11.2010).

⁷⁶⁷ While this is not the only possible interpretation, as it is also possible to argue that exclusion from the DCI does not necessarily also imply exclusion from Title XX, it finds support in EU practice since 2007. See, in particular, the shift of Saudi Arabia and Oman from the DCI to the ICI regulation. Annex I to the DCI and Annex to the ICI regulations. See also Blockmans, at 180, footnote 61.

iv. Different Procedural Rules of Articles 179, 181a and 308 ECT

It has been mentioned that differences in procedural rules and therefore in powers of Member States and EU institutions not infrequently strongly affected the evolution of primary law and its interpretation as regards democracy assistance. This section briefly addresses the procedures of Articles 179, 181a and 308 ECT in order to render the differences, in particular as regards the Council and the Parliament, clearer, without going into detail of the individual legislative procedures though. Additionally, it addresses the question of using multiple legal bases for single legislative acts and the relevance of procedural rules in this respect.

Differences in Procedural Rules

When the Treaty of Maastricht inserted the title on development cooperation into the EC-Treaty, ex-Article 130w ECT (Article 179 ECT) foresaw the use of the co-operation procedure, regulated in ex-Article 189c ECT (Article 252 ECT), for the adoption of assistance-related acts. This, in 1991 widely used procedure did not provide for the most extensive influence of the Parliament possible at that time, which would have been foreseen by the co-decision procedure. However, it gave the Parliament some possibility to affect the material content of a measure by making voting requirements in the Council more difficult: Instead of deciding by qualified majority, the Council had to act unanimously if it did not accept amendments suggested by the Parliament or decided against a negative vote of the Parliament. The co-operation procedure was, for example, used for the adoption of the EIDHR regulation concerning developing countries in April 1999 as well as for some specific development programmes for individual developing countries, like for Palestine and South Africa.⁷⁶⁸

At the same time, democracy assistance regulations and general development-related acts for third countries had, until the insertion of Title XXI by the Treaty of Nice, to be based on the subsidiary powers clause of ex-Article 235 (Article 308 ECT).⁷⁶⁹ Rather than referring to one of the ECT's legislative procedures, Article 308 ECT itself mentioned its procedural rules and basically foresaw unanimous vote in the Council and consultation of the European Parliament.

⁷⁶⁸ Council Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories, OJ 1994 L182/4, Council Regulation (EC) No 2259/96 of 22 November 1996 on development co-operation with South Africa, OJ 1996 L306/5.

⁷⁶⁹ Recall that, before the insertion of Title XX, the subsidiary powers clause was also used for development-related acts. See, for example, Council Regulation (EEC) No 3331/82 of 3 December 1982 on food-aid policy and food-aid management and amending Regulation (EEC) No 2750/75, OJ 1982 L352/1; Council Regulation (EEC) No 1993/83 of 11 July 1983 implementing a special programme to combat hunger in the world, OJ 1983 L196/6; Council Regulation (EEC) No 442/81 of 17 February 1981 on financial and technical aid to non-associated developing countries, OJ 1981 L48/8.

While this consultation had to be real or genuine and not merely formal,⁷⁷⁰ the Council was neither bound by the Parliament's opinion nor could the latter institution exert pressure on the Council through rendering voting requirements more difficult, as Article 308 ECT anyway foresaw unanimous vote in the Council. The Commission and the Council therefore dominated the procedure, while each Member States retained the power to block a measure. The procedure was, for example, used for the adoption of the EIDHR regulation concerning third states in April 1999. The European Parliament's powers therefore differed as regards the adoption of two identical regulations, just because they were targeting different countries or regions.

Returning to the provisions of Title XX, the Treaty of Amsterdam, as part of a general replacement of the co-operation procedure by the co-decision procedure, also introduced the co-decision procedure into Article 179 ECT.⁷⁷¹ The procedure, stipulated in Article 251 ECT, was designed to prevent a measure being adopted without the approval of the Council and of the Parliament and placed emphasis on the reaching of a jointly approved text, not at last through the use of 'conciliation committees' and of informal 'trilogues' that support finding a compromise.⁷⁷² Of all available procedures, it gave the Parliament the most extensive possibilities to influence a legislative act, in particular also as regards its material content. The co-decision procedure was used for the extension of the EIDHR regulation for developing countries in 2004, the adoption of the 2006 EIDHR regulation, and the DCI regulation as well as the ENPI regulation.

Finally, when Title XXI was inserted into the EC-Treaty through the Treaty of Nice, Article 181a ECT foresaw yet another procedure to be followed in the adoption of democracy assistance regulations. Article 181a ECT did not, like Article 179 ECT, foresee the co-decision procedure for the adoption of assistance regulations, but stipulated its own, specific procedural rules: It envisaged the consultation of the European Parliament and qualified majority vote in the Council. While the Nice Treaty finally created the long-desired express legal base for assistance-act for third countries, it did not change the role of the Parliament in the adoption of these acts. Just like under Article 308 ECT, the role of the Parliament remained consultative only. However, by introducing qualified majority vote, the new provision of Article 181a ECT removed the possibility of Member States to veto acts, as had been possible under Article 308 ECT. The procedures of Article 181a(2) ECT were followed in the case of the 2004 regulation that amended and, in particular, extended the EIDHR for third countries for the period 2005 and 2006.

⁷⁷⁰ See in particular: Case 138/79 *Roquette Frères v. Council* [1980] ECR 3333, paras 33 and 34; Case 139/79 *Maizena v. Council* [1980] ECR 3393, paras 33 and 34.

⁷⁷¹ The procedure was first introduced into the ECT by the Treaty of Maastricht and subsequently amended by the Treaty of Amsterdam.

⁷⁷² Craig and de Búrca, *EU Law: Text, Cases and Materials* (3rd ed.), at 144f.

On the whole, the overview shows that throughout the period 1992 and 2009 the applicable procedural provisions as regards the adoption of democracy assistance regulations were frequently changed. Nevertheless, the role of the European Parliament always remained stronger in the case of developing and weaker in the case of third countries, indicating some hesitation on part of the Member States to concede powers to the Parliament as regards third states and leading to the somewhat absurd situation that the latter institution had considerably different powers in the adoption of the EIDHR as regards developing and the (identical) EIDHR as regards third states. All in all, during the entire period, the powers of the Parliament vis-à-vis the Council increased.

The Use of Multiple Legal Bases with Different Procedural Rules

The existence of different procedural rules for acts relating to developing and third states raises the question of the possibility of a joint use for the adoption of democracy assistance regulations with a worldwide geographical scope, like of a single EIDHR regulation, and the question of which rules apply in such cases.

The question on dual (or multiple) legal bases is not unique to the case at stake and the joint use has, under certain conditions, been accepted in EU law. Different from the EIDHR case, in which the dual legal basis results from the different geographical scopes of Articles 179 and 181a ECT, it usually stems from dual (or multiple) substantive scopes of the legal acts. The solutions to the resulting problems are the same though.

All in all, in EU law the general rule is to choose a single legal basis, while the choice should rest “on objective factors amenable to judicial review” and, in particular, result from “the aim and content of the measure”.⁷⁷³ If a measure has a twofold purpose and none of the two is principal or dominant while the other is ‘merely incidental’, exceptionally a dual legal basis must be chosen.⁷⁷⁴ However, this use of dual basis also requires that the procedures laid down for each legal basis are compatible with each other.⁷⁷⁵ The ECJ has explicitly ruled that both, the cooperation and the co-decision procedures, are incompatible with the consultation procedure, if the latter foresees unanimous voting in the Council.⁷⁷⁶ The underlying reasoning is that otherwise the Parliament’s powers and thereby fundamental democratic principles would be

⁷⁷³ Case 45/86 *Commission v. Council* [1987] ECR 1493, para. 11; Case C-338/01 *Commission v. Council (Recovery of Indirect Taxes)* [2004] ECR I-4829, para. 54. See also D. Chalmers and A. Tomkins, *European Union Public Law* (2007), at 140f.

⁷⁷⁴ Case C-338/1, *Recovery of Indirect Taxes*, at para. 56.

⁷⁷⁵ *Ibid*, at para. 57.

⁷⁷⁶ Case C-300/89 *Commission v. Council (Waste from the Titanium Dioxide Industry)* [1991] ECR I-2867, paras 17-21, and Case C-338/01, *Recovery of Indirect Taxes*, para. 58.

compromised.⁷⁷⁷ In case of compatibility, the procedure is followed that gives the Parliament more extensive rights.

This explains why, in April 1999, the EC adopted two separate, but basically identical, EIDHR regulations for developing and third countries: the co-operation procedure of ex-Article 130w ECT (Article 179 ECT) was incompatible with the unanimous vote foreseen in ex-Article 235 ECT (308 ECT). It also explains why the 1996 MEDA regulation, which also covered ‘developing’ Palestine, could never have been adopted on both ex-Articles 235 (Article 308 ECT) and 130w ECT (Article 179 ECT). As indicated, in that case Palestine was simply shifted to the category of third states and the regulation based on ex-Article 235 ECT only.⁷⁷⁸ Further, the discussion explains why, upon the insertion of Article 181a ECT into the EC-Treaty, it was possible to adopt a single EIDHR regulation in 2006: the co-decision procedure applicable in the case of Article 179 ECT was compatible with the procedure of Article 181a ECT, which foresaw qualified majority voting in the Council. Similarly, the ENPI-regulation could be based on both, Articles 179 and 181a ECT. In both cases, the co-decision procedure applied.

v. Independent Democracy Assistance Programmes or Democracy Assistance
as Part of General Development Assistance Programmes Only?

This section is concerned with one aspect of the scope of Article 177(2) ECT and questions whether Article 177(2) ECT (together with Article 179 ECT) could provide a sufficient legal basis for the adoption of an independent democracy assistance regulation à la EIDHR regulation or could, due to its position as sub-section of the Title on development cooperation, only justify the inclusion of democracy assistance in general development assistance regulations. The issue was one of the main topics of the mentioned EIDHR dispute and is proof of the limitations of the EC-Treaty’s structure and wording concerning democracy promotion as well as of the critical views of some actors in the evolution of the EU’s external democratization policy in the 1990s. As the dispute took place before the inclusion of Title XXI, the discussion focuses on Title XX and Article 308 ECT. The results are, however, equally relevant for Article 181a ECT.

⁷⁷⁷ Case C-300/89 (*Waste from the Titanium Dioxide Industry*), paras 19 and 20.

⁷⁷⁸ As the correct procedure would have been adopting two identical, but separate regulations for Palestine and all other states respectively. However, apparently also the political will of a larger involvement of the Parliament was missing.

A Restrictive Interpretation of the ECT

As mentioned in Chapter 3, the Commission's first proposal for an EIDHR regulation of July 1997⁷⁷⁹ prompted a highly critical Opinion by the Council Legal Service in October of the same year,⁷⁸⁰ which was apparently in particular pushed for by the UK.⁷⁸¹ Next to suggesting a restrictive substantive scope of Articles 177(2) and 308 ECT, discussed in the next section,⁷⁸² it also argued that that Article 177(2) ECT was not an appropriate basis for democracy and human rights assistance as "stand-alone actions" or a regulation which "aimed solely" at realizing human rights- and democratization-related objectives.⁷⁸³ Rather, it could only be used for a regulation whose "main object" was traditional (socio-economic) development cooperation and which *also* concentrated on human rights and democracy, even if it had "a particular incidence on human rights".⁷⁸⁴ Democracy and human rights assistance had to be "part of an integrated development policy".⁷⁸⁵ The Opinion only very generally mentioned 'a development agreement' or 'a new development regulation' as examples. By this, however, it seemingly meant regulations like ALA, that focused on socio-economic development but also envisaged democracy assistance.⁷⁸⁶

To support its arguments, the Council Legal Service first focused on the structure and wording of Title XX. It stressed that, while Article 177(1) ECT outlined three (sub-)goals of development cooperation, Article 177(2) ECT only stipulated that "Community policy *in this area* shall *contribute* to the *general objective* of developing and consolidating democracy...".⁷⁸⁷ This division and difference in wording indicated that democracy (and human rights) promotion were not themselves goals of development cooperation, but constituted different, separate goals. These different goals could not be furthered by Article 179 ECT, as latter would only apply to "measures in the sphere of development cooperation".⁷⁸⁸ The Council Legal Service then

⁷⁷⁹ COM(97) 357 final.

⁷⁸⁰ The Council Legal Service, Opinion of the Legal Service, Subject: Commission proposal for a Council Regulation (EC) on the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms, Doc.10597/97, 16.10.1997. The Opinion was, despite being a restricted document, eventually widely circulated. (Document on file with the author).

⁷⁸¹ Peers, 'Fragmentation or Evasion in the Community's Development Policy', at 106.

⁷⁸² One further, major and correct point of critique of the Council Legal Service was that the Commission's proposal, which was based on Art. 179 ECT only, did not expressly exclude EC activities in the Member States (beyond projects that were carried out in the Member States but benefited third countries, like many projects supporting torture victim centres). In the dispute, the Legal Service remained successful as regards the exclusion of any reference to democracy and human rights promotion within the EC and the Member States. The Opinion of the Council Legal Service was criticized though for bluntly negating any EC competences as regards human rights activities in the Member States. In the view of many authors, EC action within clearly to be defined limits was possible under Art. 308 ECT. Alston and Weiler, at 26-7; Weiler and Fries, at 159-60. At last, the fourth point of critique of the Council Legal Service correctly pointed out that Title XX applied to developing countries only, not to all third states. The Council Legal Service, para. 20.

⁷⁸³ The Council Legal Service, paras 8 and 13.

⁷⁸⁴ *Ibid*, para. 11.

⁷⁸⁵ *Ibid*, para. 13.

⁷⁸⁶ *Ibid*, para. 11.

⁷⁸⁷ *Ibid*, para. 6, emphasis added by Council Legal Service.

⁷⁸⁸ *Ibid*, para. 6.

supported this interpretation with two citations from Case C-268/94 *Portugal v. Council*, a judgment that, despite accepting Article 181 ECT as proper basis for political conditionality clauses, was, as mentioned, handed down against the background of major battles over EC human rights competences. First, the judgment equated the phrase “shall contribute to the general objective...” with “to take account of the objective of respect for human rights [and democratic principles]...” (paragraph 23 of the judgment).⁷⁸⁹ For the Council Legal Service, the phrase “take account of” indicated that the promotion of human rights did not in itself constitute a development policy measure.⁷⁹⁰ Secondly, the judgment stipulated, while accepting that Article 181 ECT was a proper legal basis for political conditionality clauses, that “the question of respect for human rights and democratic principles is not a specific field of cooperation provided for by the Agreement” (paragraph 28 of the judgment).⁷⁹¹ For the Legal Service it appeared that, “if such had been the case, the Court might well have considered that ... [Article 181 ECT] was not the proper legal basis” and that, accordingly, also the possibility of using ... [Article 179 ECT] for a regulation aimed ‘solely’ at realizing the objective of democratization was questionable.⁷⁹²

After excluding that Article 177(2) and 179 ECT could serve as basis for the EIDHR, the Council Legal Service analyzed whether Article 308 ECT could be used instead (for Title XX and other states).⁷⁹³ It basically suggested, in parallel to the interpretation of the provisions of Title XX, that Article 308 ECT could only be used as legal basis for a regulation, which was targeting third (not Title XX) states and which had a general socio-economic focus but also included some (albeit substantively limited) human rights and democracy aspects, like Tacis and MEDA.⁷⁹⁴ It could not, however, serve as legal basis “for an independent programme” for democracy and human rights assistance or an act “the principle objective of which is generally” the promotion of democratization – neither for Title XX nor for third states.⁷⁹⁵

In support of its arguments, the Council Legal Service referred to Opinion 2/94, in which the Court had denied EC competence, based on ex-Article 235 ECT (308 ECT), for accession to the ECHR. It first cited a crucial statement from the judgment, that “(N)o Treaty provision confers on the Community institutions any general power to enact rules on human rights...”⁷⁹⁶

⁷⁸⁹ Ibid, para. 7

⁷⁹⁰ Ibid, para. 7.

⁷⁹¹ Ibid, para. 7.

⁷⁹² Ibid, para. 7.

⁷⁹³ Ibid, para. 14. Although the Opinion is not very clear on the issue, it appears that the main motivation of the Legal Service for looking at the Article was to see whether Art. 308 ECT could cover those types of democracy and human rights assistance, like electoral assistance, which, according to the Council Legal Service, fell outside the material scope of Art. 177(2) ECT (see the discussion in the next section). The arguments were, however, also relevant for the question discussed here.

⁷⁹⁴ The Council Legal Service, para. 20.

⁷⁹⁵ Ibid, paras 18 and 17.

⁷⁹⁶ The Council Legal Service, para. 15. The citation is from paragraph 27 of Opinion 2/94.

Then it recalled that ex-Article 235 ECT “cannot serve as basis for widening the scope of Community powers beyond the general framework created by the provisions of the Treaty as a whole and, in particular, by those that define the tasks and the activities of the Community”.⁷⁹⁷ It went on to stress that Articles 2 and 3 of the EC-Treaty did not mention the observance and promotion of human rights as EC tasks and activities, suggesting that the third criterion of Article 308 ECT, that is, that ‘human rights and democratization’ were EC objectives, was not fulfilled.⁷⁹⁸ The Council Legal Service justified the use of Article 308 ECT for general assistance regulations with a democracy and human rights focus by mentioning that certain democracy- and human rights-related actions were necessary to achieve the aim of “economic reconstruction” and, as element of the economic aspects, were covered by the scope of Article 308 ECT.⁷⁹⁹

What would the acceptance of the Council Legal Service’s interpretation of primary law have meant for EU democracy assistance? On the one hand, it would have changed little for democracy assistance under general development programmes like ALA and Tacis, which could have continued to provide and even increase aid in the sector (albeit respecting the more limited substantive focus, discussed below). On the other hand, it would have put democracy assistance in the third sector in danger. As mentioned, recipient states’ governments are involved in the programming of general development programmes, while they are not in the case of the EIDHR. Critical governments could therefore have considerably restricted the provision of democracy assistance, especially to independent, critical groups. Only some major changes in EC procedural rules on aid implementation, ensuring allocation to civil society also in the framework of general programmes, would have been able to ensure the continued support of NGOs and other groups. However, on the whole the restrictive interpretation suggested by the Council’s Legal Service contradicted the very policy that had, with the Council’s support (in particular through the adoption of the annual budget, which was the basis for the numerous EIDHR programmes) developed throughout the 1990s. It can only be understood as part of a broader conflict on EC human rights competences, in particular, as regards the encroachment upon the sphere of the Member States.

A Broad Interpretation of the ECT

The Opinion of the Council Legal Service caused much critique by the Commission and Parliament and amongst the academic community and concerned civil society. It was eventually

⁷⁹⁷ The Council Legal Service, para. 16. The citation is from paragraph 30 of Opinion 2/94.

⁷⁹⁸ The Council Legal Service, para. 17.

⁷⁹⁹ *Ibid.*, para. 19.

not followed. As is well known, self-standing democracy and human rights assistance regulations, the EIDHR regulations, were eventually in April 1999.

The legal arguments in support of using Article 179 ECT as a basis for an independent democracy assistance regulation suggested that Article 177 ECT did not treat human rights and democracy promotion (Article 177(2) ECT) as inferior or ancillary to traditional development objectives (Article 177(1) ECT) and that Article 179 ECT could therefore be used as procedural legal basis for an act realizing the goals of Article 177(2) ECT as much as it could be used for Article 177(1) ECT. Indeed, the inclusion in a separate sub-paragraph stressed the importance the EC attributed to the topic rather than indicating some inferior role. Further, the particular structure of Article 177 ECT and wording of Article 177(2) ECT showed the goals of democracy and human right promotion were not only an objective of development cooperation but also a broader, more general objective of the EC and EU that was to be pursued through various policies, in particular also through trade policy and the CFSP.

As regards the Legal Service's use of paragraph 23 of *Portugal v. Council*, which equated 'to contribute' with 'to take account of', some authors rightly criticized the reference to only part of the text in the judgment.⁸⁰⁰ Paragraph 23 was only the starting point of a reasoning that subsequently stressed the "importance...[of] respect for human rights and democratic principles" (paragraph 24), that spoke of 'subordinating' development cooperation to human rights protection (paragraph 26), and that finally accepted the legality of 'essential element clauses' under Article 177(2) ECT. Indeed, *Portugal v. Council* did not restrict but rather broadly interpreted Article 177(2) ECT – of course only as regards conditionality clauses. Other authors accept the Council Legal Service's reading of paragraph 23 of *Portugal v. Council*, but, at a more fundamental level, criticized the Court's interpretation of Article 177(2) ECT in paragraph 23 of the judgment and finally came to the same conclusion.⁸⁰¹

The Council Legal Service's use of paragraph 28 of the judgment, which stipulated that human rights and democracy were no explicit fields of cooperation in the planned agreement with India, was also misleading and taken out of context. Although the sense of paragraph 28 in *Portugal v. Council* is indeed difficult to grasp,⁸⁰² it appears that the Court only wanted to rebut one of Portugal's arguments, but not to exclude the use of Article 179 ECT for provisions on human

⁸⁰⁰ Fierro, at 253.

⁸⁰¹ Weiler and Fries, at 148. See also the critique of Peers of the Court's reading of Art. 177(2) ECT, in particular, that a Treaty objective of ensuring protection was turned into an obligation that development policy was made subject to the protection of human rights. Peers, 'Fragmentation or Evasion in the Community's Development Policy', at 103.

⁸⁰² The cited phrase has been interpreted in diverse ways. Fierro argued that the Court failed to recognize that human rights were an, albeit not explicitly stated, field of cooperation and criticized the Court's statement as 'internal contradiction'. Fierro, at 262. Peers used it to support the legality of human rights clauses in agreements not based on Arts. 177(2) and 179 ECT. Peers, 'Case C-268/94', at 549f.

rights-related cooperation.⁸⁰³ If this was not the intention of the Court, it is also not possible to argue, as did the Council Legal Service, that, had human rights and democracy been a field of cooperation, the Court would not have accepted the use of Article 179 ECT.

As regards Article 308 ECT, the opponents of the Council Legal Service's Opinion rightly argued that all three conditions of the provisions were fulfilled, in particular that external democracy and human rights promotion were objectives of the EC.⁸⁰⁴ Surely, they were not enumerated in Articles 2 and 3 ECT, however, the increasing references to human rights and democracy in the EC- and EU-Treaties (see the overview in section II.1.a) above), in particular, the mentioning of a '*general* objective' of developing and consolidating democracy in Article 177(2) ECT, the numerous declarations on the topic made by the institutions, as well as the growing body of ECJ-jurisprudence, pointed to the existence of democracy and human rights as ('transverse') EC objectives more generally, and of democracy promotion as objective of EC external action more specifically.⁸⁰⁵ As regards Opinion 2/94 it was shown that the Court had not denied competence to accede to the ECHR because of the lack of human rights being EC objectives, but because of the institutional implications of such accession.⁸⁰⁶ Some authors even inferred from the Court's silence on the question on 'objectives' that it accepted human rights to be an objective of the EC.⁸⁰⁷ The argument based on the Court's statement on the lack of "any general power to enact rules on human rights" was misleading, as the Court made this stipulation before it went on to analyze Article 308 ECT. There would not have been any sense in continuing the analysis, had the statement also referred to the subsidiary powers provision.

As indicated, these counter-arguments were eventually more convincing and it was accepted that Articles 179 ECT and 308 ECT could provide the legal basis for self-standing – EIDHR – regulations. However, more than just comparing legal arguments, the dispute in essence required a basic political decision and agreement among the various institutions and the Member States on yet another aspect of the general scope of EC human rights competences. One of the few traces of the Council Legal Service's demands was the unusually long and complicated

⁸⁰³ It is suggested here that, in order to understand the meaning of para. 28, it needs to be read in connection with paras. 26 and 27, which together treat the same topic, that is, Portugal's argument that "an essential element in cooperation presupposes specific means of action". In paras 26-28 the Court basically says that the only means of action is the 'suspension' or 'termination' of the agreement, that a conditionality clause may, from a legal viewpoint, be an important factor for such suspension or termination, and that the inclusion of a clause does not require that human rights are also a field of cooperation.

⁸⁰⁴ Peers, 'Fragmentation or Evasion in the Community's Development Policy', at 101; A. Dashwood, 'The Limits of the European Community Powers', *European Law Review* 21 (1996), at 123.

⁸⁰⁵ Brandtner and Rosas, at 472; See also Weiler and Fries, *supra* n., at 159-60; Alston and Weiler, at 26, who more elaborately speak of a 'prudent use' of Art. 308 ECT, in particular taking into account Opinion 2/94.

⁸⁰⁶ Fierro, at 269; Weiler and Fries, at 159-60. A. Arnall, 'Left to its Own Devices? Opinion 2/94 and the Protection of Fundamental Rights in the European Union', in A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000), at 61.

⁸⁰⁷ Arnall, at 71.

titles of the 1999 EIDHR regulations, which read, in the case of the regulation concerning developing countries: “Council Regulation...laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries”.⁸⁰⁸

vi. The Substantive Scope of Article 177(2) ECT and 181a ECT

The focus now shifts to the substantive scope of Articles 177(2) ECT and 181a ECT and questions whether the fact that these provisions were embedded in the EC-Treaty’s titles on development cooperation and economic, financial, and technical cooperation limited the kinds of democracy assistance they covered. As mentioned above, this question was a second major point of argument during the EIDHR dispute. The dispute focused Articles 177(2) ECT and 308 ECT, however, as it is generally assumed that the substantive scope, including as regards democracy promotion, of Articles 177(2) ECT and 181a ECT are the same, the arguments are also valid for the latter provision.

Development-Related Democracy Assistance Only?

Next to suggesting that Articles 179 ECT could only justify the adoption of general development regulations with a democracy and human rights focus but not acts like the EIDHR, in its Opinion on the EIDHR proposal the Council Legal Service also argued that the type of democracy assistance that could be provided under such general development programmes was limited to democracy assistance that materially fell within the scope of development policy or was “part of an integrated development policy”.⁸⁰⁹ Due to obvious difficulties in a precise determination, the Legal Service hesitated in its suggestions of which kinds of democracy assistance fulfilled this criterion,⁸¹⁰ but mentioned that projects focusing on disadvantaged groups, like minorities, children, and women, such on education, including of civil society, on good governance, as well as on the administration of justice and police could be attributed to development cooperation and were therefore covered by Title XX.⁸¹¹ At the same time, measures that fell outside the scope of development policy could not at all be assisted under the EC-Treaty, but only under the EU-Treaty.⁸¹² More concretely, projects that more directly concerned the

⁸⁰⁸ 1999 EIDHR regulation for developing countries. See also recitals one and three of the regulation.

⁸⁰⁹ The Council Legal Service, paras 11 and 13.

⁸¹⁰ Ibid, para. 12 and 21.

⁸¹¹ Ibid, para. 12.

⁸¹² Ibid, para. 26.

political regime and government, that more directly supported democratic change, including election-related assistance, that supported representative bodies, politically-focused civil society, and the media, could not be financed through a programme based on Article 179 or 308 ECT, but exclusively through a CFSP measure.⁸¹³ Overall, the envisaged division was along the lines of Carothers' developmental and the political approach to democracy assistance, introduced in Chapter 2.

The Council Legal Service then argued that also Article 308 ECT could not make up for this limited scope of Article 177(2) ECT and justify the provision of a broader range of democracy assistance support measures – neither for Title XX nor for non-Title XX countries. It interpreted the scope of Article 308 ECT in parallel to that of Article 177(2) ECT, as only authorizing such kind of democracy assistance – for countries not covered by Title XX – that could be considered part of development policy or that was “necessary to achieve” the aim of “economic reconstruction”.⁸¹⁴ Any other – political – democracy assistance, was beyond the scope of Article 308 ECT and could only be provided under the CFSP provisions of the TEU.

As regards the legal arguments underpinning the Council Legal Service's interpretation reference can be made to the previous section and the arguments supporting a limited interpretation of Articles 177(2), 179 and 308 ECT as regards the adoption of a regulation like the EIDHR. These arguments focused on the structure and wording of the Treaty and drew from *Portugal v. Council* and Opinion 2/92. The crucial point of the arguments was that democracy promotion, unlike socio-economic development, was not an objective of Title XX and that the latter could therefore only justify the provision of democracy assistance that was covered by the concept of development.

Such limited interpretation of the scope of Articles 177(2) and 308 ECT stood in stark contrast to EC practice of that time and, if followed, would have required fundamental changes in the EC democracy assistance: Existing EIDHR programmes would have needed to re-focus their measures to more development-related types of assistance and CFSP-based, political democracy assistance, then hardly implemented, would have needed to be created and enhanced. Nevertheless, the interpretation suggested by the Council Legal Service highlighted the limitations of EC primary law as regards democracy promotion, which did not give it a Title or Chapter of its own, but made it part of two conceptually different fields. Although the limited interpretation had to be/was rejected by supporters of a strong EU human rights policy, it would have created more pressure for a clearer, broader legal basis in primary law.

⁸¹³ Ibid, paras 12 and 26.

⁸¹⁴ Ibid, paras 19 and 20.

A Broad Material Scope for EC Democracy Assistance

Supporters of a broad substantive scope of Article 177(2) ECT argued that, rather than that Article 177(2) ECT was limited by its inclusion in Title XX, its mentioning in Title XX broadened the scope of the classic, economically-focused concept of development by a more political dimension. Consequently, a broad substantive range of democracy assistance could be provided on the basis of Article 177(2) ECT (and, in parallel, on the basis of Article 308 ECT for third countries).

The legal arguments supporting such broad interpretation were broadly the same as those used to support the view that Article 179 ECT (and Article 308 ECT) justified the adoption of a self-standing EIDHR regulation and those that were used to rebut arguments denying such competence (see the previous section). Most notably, the structure and wording of Title XX and Article 177(2) ECT supported and stressed the importance of democracy and human rights in EC external relations rather than downgrading and subordinating it under traditional development cooperation. The external promotion of democracy was, without limitations, an objective of the EU and Article 308 ECT therefore applicable. The citations from ECJ case law and opinions was taken out of context or misinterpreted by the Council Legal Service. In addition to these legal arguments, there were severe problems of delimiting development-related from non-development-related, more political democracy assistance and, even more, to show why some measures that were not considered development-related by the Council Legal Service, like election assistance aiming to ensure the emergence of a representative and accountable government, should be less able to foster development than other measures. The two categories are useful in theory to demonstrate different approaches by various actors, but are difficult to find in practice in the policies of individual donors.

The broad interpretation was also in line with the prevailing broad interpretation of the concept of development policy in *Portugal v. Council*.⁸¹⁵ It included, according to the Court, different subject matters, like intellectual property, culture, and tourism, as long as these were actually able to contribute to the socio-economic development of disadvantaged states. Limits were reached if the foreseen activities imposed such ‘extensive’ or ‘specific’ obligations on the EC, that a more specific competence was required,⁸¹⁶ like such to adopt new legislation or submitting itself to an international legal regime.⁸¹⁷ As regards democracy assistance, it had since the late 1980s/early 1990s been widely accepted that democratization positively contributed to or

⁸¹⁵ Case C-268/94, *Portugal v. Council*; Peers, ‘Fragmentation or Evasion in the Community’s Development Policy’, at 100. See also a more recent case, in which the Court confirmed the broad interpretation: Case C-403/05 *Parliament v. Commission (Philippine Border Mission case)*, OJ 2007 C315/8, in particular, paras 56-8.

⁸¹⁶ *Portugal v. Council*, at paras 37 and 39. Peers, ‘Fragmentation and Evasion in the Community’s Development Policy’, at 102-3.

⁸¹⁷ *Ibid.*, at 106 and 108.

was even a precondition of socio-economic development. Democracy assistance, broadly defined, was therefore a subject matter covered by the concept of development. This must, *a fortiori*, have been the case due to the explicit mentioning of democratization in Article 177(2) ECT.

The broad interpretation of the substantive scope of the ECT eventually prevailed in the EIDHR dispute: the adopted EIDHR regulations mentioned, in Article 2, a broad scope of engagement in the sectors of democratization and human rights. Importantly, the non-exhaustive list of concrete fields of action in these broader fields included activities pertaining to the development and political approach. Some authors were critical of too broad an interpretation of Article 177(2) ECT, in particular of the inclusion of conflict prevention and conflict resolution-related measures,⁸¹⁸ which was, however, recently confirmed by the ECJ.⁸¹⁹ Weiler and Fries suggest that the broad interpretation was part of a compromise and, in particular, a concession to the Commission, which aimed at having competence to engage in a broad field of action, in exchange for deleting any reference to an EC human rights policy with regard to the Member States from the planned regulation.⁸²⁰ However, the broad interpretation was also in line with EC policy, which had been developed with the approval of all institutions, including the Council, since the late 1980s/early 1990s and there were, as mentioned, real problems of delimiting development and non-development-related democracy assistance. As mentioned above, while such broad interpretation was welcomed by supporters of a strong EC engagement in democracy assistance, the more limited interpretation would in the long run have rather highlighted the deficiencies in primary law as regards democracy promotion.

vii. The Determination of the Substantive Scope of Democracy Promotion in Primary Law

Articles 177(2) and 181a ECT very succinctly referred to ‘developing and consolidating democracy’ and therefore neither provided a definition of democracy nor details on an EU strategy of democracy assistance. None of the other provisions of primary law did so expressly, either. However, some of these other provisions nevertheless gave, while not offering concrete

⁸¹⁸ Pippan, at 222.

⁸¹⁹ See Case C-403/05 (*Philippine Border Mission* case). Although the ECJ ruled that the ALA regulation did not allow the Commission to adopt and implement a project relating to the security of the Philippine borders, it indicated that security objectives, like the fight of terrorism and international crime, would be covered by Title XX, as „without peace and security“ no „sustainable development and eradication of poverty“ was possible. Case C-403/05, (*Philippine Border Mission* case), para. 56-8.

⁸²⁰ Weiler and Fries, at 147. Recall that the original proposal of the Commission did not expressly exclude democracy and human rights-related projects that predominantly benefited the Member States.

definitions and detailed strategies, important points of reference for EU policy-making and implementation.

Most important in this respect was Article 177(3) ECT⁸²¹ that obliged the EC and its Member States, when implementing development cooperation, to “comply with the commitments”, including legally binding as well as political commitments, and to “take account of the objectives approved” in the context of the UN and other competent international organizations.⁸²² The provision provokes the question on democracy promotion-related documents developed in the mentioned international frameworks. Beyond legally binding treaties that include political rights, like the ICCPR and ECHR and its Protocols, organizations like the UN, the OSCE and the Council of Europe, have over the last two decades built up quite comprehensive sets of – mainly politically-binding – documents on democracy and democracy promotion.⁸²³ Some of them attempted to define essential elements of democracy, others provided states with recommendations on democracy promotion. It also seems that, despite the complex nature of relations of the EU with the respective organizations and multiple forms of approval, the EU, if not committed itself, at least approved the majority of these texts.⁸²⁴

However, different from the opinion of some authors,⁸²⁵ it does not appear though, that the mentioned frameworks produced clear definitions of democracy or precise strategies of democratization. Usually they made reference to open and undefined (sub-)concepts, like human rights or the rule of law, or restricted themselves to a sheer uncountable enumeration of potential fields of support.⁸²⁶ Due to this indeterminacy, no ‘import’ of precise external definitions and strategies into EU policy-making took place. However, Article 177(3) ECT definitely obliged the EU to take the numerous internationally developed documents, which the EU approved in

⁸²¹ Unfortunately, Title XXI did not contain a similar provision, however, if Art. 177(3) ECT was of relevance for the definition of EU democracy promotion, it would necessarily also comprise EU actions in Title XXI-countries.

⁸²² Zimmermann A., Kommentar zu Artikel 177 EG-Vertrag, H. von der Groeben and J. Schwarze (eds), *Kommentar zum Vertrag über die Europäische Union und zur Gründung der Europäischen Gemeinschaft* (2003, 6th ed.), at 1493-4.

⁸²³ For a collection of the major UN documents see: Office for Promotion of Parliamentary Democracy, *Democracy Revisited: Which Notion of Democracy for the EU's External Relations?* (2009), Annex. For the most notable United Nations GA resolutions are see the list provided in Chapter ; For the Council of Europe see, L. Pratchett and V. Lowndes, *Developing Democracy in Europe, An analytical summary of the Council of Europe's Acquis* (2004).

⁸²⁴ On EU relations with international organizations see: I. MacLeod, I. D. Hendry and S. Hyett, *The External Relations of the European Communities* (1996), at 170-1 and 176-207.

⁸²⁵ Democracy Reporting International, *Discussing International Standards for Democratic Governance: A Preliminary Research Report*, Discussion Paper No. 2 (September 2007), at 22; OPPD, *Democracy Revisited: Which Notion of Democracy for the EU's External Relations?*, at 29.

⁸²⁶ On a similar critique of the limited usefulness of too broad concepts, also referring to UN human rights documents, see P. Leino, ‘The Journey Towards all that is Good and Beautiful: Human Rights and ‘Common Values’ as Guiding Principles of EU Foreign Relations Law’, in: M. Cremona and B. de Witte (eds), *EU Foreign Relations Law: Constitutional Fundamental* (2008), at 264.

various documents, like statements or declarations or policy documents, into account in policy-formulation and implementation.⁸²⁷

Article 6(1) TEU (pre-Lisbon), one of the few provisions of primary law that expressly mentioned democracy, was problematic in defining the concepts of democracy and democracy promotion in EC external relations. First, the provision, which stated that “(T)he Union is founded on the principles of... democracy...”, did not further elaborate on the content of that principle. Secondly, even if a body of democratic elements of the EU system could be derived from various Articles of the Treaty, including those on EU citizenship, the European Parliament, and on access to documents, it did not amount to a comprehensive conception of democracy, remained confronted with the critique of the EU’s democratic deficit⁸²⁸ and with the *sui generis* nature of the EU as being an entity different from states. Finally, primary law lacked an explicit provision that required the EU to replicate internal democratic feature in the definition of its external policies. At most, reference can be made to the obligation imposed on the Union institutions of ensuring consistency in the various activities carried out by the Union (Article 3 TEU (pre-Lisbon)). However, while the application of this principle as regards the internal functioning of the Union and an external policy is already slightly problematic, as Article 3 TEU (pre-Lisbon) was primarily intended for ensuring consistent ‘policies’, ensuring consistency does not require having entirely identical internal and external policies. However, a strong political argument can be made, that internal democratic features of the EU system needed to also be considered in the external dimension. In other words, if certain institutions and procedures are considered to be expressions of democracy within the EU, they could, most likely also be so in other political systems.

Similarly, also Article 6(2) TEU (pre-Lisbon) was problematic as reference point for the substantive elements of the EU’s external democratization policy. It required the EU to respect fundamental rights as guaranteed in the ECHR and as they resulted from the constitutional traditions common to the Member States, which was, as last resort, controlled by the ECJ.⁸²⁹ The provision of course also applied to the external dimension and required, for example, that EU assistance regulations and administrative acts based thereupon did not violate fundamental rights,

⁸²⁷ Examples of approval of EU documents include: EU Presidency Statement - Support of UN system to Governments to promote and consolidate democracies (15 December 2005, New York), at http://www.europa-eu-un.org/articles/en/article_5489_en.htm . Statement on behalf of the European Union by Mr. Stéphane de Loecker, Deputy Permanent Representative, at the Permanent Representation of Belgium to the United Nations on Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies, December 11, 2001, at http://www.europa-eu-un.org/articles/en/article_1054_en.htm .

⁸²⁸ D. Chrysoschoou: ‘Europe’s Contested Democracy’, in M. Cini and N. Pérez-Solórzano Borragán, *European Union Politics* (3rd ed., 2010), at 377f.

⁸²⁹ On ECJ fundamental rights jurisprudence and its limits see Craig and de Búrca, *EU Law: Cases, Text and Materials* (3rd ed.), at 319f ; Weiler and Fries, at 155-7; de Witte, ‘The Past and the Future Role of the European Court of Justice in the Protection of Human Rights’, at 882.

for example by not being discriminatory in respect of potential recipients or by not tolerating human rights violations during the implementation of an EU-funded development project, like if a project on economic development involved child labour or infrastructure projects facilitated forced labour.

However, it is highly questionable whether Article 6(2) TEU (pre-Lisbon) also informed the substantive content of the EU's external human rights and democracy promotion policy, that is, whether this policy should actively promote all fundamental rights guaranteed by the ECHR and as they resulted from the constitutional traditions common to the Member States (irrespective whether they had already been expressly recognized in the ECJ's case law or not). It appears that the rather restrictive and negative wording of Article 6(2) TEU (pre-Lisbon), which only stipulated that the EU "shall respect fundamental rights", does not support such approach. Consequently, again only a strong political argument can be made that the fundamental rights envisaged in Article 6(2) TEU (pre-Lisbon) also informed the EU's external policies. This leaves the problem though of the lack of an explicit catalogue of rights envisaged in ex-Article 6(2) TEU and, as part of this problem, of precise conceptions of democracy envisaged therein.

Finally, it is questionable whether stronger arguments can be made as regards the EU Charter of Fundamental Rights, proclaimed by the three main EU institutions on 7 December 2000 and slightly amended on 12 December 2007, as basis for the substantive content of the EU's external democratization policy. Primarily it should be mentioned that the Charter definitely related (and still relates) to the EU's internal and external dimension, as much as Article 6(2) TEU (pre Lisbon) applied to both.⁸³⁰ Different from Article 6(2) TEU (pre-Lisbon), the Charter provided an explicit list of fundamental rights that required protection in the EU and therefore constituted a more accessible instrument that could guide external policy. Further, Article 51(1) of the Charter, which regulated the field of application, stated that the institutions, bodies, offices, and agencies of the Union shall "respect the rights, observe the principles and *promote the application thereof*" [emphasis added] in accordance with their respective powers. This more positive formulation provided a stronger basis than Article 6(2) TEU (pre-Lisbon) for arguing that external policies, implemented on the basis of powers provided in Treaty-provisions, should

⁸³⁰ J. Wouters, 'The EU Charter of Fundamental Rights. Some Reflections on its External Dimension', 1 *Maastricht Journal of European and Comparative Law* (2001), at 3f; A. J. Menéndez, 'Chartering Europe: Legal Status and Policy Implications of the Charter of Fundamental Rights of the European Union', 40 *Journal of Common Market Studies* 3 (2002), at 484; E.U. Network of Independent Experts on Fundamental Rights, *Thematic Comment No. 2: Fundamental Rights in the External Activities of the European Union in the Fields of Justice and Asylum and Immigration in 2003*, 4 February 2004, at 9.

– although not only, but at least – promote the rights included in the Charter.⁸³¹ In other words, the Charter should guide or serve as a key point of reference in external policies.⁸³²

Three main problems remained though. Until the entering into force of the Treaty of Lisbon, the Charter was not a legally binding document, even if the practice of numerous EU institutions over the last decade indicated that it had some ‘legal effect’.⁸³³ As long as it was only ‘solemnly proclaimed’, only strong political arguments could be made as regards its reference role for EU external policy. Further, the Charter did not provide a separate Title on democratic rights but relevant provisions were spread out over several Titles, including under ‘Freedoms’, ‘Citizen’s Rights’, and ‘Justice’. While it therefore provided substantive input, it also did not clearly circumscribe an EU definition of democracy. Finally, as indicated, the Charter did not constitute an exhaustive enumeration of fundamental rights to be protected in the EU, but the Court, via ex-Article 6(2) TEU, could recognize additional rights.

On the whole, neither any of the EC-Treaty’s provisions nor the EU Charter of Fundamental Rights provided a concrete definition of democracy relevant for the EC external dimension and guidelines for the EU’s strategy of democracy assistance. At the same time, however, 177(3) ECT obliged the EC to take international documents on the topic, which it approved in the context of the UN or other organizations, into account. Further, strong political arguments could be made that internal democratic features of the EC/EU should be reflected in the external dimension (Article 6(1) TEU (pre-Lisbon)) and that the fundamental rights that should be respected on the basis of Article 6(2) TEU (pre-Lisbon) and that are included in the EU Charter should also be promoted in the external dimension. Nevertheless, also these sources did not provide precise conceptions of democracy and democracy assistance.

c) Shared Competence of the EC and Member States in Democracy Assistance

i. ‘Complementary’ Competence

It has been mentioned that not only the EC but also its Member States are active in the field of democracy assistance. The legal justification for the activities of both was the shared nature of EC competence in the fields covered by Titles XX and XXI. This shared nature of competence, which had been a feature of EC development policy from the beginning on,⁸³⁴ was implicitly

⁸³¹ Recall in this respect that the Charter fails to mention minority rights.

⁸³² Wouters, at 7.

⁸³³ Craig and de Búrca, *EU Law: Cases, Text and Materials* (3rd ed.), at 362.

⁸³⁴ Joined Cases C-181/91 and C-248/81 *European Parliament v. Council and Commission (Bangladesh case)* [1993] ECR 3685 and Case C-316/91 *European Parliament v Council (EDF or Lomé IV case)* [1994] ECR 625; D. O’Keeffe,

mentioned in some provisions of Title XX, like Article 179 and 180 ECT, and expressly stipulated in Article 177(1) which stated that “Community policy in the sphere of development cooperation...shall be *complementary* to the policies pursued by the Member States” (emphasis added).⁸³⁵

The particular form of shared competence envisaged in Titles XX and XXI, that is, ‘complementary’ competence, in principle implied that both the EC and the Member States could carry out their own development and democracy assistance policies. Both could act in exactly the same field, carry out the same and/or similar programmes and projects, conclude agreements or engage in other forms of cooperation with third states or international organizations. There was no compartmentalization, in the sense that competence for some kind of action, either in terms of instruments or in terms of the material scope, went on the supranational level, while that for others remained with the Member States. Rather, competence was ‘parallel’,⁸³⁶ ‘overlapping’,⁸³⁷ or ‘concurrent’⁸³⁸, allowing the EC and the Member States equally to act in all possible ways and in all substantive fields. Although the wording of Article 177(1) ECT (...EC policy “shall be complementary” to that of the Member States...) appeared to suggest some hierarchy in favour of the Member States and Article 180(1) third sentence ECT (...“Member States shall contribute...to the implementation of Community aid programmes”) appeared to favour EC policy, several other provisions, in particular Article 180(1) first sentence ECT (on both actors’ obligation of coordination and consultation), Article 180 (1) second sentence ECT (on joint actions), and Article 179 ECT (a general enabling provision for EC action) rather support the view that there was no principal subordination but that both competences and policies were ‘equal’.⁸³⁹

Based on these basic features, several further rules and principles defined and/or (potentially) affected the character of complementary competence in development policy and democracy assistance. First, as indicated, parallel competence not simply allowed the devising and implementation of independent and unrelated policies, but Article 180(1) ECT stipulated an obligation for the EC and the Member States to “coordinate their policies” and to “consult each other on their aid programmes”. Primary law gave few hints on where and how this should occur and only mentioned “international organisations” and “international conferences”, next to allowing the Commission “to take any useful initiative to promote the coordination” (Article

‘Exclusive, Concurrent and Shared Competence’, in A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000), at 193; MacLeod, Hendry and Hyett, at 64, fn. 143.

⁸³⁵ For Title XXI see in particular Art. 181(1) ECT.

⁸³⁶ MacLeod, Hendry and Hyett, at 343.

⁸³⁷ M. Cremona, ‘External Relations and External Competence: The Emergence of an Integrated Policy’, in P. Craig and G. de Búrca, *The Evolution of EU Law* (1999), at 158.

⁸³⁸ MacLeod, Hendry and Hyett, at 343. Of all terms, ‘concurrent’ appears to be the most problematic, it has been used to describe different forms of shared competence. See, for example, Cremona, at 153 and O’Keeffe, at 193.

⁸³⁹ AG La Pergola in his opinion in *Portugal v. Council*, cited in Eeckhout, at 112.

180(2) ECT).⁸⁴⁰ Although a similar provision is missing in Title XXI, the duty of coordination must also have applied in the framework of economic, financial, and technical cooperation.

Secondly, reference must be made to the general Community principle of Member States' 'loyalty', expressed in Article 10 ECT. It requires the Member States to "take all appropriate measures...to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community", to "facilitate the achievement of the Community's tasks" and to "abstain from any measure which could jeopardise the attainment of the objectives of this Treaty".⁸⁴¹ In essence, the principle restricts the freedom of action and the powers of the Member States, while reserving preference for EC action and policies, and has therefore been characterised as an extended application of the principle of supremacy of the Community legal order over national law.⁸⁴² However, while it has definitely played a role in the case of – legally binding – EC external agreements,⁸⁴³ its role in the case of democracy assistance was questionable. It is difficult to imagine how Member State democracy assistance could jeopardize EC democracy assistance. The Member States and the EC work within the same basic broad notions of liberal democracy and democratization and even if individual projects suggest opposing solutions to the same problem, for example, two projects envisage different electoral systems for one country, it still needs to be established whether they jeopardize each other rather than, coordination provided, they enrich each other. At the same time, however, the principle could play some role when individual Member States and the EU decide to pursue conflicting democracy *promotion* policies. If, for example, the EU applies a policy of negative conditionality, cutting any democracy assistance to authoritarian governments, the policy might be jeopardized if a Member State continues to provide such assistance to the same government. The loyalty principle might indeed oblige the Member State not to do so.

Thirdly, the *AERT* doctrine, which is able to replace shared competence by exclusive one, should briefly be considered.⁸⁴⁴ It basically foresees that, when the EC adopts internal provisions laying down 'common rules', the Member States are precluded from undertaking, individually or collectively, obligations with third countries that would undermine or affect those rules or alter their scope.⁸⁴⁵ 'Common rules' are considered to be such which either completely or

⁸⁴⁰ Examples of Commission initiatives include the 'Guidelines for strengthening operational coordination between the Community, represented by the Commission, and the Member States in the field of external assistance of 21 January 2001', referred to in COM(2006) 386.

⁸⁴¹ For a detailed discussion, see, for example, Eeckhout, 209-15.

⁸⁴² O'Keefe, at 182.

⁸⁴³ See AG Jacobs in his Opinion in the *EDF case*, discussed in O'Keefe, at 197-8; O'Keefe, at 198, Eeckhout, at 210f.

⁸⁴⁴ Case 22/70 *Commission v. Council* (*AETR case*) [1971] ECR 263, discussed by Eeckhout, at 61 and 71; O'Keefe, at 182 and 197.

⁸⁴⁵ MacLeod, Hendry and Hyett, at 343; O'Keefe, at 198; Craig and de Búrca, *EU Law: Text, Cases, and Materials* (3rd ed.), at 129.

‘exhaustively’ regulate a matter or area or such that ‘to a large extent’ regulate an area with a view to achieving harmonization, for example by fixing standards. ‘Minimum requirements’, at the same time, would not fall into this category.⁸⁴⁶ That the principle also applies in cases of ‘complementary’, shared, competence results from case law, but *a fortiori* from Declaration 10, annexed to the TEU,⁸⁴⁷ which stipulates that “the provisions of ...[Article 181] do not affect the principles resulting from the judgment handed down by the Court of Justice in the AETR case”.⁸⁴⁸ Again, the practical relevance of the principle in the field of democracy assistance was small, as the nature of democracy assistance, just like development policy, does not operate with ‘common rules’. Additionally, as discussed for the loyalty principle, it is highly unlikely whether Member States actions would be able to violate these common rules.

Finally, the *Bangladesh* and *EDF (or Lomé VI)*⁸⁴⁹ cases should be mentioned, which provided further important insights into the exercise of shared powers, in particular the administration of aid. The *Bangladesh* case concerned a special aid package for Bangladesh, which had, upon a plan from the Commission, been adopted by the Member States ‘meeting within the Council’.⁸⁵⁰ The funding came from the Member States, but the Commission could, at the discretion of each Member States, administer and implement the programme and in any case played a coordinating role. The Parliament considered that such arrangement involving supranational institutions required overall recourse to supranational rules.⁸⁵¹ However, the ECJ pointed out that shared, complementary competence meant that the Member States could exercise their powers either outside the Council, but also ‘collectively in the Council’. Any links to supranational institutions in the preparation and implementation of aid did not change the act’s characterisation as intergovernmental and did not require recourse to EC law.

The not long afterwards decided *EDF (or Lomé VI) case* concerned aid provision under the quite complex system under which the EC and the Member States provided assistance to the group of ACP states through a mix of supranational and intergovernmental procedures (‘hybrid system’).⁸⁵² Most notably, the Lomé Convention, a mixed agreement concluded by the EC, its

⁸⁴⁶ MacLeod et al., at 59; O’Keeffe, at 182-92.

⁸⁴⁷ The legal status of the Declaration is unclear. It was referred to by AG La Pergola in *Portugal v. Council*, but not further addressed by the Court. O’Keeffe, at 193.

⁸⁴⁸ Declaration 10 or “Declaration on Articles 109, 130r and 130y of the Treaty establishing the European Community”.

⁸⁴⁹ Joined Cases C-181/91 and C-248/91 (*Bangladesh* case) and Case C-316/91 (*EDF* case).

⁸⁵⁰ See, for example, A. Ward, ‘Community Development Aid and Evolution of the Inter-institutional Law of the European Union’, in: A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000), at 42-5.

⁸⁵¹ The major question at stake was the issue of which acts are amendable to judicial review and the Parliament claimed that the mentioned act, which had been adopted by the Member State ‘meeting in the Council’ was a supranational one. It lost the case at the threshold of admissibility, as the primary act at stake was not considered amendable to judicial review under Art. 230 ECT. However, the ECJ still made some important statements on substantive issues. Ward, at 44.

⁸⁵² Eeckhout, at 108-9, Ward, at 46.

Member States and the ACP states, generally regulated ‘financial cooperation’, while its ‘Financial Protocol’ set out the overall amount of so-called ‘Community aid’, that is, all aid provided under the Convention. An Internal Agreement of the Member States established the (seventh) EDF, which constituted the intergovernmental budget for the envisaged ‘Community aid’. Details of the implementation of assistance were laid down in a special ‘financial regulation’, adopted by qualified majority by the Council on the basis of a Commission draft and after delivery of an opinion by the European Investment Fund. As in the *Bangladesh case*, the Parliament claimed a violation of its prerogatives, recourse to supranational rules, but lost the case.⁸⁵³ The Court largely confirmed its *Bangladesh* ruling. It distinguished between the competence to enter into commitments and to perform those and stated that while the EC and the Member States, as signatories of the Lomé Convention, were together obliged to grant “the Community’s financial assistance”, this did not have immediate consequences for the implementation of these commitments.⁸⁵⁴ Shared, parallel competences conceded the Member States broad discretion in the choice of the system of aid provision, including the choice of the source and method of financing, like bilateral funding through the EDF, and the partial use of EC procedures as well as the ‘recruitment’ of EC institutions.

To conclude, complementary competence allowed both, the EC and the Member States, to engage in the field of democracy assistance on an equal footing. Several specific and general rules and principles aimed at promoting harmonious, conflict-free, and possibly joint activities of all actors, in particular the duty of coordination and consultation (Article 180 ECT) and the general ‘loyalty’ principle (Article 10 ECT). At the same time, shared, complementary competence gave the Member States considerable freedom as regards the choice of the system of aid administration.

ii. The Principles of Subsidiarity and Proportionality

Two further principles, the principles of subsidiarity and proportionality (Article 5 ECT), need to be taken into account in all cases of shared, including complementary competence. Different from the previous discussion on the *existence* of EC competence, they concern the *exercise* of EC competence.⁸⁵⁵ As such, they are able to affect the scope of EC action, although, just as with the

⁸⁵³ Again, the case was of strong importance for the question and eventually extension of the scope of ‘acts’ amenable to judicial review under Art. 230 ECT. This time the Parliament did not lose on the threshold of admissibility, but on the merits. Ward, at 48.

⁸⁵⁴ Case C-316/91 (*EDF case*), at para. 33.

⁸⁵⁵ Protocol on the Application of the Principles of Subsidiarity and Proportionality, annexed to the Treaty of Amsterdam, paras 2 and 3.

principle of loyalty and the *AERT* doctrine, the very character of (democracy) assistance, renders them less compulsive.

Article 5 ECT introduced the principles, which were only after Amsterdam treated as separate, but linked principles, and provided basic definitions. Article 5(2) ECT stipulated that the EC shall only act “if and in so far the objectives of the proposed action cannot be sufficiently achieved by the Member States” and can “by reason of the scale or effects...be better achieved by the Community”. The Commission has called that the ‘comparative efficiency test’.⁸⁵⁶ Article 5(3) ECT continued that “Community action shall not go beyond what is necessary to achieve the objectives of this Treaty”, which brings in the proportionality test. An inter-institutional agreement on subsidiarity of 1993 and a Protocol attached to the Treaty of Amsterdam further defined their content and partly regulated their application.⁸⁵⁷ For example, the Protocol envisaged, where appropriate and except in cases of particular urgency or confidentiality, the publication of consultation documents before the adoption of new pieces of legislation and the publication of explanatory memoranda that clearly proof compliance with the principles of subsidiarity and proportionality.⁸⁵⁸

As regards the application of the principles in the case of democracy assistance, the Commission’s explanatory memorandum accompanying the proposal for the 2006 EIDHR regulation only very succinctly referred to the fact that several EIDHR-covered activities had a global nature and therefore require a transnational approach.⁸⁵⁹ There are several other reasons though, that make the EIDHR regulation and democracy assistance under general development regulations meet the comparative efficiency test, all of which are linked to its ‘European’ character. It does not as easily allow criticism that individual national models (of democracy) are promoted and is overall perceived as more ‘neutral’ than assistance from Member States, in particular from such with a colonial history.⁸⁶⁰ Further, as the EU is a more powerful actor than most individual Member States, it can also provide more security to individual assistance recipients as regards their authoritarian governments. Passing the proportionality test is

⁸⁵⁶ Craig and de Búrca, *EU Law: Cases, Text and Materials*, at 135.

⁸⁵⁷ Interinstitutional Agreement of 25 October 1993 on the procedures for implementing the principle of subsidiarity, OJ 1993 C329/135; Protocol on the Application of the Principles of Subsidiarity and Proportionality, annexed to the Treaty of Amsterdam. See also the Protocol on the Application of the Principles of Subsidiarity and Proportionality (Protocol No 2), attached to the TEU and TFEU.

⁸⁵⁸ Protocol on the Application of the Principles of Subsidiarity and Proportionality, annexed to the Treaty of Amsterdam, paras 4 and 9. See, for example, the Consultation Paper Thematic Programme for the promotion of democracy and human rights worldwide.

⁸⁵⁹ European Commission, Proposal for a Regulation of the European Parliament and of the Council on establishing a Financing Instrument for the Promotion of Democracy and Human Rights Worldwide (European Instrument for Democracy and Human Rights), COM(2006) 354 final, 26.6.2006, Explanatory Memorandum, para. 7.

⁸⁶⁰ Netherlands Institute for Multiparty Democracy (NIMD), at 13.

unproblematic, as there is a much higher demand for democracy assistance in many states than the EU is providing and even can provide.

2. The EU-Treaty

As mentioned above, next to the EC-Treaty, the EU-Treaty also contained references to democracy and human rights and, in particular, mentioned democracy promotion as an objective of the EU's CFSP. This section looks in more detail at the TEU before Lisbon, at CFSP-based democracy assistance, and, in particular, at the relationship between the first, supranational (EC) and the second, intergovernmental (CFSP) pillar. Could EC and EU/CFSP democracy assistance coexist just like EC and Member States activities, only limited by obligations of coordination, or did one Treaty have preference over the other?

a) An Overview of the Legal Basis relevant for Democracy Assistance

The major TEU (pre-Lisbon) provisions relevant for the following discussion should briefly be cited.

While the EU-Treaty, just like the EC-Treaty, did not declare democracy and human rights to be general objectives of the EU, their promotion was an express objective of the Union's foreign and security policy. Article 11 (1) TEU (pre-Lisbon) stipulated that

“The Union shall define and implement a common foreign and security policy ..., the objectives of which shall be:
— to safeguard the common values, fundamental interests,...,
— to strengthen the security of the Union in all ways,
— to preserve peace and strengthen international security...,
— to promote international cooperation,
— to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.”

Article 11(1) fifth indent TEU (pre-Lisbon) was part of the TEU since the creation of the Union, that is, since the adoption of the TEU at Maastricht. It uses a very similar wording as Article 177(2) ECT, which was also included into the TEU at Maastricht, avoids, however, the ambiguous phrase of “*contribute to the general objective*” [emphasis added] (Article 177(2) ECT). Nevertheless, democracy-related activities under the CFSP pillar must be seen as one element of such general policy, which was pursued in various frameworks and EC and EU policies. Importantly, unlike the ECT, the TEU (pre-Lisbon) did not distinguish between different types of countries but has a universal scope.

For the discussion of inter-pillar relations, Articles 2, 3 and 47 TEU (pre-Lisbon) were relevant. Article 2 fifth indent stipulated:

“The Union shall set itself the following objectives:

...

– to maintain in full the *acquis communautaire* and build on it...”.

The relevant part of Article 3 TEU (pre-Lisbon) provided:

“The Union shall...attain its objectives while respecting and building upon the *acquis communautaire*.”

Article 47 TEU (pre-Lisbon) stipulated that

“... nothing in this Treaty [i.e. the TEU] shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.”

b) An Analysis of the Legal Bases Relevant for Democracy Assistance

i. Democracy Assistance as Tool of CFSP-based Democracy Promotion?

Neither Article 11(1) fifth indent TEU (pre-Lisbon) nor any other provision of the TEU elaborated expressively and comprehensively on the tools the EU could/should use to promote the objective of democratizing third states. In practice, a whole range of instruments was employed on the basis of Article 11(1) TEU and the necessary procedural provision discussed shortly below. Indeed, usually only this procedural provision was cited in the act establishing an instrument and the link to Article 11(1) fifth indent (pre-Lisbon) had to be deduced from the text of the act.

Most notable EU tools of democracy promotion were various diplomatic measures, like statements, declarations, and *démarches* towards individual states or regions by the Council.⁸⁶¹ Further, all three of the European Council’s common strategies (Article 13(2) TEU) – on Russia, Ukraine, and the Mediterranean – stressed the relevance of democracy promotion in the countries or regions they targeted, next to having many other objectives.⁸⁶² Similarly, the EU’s

⁸⁶¹ A. Clapham, ‘Where is the EU’s Human Rights Common Foreign Policy, and How is it Manifested in Multilateral Fora?’, in: P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999), at 628.

⁸⁶² See the Common Strategy of the European Union of 4 June 1999 on Russia (1999/414/CFSP), OJ 1999 L157/1; European Council Common Strategy of 11 December 1999 on Ukraine (1999/877/CFSP), OJ 1999 L331/1; Common Strategy of the European Council of 19 June 2000 on the Mediterranean region (2000/458/CFSP), OJ 2000 L183/1.

‘Special Representatives’ for particular regions or states (Article 18 (5) TEU) often included a mandate concerning democratization, like in the case of Central Asia, the Great Lake Region, and the Middle East Peace Process.⁸⁶³ Finally, the objective of democracy promotion gave rise to various CFSP-based election monitoring missions carried out throughout the 1990s, for example, the EU election observation mission to the Russian parliamentary elections in 1993, which was established by the first Joint Action ever adopted under the then new TEU.⁸⁶⁴

In Case C-91/05 *Commission v. Council (ECOWAS)* the ECJ made clear that also assistance was in principle a permissible tool under the TEU and was not *per se* limited to Title XX of the ECT.⁸⁶⁵ However, as will be elaborated in more detail shortly below, it was only justified under the provisions of CFSP, if it was provided to mainly pursue CFSP objectives.

There are indeed rather few examples of TEU-based democracy assistance. The first type of activity was various election assistance projects carried out during the early-mid 1990s. Frequently, these formed part of broader missions that also encompassed election monitoring – at that time no strict division was made between these two types of actions – and, at times, the assistance element was the predominant aspect. Most notably, in 1993 and 1994 the EU supported the transition process in South Africa with a CFSP-based election assistance programme.⁸⁶⁶ By the later 1990s, in particular once the 1999 EIDHR regulations were adopted, the Commission increasingly insisted that all election-related activities, including observation and assistance, should only be carried out within the first pillar.⁸⁶⁷ This was, after initial protest by the Council,⁸⁶⁸ done from 2001 on.

The second type of TEU-based democracy assistance was the more recent EU ‘rule of law missions’, most notably EUJUST THEMIS benefitting Georgia,⁸⁶⁹ EUJUST LEX focusing on Iraq,⁸⁷⁰ and EULEX KOSOVO⁸⁷¹. These missions either aimed at reforming elements of the criminal justice sector, like in Georgia and Iraq, or, more broadly, at establishing a proper justice system, like in Kosovo. In terms of such substantive focus these missions had a strong overlap or even identity with traditional rule of law projects and programmes carried out under the

⁸⁶³ <http://www.consilium.europa.eu/showPage.asp?id=263&lang=en&mode=g> .

⁸⁶⁴ Council Decision 93/604/CFSP. For a list of joint actions in support of monitoring missions see, for example, Eeckhout, at 401 and Annex I of COM(2000) 191final.

⁸⁶⁵ Case C-91/05 *Commission v. Council (ECOWAS or Small Arms Light Weapons)*, OJ 2008 C171/2, at para. 104-5.

⁸⁶⁶ Joint Action 93/678. See, for example, Council of the European Union, Annual Report on Human Rights 2000, at 35.

⁸⁶⁷ COM (2000) 191 final, at 11-2.

⁸⁶⁸ Election Assistance and Observation – Council Conclusions, Council Conclusions Doc. 9990/01-PESC 236-DEV GEN 103-COHOM 17, Brussels 26 June 2001, para. 6.

⁸⁶⁹ Joint Action 2004/523/CFSP of 28 June 2004 on the European Union Rule of Law Mission in Georgia, EUJUST THEMIS.

⁸⁷⁰ Council Joint Action 2005/190/CFSP of 7 March 2005 on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX, OJ 2005 L62/37.

⁸⁷¹ Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, OJ 2008, L42/92.

EIDHR⁸⁷² or under general development programmes (often under the heading of institutional reform⁸⁷³). One major difference was, however, that the missions formed part of the EU's civilian crisis management (CCM) effort pertaining to the European Security and Defence Policy (ESDP)⁸⁷⁴ and therefore primarily aimed at improving the security situation in a particular country (Articles 11(2) second indent TEU and Article 17(2) TEU pre-Lisbon). Rule of law (democracy) promotion was therefore just an intermediary or secondary aim in efforts to achieve the broader objective of security. It should also briefly be mentioned that some other ESDP missions, like police missions, had at times very small democracy and human rights components, like ensuring civilian control of the security sector or human rights training for police-officers, which were very minor and ancillary though.⁸⁷⁵

ii. Procedural Rules

The major differences between the first and second pillar related to the existence of different legal instruments and procedural rules for their adoption, providing different powers to institutions. Just as within the supranational pillar, these differences could explain some of the indicated problems of inter-pillar relations, that will be looked at in the next section.

Of the available legal CFSP instruments – common strategies, joint actions, and common positions – the joint action, which “shall address specific situations where operational action by the Union is deemed to be required” (Articles 12 and 14(1) TEU (pre-Lisbon)), was the most appropriate tool for the provision of EU democracy assistance and was indeed used for the various above-mentioned activities. It could be initiated by a Member State (Article 22 TEU (pre-Lisbon)), directly or via the Council Presidency, the Political or Security Committee (Article 25 TEU (pre-Lisbon)), a TEU-based committee of Member States' representatives and the so-called ‘back-bone’ of EU foreign policy, and the Commission (Article 22 TEU (pre-Lisbon)). It was

⁸⁷² See Art. 2(2)(a) of the EIDHR regulation, which mentions the rule of law as one of the first fields of engagement of ‘democracy assistance’.

⁸⁷³ See Annex II to the 1999 Tacis regulation that mentions the various ‘areas of cooperation’ and lists, in section 1, entitled ‘Support for institutional, legal and administrative reform’, “development of the rule of law”.

⁸⁷⁴ See, for example, A. Nowak, ‘Civilian Crisis Management within ESDP’, in A. Nowak (ed.), *Civilian Crisis Management: The EU Way*, Chaillot Paper 90 (2006), at 15f.

⁸⁷⁵ Council Joint Action 2005/355/CFSP of 2 May 2005 on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of Congo (DRC); Council Joint Action 2005/643/CFSP of September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission – AMM); Council Joint Action 2004/789/CFSP of 22 November 2004 on the extension of the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL PROXIMA), as well as, EUPOL PROXIMA Joint Action 2003/681/CFSP, which established the first mission. For a collection of relevant documents on each mission see <http://www.consilium.europa.eu/showPage.asp?id=268&lang=en&mode=g> (last accessed on 11.2.2011). For a discussion of the police missions see M. Merlingen and R. Ostrauskaite, ‘ESDP Police Missions: Meaning, Context and Operational Challenges’, 10 *European Law Review* (2005), at 215f.

decided upon by the Council, in general acting by unanimous vote (Article 23(1) TEU (pre-Lisbon)), except if the joint action was taken on the basis of a common strategy and therefore just implemented a more basic decision, in the case of which qualified majority applied.⁸⁷⁶ This was never the case as regards democracy assistance-related acts though.

The Parliament's involvement in CFSP was limited to rights of consultation, regular information, and to make recommendations (Article 21 TEU (pre-Lisbon)). While its views should "duly [be] taken into consideration" (Article 21 TEU (pre-Lisbon)), it was not involved in decision-making on joint actions. It could, however, exercise some influence over joint actions via its role in the budgetary procedure. According to Article 28(3) TEU (pre-Lisbon) all operational expenditure for joint actions was financed from the EC budget, except that with defence implications and if the Council decided otherwise, which happened rarely.⁸⁷⁷ With CFSP measures being non-compulsory expenditure, the Parliament's influence was even stronger as it had the last word in the budgetary process.⁸⁷⁸ An inter-institutional agreement on budgetary discipline and sound financial management further strengthened the Parliament's role by increasing its rights of early and regular information on planned and implemented joint actions.⁸⁷⁹ However, despite these budgetary powers, all in all, the role and powers of the Parliament, like that of the Commission, were evidently much more limited than within the supranational pillar.

Finally, as indicated, the ECJ's jurisdiction did not cover the second pillar. However, it successfully claimed, based on Article 46 and 47 TEU, powers to rule on pillar-delimitations, arguing that it had an obligation to determine whether action adopted under an intergovernmental pillar did not encroach upon Community powers.⁸⁸⁰

c) Inter-pillar Delimitation

Questions on inter-pillar delimitations were among the most contentious over the last decade and led to a series of case law, most notably for this discussion, to Case C-91/05 *Commission v. Council*

⁸⁷⁶ Also in this case the Member States retain the possibility of either opting-out of a particular measure, that is, to declare not to be obliged to apply the measure, while accepting that the measure binds the Union, or of declaring to oppose the measure for important reasons of national policy. In this case no decision is taken, but the Council may refer the matter to the European Council for a decision by unanimity. See Art. 23(2) TEU.

⁸⁷⁷ See, for example, the mentioned mission in Congo, EURSEC – R.D.Congo, which is only partly financed by the EC budget. See Art. 6 of Joint Action 2005/355/CFSP.

⁸⁷⁸ On the budgetary procedure see Craig and de Búrca, at 107.

⁸⁷⁹ European Parliament, Council, and Commission, 'Inter-institutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management', OJ 2006 C139/1.

⁸⁸⁰ See in particular Case C-170/96 *Commission v. Council (Airport Transit Visa)* [1998] ECR I-2763; Ward, at 46-7; Eeckhout, at 148-9.

(*ECOWAS*),⁸⁸¹ which specifically concerned Title XX (on development cooperation) of the ECT and Title V (on CFSP) of the TEU.⁸⁸² The answer to the question on whether ECT and CFSP-based democracy assistance could co-exist next to each other like EC and Member States democracy assistance was already briefly mentioned: EU-Treaty-based democracy assistance was limited to cases in which democratization was not the main or primary aim of an activity, but a secondary or incidental aim only. The following paragraphs shed more light on the underlying legal rules and their interpretation.

i. Article 47 TEU: The Collision Rule

A literal interpretation of Article 47 TEU (pre-Lisbon), which stipulated that “nothing in...[the TEU] shall affect [the ECT]” and of Articles 2 and 3 TEU (pre-Lisbon), which mentioned that the Union shall maintain, respect and build upon the *acquis communautaire*, suggested a ‘fixed boundary’ between EC and EU competences and a strong preference for the supranational pillar, in the sense that the EU could only act if the EC could not.⁸⁸³ Commission and Parliament were in favour of such reading of the Articles and also the ECJ confirmed such an interpretation. In two cases concerning the delimitation of competences between the first and the third pillar, Case C-176/3 *Environmental Crimes*⁸⁸⁴ and Case C-440/05 *Ship-Source Pollution*⁸⁸⁵, it ruled that, if, on the basis of the aim and content of a measure, it could be established that its purpose was the implementation of a policy that the ECT conferred on the Community and that it could properly have been adopted on the basis of the ECT, a third pillar measure encroached upon EC powers and violated Article 47 TEU (pre-Lisbon). In consequence, the ECJ annulled the respective third pillar legal acts.

The Council and some Member States were of the opinion that Article 47 TEU (pre-Lisbon) aimed at protecting a ‘balance of power’ established by the Treaties, allowing both, the supranational and the intergovernmental regimes to co-exist alongside each other.⁸⁸⁶ Similarly, several commentators called for a more accommodating interpretation of Article 47 TEU (pre-Lisbon), stressing cooperation rather than conflict and competition.⁸⁸⁷ They argued that this was

⁸⁸¹ OJ 2008 C171/2.

⁸⁸² On the topic in general see M. Petite, *Current Legal Issues in the External Relations of the European Union*, EUI Working Paper LAW No. 2006/38 (2006), at 3-4; M. Cremona, *External Relations of the EU and the Member States: Competence, Mixed Agreements, International Responsibility, and Effect of International Law*, EUI Working Paper LAW No. 2006/22 (2006), at 12; A. Dashwood, ‘Article 47 TEU and the Relationship between First and Second Pillar Competences’, in A. Dashwood, *Law and Practice of EC external relations* (2008), at 70f.

⁸⁸³ See, for example, Case C-91/05 (*Small Arms Light Weapons*), para. 36.

⁸⁸⁴ Case C-176/03 *Commission v. Council (Environmental Crimes)*, [2005] ECR I-7879.

⁸⁸⁵ Case C-440/05 *Commission v. Council (Ship-Source Pollution)*, [2007] I-9097.

⁸⁸⁶ *Ibid.*, para. 43.

⁸⁸⁷ Chalmers and Tomkins, at 141

in particular necessary for the implementation of single, ‘integrated’ policies in areas where competences were divided and EC and EU action was necessary, like in the field of security.⁸⁸⁸ They also pointed to the absurd situation a limited interpretation created in comparison to fields of parallel, complementary competences: In fields of EC competence, like in the case of Title XX, the Member States could act collectively outside the EC/EU framework, possibly also using EC mechanisms, but were precluded to act collectively under the TEU.

ii. Case C-91/05 *Commission v. Council (ECOWAS or Small Arms Light Weapons)*

Different from the above-cited cases, Case C-91/05 specifically concerned the delimitation of powers between Title XX ECT and Title V TEU (Pre-Lisbon).⁸⁸⁹ The case arose when both, the Council and the Commission became active in the sector of combating the accumulation and spread of small arms and light weapons. On the one hand, in February 2003 the Commission and ECOWAS (Economic Community of West African States) signed, on the basis of the Cotonou Agreement, a regional support strategy and a regional indicative programme envisaging arms control as part of a broader regional conflict prevention and good governance policy. In 2004 concrete proposals for operations in the sector followed. On the other hand, in July 2002 the Council adopted a CFSP decision that focused on the Union’s role in combating the accumulation and spread of small arms and light weapons and in December 2004 it followed up with an implementing joint action that envisaged technical and financial assistance in the sector of light arms control, in particular as regards an ECOWAS moratorium on small arms and light weapons.

According to the Commission, which was supported by the Parliament, the Council’s acts infringed Article 47 TEU (pre-Lisbon) as the measures could have been adopted under the ECT because, in essence, combating the proliferation of small arms and light weapons was an integral part of development policy, as development could only be achieved if there was a minimum degree of stability.⁸⁹⁰ The Council, supported by six Member States, disputed such interpretation and basically argued that the fight against small arms and light weapons and for peace and security more generally, lay beyond the scope of Title XX ECT and only within Title V TEU (pre-Lisbon). A too broad interpretation of Title XX ECT, in the sense that already an incidental

⁸⁸⁸ P. Craig and G. de Búrca, *EU Law: Text, Cases, and Materials* (4th ed., 2008)), at 193.

⁸⁸⁹ For a discussion of the judgment see J. Heliskoski, ‘Small Arms and Light Weapons in the Union’s Pillar Structure: An Analysis of Article 47 of the EU Treaty’, 33 *European Law Review* 6 (2008), at 898f; P. Koutrakos, ‘Editorial: Development and Foreign Policy: Where to Draw the Line between the Pillars’, 33 *European Law Review* 3 (2008), at 298; Cremona, at 13-4; C. Hillion and R. A. Wessel: ‘Competence Distribution in EU External Relations after *ECOWAS*: Clarification or Continued Fuzziness?’, 46 *Common Market Law Review* (2009), 574f.

⁸⁹⁰ Case C-91/05 (*Small Arms Light Weapons*), paras 35-41.

effect on development was sufficient to bring a measure within its scope, would render EC competence without limits, CFSP provisions without effect, and threaten the principle of conferred powers and the constitutional structure of the pillar system. The UK also argued that the concurrent nature of competence of Title XX ECT needed to be taken into account and that EU action did not pre-empt EC action.⁸⁹¹

The ECJ first reiterated that measures adopted on the basis of the TEU infringed Article 47 TEU (pre-Lisbon) if they, on account of their aims and content, had as their main purpose the implementation of a policy conferred by the ECT on the Community, and if they could properly have been adopted on the basis of the ECT.⁸⁹² This was also true in cases of parallel or concurrent competence and irrespective of whether EC action prevented or limited EC action.⁸⁹³ The Court then confirmed its already established broad interpretation of the concept of development cooperation, stating that measures combating small arms and light weapons were in principle covered as they could contribute to socio-economic development (by reducing or eliminating obstacles to such development).⁸⁹⁴ However, they could nevertheless only be adopted under the ECT, if, by virtue of aims and content, the measures fell within the scope of competence conferred by the ECT on the EC, which was *not* the case, if their main purpose was implementing the CFSP.⁸⁹⁵ Further, the Court clarified that Article 47 TEU (pre-Lisbon) precluded that measures that pursued two or more objectives falling within development cooperation and within CFSP, none being the major or merely incidental one, could be based on two legal bases.⁸⁹⁶ As Article 47 TEU (pre-Lisbon) precluded the adoption, on the basis of the TEU, of a measure that could have been adopted on the basis of the ECT, the Union could also not have recourse to a legal basis falling within the CFSP in order to adopt provisions which also fell within a competence conferred by the ECT on the Community.⁸⁹⁷

Based on this preliminary analysis, the Court then applied its traditional ‘centre of gravity’ test to the case and determined whether the decision and joint action at stake, by virtue of their aim and content, fell within the scope of competence conferred by the ECT on the EC. It carried out a detailed analysis, in particular of the aims of both documents, and came to the conclusion that the contested decision contained two main components, neither of which was incidental to the other, one falling within development cooperation the other within CFSP.⁸⁹⁸ Given that the

⁸⁹¹ Ibid, paras. 42-55.

⁸⁹² Ibid, para. 60.

⁸⁹³ Ibid, paras. 60-2.

⁸⁹⁴ Ibid, para. 67-8.

⁸⁹⁵ Ibid, para. 72.

⁸⁹⁶ Ibid, para. 75-6.

⁸⁹⁷ Ibid, para. 77.

⁸⁹⁸ Ibid, paras. 79-107 and, in particular, para. 108.

measure also fell within development policy, the Council could not adopt the act, had violated Article 47 TEU (pre-Lisbon) and the decision was annulled.⁸⁹⁹

On the one hand, the Court confirmed its previous case law on Article 47 TEU (pre-Lisbon). Article 47 TEU created a fixed boundary between EC and EU competence, not allowing mixed cross-pillar acts.⁹⁰⁰ Further, Article 47 TEU was infringed not only if a measure fell within EC competence and could have been adopted by the EC, but also if a measure had two main purposes of which one fell within the first pillar while the second fell within CFSP.⁹⁰¹ On the other hand, the judgment also stated limits of EC powers vis-à-vis the EU. It stipulated clearly that even if a subject matter contributed to achieving EC objectives, it only fell within EC competence if it mainly pursued EC and not EU objectives. Therefore, in fields pertaining to the EC and EU, the real, underlying main purpose of a measure had to be determined through a detailed analysis of the text of the act at stake as well as other, related policy documents. Further, different from the interpretation of the judgment by some authors,⁹⁰² it is suggested here that the EC was also prevented from adopting a measure that concurrently pursued EC and EU objectives, such as the joint action at stake, as the CFSP elements lay beyond its scope of competence.⁹⁰³ All in all, it strongly appears that in the *ECOWAS* judgment the ECJ gave hints of how it would solve conflicts under the future Lisbon legal regime, which replaced Article 47 TEU (pre-Lisbon) by a provision that protected both the supranational and CFSP ‘pillars’: the solution was a strict application of the ‘centre of gravity’ test, with main purposes being decisive, while incidental, secondary aims remained irrelevant. The law-making institutions were called upon to be very clear in their formulation of a relevant legal and policy document. Mixed-pillar acts might remain impossible due to incompatible procedural rules.

iii. Implications for TEU-based Democracy Assistance

In order to test the legality of the various rule of law missions mentioned above, it was equally necessary to establish the main purpose of the measures. The more problematic issue as regards those missions than in the *ECOWAS* case was that the promotion of the rule of law constituted express objectives of both, the EC-Treaty (Articles 177(2) and 181a ECT) and the EU-Treaty (Article 11(1) fifth indent) and that the missions therefore *prima facie* concurrently pursued an

⁸⁹⁹ Ibid, paras. 109-10.

⁹⁰⁰ Ibid, para. 76.

⁹⁰¹ Ibid, para. 77.

⁹⁰² See, for example, Hillion and Wessel, at 574-5 and Dashwood, at 98.

⁹⁰³ Case C-91/05 (*Small Arms Light Weapons*), para. 72.

objective that was an EC and a CFSP objective. Indeed, next to the CFSP-based rule of law missions the EC implemented several substantively similar or even identical EC measures.⁹⁰⁴

However, a more detailed analysis of the texts of the joint actions establishing the rule of law missions as well as of other EU policy documents, in particular of those pertaining to the EU's CCM activities, showed that the main purpose of the missions related to security- and stability-related objectives and therefore CFSP objectives (Article 11(1) second and third indent TEU rather than fifth indent).⁹⁰⁵ Rule of law development only constituted an intermediate, secondary or incidental aim that was not decisive for the establishment of EC or EU competence. In such a case, even if the measure contributed to achieving an EC objective (rule of law development or even development cooperation), it needed to be adopted on the basis of the CFSP provisions, because it primarily pursued a CFSP objective.⁹⁰⁶ All in all, the general view of the EU institutions and of some commentators was that the rule of law missions did not violate Article 47 TEU.⁹⁰⁷

The question emerges whether and under what conditions the provision of democracy assistance would have been legal under the TEU. Again, the case was difficult, as democracy promotion was an explicit objective of both the ECT and the TEU. The centre of gravity test had to be applied to determine on the basis of an analysis of aim and content the main purpose of a measure. If the main purpose was democratization *per se* or (socio-economic) development (Title XX and XXI ECT) to which democracy assistance would contribute, Article 47 TEU (pre-Lisbon) prevented the EU from providing democracy assistance, as a measure fell within EC competence and could have been provided by the EC. If it could be established that democracy promotion was not the main but merely an incidental aim while the main aim was clearly a CFSP objective, like strengthening international security, the EU could adopt a relevant act that also envisaged democracy assistance. This explains the very limited provision of democracy assistance under the second pillar.

⁹⁰⁴ See, for example, D. Helly, 'EUJUST THEMIS in Georgia: An ambitious Bet on Rule of Law', in A. Nowak (ed.), *Civilian Crisis Management: The EU Way*, Chaillot Paper 90 (2006), at 94; X. Kurowska, 'Beyond the Balkans but Still in Civilian Uniform: EUJUST THEMIS to Georgia', 4 *CFSP Forum* (2006) 9, at 9; M. Cremona, *The European Neighbourhood Policy: Legal and Institutional Issues*, CDDRL Working Papers No 25 (2004), at 17.

⁹⁰⁵ For example, third recital in the preamble of the Joint Action establishing EUJUST THEMIS. See also: Santa Maria da Feira European Council, Presidency Conclusions, 19 and 20 June 2000, Appendix 3, Study on Concrete Targets on Civilian Aspects of Crisis Management; Council, 'Civilian Headline Goal 2008', 7 December 2004, Doc. 15863/04.

⁹⁰⁶ Case C-91/05 (*Small Arms Light Weapons*), para. 72.

⁹⁰⁷ Dashwood, 'Article 47 TEU and the Relationship between First and Second Pillar Competences', at 89-93.

3. Summary of the Analysis of the Pre-Lisbon Legal Framework

The legal bases for the provision of democracy assistance in the EC-Treaty evolved gradually during the period 1991 to 2001, with the three main developments being: (1) the insertion of Article 177(2) ECT into primary law by the Treaty of Maastricht; (2) the 1997-1999 EIDHR dispute, which resulted in a broad interpretation of the scope of Article 177(2) ECT; and (3) the insertion of Article 181a ECT by the Treaty of Nice.

By 2001 the ECT therefore consisted of two express provisions that provided the legal bases for the adoption of regulations that envisaged the provision of democracy assistance. Article 177(2) ECT was part of the Title on 'development cooperation' and authorized EC democracy assistance for developing countries, while Article 181a ECT formed part of the Title on 'economic, financial, and technical cooperation' and authorized democracy assistance for third countries. Unfortunately, the exact allocation of countries to the two groups was never based on objective factors only but was also always influenced by a whole range of other factors, even after a reform in 2006. Further, the procedural provisions linked to Articles 177(2) and 181a ECT always differed, first being incompatible and eventually still creating the absurd situation that the European Parliament had less power as regards democracy assistance for third countries than for developing countries. However, Articles 177(2) ECT and 181a ECT were interpreted very broadly by the EC institutions as authorizing not only the provision of democracy assistance in the framework of general development or cooperation regulations and policies, like Tacis or the ENPI, but also on the basis of specific, self-standing EIDHR regulations. Further, they were interpreted broadly as allowing a basically unlimited number of types of activities, ranging from so-called political aid to more development- or governance-related aid.

At the same time, the wording of both cited Articles was very succinct and they did not provide any further details on the EU's strategy of democracy assistance, like on the substantive focus, geographical concentration, and concept of democracy guiding EU action. Some other EC-Treaty provisions gave some indications on elements of the strategy, however, also did not amount to explicit, clear and comprehensive strategies. Primary law, while providing the necessary competence and legal basis for EC actions, left a large margin of discretion to the political institutions to elaborate concrete strategies of democracy assistance towards individual regions and countries.

Beyond the EC framework, following Article 47 TEU, EU democracy assistance was limited to cases when the particular EU act mainly pursued non-EC objectives, like security objectives in the case of the various EU rule of law missions, or when democracy assistance was just an incidental aim. However, as a field of parallel competence, the Member States could

always, next to EC actions, provide democracy assistance, just limited by the obligation of both the EC and the Member States to coordinate their actions.

III. The Current Legal Framework

On 1 December 2009 the Treaty of Lisbon entered into force, which, introducing most of the reforms envisaged in the failed Constitutional Treaty, brought some important changes to the previous legal framework while also leaving much as it was. Most notably, it established a single 'Union' that replaced and succeeded the EC and is now regulated in the amended TEU as well as in the 'Treaty on the Functioning of the European Union' (TFEU), an amended version of the EC-Treaty. The TEU contains the more general provisions, like on Union values and aims, institutions, and revision procedures and also stipulates the 'general provisions on the Union's external action' as well as the 'specific provisions on CFSP'. Importantly, the latter continues to use intergovernmental rules ("partial depillarization").⁹⁰⁸ The TFEU contains the more detailed provisions for individual policy fields, including on external action, as well as on institutional and procedural aspects. The following sections analyze the relevant reforms and non-reforms concerning democracy assistance, focusing first on supranational and then on intergovernmental, CFSP-based democracy assistance.

1. Supranational Democracy Assistance: The TFEU and the TEU

a) An Overview of the Legal Bases Relevant for Democracy Assistance

One of the major novelties of the current legal framework is that democracy is now explicitly mentioned as guiding principle of and democracy promotion as objective of EU external action. Title V of the TEU contains the relevant provisions, which should be cited in some detail. It should also briefly be mentioned that the existence of separate, comprehensive Parts and Titles on the EU's external dimension, both, in the TEU and TFEU, itself constitutes a further major novelty and improvement of the legal framework. The TEU provides:

⁹⁰⁸ B. de Witte, 'The Constitutional Law of External Relations', in I. Pernice and M. Poiares Maduro (eds), *A Constitution for the European Union: First Comments on the 2003 Draft of the European Convention* (2004), at 95f; M. Cremona, *A Constitutional Basis for Effective External Action? An Assessment of the Provisions on EU External Action in the Constitutional Treaty*, EUI Working Paper Law No. 2006/30 (2006), at 17.

“TITLE 5

GENERAL PROVISIONS ON THE UNION’S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON
THE COMMON FOREIGN AND SECURITY POLICY

Chapter 1

GENERAL PROVISIONS ON THE UNION’S EXTERNAL ACTION

Article 21

1.The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law,...human rights and fundamental freedoms,...

The Union shall seek to develop relations and build partnerships with third countries...which share the principles referred to in the first subparagraph.

2.The Union shall define and pursue common policies and actions,..., in order to:

- (a)safeguard its values, fundamental interests, security, independence and integrity;
- (b)consolidate and support democracy, the rule of law, human rights and the principles of international law;
- (c)preserve peace, prevent conflicts and strengthen international security,...

...

3.The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union’s external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

...

Chapter 2

SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY

...

Article 23

The Union’s action on the international scene, pursuant to this Chapter, shall be guided by the principles, shall pursue the objectives of, and be conducted in accordance with, the general provisions laid down in Chapter 1.”

As before, however, primary law does not contain a separate section, in particular Title, on the policy of democracy promotion.⁹⁰⁹ Individual democracy promotion-related acts continue having to be based on provisions of other, expressly mentioned external policy fields, in particular CFSP, trade policy, and cooperation policies (Article 21 (3) TEU). For democracy assistance, the relevant provisions are, as before, those of the Chapters on ‘development cooperation’ and of ‘economic, financial, and technical cooperation with third countries’. Their only difference lies, as

⁹⁰⁹ Such separate section would necessarily have to be part of Part Five of the TFEU, like the CCP, Cooperation with Third Countries and Humanitarian Aid, and therefore be a separate ‘Title’.

before, in their geographical scope: developing and third countries. Unlike before, the two Chapters do, for one exception, no longer expressly mention the objectives of the respective policies, but just refer to the general list of aims of EU external action of Article 21 TEU. The relevant provisions of the TFEU are included in Part V, Title III TFEU:

“PART FIVE
THE UNION’S EXTERNAL ACTION

...

Title III

COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID

Chapter 1

DEVELOPMENT COOPERATION

Article 208

1.Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union’s external action. The Union’s development cooperation policy and that of the Member States complement and reinforce each other.

Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

2.The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organizations.

Article 209

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.

...

Article 210

1.In order to promote the complementarity and efficiency of their action, the Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes,...They may undertake joint action. Member States shall contribute if necessary to the implementation of Union aid programmes.

2.The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.”

...

Chapter 2

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

Article 212

1. Without prejudice to the other provision of the Treaties, and in particular Articles 208 to 211, the Union shall carry out economic, financial and technical cooperation measures, including assistance, in particular financial assistance, with third countries other than developing countries. Such measures shall be consistent with the development policy of the Union and shall be carried out within the framework of the principles and objectives of its external action. The Union's operation and those of the Member States shall complement and reinforce each other.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of paragraph 1."

A brief reference should also be made to some other TEU provisions that explicitly or implicitly refer to democracy or democracy promotion and that, while not being legal bases for concrete actions, provide general support to the policy of democracy promotion. Article 2 TEU stipulates, similar to Article 6(1) of the TEU (pre-Lisbon), but replacing 'principles' with 'values', that

"(T)he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights for persons belonging to minorities...".

Article 3 TEU is devoted to the aims of the Union and stipulates, more generally, in paragraph 1 that

"(The) Union's aim is to promote peace, its values and the well-being of its peoples."

Article 3(5) TEU makes clear that this also applies to the Union's relations with the wider world:

"In its relations with the wider world, the Union shall uphold and promote its values and interests ... shall contribute to...the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law,...".

However, while mentioning most of the more specific aims of EU external action enumerated in Article 21 TEU, Article 3(5) TEU does not expressly refer to democracy promotion but only indirectly refer to it under the concept of the Union's values.

Further, the TEU includes a specific Title on 'democratic principles' (Title II, Articles 9-12 TEU), which, among others, summarizes the provisions on EU citizenship. It is basically exclusively targeting the EU-internal dimension, but can nevertheless give some inputs into conceptual issues in the external sphere. Finally, just as under the TEU pre-Lisbon, Article 49

TEU requires that only European states which respect the foundational values of the Union (stipulated in Article 2 TEU) and are committed to promote them – in the internal and external dimensions (Article 3(5) TEU) – may apply and become a member of the Union.

On the whole, since the reforms of the Treaty of Lisbon, primary law provides a stronger foundation for a policy of EU democracy promotion. Most notably, democracy is expressly declared to be a guiding principle of EU external action and democracy promotion as an explicit objective thereof. Previously disputed questions, like whether a trade policy act can include a democracy and human rights clause, are now without doubt to be answered in the affirmative. However, while the general provisions on principles and objectives definitely provide the basis for an external democratization policy of the EU, primary law still does not give such policy its own Title in the TFEU. Individual acts have to be based on provisions pertaining to expressly mentioned external policy fields. As regards democracy assistance, these are, as before, the Chapters on development cooperation and on economic, financial, and technical cooperation with third countries.

The following Table summarises all democracy promotion- and assistance-relevant provisions of the TEU and TFEU:

Table 9: Democracy Promotion- and Democracy Assistance-relevant Provisions of the TEU and TFEU

TEU	TFEU
<p>Title I: Common Provisions</p> <p>Article 2: foundational values of the Union: ...democracy...</p> <p>Article 3(1): the Union’s aim is to promote its values</p> <p>Article 3(5): the Union’s aim in its relations with the wider world is to promote its values</p>	<p>Part V: The Union’s External Action</p> <p>Article 209: development cooperation shall pursue objectives of Article 21 TEU</p> <p>Article 212: economic, financial, and technical cooperation shall pursue objectives of Article 21 TEU</p>
<p>Title II: Provisions on Democratic Principles</p> <hr/> <p>Title V: General Provisions on the Union’s External Action and Specific Provisions on CFSP</p> <p>Article 21(1): democracy as guiding principle of EU external action</p> <p>Article 21(2): democracy promotion as objective of EU external action</p> <p>Article 21(3): democracy promotion shall be pursued in CFSP, external policies, and external dimension of internal policies</p> <p>Article 23: CFSP shall pursue objectives of Article 21 TEU</p>	

b) An Analysis of the Legal Bases Relevant for Democracy Assistance

The following sections systematically address the same questions as Part II of this Chapter and mainly concentrate on changes or lack of changes in result of the Lisbon Treaty.

i. Democracy Assistance as Tool of EU Democracy Promotion under Articles 209 and 212 TFEU?

The above overview has shown that also the TFEU does not contain a separate Title on EU democracy promotion, which would list, in a non-exhaustive way, the tools of an external democratization policy. Rather, the relevant legal acts of secondary law providing the basis for concrete democracy promotion actions have to be based on provisions of other, expressly mentioned policy fields – regulations authorizing democracy assistance on Article 209, pertaining to the Chapter on development cooperation, and/or on Article 212(2) TFEU, pertaining to the Chapter on economic, financial, and technical cooperation. There is no doubt that these Articles can provide the basis for ‘assistance’ actions, in particular also because Article 209 expressly mentions ‘multiannual cooperation programmes’ and ‘programmes with a thematic approach’. Article 212 TFEU is, like its predecessor (Article 181a ECT), less elaborate, however, definitely has a similar scope. All in all, while it has also not been disputed before, Article 209 and 212 TFEU authorize the adoption of general development assistance regulations with a democracy focus as well as specific regulations like the EIDHR.

ii. The Double-Track Legal Basis and Absence of a Separate Section on Democracy Promotion

As mentioned, the new legal framework contains an important novelty and improvement by expressly declaring democracy to be a guiding principle of and democracy promotion an express aim of EU external action. The Treaty-makers considered this amendment to the previous regime sufficient, first, to more clearly stipulate that democracy promotion was a Union objective and, secondly, to ensure that the various democracy promotion activities had a proper legal basis. They did not think that it was necessary to provide the policy with a separate Title and at no point during the discussions leading to the Constitutional Treaty and, via the Reform Treaty, to the Lisbon Treaty considered this. Indeed, the current framework does constitute a sufficient basis for the broad range of instruments used by the Union, even if a separate Title on democracy promotion would be preferable.

One consequence of the fact that EU democracy promotion acts have to be based on provisions of expressly mentioned fields is that, for democracy assistance, also in future a dual legal basis exists in primary law, as the TFEU continues to distinguish between two types of cooperation policies, development cooperation and economic, financial, and technical cooperation, with different geographical scopes.

iii. The Geographical Scope (*ratione personae*) of Articles 208, 209 and 212 TFEU

Just as under the pre-Lisbon legal framework, also the current Chapters on development cooperation and economic, financial, and technical cooperation do not provide explicit definitions of which countries are covered by which provisions. Like before, the practice of the EU institutions remains decisive and the allocation is carried out on the basis of a mix of objective, historical, conceptual, structural, and institutional (power-related) factors. All in all, for the current time, the division introduced by the various new assistance regulations that entered into force on 1.1.2007, presented above, remains valid.

iv. Procedural Rules of Articles 209 and 212 TFEU

A major improvement of the new legal framework is the introduction of the same procedural rules in the case of development cooperation and other cooperation policy (see Article 209 and 212 TFEU). Irrespective if targeting developing or third countries, democracy assistance-relevant regulations are therefore now to be adopted according to the new, so-called ‘ordinary legislative procedure’, which is regulated in Article 294 TFEU. The procedure is in principal identical with the previous co-decision procedure,⁹¹⁰ which had been applicable in the case of developing countries since the Treaty of Amsterdam (Article 179 ECT). The introduction of the ordinary legislative procedure also in the case of third countries therefore, in particular, strengthens the role of the European Parliament with respect to third countries.

v. The Scope of Articles 208 and 212 TFEU

Primary law continues to be rather succinct on the scope, in particular, the material scope of EU democracy promotion. Like the provisions under the ECT and TEU pre-Lisbon, it only speaks of ‘democracy’ and to ‘consolidate and support democracy’ (Article 21(2)(b) TEU), without

⁹¹⁰ See, for example, B. de Witte, ‘Legal Instruments and Law-Making in the Lisbon Treaty’, in S. Griller and J. Ziller: *The Lisbon Treaty. EU Constitutionalism without a Constitutional Treaty?* (2008), at 97f.

providing any further conceptual details. However, it can be assumed that the broad interpretation of these concepts that developed under the previous regime continues to prevail also under the current legal regime. This means, first, that specific, self-standing democracy assistance regulations, like the EIDHR, can be adopted on the basis of Articles 209 and 212 TFEU. Indeed, Article 209 TFEU expressly mentions ‘thematic’ programmes, which provides further support for such interpretation. Secondly, a basically unlimited range of different types of democracy assistance can be provided on the basis of such regulations. In particular, as argued during the EIDHR dispute, the fact that the legal bases for democracy assistance are part of two different cooperation policies, does not limit its scope.

Further, as under the previous legal framework, various provisions of primary law appear relevant and give important inputs into EU democracy assistance.⁹¹¹ Reference shall be made to Article 208(2) TFEU that is identical with Article 177(3) ECT and obliges the Union to take international documents, which it approved, into account in policy formulation and implementation. Strong political arguments can be made that the various democratic features of the EU system, many of which are now summarized in Title II TEU (‘Provisions on Democratic Principles’), shall inform external democratization policies. Finally, the various rights and principles mentioned EU Charter of Fundamental Rights, now part of EU primary law, shall be promoted (also) in the external dimension (Article 51(1) EUCFR). However, a major limitation of all mentioned documents and provisions is, as elaborated in some more detail in Section II.1.b)vii., that they also do not provide clear and detailed conceptions of democracy and democratization.

c) Shared Competence, Subsidiarity and Proportionality

The areas of development cooperation and economic, financial, and technical cooperation continue to be fields of shared, parallel competence, in which the Union and the Member States can carry out activities and conduct policies without that Union action results in Member States being prevented from acting (Articles 2(2) and 4(4) TFEU). Articles 210 TFEU and, although with less detail, Article 212(1) TFEU, stipulate more specific obligations of coordination and consultation in order to promote the complementarity and efficiency of their action, mentioning, as its predecessors, the framework of international organizations and conferences as exemplary frameworks for such efforts and giving special responsibility to the Commission to take initiatives (Article 210 (1) and (2) TFEU). A more general, expressly mentioned ‘principle of sincere cooperation’ obliges the Union and the Member States to assist each other (also Articles 4(3)

⁹¹¹ See Section II.1.b)vii. above for a more detailed treatment of the argument.

TEU). Further, as before, the *AERT* doctrine and the principle of loyalty (Articles 4(3) TEU) apply, but will most likely, due to the very character of democracy assistance, be of limited relevance in practice. The rulings in the *Bangladesh* and *EDF* cases also remain relevant.

At the same time, the principles of subsidiarity and proportionality continue to govern “the use of Union competences” (Article 5 TEU). More detailed rules on their application are now included in a new Protocol on the Application of the Principles of Subsidiarity and Proportionality.⁹¹² A new feature is the increased role of national parliaments in the control of whether the principles are being observed.⁹¹³

2. CFSP-Based Democracy Assistance

As indicated, the Union’s CFSP continues to be ruled by specific provisions of the TEU that are of a more intergovernmental nature than those which apply in the case of all other EU policies. This section briefly addresses these rules and its relationship with supranational EU democracy assistance.

a) An Overview of the Legal Bases Relevant for Democracy Assistance

The crucial provisions that stipulate that democracy promotion should – also – be pursued through CFSP activities are Articles 21 and 23 TEU. Article 23 TEU, pertaining to the TEU’s Chapter on CFSP, stipulates that

“(T)he Union’s actions on the international scene, pursuant to this Chapter [i.e. CFSP], shall be guided by the principles, shall pursue the objectives of, and be conducted in accordance with, the general provisions laid down in Chapter 1 [i.e. the general provisions on the Union’s external action]”.

Article 21 TEU contains the general provisions on EU external action and declares democracy to be a guiding principle and democracy promotion to be an objective of EU external action (Article 21(1) and (2) TEU). Most notably, Article 21(3) TEU stipulates that

“(T)he Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union’s external action covered by this Title [that is, the CFSP]...”.

⁹¹² Protocol On the Applications of the Principles of Subsidiarity and Proportionality (Protocol No 2), annexed to the TEU and TFEU.

⁹¹³ Protocol on the Role of National Parliaments in the European Union (Protocol No 1), annexed to the TEU and TFEU.

For the delimitation of competences between supranational and intergovernmental Union actions an amended ‘collision rule’ has been included in the TEU, which now protects both, the supranational and the intergovernmental ‘pillars’ from encroachment by each other. Other provisions of the TEU pre-Lisbon that were relevant for inter-pillar delimitations, in particular Articles 2 and 3 TEU (pre-Lisbon), have not been retained in current primary law. Article 40 TEU reads:

“The implementation of the...[CFSP] shall not affect the application of the procedures and the extent of powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 [TFEU].

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter”.

b) Analysis of the Legal Bases Relevant for Democracy Assistance

i. Democracy Assistance as Tool of CFSP-based Democracy Promotion

Just as under the previous legal framework, the TEU does not list the various tools that can/should be used to implement the Union’s CFSP. However, democracy assistance can also today be provided under the provisions of CFSP, as long as, as will be discussed further below, its main aim is the implementation of the Union’s common foreign and security policy. The major current examples of CFSP-based EU democracy assistance continue to be the two EU rule of law missions EUJUST LEX Iraq⁹¹⁴ and EULEX KOSOVO⁹¹⁵.

ii. Procedural Rules

Of the various new CFSP instruments – general guidelines, actions, positions, arrangements for the implementation of actions and positions, all of which are adopted through decisions – the ‘action’, which is basically the successor of the joint action, is the most suitable for CFSP-based democracy assistance (Article 25 and 28 TEU). It has also been used in 2010 to prolong the

⁹¹⁴ Council Decision 2010/330/CFSP of 14 June 2010 on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX-IRAQ, OJ 2010 L149/12.

⁹¹⁵ Council Decision 2010/322/CFSP of 8 June 2010 amending and extending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, OJ 2010 L145/13.

currently implemented EU rule of law missions. It is, as indicated, adopted by a decision of the Council, in general deciding by unanimous vote, except if the action is just implementing another action and therefore based on a decision that has been decided unanimously or is based on a proposal by the High Representative (Article 31(2) TEU), in the cases of which qualified majority applies. As before, special rules exist for Member States that do not wish to participate in the adoption of an action (Article 31(1) second paragraph TEU) or oppose the adoption by qualified majority (Article 31(2) TEU). The adoption of an action can be suggested by the Political and Security Committee (Article 38 TEU), a Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission (Article 30 TEU).

The European Parliament's formal role in CFSP continues to be limited to rights of consultation, questioning, and making recommendations (Article 36 TEU), with obligations of information now falling on the High Representative. It also continues to have a say though the budgetary procedure, as administrative and operational expenditure arising in the case of CFSP activities are also now charged to the Union budget (Article 41 TEU). However, overall, as under the previous regime, the Parliament's and the Commission's role remain rather limited as compared to their powers under the supranational 'pillar'.⁹¹⁶ Similarly, the ECJ's jurisdiction under CFSP is limited to monitor compliance with Article 40 TEU and to review the legality of sanctions against private and legal persons adopted under CFSP rules (Article 275 TFEU).

iii. 'Inter-Pillar' Delimitation

Just as under the previous legal framework, the further existence of a more intergovernmental CFSP, which in principle pursues the same objectives as also all other, supranational Union external policies (Article 21 TEU), has the potential to give rise to 'pillar' conflicts. Article 40 TEU is the primary provision to regulate the relationship between CFSP and the supranational elements of Union competences. It considerably differs from its predecessor, Article 47 TEU, by protecting both the supranational policies and CFSP from encroachment by each other. Overall, many writers have expressed concern of how on the basis of Article 40 TEU, conflicts will be resolved.⁹¹⁷

Based on the approach of the ECJ in the *ECOWAS* case, it can be expected that a strict 'centre of gravity' test will also in future be the key criterion to determine whether an act has to

⁹¹⁶ See also Declaration 14 annexed to the Final Act of the IGC that adopted the Treaty of Lisbon. See also J. Wouters, D. Coppens, B. De Meester, 'The European Union's External Relations after the Lisbon Treaty', in S. Griller and J. Ziller, *The Lisbon Treaty. EU Constitutionalism without a Constitutional Treaty?* (2008), at 160.

⁹¹⁷ Cemon, *External Relations of the EU and the Member States*, at 14; Heliskoski, at 910.

be adopted on the basis of provisions of Title V, Chapter 2 TEU or provisions of Part V of the TFEU. If analysis of aim and content of a measure exposes that its main purpose is the implementation of the CFSP, a CFSP act has to be adopted, if the main purpose is the implementation of one of the supranational external policies, the act has to be based on the TFEU. Incidental or secondary aims are not relevant. For example, if election assistance mainly aims at contributing to a long-term political and socio-economic support strategy, it will have to be provided as a TFEU-based action, while, if its purpose is ensuring the stability and security in a third state (without developmental aims) it will have to be provided as CFSP-based action. Overall, it can be expected that it will be difficult to draw a clear line between these aims and there will definitely be activities that could be provided under both, the TFEU and the TEU. Additionally, the institutions will therefore have to be very careful in choosing a clear wording in the acts to be adopted, so that the main purpose will be clear. In the case of two main purposes pertaining to both CFSP and a supranational external policy, the act cannot be adopted but a single main purpose has to be identified and/or the act has to be split. Joint acts appear also now impossible, on the one hand, due to Article 40 TEU, which prevents mutual encroachment, just like Article 47 TEU (pre-Lisbon) has prevented encroachment by the intergovernmental on the supranational pillar, on the other hand, due to the incompatibility of procedural rules. At the same time, whether conflicts will really emerge will fundamentally depend on the institutions and, in particular, also on the High Representative, who occupies a “double hat” role.⁹¹⁸

3. Summary of the Analysis of the Current Legal Framework

The analysis has shown that the Treaty of Lisbon introduced several changes to the previous legal framework, while also leaving a lot as it was. Democracy is now mentioned as a guiding principle of and democracy promotion as an aim of EU external action, which constitutes an important innovation. However, the policy is not regulated in a separate Title or Chapter but continues to be pursued in the framework of the various expressly mentioned external policies. For (supranational) democracy assistance, this implies that it also now has two legal bases in the TFEU: Article 209, which pertains to development cooperation, and 212(2) TFEU, which pertains to economic, financial, and technical cooperation, with the only difference being the geographical scope of the provisions. Like before, primary law does not regulate this scope, but the practice of the institutions, which is influenced by a whole range of factors, remains decisive.

⁹¹⁸ Dashwood, at 103. On the High Representative see, for example, K. Kaddous, ‘Role and Position of the High Representative of the Union for Foreign Affairs and Security Policy under the Lisbon Treaty’, in S. Griller and J. Ziller, *The Lisbon Treaty. EU Constitutionalism without a Constitutional Treaty?* (2008), at 209.

A clear improvement of the current legal framework is the use of the same procedural rules – the ordinary legislative procedure – for Articles 209 and 212(2) TFEU. The scope of the just cited provisions appears to be interpreted as broadly as before; first, authorizing the inclusion of democracy assistance elements in general assistance regulations and the adoption of specific regulations, like the EIDHR, and secondly, allowing a basically unlimited scope of type of activities. However, none of the TFEU's or TEU's provisions provides detailed conceptions of democracy and democratization, even if several provision do provides inputs. Overall, like before, primary law remains brief on regulating the policy of democracy promotion and leaves a large margin of discretion to the policy makers.

As a field of shared, parallel competence, Member States continue to be able to engage in democracy assistance just as the Union does. At the same time, democracy assistance can also be provided under the Union's CFSP, as long as the main purpose is pursuing CFSP objectives.

III. Conclusion

Chapter 4 has aimed, on the one hand, to complement the evolutionary account of EU democracy assistance presented in Chapter 3 by a legal account of how primary law relevant for the field has developed over the last two decades and, on the other hand, to expose the contribution of primary law to the EU's strategy of democracy assistance.

As regards the most important details of the development of primary law, reference can be made to the summaries provided in Sections II.3. and III.3.. Suffice it to say that, before Lisbon, primary law gave preference to first pillar democracy assistance and that by 2001 the EC-Treaty consisted of two express legal bases that authorized the inclusion of democracy assistance elements in general assistance regulation as well as well as the adoption of specific regulations like the EIDHR. A broad interpretation of the provisions allowed EC engagement on a basically unlimited range of democracy-related topics.

Three main features characterize the evolution of primary law. First, the legal bases for democracy assistance have developed gradually. Each of the four treaty reforms of the last two decades has in a major or minor way affected them, either by inserting an express legal basis (Maastricht and Nice), reformulating it (Lisbon), or changing procedural rules (Amsterdam and Nice). Secondly, early contingent choices taken during the ICG 1990-1991 have had an enduring legacy that continues to affect current primary law. The prevailing absence of a separate Chapter on democracy promotion and dual legal basis for democracy assistance can be traced back to the decision of inserting the reference to democracy promotion into the title on development cooperation by the Maastricht Treaty. Thirdly, primary law before Lisbon reflects the

fundamental disagreements on EC competences in the field of human rights and democracy that dominated the 1990s. Only a very broad and generous interpretation of the relevant Treaty provisions allowed the EC to pursue a comprehensive policy of assistance.

The analysis has also exposed the rather limited contribution of primary law to the strategy of EU democracy assistance. It has provided the legal authorization to act, has, by being interpreted broadly, allowed a broad range of different type of actions through general and specific programmes, and is responsible for the existence of supranational and CFSP-based assistance. Some provisions give input into the substantive elements of assistance, in particular through reference to international documents or through the EUCFR. But these do not offer clear concepts and strategies. All in all, primary law has left an extremely large margin of discretion to policy makers of when, where, and how to use democracy assistance as tool of democracy promotion.

Despite the existence of a secure legal basis in primary law for democracy assistance, a major shortcoming of the legal framework has always been the lack of a separate Title or Chapter on democracy promotion (possibly including human rights promotion) with a universal geographical scope. On the one hand, such Title appears relevant for reasons of principle. Since the early 1990s democracy promotion has developed into an important, self-standing external *EC policy*, with its own history, tools, rationale, and objectives. Any policy with the relevance, elaboration, and extent of EC democracy promotion should have its own constitutional basis in EC primary law, which stipulates objectives, tools and principles. On the other hand, a separate, explicit title would constitute a better guarantee for a strong external democratization (and human rights) policy. This would be especially so if it would clearly formulate the EC objective of democracy promotion, in a non-exhaustive way list the various tools the EC should employ in pursuing this policy, and outline the principles and conceptions to be used. Tool of democracy promotion would include all known positive and negative tools enumerated in Chapter 1, like assistance, dialogues, conditionality clauses, and sanctions. Principles of democracy promotion would include basic issues, like the recognition that democracy is the only legitimate form of government and results from universally accepted human rights, that there is agreement on the core concept of democracy and on essential minimum features, that individual countries have and should develop their own specific models within the scope of the accepted minimum conditions. More specific issues would be the preference for the positive approach and the use of negative tools as last resort only, the recognition that democratization is a domestically rooted process that can only be facilitated by external donors, which implies strong cooperation with local actors, the recognition to work with both governments and civil society. The existence of a specific Title on democracy promotion does not mean that democracy promotion should not *also* be pursued as a

sub-objective of other policies. Indeed, a comprehensive policy even requires it to be pursued both through and in other policies, like trade policy and development policy. However, the objectives, tools and principles should be stipulated in a separate title with a universal scope, and independent programmes like the EIDHR should be based thereupon.

Chapter 5: The Institutional and Procedural Dimension of EU Democracy Assistance

I. Introduction

Chapter 5 focuses on the institutional and procedural dimension of EU democracy assistance provided under the EIDHR and the EU's mainstream development programmes. It presents and analyses the various stages of an entire policy cycle of democracy assistance and aims, in particular, at identifying the most important decisions taken during each stage, the types of instruments adopted during each stage, the role of actors involved in the drafting and adoption of these instruments, and the underlying procedural rules that regulate EU policy-making and policy-implementation. On the one hand, the discussion intends to provide a basic and general outline of the policy cycle in EU democracy assistance and of the overall role and relative powers of the involved actors in individual stages, in particular, of EU institutions, target states' governments, and European and local, that is, target state-based civil society organizations. On the other hand, the analysis also intends to give detailed information on some individual stages, in particular on decision-making procedures in processes crucial for development aid and usually little discussed, like the adoption of Strategy Papers. Chapter 5 does not attempt to theorize EU policy-making and to support and/or dismiss specific approaches to European integration or to analyze EU policy-making from a particular theoretical perspective or approach.⁹¹⁹

The focus of the chapter on the institutional and procedural dimension constitutes in itself an important theme in the study of democracy assistance that should not be missing in this thesis. Further, institutional and procedural factors can and do have important implications for the substantive dimension of democracy assistance, as the involvement or non-involvement of authoritarian governments, of civil society, and of parliaments obviously can and does shape the material scope of assistance. At the same time, Chapter 5 also introduces many terms, documents, actors, and steps in policy implementation that are further looked at in later chapters and therefore facilitates reading these following chapters.

Given that there are some crucial differences between the EIDHR and mainstream development programmes, in particular in implementation, some of the following sections look

⁹¹⁹ For such perspectives see, for example, M. A. Pollack, 'Theorizing EU Policy-Making', in H. Wallace, M. A. Pollack and A. R. Young (eds), *Policy-Making in the European Union* (6th ed., 2010), at 15f.

at these programmes separately. In other sections, all external programmes are discussed together. It should also be mentioned that the analysis concentrates on the presentation of the current framework and only briefly mentions some of the major reforms carried out in the sector over the last two decades. Overall, the following discussion is due to limits of space restricted to the main procedural and institutional questions, leaving aside detailed issues of aid implementation, like contracting procedures.

II. An Analysis of the Institutional and Procedural Dimension of EU Democracy Assistance

The ‘policy cycle’ is an analytical tool that provides an ideal-typical description of all the major, chronological stages in the lifetime of a policy and thereby facilitates its analysis. According to a standard version, it begins with an initial idea for action in a certain field (agenda setting or problem identification), proceeds with the formulation of more concrete goals and basic policy guidelines (policy formulation), that require development of more detailed guidelines and eventually result in decisions on concrete actions (adoption), which are implemented (technical implementation), and are eventually evaluated internally or externally (evaluation). To close the circle, the final evaluations of projects should feed back into policy-making.⁹²⁰ The first two stages or the definition of basic principles and guidelines of a policy or a policy-instrument can also be referred to as policy-making. The remaining stages and therefore the development of more detailed, secondary guidelines and their actual application in practice through decisions on concrete actions belong to the field of policy implementation. Importantly, crucial decisions on the substantive dimension of the policy are also taken during this second stage, which therefore not only consists of the more limited, technical process of implementing concrete projects in the target states (technical implementation).⁹²¹ Frequently, but not always, studies treat the stage of evaluation as a third, separate element of the policy cycle.⁹²² Following Commission practice, it should, despite its specific features, here be covered by the stage of implementation.

1. Policy-making in EU Democracy Assistance

Policy-making is usually a complex process nationally. It is even more so at the European level, where a larger number of actors and interests play a role and intervene in different ways and

⁹²⁰ Young, ‘The European Policy Process in Comparative Perspective’, in H. Wallace, M. A. Pollack and A. R. Young (eds), *Policy-Making in the European Union* (6th ed., 2010), at 46-7. See also Bicchi, ‘Dilemmas of Implementation’, at 978f.

⁹²¹ See also, for example, M. Hill and P. Hupe, *Implementing Public Policy* (2002), at 8; Bicchi, ‘Dilemmas of Implementation’, at 978.

⁹²² Bicchi, ‘Dilemmas of Implementation’, at 978.

through different tools at different times to shape outcomes.⁹²³ EU policy-making is diverse and differs from policy field to policy field. Not only are the major differences between the intergovernmental field of CFSP and the supranationalized fields, policy-making also differs among policy fields within the (former) supranational pillar, due to different legislative procedures and the existence of special policy-making procedures with specific roles for EU institutions and other bodies.⁹²⁴ EU policy-making also changes over time, given changes in roles and powers of EU institutions through Treaty amendments, the increasing involvement of traditionally excluded actors, like civil society and national parliaments, and/or the emergence of entirely new modes of governance, like the Open Method of Coordination (OMC).⁹²⁵

Like most thematic areas, the field of democracy assistance also has particular features unique or specific to it, for example that it is a field characterized by parallel, shared competence and that various third actors outside the EU are involved at the level of implementation. However, as regards policy-making in democracy assistance, it appears that the process largely corresponds to the classic, although revised, so-called ‘Community method’ or ‘supranational method’ and does not show features of new modes of governance.⁹²⁶ This means, in a nutshell, that the two legislative EU institutions – Council and European Parliament –, supported by the Commission in its particular role as initiator of EU law, take core policy-making decisions in secondary law, which are developed further through non-legally binding acts by these institutions, and are subsequently implemented by the Commission. Civil society is invited to submit opinions and views, but has no formal role to play.

The following discussion of EU policy-making in democracy assistance is structured along the various policy-making instruments that result from the policy-making process and express the basic principles and guidelines mentioned. The role of individual institutions and bodies is discussed in the framework of these instruments. The focus is, in particular, on

- (a) primary law;
- (b) secondary law;
- (c) Commission communications (COMs) endorsed by the Council and the Parliament; and
- (d) European Council, Council and European Parliament declarations, conclusions and resolutions.

⁹²³ Young, at 46; Warleigh-Lack and Drachenberg, at 209f.

⁹²⁴ See the collection of articles in H. Wallace, M. A. Pollack and A. R. Young (eds), *Policy-Making in the European Union* (6th ed., 2010).

⁹²⁵ Article 6 TFEU. See, for example, A. Warleigh-Lack and R. Drachenberg, ‘Policy-Making in the European Union’, in M. Cini and N. Pérez-Solórzano Borrágán (eds.), *European Union Politics* (3rd ed., 2010), at 217-19.

⁹²⁶ A. A. Dashwood, ‘Issues of Decision-making in the European Union after Nice’, in A. M. Arnall and D. Wincott (eds), *Accountability and Legitimacy in the European Union after Nice* (2002), at 22-24; A. Warleigh-Lack and R. Drachenberg, at 210; H. Wallace, ‘An Institutional Anatomy and Five Policy Modes’, in H. Wallace, M. A. Pollack and A. R. Young (eds), *Policy-Making in the European Union* (6th ed., 2010), at 91f.

As opposed to implementation, no clear, subsequent stages can be distinguished in policy-making, except that secondary law rests on primary law. The other mentioned, non-legally binding instruments can and do appear at any time during the policy-making process. The following order used in presenting crucial policy documents is therefore, except for the mentioned relationship between primary and secondary law, not chronological.

a) Primary Law

Primary law or the ‘constitutional law’ of the European Union, expressed in the various Treaties – until 1st December 2009 in the ECT and TEU and since then in the TEU and the TFEU – is here mentioned as first policy-making instrument as it lays down some, albeit few, basic principles and guidelines for the policy. It is, however, of course a very special policy-making instrument that stands beyond the regular EU policy-making process, as primary law is the result of negotiations of the Member States as masters of the Treaties (Article 48 TEU) rather than of cooperation of the EU institutions in a regular EU policy-making process on the basis of powers provided by the Treaties. Before Lisbon, primary law foresaw that treaty-making mainly occurred during intergovernmental conferences (IGCs) (ex-Article 48 TEU). During the last decade more inclusive procedures developed, which were eventually also to some extent entered into the TEU (Article 48 TEU). Now, IGCs are preceded by so-called Conventions, composed of members of the European Parliament, national parliaments, government representatives, and members of the Commission, which prepare recommendations for this body. Further, although not foreseen in primary law, interested individuals and civil society are invited to communicate their views.⁹²⁷ At the end of the process it is Member States, which take the final decision on the treaties.

Primary law, already discussed in much more detail in Chapter 5, is at the same time of fundamental as well as of limited relevance for EU democracy assistance. It is highly important as it, since the Treaty of Maastricht, provides the EU with the explicit competence to pursue a policy of democracy promotion that includes the use of the tool of democracy assistance (see in particular Articles 3(5) TEU, Article 21(1) and (2)(b) TEU, and Articles 208, 209 and 212 TFEU). Primary law also lays down that this competence is shared with the EU Member States and, indeed, is a form of parallel, shared competence (Article 4(4) TFEU). Further, primary law calls on the Council and/or the Council and the Parliament to adopt secondary legislation to implement the objective of democracy promotion (“...shall adopt the measures necessary...”

⁹²⁷ C. Church and D. Phinnemore, ‘From the Constitutional Treaty to the Treaty of Lisbon’, in M. Cini and N. Pérez-Solórzano Borrágán (eds.), *European Union Politics* (3rd ed., 2010), at 50.

(Article 179 ECT, Article 209 TFEU) and regulates the legislative procedures that have to be followed in the adoption of relevant EU legal acts.

However, beyond these aspects primary law is quiet on substantive features of democracy assistance and modes of implementation. Some provisions in the Treaties indirectly give some input into the substantive dimension; however, also only very vaguely and generally. This generality and vagueness is similar to other external fields, like development policy, humanitarian aid, and, although to a more limited extent, the common commercial policy, and is therefore not specific to human rights and democracy promotion.⁹²⁸ The vagueness is, however, entirely different to the regulation of most internal policy fields in the Treaties.⁹²⁹ All in all, while primary law is fundamental in establishing and defining EU competence, it does not provide any further details as to the content of such a policy.

b) Secondary Law

Secondary legislation consists of acts adopted by the EU institutions on the basis of the competences and the legislative procedures foreseen in primary law. It consists of unilateral acts of secondary law, that is, regulations, directives, or decisions (Article 288 TFEU), and agreements (Article 216 TFEU). Recommendations and opinions, also mentioned in Article 288 TFEU and communications (COMs), White Papers, and Green Papers, not at all referred to in the Treaties but used frequently, are due to their non-legally binding nature not considered secondary law.

In order to – based on primary law – further regulate details on the provision of EU democracy assistance, the institutions overall made recourse to regulations, which are due to their character and the character of the other instruments the most suitable legal instrument for such a purpose (“binding in its entirety and directly applicable in all Member States” (Article 288 TFEU, second paragraph)). In some cases, democracy assistance is also in some detail regulated in agreements, in particular in the case of the Cotonou Agreement with the ACP states.⁹³⁰ More detailed rules on implementation are, however, also in that case laid down in a specific ‘financial regulation’ applicable to the European Development Fund (EDF), the budget source for ACP aid.⁹³¹

⁹²⁸ See the very succinct statements on objectives in Arts 206, 208, 212, and 214 TFEU.

⁹²⁹ The different internal EU policies are mainly regulated in Part Three of the TFEU.

⁹³⁰ Assistance to ACP states under the Cotonou Agreement is funded from the European Development Fund (EDF) rather than from the EU budget.

⁹³¹ See, for example, for the 10th EDF: Council Regulation (EC) No. 215/2008 of 18 February 2008 on the financial regulation applicable to the 10th European Development Fund, OJ 2008 L78/1; See also the financial protocols attached to the various agreements with the Mediterranean countries and regulations regulating to their implementation in Chapter 7 and 8.

The drafting and adoption of secondary law constitutes EU policy-making proper, involving the various EU institutions in formal and informal ways and has, as will be seen shortly below, considerably contributed to laying down more detailed rules and principles for the implementation of EU democracy assistance. Overall, the various democracy assistance-specific regulations and development regulations with a focus on democracy assistance therefore constitute key documents in the policy-making process.

i. The Necessity of Secondary Legislation

There are two reasons why the EU institutions have to adopt secondary law to authorize and further regulate the provision of EU democracy assistance. First, the ECT and TFEU explicitly foresaw/foresee the adoption of further ‘measures necessary for the implementation of’ the policy (Article 179 ECT, Article 209 TFEU), even if this provision is rather generally formulated. Secondly, if EU action involves expenditure, this requires an entry of an appropriation into the EU budget as well as, in principle, the adoption of a so-called basic act of secondary law that foresees/regulates action in a particular thematic field. Exceptions are only possible for certain types of pilot and preparatory measures.

The second rule only gradually started to be handled more strictly in the course of the later 1990s. As mentioned, EU democracy assistance was until 1999 provided on the basis of the EU budget only, that is, without a basic act. This was possible because the then applicable general Financial Regulation of 1977 envisaged that only ‘significant’ Community expenditure required, next to entry into the EU budget, the prior adoption of a basic act.⁹³² By implication, ‘non-significant’ action could be provided on the basis of the budget only. As neither the Financial Regulation of 1977 nor any of the institutions’ declarations or inter-institutional agreements on budgetary procedure further defined the terms ‘significant’ and ‘non-significant’ expenditure, the latter was interpreted broadly and an increasing number of programmes were implemented without basic legislation, like the EIDHR forerunner programmes, that is, the programmes that would in 1994 be assembled under the umbrella of the EIDHR and eventually be transformed into the EIDHR programme. As discussed in Chapters 3 and 4, the institutions were initially unclear about the future of these various EIDHR forerunner programmes and eventually a legal dispute on EC competences further delayed the adoption of a regulation in the mid-late 1990s.

⁹³² Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, OJ 1977 L356/1 (from now on referred to as 1977 Financial Regulation). It was amended by Council Regulation (Euratom, ECSC, EC) No 610/90 of 13 March 1990 amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, OJ 1990 L70/1, point 28.

In any case, in 1996 the UK, increasingly critical of the Commission's interpretation of the term 'non-significant', legally challenged an EC-funded programme on social exclusion.⁹³³ The ensuing decision of the ECJ in May 1998 clarified that 'significant' expenditure was the rule and 'non-significant' was the exception that had to be interpreted strictly and proven in each case.⁹³⁴ It suggested that only measures that prepared future actions or were pilot projects could be considered 'non-significant', while the amounts committed and the duration of a programme were not decisive, as had been suggested by the Commission.⁹³⁵ The decision speeded up the process of adopting many regulations, including the first EIDHR regulation in April 1999, as many programmes risked not receiving further funding, even if the Court restricted the effects of its judgment.⁹³⁶ As discussed in Chapter 8, the various mainstream programmes were adjusted to the new objective of democracy promotion throughout the first half of the 1990s.

It should only briefly be added that a new interinstitutional agreement on budgetary discipline of May 1999 explicitly clarified the cases in which expenditure was possible without basic legislation and replaced the term 'significant' with the terms 'pilot schemes' and 'preparatory actions' and in some more detail defined their nature.⁹³⁷ This rule was in 2002 taken over into the new Financial Regulation.⁹³⁸

ii. The EIDHR Regulations

It has been mentioned that in April 1999 the Council finally adopted the first two EIDHR regulations that provided the necessary basic act in secondary law for the provision of EIDHR funds.⁹³⁹ They were slightly amended in late 2004, in particular as regards the introduction of the programming documents and processes and extended for the period 2005 to 2006.⁹⁴⁰ Since 1 January 2006, a new EIDHR regulation provides the basis for action in the field, which will, in conformity with the multiannual financial framework, expire at the end of 2013.⁹⁴¹ It was slightly

⁹³³ Case C-106/96 *United Kingdom v. Commission* [1998] ECR I-2729.

⁹³⁴ *Ibid.*, para. 30.

⁹³⁵ *Ibid.*, para. 34.

⁹³⁶ Alston and Weiler, 'An 'Ever Closer Union' in Need of a Human Rights Policy', at.

⁹³⁷ Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure, OJ 1999 C172/1, at point 37(a)(i) and (ii). From now on referred to as 1999 Interinstitutional Agreement on budgetary discipline.

⁹³⁸ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ 2002 L248/1, Art. 49(2)(a) and (b) (from now on referred to as 2002 Financial Regulation).

⁹³⁹ Council Regulation No 975/1999 and Council Regulation (EC) No 976/1999.

⁹⁴⁰ Regulation No 2240/2004 and Council Regulation (EC) No 2242/2004.

⁹⁴¹ Regulation No 1889/2006.

amended in December 2011, in order to ensure consistency in all external aid regulations as regards the use of EU funds for paying taxes, duties or charges in beneficiary countries.⁹⁴²

The EIDHR regulations are *the* core documents in EU policy-making as regards EIDHR democracy assistance, providing a number of basic propositions or principles – although they do not explicitly call these ‘principles’ – and guidelines for the further implementation of EIDHR projects. No other document summarizes these principles and guidelines in an equally comprehensive fashion and, in particular, has been agreed by – at least in the case of the 2006 regulation – both legislative institutions.

The Substantive Content of the EIDHR Regulations

Neither primary law nor the Financial Regulation lay down in what detail a regulation like the EIDHR has to further regulate the implementation of EU democracy assistance. In the case of the EIDHR regulations, the institutions decided to be specific and open at the same time, laying down several basic guidelines in quite some detail, while at the same time also leaving scope to adjust the programme to specific situations and circumstances and developments at the level of implementation. Both the 1999 and 2006 versions of the regulations are very similar in the scope of issues they address, although the 2006 regulation is in several sections much more detailed than its predecessor, in particular as regards the rules of origin. The following issues are regulated in the EIDHR regulations:

- (1) the thematic scope of EU democracy assistance. This is detailed at length in all regulations, but also non-exhaustive;
- (2) the eligible recipients of EIDHR grants. A wide range of eligible actors are explicitly mentioned, also, however, allowing for others to receive funds;
- (3) the ‘principles’ to ensure complementarity, coherence, and consistency in EU external action, with the activities of the Member States and those of other actors;
- (4) the types of measures or projects that can be funded, like regular, programmed projects, and special measures and *ad hoc* measures adopted on the basis of speedier procedures;
- (5) the procedures to be followed in aid implementation, in particular, in the programming process and comitology⁹⁴³;
- (6) rights of information of the European Parliament, rule on Commission reporting and evaluation; and
- (7) rules of participation under the programme and rule of origins for supplies and materials

⁹⁴² Regulation No 1340/2011 of the European Parliament and the Council of 13 December 2011 amending Regulation No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, OJ 2011 L347/32.

⁹⁴³ Only the 2004 amendments to the EIDHR regulations formally introduced rules on EIDHR programming.

purchased in the framework of an EIDHR contract.

It has been mentioned that the regulations themselves do not explicitly speak of principles, although they definitely include some basic propositions, like the already mentioned principle of complementarity, coherence, and consistency. Additionally, the regulations allude to the principle of indivisibility of human rights, which derives from the stated objective of promoting all kinds of human rights (for example, Article 2(1)(b) of the 2006 EIDHR regulation) and the principles of participatory and representative as well as parliamentary democracy, which are expressly mentioned (Article 2(1)(a) of the 2006 EIDHR regulation), without, however, providing more detailed definitions of these concepts.

Procedures for the Adoption of the EIDHR Regulations

The question emerges which institutions adopted the above outlined basic rules and principles, as primary law envisages various types of legislative procedures. Even after Lisbon introduced one ordinary legislative procedure, EU law still foresees several special legislative procedures.⁹⁴⁴ Chapter 5 discusses the applicable procedural rules and the reason for adopting two, basically identical regulations rather than one in 1999, in more detail. Suffice it to say at this point that frequent changes of the procedural rules led to a situation where most EIDHR regulations adopted so far were adopted on the basis of different procedural rules. The 1999 EIDHR regulation for developing countries was adopted using the co-operation procedure (Article 252 ECT), while the concurrently adopted 1999 EIDHR regulation for third countries required the consultation procedure with unanimous vote in the Council (Article 308). As the institutions wanted to adopt two identical regulations, in effect unanimous agreement also had to be achieved in the Council as regards the EIDHR regulation for developing countries. The amendment to the 1999 EIDHR regulation for developing countries adopted in 2004 was based on the cooperation procedure (Article 251 ECT), while the concurrently adopted amendment to the EIDHR regulation for other countries used the consultation procedure with majority voting in the Council (Article 181a(2) ECT). The 2006 EIDHR regulation had to make recourse to the cooperation procedure (Article 251 ECT). The most recent amendment to the 2006 EIDHR regulation, which introduced only a minor change as regards the use of funds for taxes, was adopted on the basis of the new ordinary legislative procedure (294 ECT), which is a slightly revised version of the cooperation procedure. It involved, due to the insistence of the European Parliament in being strongly involved in implementation, a conciliation committee. Upon its expiry at the end of 2013, a successor instrument, which has been proposed in COM(2011)

⁹⁴⁴ de Witte, 'Legal Instruments and Law-Making in the Lisbon Treaty', at 79f.

844final of December 2011, will have to be adopted on the basis of the ordinary legislative procedure.

Overall, the adoption of the 1999 EIDHR regulations was mainly an issue of the Commission and the Council, with the Parliament being a minor, secondary actor. This was visible, on the one hand, in the basic dispute on EC competences in the field of human rights that surrounded the adoption of the EIDHR regulation, and that was mainly carried out between the Commission and the Council.⁹⁴⁵ On the other hand, it also expressed itself in the drafting of the substantive provisions of the 1999 EIDHR regulations. The Commission could influence the programme through its right of initiative, that is, to make the initial legislative proposal for the future legislative act, which can be amended, but is of course hardly ever entirely changed.⁹⁴⁶ The Commission could also act as interlocutor for the Parliament, by changing its original proposal in the course of the legislative process in order to integrate the wishes of the European Parliament. It did so in respect of some demands, for example as regards the explicit inclusion of the death penalty in the thematic scope of the programme, but not as regards all demands, like the stronger involvement of the Parliament in implementation.⁹⁴⁷ However, at the final stage of discussions, the Council decided on the 1999 EIDHR regulations alone. In particular, it did not accept the amendments suggested by the Parliament at the end of its second reading.

In the discussions preceding the adoption of the 2006 EIDHR regulation, which related to the enactment of a separate EIDHR regulation rather than regulating it in the DCI, all three institutions played a key role and pushed for their views. Indeed, it appears that the disagreements existed mainly between the Commission and the Parliament, with the Commission favouring the EIDHR as thematic programme under the DCI and the Parliament favouring a separate programme based on a separate regulation. Only after many months of negotiation and persistence did the Commission bend to the demands of the Parliament.⁹⁴⁸ The Parliament also used its power of co-decision to influence the substantive content of the 2006 EIDHR regulation. Issues like the very explicit character of the EIDHR regulation as civil society support

⁹⁴⁵ See Chapter 4 on a detailed discussion of the institution's arguments on the topic.

⁹⁴⁶ The Commission's right of initiative is now expressly enshrined in Art. 17 TEU. Art. 225 and Art. 241 TFEU give rights to the European Parliament and to the Council to request the Commission to submit legislative proposals. The Commission is not legally obliged to respond to such request, but shall inform the Parliament and/or Council if it does not.

⁹⁴⁷ European Parliament, Committee on Development and Cooperation, Report on the draft Council Regulation (EC) laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms (COM(97)0357 - 9581/98 - C4-0507/98 - 97/0101(SYN)), Rapporteur J. M. Torrès Couto, PE 228.200/fin, A4-0466/98; Amended proposal for a Council Regulation (EC) laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, COM (99) 13 final.

⁹⁴⁸ See Chapter 3 for a more detailed discussion with references.

instrument and the inclusion of parliaments as eligible applicants can be traced to the wishes of the Parliament. Indeed, the Council accepted the overwhelming majority of the Parliament's suggested amendments to the Commission's first proposal and adopted the act after the Parliament's first reading. It also needs to be stressed though that the Parliament did not, unlike 1999, push issues, which were not acceptable to the other institutions, like increased powers at the stage of implementation.

On the whole, EU law-making is always an inter-active process involving the three primary institutions in formal and informal ways, while the particular legislative process regulates their power of influence. Overall, in 1999 the Commission and the Council played the key role in the adoption of the regulations, while in 2006 all three institutions were influential, in particular the Parliament.

iii. The Mainstream and Specific Assistance Programmes

It has been mentioned that EU democracy assistance is also, and increasingly, provided through the numerous EU mainstream and specific development assistance programmes, like ALA, Tacis, DCI, and IFS. In order to satisfy the requirement of a basic act for the provision of funds entered into the EU budget, these regulations also have to foresee the provision of democratization-related assistance. More recently, the ECJ repeated this requirement in the *Philippine Border Mission case*, in which it confirmed its broad interpretation of the concept of development in primary law, however, it was also made clear that in order to provide specific assistance under a regulation, that regulation needs to explicitly foresee this particular type of assistance.⁹⁴⁹ It cannot simply be assumed that a development aid regulation allows for all kinds of assistance that can be brought into the thematic scope of development aid.

The analysis of the various mainstream programmes in Chapter 7 shows that already by the mid-1990s all mainstream development regulations basically included provisions on democracy promotion and assistance, where in the course of time, when new regulations were adopted or existing regulations were amended, the provisions became increasingly explicit and detailed. However, given that the various development programmes cover a much broader scope of thematic issues, like economic and social development, culture, industry, and the environment, democracy assistance was of course never regulated in the same detail as in the EIDHR regulations, as this would have resulted in extremely long and complex documents. Usually, a development regulation generally mentions the objective of democracy promotion and explicitly envisages the provision of democracy assistance. In the course of time, the regulations have also

⁹⁴⁹ Case C-403/05 (*Philippine Border Mission case*), in particular, para. 60.

increasingly mentioned, although non-exhaustively, some sub-fields of democracy assistance, like rule of law or civil society development, that should receive funding. Another democracy-related feature of most regulations is a political conditionality clause.

All other, general provisions of the mainstream development assistance regulations are relevant for democracy assistance. Most notably, these regulations also identify eligible applicants. The list is more comprehensive than under the EIDHR, as, next to non-state actors, in particular also the recipients states' governments at national, regional, and local level can receive aid and, indeed, are the major recipients. The regulations do not in detail determine which bodies can receive funds for which areas of support, but are open on that issue. Further, the principles of complementarity and consistency, the programming process, the rights of the European Parliament, rules on reporting and evaluations, and rules of origin, are addressed in the majority of regulations, although, of course at times being regulated differently.

Just like the EIDHR regulations, various legislative procedures have been followed in adoption of the numerous mainstream assistance regulations, depending on the countries or regions addressed and the time of adoption. To name just a few, the ALA, Tacis, and MEDA regulations were adopted on the basis of ex-Article 235 or Article 308 ECT and therefore with a unanimous vote in the Council and consultation of the Parliament, while the ENPI and DCI regulations were adopted using the co-decision procedure. Overall, during the last two decades, the European Parliament increasingly played an important role in the adoption of external assistance regulations. In 2006, it co-decided the two major new assistance programme – ENPI and DCI – also considerably influenced the overall structure of external assistance and the substantive content of the regulations.

iv. The EU Budget and the Financial Regulation

Two further acts of secondary law are highly important for the provision of democracy assistance. First, as indicated, EU expenditure requires, next to an authorizing act of secondary law, the entry of the expenditure into the annual EU budget. Indeed, while the early EIDHR programmes had been implemented without basic legislative act, they had always been implemented on the basis of a financial allocation in the EU budget. The EU budget includes two types of allocations: so-called 'commitment appropriations' and 'payment appropriations'. The first relates to the total costs of the legal commitments that can be entered into under a programme in the particular year in question, the second refers to the total payments that can be made in a particular year in order to fulfill the legal commitments entered into in the current

financial or an earlier financial year.⁹⁵⁰ The two appropriations normally differ and are therefore called ‘differentiated appropriations, as not all the funds are paid in the year of their commitment, but usually with some delay, and as overall not all commitments are paid because some parts, although few, are de-committed. As will be seen in Chapter 6, the EU budget provides an excellent source for tracing the development of the EIDHR budget.

The budget is has always been adopted on the basis of a special legislative procedure, that emphasizes the role of the each institution, that is, Commission, Council, and European Parliament. Although the Treaty of Lisbon has introduced some important innovations, like a budget-specific ‘conciliation committee’ and has abolished the differentiation between compulsory and non-compulsory expenditure,⁹⁵¹ the basic process has always been and still is that the Commission prepares a draft budget and the Council and the Parliament jointly adopt the budget.⁹⁵² Most importantly, the budgetary process is a field in which the Parliament has been able to gain increasing powers ever since the first budgetary treaties adopted in the 1970s.⁹⁵³ In particular, under the pre-Lisbon rules it had the last word on non-compulsory expenditure, which it frequently used to change sums assigned to specific programmes and to introduce new programmes.⁹⁵⁴ As shown in the evolutionary overview, of EU democracy assistance, it also did so in the case of EU human rights and democracy assistance and thereby crucially contributed to the development of this tool.

Reference should at this point also be made to the so-called ‘multiannual financial framework’, an agreement by the three budgetary institutions on expenditure ceilings in broadly defined fields for individual years and over a longer period of usually about seven years. The framework, so far adopted in the form of a non-legally binding interinstitutional agreement, has the purpose of rendering the budgetary development more stable and foreseeable.⁹⁵⁵ Democracy assistance is too specific a topic to be mentioned in the framework; however, the currently applicable ‘multiannual financial framework 2007 to 2013’ envisages a total budget of about 50 billion Euros for actions that relate to the ‘EU as global player’.⁹⁵⁶ Further, for the same purpose of controlling budgetary developments, since the mid-1990s legislative acts with budgetary

⁹⁵⁰ Art. 7(2) and (3) of the Financial Regulation 2002.

⁹⁵¹ Compulsory expenditure relates to expenditure that necessarily results from the Treaty or from acts adopted in accordance therewith, while non-compulsory expenditure relates to all other. Art. 272(9) ECT.

⁹⁵² Art. 272 ECT and Art. 314 TFEU.

⁹⁵³ Craig and de Búrca, *EU Law: Text, Cases and Materials*, at 18.

⁹⁵⁴ B. Laffan and J. Lindner, ‘The Budget. Who Gets What, When, and How?’, in H. Wallace, M. A. Pollack and A. R. Young (eds), *Policy-Making in the European Union* (6th ed., 2010), at 214.

⁹⁵⁵ Art. 312 TFEU, introduced by the Treaty of Lisbon, now foresees the adoption of a Council regulation (unanimous vote in the Council, consent of the Parliament) instead of an interinstitutional agreement.

⁹⁵⁶ European Parliament, the Council and the Commission Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management, OJ 2006 C139/1, Annex I (from now on referred to as 2006 Interinstitutional Agreement).

implications include so-called ‘financial envelopes’, ‘financial reference amounts’, or ‘financial frameworks’ that indicate the envisaged total amount of funding for the entire duration of the programme.⁹⁵⁷ Regulated in inter-institutional agreements, they are not binding law, but still create some form of obligation, from which the institutions are only permitted to depart in cases of “new, objective, long-term circumstances”.⁹⁵⁸ Unlike the 1990s, when the budget for democracy assistance programmes increased strongly, the budgetary development of the EIDHR is now more controlled and annual increases of 50 and 100% would require serious justification, but is, of course, legally not impossible. Under the current multiannual financial framework 2007-2013, the duration of the assistance programmes, like DCI and EIDHR, and therefore the financial envelopes envisaged in these programmes, have for the first time been adjusted to each other. All in all, the annual allocations for the EIDHR therefore have to be made in view of these broader limitations.

Secondly, reference needs to be made to the Financial Regulation, which provides more detailed guidelines on the adoption and the implementation of the EU budget and therefore also of EIDHR funds. It stipulates a set of budgetary principles, like annuality, sound financial management, transparency and specification, that is, that specific appropriations have to be made for specific objectives in separate chapters, titles, articles, and items, as well as a set of more detailed rules discussed shortly below.⁹⁵⁹ The currently applicable regulation (the 2002 Financial Regulation) was adopted by the Council with consultation of the Parliament in 2002, and replaced the earlier 1977 Financial Regulation.⁹⁶⁰ It is on purpose limited to providing more general principles and rules, while more specific rules are laid down in a Commission regulation.⁹⁶¹

The most relevant sections of the Financial Regulation for this discussion are Part II, Title IV on external action and Part I, Title VI on grants. Title IV of Part II provides some general rules for expenditure in development aid and regulates which other titles of the regulation apply to external aid. Amongst others, it clarifies that assistance can be implemented on a

⁹⁵⁷ For example, 2006 EIDHR regulation, Art. 19. Financial envelopes were first envisaged in a 1995 joint declaration by the three legislative institutions and later regulated in interinstitutional agreements. See: Declaration by the European Parliament, the Council and the Commission of 6 March 1995 on the incorporation of financial provisions into legislative acts, OJ 1996 C102/4; 1999 Interinstitutional Agreement on budgetary discipline; 2006 Interinstitutional Agreement on budgetary discipline.

⁹⁵⁸ 1999 Interinstitutional Agreement on budgetary discipline, at point 33; 2006 Interinstitutional Agreement on budgetary discipline, at point 37.

⁹⁵⁹ 2002 Financial Regulation. See also the various amending acts, in particular, Council Regulation (EC, Euratom) No 1995/2006, which introduced several important changes as regards EU grants.

⁹⁶⁰ Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, OJ 1977 L256/1.

⁹⁶¹ Commission Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ 2002 L 357/1.

centralized basis by the Commission, if specific conditions are met also on a decentralized basis by third countries, or in cooperation with international organizations (Articles 162 - 164 of the Financial Regulation 2002). In the case of implementation by third states, the Commission must retain the possibility of scrutinizing the actions (Article 165). Article 169 of the Financial Regulation lays down that an EU grant can only be used to cover 100% of the costs of a project, if that is essential for its implementation.

Title VI of Part I on grants stipulates several important rules for the provision of EU grants that are, in particular, also relevant for the framework of the various external assistance programmes. Most notably, it confirms the principle of transparency in the provision of grants and introduces the rule of equal treatment (Article 109 of the Financial Regulation 2002). Several of the subsequently mentioned rules further determine how these principles should be achieved. For example, grants cannot be cumulated, that is, in principle only one grant can be provided per project and one beneficiary can only receive one grant per budget year. Exceptions can be made in basic acts (Article 111 of the Financial Regulation 2002). The principal procedure of project identification is the open call for proposals (Article 110). Only in cases of urgency, if the beneficiary leaves no choice, for example if a recipient is a unique actor, such as an UN agency, or if a basic act identifies a grant recipient, as in the case of human rights defenders, can a grant be provided without a call (Article 110). The Commission needs to adopt annual work or action programmes, which envisage individual projects or programmes, except for urgent or specific other cases (Article 110). Award criteria need to be published in advance, so as to allow a fair chance of all applicants (Article 115). As stipulated, in principle there is the rule of co-financing (Article 110), except if this would jeopardize a project (Article 110, 113 and 169). Finally, since 2006, not only natural persons and registered legal persons can apply, but also entities that are not registered, as long as a representative has the capacity to undertake legal obligations and assumes financial liability (Article 114). This change was suggested in the wake of the adoption of the 2006 EIDHR Regulation, and has particular relevance for regime-critical civil society organizations that are not formally registered but want to apply for funding under the EIDHR.

c) Commission Communications

The discussion now shifts to non-legally binding documents that can appear at any time before and after the adoption of secondary law, but can be equally important. Indeed, in the early 1990s, when the EU had not yet adopted the EIDHR regulations, it was these non-legally binding documents that provided an outline of the policy. The focus is, first, on Commission

communications, usually published as COMs,⁹⁶² which are the primary means through which the Commission formally communicates its ideas, views, and suggestions to the other institutions, in particular to the European Parliament and the Council, as well as to the wider public. It is also the principal means through which it expresses its role as one of the executive institutions of the EU, either by making policy suggestions or by reporting on implementation.⁹⁶³ The considerably high number of communications published by the Commission in the field of democracy promotion indicates its strong and active role in the policy cycle. The various policy-making COMs in the field can be assigned to two major categories.

First, based on its sole right of initiative (Article 17 TEU),⁹⁶⁴ the Commission starts a legislative process with the publication of a legislative proposal, basically always published as a communication.⁹⁶⁵ It can amend such a proposal until the final adoption of the act by the legislative branch through the publication of a new or amended proposal. In the case of the 1999 EDHR regulations it submitted several amended proposals in order to integrate some suggestions of the European Parliament, which could not co-decide the measures, or to respond to demands by the Council and therefore to facilitate the adoption of the act, not at least because the Council would have had to decide by unanimity if it changed the Commission proposal.⁹⁶⁶ At times, the Commission has also used its sole right of initiative to withhold publishing legislative proposals, as was the case in the early-mid 1990s for the various democracy and human rights programmes. Despite calls from the Parliament for such a proposal, which only politically but not legally oblige the Commission to act, the Commission only very late – in 1997 – and when the provision of assistance without basic act became increasingly critical and even challenged before the ECJ, prepared a relevant communication.⁹⁶⁷

Overall, Commission communications are not developed out of thin air. On the one hand, in the field of external assistance there is a preparatory phase in which pilot and preparatory measures are implemented. The first EIDHR proposal published in July 1997 strongly drew from the practice developed in these programmes from the early 1990s on.⁹⁶⁸ On the other hand, the Commission is usually aware of the approximate position and wishes of the

⁹⁶² At times, communications are published as so-called SEC documents, which are usually a kind of default category that includes documents that cannot be attributed to other types.

⁹⁶³ S. Hix, *The Political System of the European Union* (2005), at 40.

⁹⁶⁴ Different rules apply under CFSP (Article 27 TEU) and for Judicial Cooperation (Article 76 TFEU).

⁹⁶⁵ See, for example, COM(97) 357final.

⁹⁶⁶ See the various steps in the adoption of the 1999 EIDHR regulations at the Legislative Observatory of the European Parliament:

[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=1997/0191A\(SYN\)&lg=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=1997/0191A(SYN)&lg=en) and [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=1997/0191B\(CNS\)&lg=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=1997/0191B(CNS)&lg=en) (last accessed on 15.2.2012).

⁹⁶⁷ See Case C-106/96 *United Kingdom v. Commission* [1998] ECR I-2729; COM(97) 357final, 24.7.1997, Explanatory Memorandum, point III.

⁹⁶⁸ *Ibid* and COM(95) 567 final at 10f.

Council/the Member States, which it derives from Council conclusions and European Parliament resolutions and informal discussions, and also tries to integrate the views of other institutions, except where these are unacceptable to the Commission. The Commission has, for example, in the case of the EIDHR regulations, repeatedly rejected demands by the European Parliament.

Since the late 1990s, the Commission is also obliged to carry out a public consultation process, except in cases of urgency or confidentiality, which should give civil society actors a chance to contribute to the policy-making process.⁹⁶⁹ The Treaty of Lisbon has reinforced this obligation in primary law (Article 11 TEU).⁹⁷⁰ It was done in the case of the preparation of the 2006 EIDHR regulation, when the Commission published a consultation document on its website and invited EU- and third country-based civil society organizations to provide input for the new democracy and human rights instrument to be adopted, in particular, on the thematic objectives.⁹⁷¹ Additionally, one meeting was organized with Brussels-based civil society networks and platforms of NGOs working in the field of human rights and democracy promotion and development assistance more generally for an exchange of views.⁹⁷² Although the time-frame for consultation was with less than one month very short, there was considerable input from NGOs. Overall, these groups largely called for retaining the status quo, suggesting satisfaction with the thematic scope of EIDHR assistance as well as implementing procedures, however, also suggesting an adaptation of European civil society to EU instruments and procedures.⁹⁷³ The preservation of a broad thematic focus and the continuing focus on conflict prevention and resolution, albeit not as a major heading, in the 2006 regulation, can, for example, clearly be traced to civil society demands.⁹⁷⁴

All in all, through its right of initiative, which is considered a core guarantee of the institutional balance of power in the EU political system, the Commission has considerable power to determine the content of a future legislative act. It is, however, not operating in a vacuum, but has to and also has interest in taking the views of the two legislative institutions and as well as of civil society into account.

⁹⁶⁹ Protocol on the Application of the Principles of Subsidiarity and Proportionality, annexed to the Treaty of Amsterdam, para. 9; Protocol on the Application of the Principles of Subsidiarity and Proportionality (Protocol No 2), annexed to the TEU and TFEU, Art. 2; European Commission, Towards a Reinforced Culture of Consultation and Dialogue – General Principles and Minimum Standards for Consultation of Interested Parties by the Commission, COM(2002) 704 final, 11.12.2002.

⁹⁷⁰ P. Craig, *The Lisbon Treaty: Law Politics and Treaty Reform* (2010), at 66-70.

⁹⁷¹ Consultation Paper Thematic Programme for the promotion of democracy and human rights worldwide. See also http://ec.europa.eu/europeaid/what/human-rights/documents/covertxt_webconsult_en.pdf (last accessed on 29.2.2012).

⁹⁷² Consultation Document The new Thematic Programme for Democracy and Human Rights.

⁹⁷³ http://ec.europa.eu/external_relations/consultations/er.htm (last accessed on 4.7.2007); COM(2006) 354 final, Explanatory Memorandum para. 7.

⁹⁷⁴ Consultation Paper Thematic Programme for the promotion of democracy and human rights worldwide, at 8-10; COM(2006) 23 final; COM(2006) 354 final.

The second group of democracy assistance-relevant Commission communications consists of core, thematic documents that aim at outlining aspects of the policy of EU democracy promotion and, in particular, of assistance unrelated to legislative process. These COMs usually provide an overview of the current state of affairs as well as, based on that, an outlook of how the Commission intends to or suggests developing the policy or tool further. Again, while these communications frequently firstly widely communicate ideas, the ideas do not necessarily originate in the Commission but also in other institutions, in particular the Parliament, and/or have already been tested out by the Commission in practice.

All the major COMs belonging to this group have been addressed in the evolutionary overview and should only briefly be referred to here. Two communications and one inter-pillar document issued by the Commission and the General Secretariat of the Council have in general addressed the policy of EU democracy promotion and also elaborated in more detail on EU democracy assistance: COM(95) 567 final, COM(2001) 252 final, and SEC(2009) 1095 final. Some communications have focused on democracy promotion and assistance in particular regions, like COM(98) 146 concerning the ACP states and COM(2003) 294 final and COM(2011) 200 final on the Mediterranean. Only one communication related to an individual type of democracy assistance: COM(2000) 191 final on ‘EU Election Assistance and Observation’.

Reference should only briefly be made to a third group of communications, which comprises a whole range of communications that deal with EU policies towards particular regions and in that framework address democracy promotion and assistance, without, however, dealing with it in more detail. A case in point is COM(2005) 636 final on ‘A stronger partnership between the European Union and Latin America’.⁹⁷⁵

The publication of suggestions on policy changes as regards EU democracy assistance in Commission communications does, of course, not automatically lead to the intended policy reforms. Acceptance by the other institutions, in particular by the Council, is required and is usually expressed in Council conclusions and European Parliament resolutions. Such documents can also express disagreement, but rarely do so, as the Commission, as indicated, takes the views of the other institutions into account when preparing documents. An endorsed communication can be, next to secondary law, a core policy-making document, like, for example, COM(2001) 252final. Without endorsement, the Commission risks being blocked by the Member States during the stage of implementation, in particular, through comitology or, but rarely, be taken before the Court of Justice for overstepping implementing powers. The latter is only possible, if suggested policy changes go beyond the particular scope of the relevant regulation, like in the

⁹⁷⁵ Communication from the Commission to the Council and the European Parliament, A stronger partnership between the European Union and Latin America, COM(2005) 636 final, 8.12.2005, at 13-4.

Philippine Border Mission case, where the Court ruled that the Commission could not provide security-related assistance under the ALA regulation, as this was not foreseen in that regulation.⁹⁷⁶

Commission communications are decided by the Commission collectively, or, if asked for by a member, by majority voting. Until recently, the draft texts for communications were prepared by the various thematically responsible units in the various Commission's Directorates-General (DGs). There was a lead unit, responsible for strategic questions on specific thematic issues, countries or regions, which had the main responsibility to draft documents and was mainly located in DG for External Relations (DG RELEX). During this drafting process, it widely consulted other, related units, in particular the services responsible for aid implementation. The recent introduction of the European External Action Service (EEAS), which is separate from the Commission and the Council and works under the guidance of and to assist the Union High Representative for Foreign Affairs and Security Policy, has brought some changes.⁹⁷⁷ It basically absorbed the former DG External Relations, which included the majority of lead, strategic units. Now, the EEAS is involved in the preparation of Commission communications, including for legislative proposals concerning the basic regulations. In the case of some programmes, like the EIDHR, the responsible department in the EEAS, working under the High Representative, will have the main responsibility of developing proposals for the Commission. In this process, it has the obligation to cooperate and coordinate with the Commission services. In the case of other programmes, like the DCI and ENPI, the EEAS and the relevant Commission services, under the responsibility of the thematically responsible Commissioner, that is, the Commissioner for Development or the ENP, prepare a joint document that is submitted to the Commission for decision.⁹⁷⁸

d) European Council and Council Conclusions and European Parliament Resolutions

Next to the Commission, the European Council, the Council, and the European Parliament participate in the policy-making process not only, at least in the case of Council and Parliament, through their role in the legislative process, but also through the publication of non-legally binding documents. As indicated, these documents can initiate actions, respond to policy suggestions of other institutions, or in general contribute to ongoing deliberations.

The European Council, that is, the meeting of the heads of state or government of the Member States and the President of the European Commission, as well as, since the Treaty of

⁹⁷⁶ Case C-403/05 (*Philippine Border Mission* case).

⁹⁷⁷ Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, OJ 2010 L201/30.

⁹⁷⁸ *Ibid.*, in particular Art. 9.

Lisbon, of the President of the European Council, has the special role of defining the Union's political direction and priorities (Article 15(1) TEU).⁹⁷⁹ European Council conclusions, adopted at its two regular (as well as extraordinary) meetings during the course of a single presidency, are therefore usually general, direction-giving documents, leaving the more detailed formulation of policies to the other institutions. The European Council usually takes decisions by consensus, except if, in specific cases, the Treaty provides for unanimity or majority voting. For democracy promotion and, implicitly, assistance, European Council conclusions were mainly important during the early stage of the development of an external EU human rights and democratization policy, when it was decided at the highest political level that human rights issues in third countries should be a legitimate concern of the EU – then still EEC – and its Member States, that human right and democratization mattered for foreign policy and development, and that an external human rights and democratization policy should therefore be pursued.⁹⁸⁰ The concrete definition of the policy, its extent and tools, has since then been carried out by the other EU institutions. Beyond this early period, the European Council frequently comments on progress in or lack of democratization in third countries and in this framework calls for continuing or more EU support. It has, however, since the early 1990s not provided any major input into the policy tool of democracy assistance.

The Council participates in policy-making through its decisions in the legislative process, however, also through the adoption of non-binding conclusions that express opinions, preferences, and critique and thereby feed into the policy-making process beyond the process of adopting secondary law. Numerous Council conclusions constitute responses to Commission communications. Usually these conclusions endorse Commission ideas, not at least because the Commission, aware of the interests of the other institutions, takes the various opinions into account in the drafting of COMs (as far as they are acceptable to the Commission). The regular endorsement does not mean though that Council resolutions on Commission communications are brief und adopted without discussion. In practice, Council conclusions are often lengthier documents, in some detail mention which policy suggestions of the Commission the Council approves and how the Council intends to developing the policy further.⁹⁸¹ In any case, the conclusions are official signals to the Commission how to pursue a certain path further. At times,

⁹⁷⁹ J. Lewis, 'The Council of the European Union', in M. Cini and N. Pérez-Solórzano Borragán (eds.), *European Union Politics* (3rd ed., 2010), at 145-6; H. Wallace, at 81-2.

⁹⁸⁰ In particular, the Rome European Council of December 1990 and the Luxembourg European Council of June 1991. Several crucial decisions of that time were taken in the framework of EPC and therefore by the foreign ministers of the Member States, but nevertheless published as part of European Council conclusions.

⁹⁸¹ See, for example, Council, Draft Council conclusions on the European Union's Role in Promoting Human Rights and Democratisation in Third Countries, 9547/01, 19.6.2001; Council, Draft Council conclusions on the implementation of the follow-up to the 25 June 2001 Council conclusions on human rights and democratisation in third countries, 14671/02, 26.11.2002.

the Council also publicly disagrees with the Commission in its conclusions. This happened, most notably, in the case of election observation. In order to build a coherent framework for EU EOMs, in 2000 the Commission suggested implementing all EU EOMs under the first pillar, foreseeing an important role for itself (COM(2000) 191final). The Council overall welcomed Commission efforts, however, did not entirely agree to the planned supranationalisation, but intended to reserve a more important position for itself. A compromise was eventually reached in informal discussions.⁹⁸²

At times, although less frequently, Council conclusions are adopted during a policy-making process initiated by one of the EU presidencies. The most recent case in point is the initiation of discussions on a European consensus on democracy support, first suggested during the French presidency in 2008 and developed further by the Czech and Swedish presidencies in 2009. The document, which in particular aimed at increasing the coherence of all EU activities, had a strong inter-pillar focus. It resulted in the adoption, in November 2011, of Council conclusions on Democracy Support in the EU's External Relations and an Action Programme, that called for further elaboration by the relevant Council bodies and the Commission and for an annual report on implementation. It has since been followed by further Council conclusions and implementation reports concerning the Action Programme.

Finally, reference should be made to the EU's 'Annual Report on Human Rights', since 2010 called the EU's 'Annual Report on Human Rights and Democracy in the World'. First published in 1999, it is annually drafted by the Council's Working Group on Human Rights – COHOM – and aims to provide an overview to the public and, in particular, to EU partner states and civil society, on all EU activities in the area of the Union's external human rights and democratization policy. The report is a very comprehensive account of EU actions over a period of 12 months, discussing individual instruments, including the EIDHR, as well as, since more recently, actions in individual countries.⁹⁸³ The last reports also included a section on the European Parliament's activities, made available by the Parliament. While the document provides a comprehensive overview it is, as its title suggests, a report on implemented actions rather than a document providing inputs for future policy developments.

As regards the drafting of Council documents and decision-making, the central role of the just referred to Council's Working Group on Human Rights, known as COHOM, has to be mentioned. It was established in 1987 and therefore under EPC and before the establishment of CFSP and consists of experts on human rights (and democracy issues) of the Member States.

⁹⁸² SEC(2003) 1472.

⁹⁸³ The latest reports are published at http://eeas.europa.eu/human_rights/docs/index_en.htm (last accessed on 1.2.2012). Earlier documents are included in the documents collection of the Council website.

While it originally usually only met twice a year, it now meets regularly and has the task of collecting information and discussing human rights issues as regards individual third states, to preparing activities within international organizations like the UN, to coordinating actions among the Member States, to discussing the EU's human right and external democratization policy as a whole, and to submitting recommendations to the Council.⁹⁸⁴ Next to preparing the annual reports for the Council, it also prepares the Council conclusions on human rights and democracy-related issues. COHOM's views, opinions and documents are channeled via the Committee of Permanent Representatives (COREPER), that is, the meeting of Member States' representatives at ambassadorial level, which coordinates the work of the numerous working parties and groups, including COHOM, prepares Council meetings, and also informally pre-decides issues, so that the Council only discusses contentious issues that have not been decided at the level of COREPER. At times, if CFSP issues are concerned, the Treaty-based Political and Security Committee (PSC, Article 38 TEU), whose task it is, among others, to monitor international developments in the area of CFSP, can also be asked by the Council to submit opinions.

Finally, the European Parliament has always intensively engaged in policy-making as regards democracy promotion and assistance. Next to participation in the legislative process, it adopts non-binding resolutions. These can, as in the case of the Council, constitute responses to Commission communications making policy-suggestions, or responses to Council initiatives.⁹⁸⁵ Usually, the Parliament's resolutions are very comprehensive documents, frequently addressing a merely uncountable number of very detailed elements. The Parliament has also tended to be very outspoken and far-reaching in its demands, even if it has appeared obvious that these could not be realized in the immediate future, for example, to grant the Parliament similar powers as the Council in comitology or to supranationalize CFSP.⁹⁸⁶ Frequently, the Parliament also adopts own-motion resolutions irrespective of any initiative of another institution, like in July 2011 the resolution on 'EU external policies in favour of democratisation', which was, in particular, caused by the events in the Arab world in 2011. This resolution criticized the weak and wrong engagement of the Union in the Southern Mediterranean in the preceding period and called for real engagement in the area.⁹⁸⁷ Further, next to the EU Annual Report on Human Rights (and Democracy) in the World, to which the Parliament now contributes, the Parliament has annually drafted its own report on the same topic and adopted a related resolution since 1983. Since 2006,

⁹⁸⁴ http://www.consilium.europa.eu/uedocs/cmsUpload/COHOM_mandates.pdf (last accessed on 1.2.2012).

⁹⁸⁵ See for example European Parliament resolution on the Communication from the Commission to the Council and the European Parliament on the European Union's role in promoting human rights and democratisation in third countries (COM(2001) 252 - C5-0653/2001 - 2001/2276(COS)).

⁹⁸⁶ Ibid, at point 22.

⁹⁸⁷ European Parliament resolution of 7 July 2011 on EU external policies in favour of democratisation (2011/2032(INI)), P7_TA-PROV(2011)0334.

the Parliament's 'Annual Report on Human Rights in the World' has a broader focus, analyzing EU policy comprehensively and making policy suggestions for reform, as well as relating directly to the Council's annual report.⁹⁸⁸

Furthermore the Parliament has a specialized unit dealing with human rights and democratization-related topics: the Subcommittee on Human Rights or DROI, which, established in 2004, is a sub-unit of the Foreign Affairs Committee and is composed of 32 Members of the European Parliament, which are appointed for an entire legislative period. The sub-committee holds hearings and leads discussion on all human rights and democracy-related topics of concern to the Parliament and prepares reports and motions for resolutions to be tabled at plenary meetings. At times, other committees, like that on Development (DEVE), Women's Rights and Gender Equality can also be involved in human rights issues. Because democracy assistance involves a strong financial element, the Committee on Budget can also be brought into the picture.

2. Policy Implementation

On the basis of the outlined legally-binding and non-binding policy-documents, the EU has to take further steps to transform the annually available budget for the EIDHR and parts of the available budget under mainstream programmes into concrete projects. This task is in the relevant assistance regulations attributed to the Commission and constitutes one of its primary activities as executive institution of the European Union. In the process, other actors are involved as well. The various steps of the implementation process are looked at in the following sections of this chapter. Unlike the case of policy-making, it is possible to identify a chronology of steps that each or at least most programmes and projects go through. To begin, the three basic approaches to aid implementation followed by the EU as well as most other international donors, usually referred to as 'aid delivery methods', should briefly be introduced. As will be seen, specific features of the EIDHR and of the mainstream development programmes require or prefer the use of a specific aid delivery method.

⁹⁸⁸ R. Rack and S. Lausegger, 'The Role of the European Parliament: Past and Future', in P. Alston, with M. Bustelo and J. Heenan (ed), *The EU and Human Rights* (1999), at 807; European Parliament, Subcommittee on Human Rights, Notice to Members (1/2009), Summary of activities Summary of activities of the Subcommittee on Human Rights during the sixth parliamentary term(2004-2009), PE423.9PE423.953v02-00, 15.5.2009; See, for example, European Parliament, Committee on Foreign Affairs, Report on the Annual Report on Human Rights in the World 2009 and the European Union's policy on the matter2010/2202(INI), A7-0339/2010, 23.11.2010

a) Three Basic Modes of Aid Implementation

Overall, the Commission currently works with three different aid delivery methods, which are implemented through one or more of three possible so-called ‘financing modalities’.⁹⁸⁹ First, there is the project approach, which constitutes the original form of aid delivery. It is implemented through individual projects, which are financed either through EU grant or procurement award procedures.⁹⁹⁰ The approach is characterized by a strong determining and controlling role of the EU, especially in the programming phase, as well as the use of EU rules and procedures, rather than those of the target state. These features have increasingly brought the project approach under pressure. In line with the Paris Declaration on Aid Effectiveness, a declaration of major donors and developing countries adopted in the framework of the OECD in 2005, and other linked documents, reforms of the project approach aim at a more intensive involvement of recipients and better coordination with other donors to avoid double-funding, multiple procedures, and to create synergies.⁹⁹¹

Secondly, there is the ‘macro or global approach’ in the case of which the EU supports a target country in the implementation of that country’s own national development plan or strategy by contributing financial resources to the national budget of that country (so-called budget support). The resources become an unidentifiable part of that budget and are spent by the authorities of the target state according to the national financial management system. While the EU keeps oversight of how the funds are being spent, it has no say as regards the decisions on and implementation of individual programmes and projects carried out by the target state. The provision of budget support is linked to strict conditions, including relevant initiatives to ensure and improve sound public financial management in the target state.⁹⁹²

Thirdly, in the case of the ‘sector approach’, the EU supports a target state’s development programme in a certain sector (‘sector programme’). As with budget support, the recipient state plays a key role in the development and implementation of the programme, coordination is sought with other donors, and the focus is on an entire sector and therefore broad. Sector programmes can be financed through three means: sector budget support – the preferred option – which works basically in the same way as general budget support; common pool funding, in the case of which the different donors pay into a common basket that is either managed by the

⁹⁸⁹ EuropeAid, Guidelines on the Programming, Design & Management of General Budget Support, January 2007, at 12.

⁹⁹⁰ European Commission, Aid Delivery Methods, Volume 1 Project Cycle Management Guidelines, March 2004, at 8f.

⁹⁹¹ <http://www.oecd.org/dataoecd/30/63/43911948.pdf> (last accessed on 21.10.2010).

⁹⁹² European Commission, Aid Delivery Methods, Volume 1, at 12f and 29f; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The Future Approach to EU Budget Support to Third Countries, COM(2011) 638 final, 13.10.2011.

government or by a donor according to the target country's or the donors management system; or through projects, implemented according to EU procedures.⁹⁹³

Over the last decade, donors, including the EU, and developing countries have come to favour budget and sector support over the project approach.⁹⁹⁴ Due to their very nature, these approaches avoid the problems of the project approach, in particular the dominating role of the donor. Their positive features include a stronger local ownership by the target state, donor alignment with the target state's development strategies, institutions, and procedures, together with a stronger engagement in local capacity development, and more cooperation and coordination among donors. All these features are considered a support to enhanced aid effectiveness. In 2008 about 39% and in 2009 about 28% of the EDF and EU budget for development assistance was envisaged for general and sector budget support measures, and there is strong interest in increasing this share.⁹⁹⁵

Nevertheless, the project approach continues to be a main form of aid delivery. There are situations where it is the most appropriate or indeed the only possible form of aid delivery, like when projects are implemented by non-governmental bodies, as in the case of the EIDHR, in post-crisis or emergency situation, or when the conditions for budget and sector support, dependent upon a stable financial framework, are not (yet) met.⁹⁹⁶ The Parliament has warned of providing budget support to authoritarian governments and has called for always supplementing budget support with projects that develop the oversight capacities of national parliaments and civil society actors.⁹⁹⁷

All in all, the EIDHR is exclusively implemented through the reformed project approach. Aid under mainstream development programmes is provided under the project, budget and sector approach. Given that many national development plans refer to reforms related to democratization – rule of law development, judicial reform, etc. – it can be assumed that parts of democracy assistance provided under the mainstream programmes have been paid as budget or sector support.⁹⁹⁸ The exact share of budget support, sector support, and projects of all democracy assistance is, however, not known.

⁹⁹³ European Commission, Support to Sector Programmes covering the three financial modalities: Sector Budget Support, Pool Funding and EC project procedures, Short Version, July 2007, at 8f and 21 f.

⁹⁹⁴ For the EU's first expression of the shift, see Communication from the Commission to the Council and the European Parliament, The European Community's Development Policy, COM(2000) 212 final, Brussels, 24.4.2000, at 33. The EU's commitment was, for example, reconfirmed in the European Consensus on Development, para. 26 and 32.

⁹⁹⁵ European Commission, Annual Report 2009 on the European Community's development and external assistance policies and their implementation in 2008, at 12; European Commission, Annual Report 2010 on the European Union's development and external assistance policies and their implementation in 2009, at 158.

⁹⁹⁶ European Commission, Project Cycle Management Guidelines, at 13-14.

⁹⁹⁷ Committee on Foreign Affairs, Report on EU External Policies in Favour of Democratization, point 23 and 44.

⁹⁹⁸ See the Poverty Reduction Strategy Papers at the website of the World Bank. Specific national development plans or strategies are frequently drafted with the assistance of UNDP and are published by the countries concerned.

b) The Standard Cycle of Operations

For the discussion of the major stages of the stage of implementation, it is useful to introduce to the so-called Project Cycle Management (PCM) tool, a project design and management instrument for the project approach that has been used by the EU since the early 1990s. The tool has been developed and refined since then, but has essentially retained the same five major stages that each project, irrespective of its size, time-frame or thematic focus, has to run through in an entire cycle of implementation. Although referring to ‘project management’, the cycle also describes the regular stages followed during implementation in the case of the budget and sector approaches.⁹⁹⁹ The exact roles of the EU institutions, target states’ governments, and civil society, applicable rules, etc. during individual stages differ according to the chosen approach. The five stages are:

- Programming;
- Project Identification (with a financing decision); or
- Formulation (with a financing decision);
- (technical) Implementation (i.e. implementation in a more limited sense);
- Evaluation & Audit.¹⁰⁰⁰

The PCM tool neatly fits into the policy cycle model outlined above, repeating the various steps of that model during the implementation phase.

c) Programming

Programming refers, broadly speaking, to the process of developing the EU’s strategy for providing assistance in third states during a particular period of time.¹⁰⁰¹ It is today widely considered a crucial phase in the project cycle and is quite an elaborate process during which several issues, like donor coordination, have to be addressed in order to ensure as much aid effectiveness and efficiency in delivery as possible. The Commission calls its central programming documents tools for ‘steering, managing and evaluating operations’.¹⁰⁰²

⁹⁹⁹ Europaïd, Guidelines on the Programming, Design & Management of General Budget Support, Tools and Methods Series, Guidelines No. 1, January 2007, at 32.

¹⁰⁰⁰ European Commission, Aid Delivery Methods, Volume 1, at 16. In principle, after ‘technical implementation’ the stage of ‘monitoring’ of an ongoing project could be added as separate stage or activity. See, for example, European Commission, Aid Delivery Methods, Volume 1, at 41.

¹⁰⁰¹ Art. 5(1) of the 2006 EIDHR regulation.

¹⁰⁰² Common Framework and Procedure for the Programming of Thematic and Horizontal Budget Lines 2007-2013, DEV/10/2004-EN, at 1 and 4.

i. Programming the EIDHR

The Increasing Importance of Programming in the case of the EIDHR

EU programming has undergone major changes over the last two decades, in particular as regards the EIDHR. Unlike mainstream development programmes, before the late 1990s the EU paid little attention to programming in the case of the EIDHR forerunner programmes. With the major exception of the Phare/Tacis Democracy Programme, for which the Commission set up a special Advisory Group that, besides other tasks, drafted programming guidelines,¹⁰⁰³ hardly any EIDHR predecessor programme operated on the basis of some kind of programming document.¹⁰⁰⁴ The programming documents of mainstream development programmes did not sufficiently cover human rights and democracy assistance as regards the EIDHR either.¹⁰⁰⁵ Surprisingly for its time of adoption, the 1999 EIDHR regulations also did not change this situation and explicitly demand the adoption of programming documents, but instead remaining largely silent on the topic. They only spoke of Commission ‘programmes intended to provide a coherent framework for action’ in specific countries, regions, or on specific topics, without, however, requiring that they should be established.¹⁰⁰⁶ All in all, to the extent that some form of yearly or even multiannual planning took place before the late 1990s, it was largely intransparent, unstructured, and very diverse.

While this absence of programming was surprising, it can be explained by the minor importance attributed to strategic programming before the late 1990s, the unclear character and future of the EIDHR as pilot or independent programme, and the perceived conflict of programming and the demand-led approach. In any case, the general pressure for strategic programming became stronger, in particular in view of a perceived lack of aid effectiveness. Consequently the EIDHR was established as an independent programme that was going to stay. It was also accepted that the use of calls for proposal was compatible with a strategic framework. Next to Phare/Tacis Democracy, regional multiannual programming documents also started to be developed for Latin American countries, but did not become operational. Eventually, in 2001, the Commission published its first EIDHR programming document, entitled ‘Programming

¹⁰⁰³ The Phare/Tacis Democracy Programme’s special Advisory Group consisted of members from various Commission services, MEPs, representatives from services of the European Parliament, and representatives of the Council of Europe. Evaluation of the Phare and Tacis Democracy Programme 1992-1997 (November 1997), at 61.

¹⁰⁰⁴ For the lack of programming in the case of ACP states see, for example, External Evaluation of Community aid concerning positive actions in the field of human rights and democracy in the ACP countries 1995-1999 (28 August 2000), at 34.

¹⁰⁰⁵ Court of Auditors, Special Report No.12/2000, at 7.

¹⁰⁰⁶ Art. 13 and 14 of the 1999 EIDHR regulations.

Human Rights and Democracy – Exercise 2001’.¹⁰⁰⁷ It has since then been followed by four further programming documents, covering different periods of time:

- 2002-2004 EIDHR Programming Document;¹⁰⁰⁸
- EIDHR Programming for 2005-2006;¹⁰⁰⁹
- Strategy Paper for 2007-2010;¹⁰¹⁰
- Strategy Paper for 2011-2013.¹⁰¹¹

Most of these programming documents were supplemented by annual work programmes or action programmes.

The Character of EIDHR Programming Documents

Chapter 6 will show that each of the five programming documents adopted for the EIDHR since 2001 differed in its particular approach to thematic and geographical priorities, and that the Commission experimented with various models until arriving at a satisfactory format, in particular as regards the details regarding the thematic focus in individual countries and regions. Overall, as regards their general character it can be observed that the programming documents focused on the EIDHR as a single, worldwide applicable programme and aimed at providing a strategy with worldwide validity for the implementation of that instrument. They therefore aimed at providing a single strategy of democratization for all target states and regions, rather than addressing each target country separately with a tailored, individual strategic programme.

On the one hand, such a model makes perfect sense for global priorities and actions, for which global calls for proposals are held, for example in the case of a global campaign against the death penalty. On the other hand, it risks disregarding that there are differences in the problems and needs of individual target states. The definition of global priorities and responses can, but does not necessarily explicitly cover all problems and needs in all target states.

The programming documents take account of this potential problem in three ways. The process of establishing priorities is not done in a top-down fashion, as the global EIDHR strategy papers suggest. The EU representations in the target states, civil society in Brussels and, although still limited, civil society in the target states, provide input into the definition of these global priorities. The global priorities are therefore, at least to some extent, the sum of all local priorities

¹⁰⁰⁷ SEC(2001) 891.

¹⁰⁰⁸ European Commission, Commission Staff Working Document, European Initiative for Democracy and Human Rights Programming Document 2001-2004, REV 1 – Final, 20.12.2001.

¹⁰⁰⁹ European Commission, European Initiative for Democracy and Human Rights (EIDHR), Programming for 2005 and 2006. From now on referred to as EIDHR Programming document for 2005 and 2006.

¹⁰¹⁰ European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2007 – 2010.

¹⁰¹¹ European Commission, European Instrument for Democracy and Human Rights (EIDHR). Strategy Paper 2011-2013, C(2010)2432, 21.5.2010.

and in principle, each applicant in a target state should fall under one of the selected priorities. Further, global and local EIDHR calls for proposals are in part defined very broadly and therefore cover a very broad spectrum of possible thematic foci of projects. It is therefore rather unlikely that a suggested project does not fall under one of the envisaged EIDHR priorities. Finally, in local calls for proposals the Delegations are explicitly entitled to adjust the global priorities to local circumstances and therefore to make changes to the broad priorities.

More recently, the Commission has itself (implicitly) criticized the global programming exercise, which it calls a ‘one size fits all approach’.¹⁰¹² It is now elaborating individual human rights strategies for, initially, 150 third states that will serve as guiding documents for all EU external democracy and human rights instruments and therefore also for the EIDHR, in particular, EIDHR programming. It remains to be seen to what extent these documents will also explicitly address questions of democratization and outline a democracy promotion strategy for individual states. Whether this will also result in changes to future EIDHR programming documents and replace the global approach by a mixed approach, which retains a global view for those aspects of the EIDHR that are promoted globally, and refers, at least as regards the substantive elements, to individual country strategies, has still to be seen.

The Legal and Regulatory Basis for EIDHR Programming

While the 1999 EIDHR regulations were silent on programming, the amendments to the 1999 EIDHR regulations adopted in 2004 first introduced provisions on EIDHR programming into the EIDHR regulations. They foresaw the adoption of Multiannual Indicative Programmes (MIPs) and Annual Work Programmes (AWPs) and regulated their adoption.¹⁰¹³ This first express legal basis for programming was introduced after the Commission had started to develop programming documents in 2001 but was never followed up, as the 2005-2006 EIDHR programming document had already been drafted, when the amendments entered into force.

The currently applicable 2006 EIDHR regulation devotes considerable space to the programming process, stressing its relevance. It renamed the EIDHR programming documents into Strategy Papers (SPs) and Annual Action Programmes (AAPs), which is more in line with other programming documents, and regulates their content and procedure of adoption (in particular, in Articles 4-6 of the 2006 EIDHR regulation) in more detail.

Of further relevance is the ‘Common Framework and Procedure for the Programming of Thematic and Horizontal Budget Lines’ – from now on referred to as the Common Framework

¹⁰¹² COM(2011) 886, at 8.

¹⁰¹³ See Art. 11 of the 1999 EIDHR regulation for developing countries, as amended by Reg. 2240/2004.

for Thematic Lines – of 2003 and, in an updated version, of 2006.¹⁰¹⁴ It supplements the EIDHR regulation in providing further details on the essential content of EIDHR strategy papers and by outlining the various phases in the adoption of these papers. The document was developed by the so-called ‘inter-service Quality Support Group’ (iQSG), a group of EU officials of various Directorates-General and services dealing with external relations, which was established in 2000, in the wake of reforming the assistance sector and with the specific objective of improving the quality of the programming process. The document is rooted in the ‘Common Framework for Country Strategy Papers’ of 2000, which provided more detailed rules for the adoption of Country Strategy Papers (CSPs) in the framework of mainstream assistance programmes.¹⁰¹⁵

Types of Programming Documents and their Essential Content: Strategy Papers and Annual Action Programmes

The two types of programming documents envisaged in the 2006 EIDHR regulation have already been mentioned: Strategy Papers (SPs) and Annual Action Programmes (AAPs). Unlike mainstream development programmes, no separate Multiannual Indicative Programmes (MIPs) are envisaged; however, the actually adopted SPs include such multiannual indicative programming as part of the SPs.

Strategy Papers are the basic, general programming documents that shall, according to Article 5(1) of the 2006 EIDHR regulation, lay down the strategy of assistance under the regulation, its priorities, the international situation, and the activities of the main partners, that is, those of other donors. Article 5(2) of the same regulation requires that the Strategy Papers set out in more detail priority areas selected for financing, the specific objectives, and, introducing results-based management, the expected results and the performance indicators.¹⁰¹⁶ The SPs shall also provide an indicative financial allocation, both, overall and by priority area. The regulation leaves considerable freedom to the implementing bodies to determine the specificity and the number of selected objectives within the framework of the regulation. It also does not envisage a specific time frame for SPs, except that they should not go beyond the period of validity of the regulation (i.e. beyond 31.12.2013). The exact structure of SPs, which consist of six parts, has been outlined in the Common Framework for Thematic Lines and comprises, amongst others, a section on the EC policy agenda in the field of democracy and human rights promotion, the activities of other donors, the needs of the target states, the EU’s past actions, the EU’s response

¹⁰¹⁴ Common Framework and Procedure for the Programming of Thematic and Horizontal Budget Lines (2003) and (2006).

¹⁰¹⁵ European Commission, Commission Staff Working Paper: Community Co-operation: Framework for Country Strategy Papers, SEC(2000) 1049.

¹⁰¹⁶ Results based management is a management strategy in development policy that focuses on performance and achievement of outputs, outcomes and has over the last two decades increasingly become the standard model in aid management.

strategy, and multiannual programming. Table 16 (Chapter 6) lists the various objectives chosen by the Commission in all programming documents adopted since 2001, which in the case of the last two SPs, covered four and three years, respectively.

Based on SPs, the Commission has to adopt so-called Annual Action Programmes (AAPs). These are more detailed documents, which, next to repeating much of the content of SPs, in particular objectives and expected results of activities, also list, in separate Action Fiches, the individual operations to be financed, the amount allocated for each operation, and an indicative timetable (Articles 6(1) of the 2006 EIDHR programme) for implementation and methods of implementation. Again, in line with results-based management, the objectives shall be measurable and have time-bound benchmarks (Article 6(2) of the 2006 EIDHR programme). Further, the Commission is again free to decide on the degree of specificity with which it addresses the intended actions. Some of the identified operations are entirely formulated projects, often already ongoing with the support of the EU, like the contribution to the European Inter-University Centre for Human Rights and Democratization based in Venice. The majority of operations are planned programmes, whose individual projects only have to be identified, mainly through calls for proposals. The principal programmes here are the ‘Country Based Support Schemes’ (CBSS), the successors to the EIDHR micro-project schemes, which are implemented by the Delegations with little involvement from the Commission headquarters.¹⁰¹⁷ AAPs define the thematic foci of CBSSs, which apply to all countries worldwide in which the scheme is being implemented. However, as mentioned, the AAPs give the Delegations the possibility to adjust these generally defined objectives to local circumstances and to focus on certain thematic issues rather than others.¹⁰¹⁸ AAPs also regulate the methods of implementing CBSS, for example that calls for proposals have to be held, and specifies, which are the award criteria.

In principle, all measures funded under the EIDHR have to be covered by an SP and AAP. The EIDHR regulation provides for some exceptions to this rule. Most importantly, it allows for ‘special measures’, that is, projects responding to unforeseen needs and exceptional circumstances, like a revolution, an unexpected start of a transition, but also a sudden return to authoritarianism in the case of which funds can be released more quickly. Further, the Commission can provide small ‘*ad hoc*’ grants to defenders of human rights.¹⁰¹⁹

¹⁰¹⁷ See, for example, the Annual Action Programme 2011 for the EIDHR, Action Fiches 3 and 8.

¹⁰¹⁸ See, for example, Bicchi, ‘Dilemmas of Implementation’, at 976f.

¹⁰¹⁹ Art. 7 and Art. 9 of the 2006 EIDHR regulation.

Procedures in the Adoption of Programming Documents

According to the Commission's Common Framework for Thematic Lines, the programming of SPs occurs in three stages: (1) the drawing up of the draft programming document; (2) quality control and comitology; and (3) the formal approval. Each stage contains various steps and involves various institutions, organizations, and bodies.¹⁰²⁰ A similar, slightly less complex structure applies in the case of AAPs.¹⁰²¹ Overall, the Commission, as one of the primary executive institutions of the EU, dominates the drafting of the SPs and AAPs. Nevertheless, the Member States and the European Parliament, as well as European and target country-based civil society organizations also play a role in the process.

(1) Drawing up the draft programming document:

(a) The Commission Headquarters

There have been several restructurings within the Commission over the last two decades, which have also affected the EIDHR. The lead units on the EIDHR have several times changed their name/number and/or overall position. Importantly, since major reforms carried out under the Prodi Commission in 1999,¹⁰²² there have always been two lead units on the EIDHR. On the one hand, there is a political unit, responsible for strategic aspects of the programme, which was from 1999 on part of DG External Relations and then emerged from a unit on Human Rights in DG External Relations and a special unit dealing with Democratization, Good Government and Institutional Reform in DG Development.¹⁰²³ On the other hand, there is one operational unit, responsible for the implementation aspects of the EIDHR, which was, initially part of the 'Common Service Directorate' (usually referred to under its French name, Service Commune Relex or SCR and introduced under the Santer Commission in 1998), and from 2001 on, of the

¹⁰²⁰ Common Framework for Thematic Lines, at 6.

¹⁰²¹ Ibid, at Annex point 8. See also European Commission, *Europaid*, Consultation meeting with civil society organizations EIDHR 2011 Annual Action Programme, at 2.

¹⁰²² Criticism of the insufficient and inefficient structure was, in particular, made in the Lenz Report of the Committee of Foreign Affairs, Security and Defense Policy of the European Parliament, devoted to the topic, and by Alston and Weiler in their report for the Comité de Sages, which prepared a human rights agenda for the EU in 1999. Report on setting up a single coordinating structure within the Commission responsible for human rights and democratization, Committee for Foreign Affairs, Security and Defense Policy, European Parliament, Rapporteur Marlene Lenz, 4.12.1997, A4-0393/97; Alston and Weiler, 'An 'Ever Closer Union' in Need of a Human Rights Policy', at 35.

¹⁰²³ In DG VIII or DG Development, from the early 1990s to 1996 the unit in charge of 'International Organizations' took care of democracy and human rights programmes and from 1996 to 1998 a special, newly created unit on 'Democratization, Good government and Institutional reform'. It also managed programmes for the Mediterranean and Asia and Latin America. In parallel, there was a unit on 'Human Rights' in DG External Relations (first in DGI and, later in DGIA), which was responsible for the Phare and Tacis Democracy Programme. External Evaluation of Community Aid concerning positive actions in the field of human rights and democracy in the ACP countries, at 40-42.

newly established EuropeAid Cooperation Office (AIDCO or EuropeAid). Before 1998, the various mentioned political units were also responsible for the management of programmes, which led, due to staff restraints, to an extensive use of external bodies, so-called Technical Assistance Offices (TAOs).¹⁰²⁴ The Lisbon Treaty and the subsequent creation of the European External Action Service (EEAS), working under the High Representative of the Union for Foreign Affairs and Security Policy, brought about the most recent changes. The political unit dealing with the EIDHR is now positioned in the EEAS, in the Department for Human Rights and Democracy,¹⁰²⁵ while the unit responsible for the implementation of the EIDHR is positioned in the new DG Development and Cooperation – Europeaid, Directorate Human and Society Development (Unit 1 in DEVCO.DGA2.D).¹⁰²⁶

The EIDHR programming process starts when the politically responsible unit on the EIDHR in the Commission services or now in the EEAS begins to elaborate the major priorities of the SPs. In developing priority areas, this lead unit has to consult a wide range of other services in the headquarters of the Commission in Brussels. These other units should provide input about ongoing and implemented activities in the field, that is, under the EIDHR as well as under other programmes, and suggest priorities for the future SP. The units that primarily respond to the lead unit are the geographical departments in the EEAS, or before, in DG RELEX and DG Development, and in DG Development and Cooperation – Europeaid, or, before in Europeaid, which have expert knowledge about political situations in the target countries and ongoing assistance programmes and projects. They are also in a prime position to ensure that information gained in the framework of the implementation of other democratization tools feeds into EIDHR programming, like weaknesses exposed during EU EOMs, information gained in human rights dialogues, or insights from the Special Representatives, which has increasingly been called for in the last three years and as part of efforts to ensure ‘inter-pillar’ coherence.

In the case of the drafting of AAPs the lead unit in Europeaid takes the initiative to elaborate the more detailed aspects of the programmes as well as the individual action fiches. The units in EEAS are no longer involved in a leading role.

¹⁰²⁴ COM(2000) 200 final, at 5-6; External Evaluation of Community aid concerning positive actions in the field of human rights and democracy in the ACP countries, at 43f. A special TAO was the European Human Rights Foundation, created by the Commission upon initiative of the Parliament in 1980, that not only managed the Phare and Tacis Democracy Programme, but also carried out some other human rights-related work for the EC. Evaluation of the Phare and Tacis Democracy Programme 1992-1997 (November 1997), at 61.

¹⁰²⁵ European External Action Service, Graphic Representation, 16.2.2012, at http://www.eeas.europa.eu/background/docs/organisation_en.pdf.

¹⁰²⁶ See the organigram at http://ec.europa.eu/europeaid/who/documents/organigramme-devco_en.pdf (last accessed on 5.1.2012).

(b) The Delegations

At this stage the representations of the European Union in third countries come into play. While primary law only made scant reference to Commission delegations in third countries in ex-Article 20 TEU, the Treaty of Lisbon now expressly establishes so-called Union Delegations that work under the authority of the High Representative and represent the EU abroad (Article 221 TEU). The number of Delegations has increased over the last decade to 136 in 2012. Additionally, the Delegations have increasingly received responsibilities and competences to implement external assistance programmes, in particular following the major reform in external assistance of the early 2000s. This ‘deconcentration’ from Brussels to the Delegations is in line with the key principles of the Paris Declaration on Aid Effectiveness and reflects the idea that aid effectiveness can be increased by a stronger and permanent presence in target, developing countries. EU Delegations have over the last decade also increasingly been staffed with human rights and democracy experts and, in part, established specific administrative units – focal points – for these themes.¹⁰²⁷

The Delegations in the target countries are involved in the EU’s programming process via the geographical units in the Commission headquarters, which are responsible for a particular country or region. These units have to request the specific Delegations for their inputs on priorities of support for the next EIDHR SP.¹⁰²⁸ Their input is particularly important for the thematic priorities of the County Based Support Schemes (CBSSs), which are later on entirely administered by the Delegations rather than by the offices in Brussels. As mentioned, despite this decentralized implementation global priorities for all CBSSs worldwide are established by the Commission in the EIDHR SPs and AAPs. Delegation can subsequently diverge from these priorities and adjust them to the local context during implementation. Overall, this involvement of the Delegation ensures that the programming exercise is not simply a top-down exercise, but rests on strong input from the level of the countries concerned – even if it is still from within the Commission and not representatives of target states.

(c) Civil Society

The 2006 EIDHR regulation explicitly foresees that the Commission shall also involve civil society in the establishment of programming documents, in order for them to contribute to the exercise.¹⁰²⁹ It is explicitly foreseen that this should also happen at the level of the target states.¹⁰³⁰

¹⁰²⁷ See, for example, the operations section 1 on ‘good governance and democratization’ in the Commission Delegation in Ukraine; COM(2011) 886 final, at 17.

¹⁰²⁸ Common Framework for Thematic Lines.

¹⁰²⁹ See Art. 5(4), Art. 3(3) and (5), as well recital 17 of the 2006 EIDHR regulation.

At regards cooperation with civil society in Brussels, the Commission conducts a regular, informal dialogue with European NGOs and networks or platforms of civil society organizations working on human rights and democracy issues or on development more generally. There is no approved list of NGOs for this EU-civil society dialogue, but the major participating NGOs belong to the so-called Human Rights & Democracy Network (HRDN), an informal grouping of NGOs working at the EU level in the fields of human rights, democracy, and conflict prevention, that currently comprises of about 45 members. Additionally, the Commission invites the European Network of Political Foundations (ENOP), currently representing about 65 foundations, the European Peacebuilding Liaison Office (EPLO), a platform of about 30 NGOs working in the area of peacebuilding, and ITUC, the main international trade union organization.¹⁰³¹ The dialogue with these civil society organizations takes place 1-2 times per year, when the Commission invites these networks and platforms and organizations belonging to these groupings to a meeting.¹⁰³²

The influence of civil society in drafting SPs, which are the more crucial strategic documents, would be important to assess. Unfortunately, the Commission has not published minutes of meetings on discussions about SPs. There is only a good record of annual meetings on AAPs as well as on some meetings on specific Action Fiches or calls for proposals.¹⁰³³ These show a mixed result. On the one hand, there is, overall, a quite intensive exchange between the Commission and civil society organization on a broad range of issues which is due to the insider-knowledge of the organizations, also highly appreciated by the Commission.¹⁰³⁴ On the other hand, the meetings seem to be held at a point of time, when the planned operations have already been defined, no longer allowing NGOs to have a real input on the discussed AAP. Further, the meetings strongly appear as information sessions for European civil society, making it easier for the informed NGOs to apply under the next rounds of calls for proposals. Frequently, much time is spent for the Commission to justify certain decisions that have been taken. The NGOs and political foundations provide input, however, rather on technical than thematic issues, like on the time for launching calls or on shares of the overall project costs to be born by recipients.¹⁰³⁵ Requests in relation to the material focus of a call are also made, for example, demands for a stronger focus on and specific calls on the rights of the child, but could only be registered for future programming exercises.

¹⁰³⁰ Article 3(5) of the 2006 EIDHR regulation.

¹⁰³¹ http://ec.europa.eu/europeaid/who/partners/civil-society/dialogue_en.htm (last accessed on 5.1.2012).

¹⁰³² For a list of meetings since 2002 see http://ec.europa.eu/europeaid/what/human-rights/meetings_en.htm (last accessed on 5.1.2012).

¹⁰³³ Ibid.

¹⁰³⁴ See, for example, European Commission, Europeaid, Consultation meeting with civil society organizations on EIDHR 2011 Annual Action Programme, at 1.

¹⁰³⁵ Herrero comes to similar conclusions after interviews with a range of stakeholders. Herrero, at 43-4.

Civil society in the target states is involved in the programming process of SPs and AAPs when the Delegations, via the geographical units, submit information and suggestions to the lead EIDHR unit. Efforts have over the last years been made to ensure the involvement of local civil society in the programming process, by specific requests by the Commission headquarters to Delegations to carry out such consultations, and by providing additional funds for this purpose. However, it is not yet common practice for meetings between civil society and Delegations to take place everywhere.¹⁰³⁶

(d) The Member States

In order to ensure coordination with other donors, the Commission also has to exchange information with the Member States at an early stage in the programming process. Again, this is done in Brussels, through the involvement of Member States' experts posted to the Commission and through contacts with the permanent representations of the Member States in Brussels. In the target states, Union Delegations have meetings with representatives of the Member States' diplomatic or development missions. Similarly, the Commission regularly exchanges views with the European Parliament in order to ensure that comments and requests by this institution can flow into the programming process. As will be seen in a moment, there is a more intensive involvement of the European Parliament at a later stage in the programming process.

Once the numerous mentioned actors have provided input on various aspects of the future programming document, the lead unit in the Commission prepares a first draft of the document and circulates it among the mentioned services in the Commission. A so-called 'thematic team meeting' is held, bringing together all involved Commission units in order to get inputs into this draft document, which is, subsequently, revised. This leads to the finalization of the draft document by the lead unit.

(2) Quality control and comitology

In order to improve the quality of the programming process and programming documents, in September 2000, as part of the overall reform of external assistance, the various Commissioners responsible for external relations set up the already mentioned inter-service Quality Support Group (iQSG).¹⁰³⁷ It consists of officials from the various DGs and services and has the task of ensuring that SPs meet established requirements and quality standards, for example that they

¹⁰³⁶ European Commission, Europeaid, Summary of the civil society consultations on AAP 2009, at 2-3.

¹⁰³⁷ Commission, Reform of the Management of External Assistance, at 12.

sufficiently address all issues that need to be addressed in a programming document, ensure complementarity with and coherence of all external assistance programmes.¹⁰³⁸ Once this quality control has been made, the draft SP is sent to the responsible Member States' committee and to the European Parliament.

As in the majority of policy fields, the Council retains control over the Commission's use of implementing powers through the involvement of a Member States' committee in the adoption of programming documents, that is, SPs and AAPs.¹⁰³⁹ Article 17(1) of the 2006 EIDHR regulation sets up the so-called 'Democracy and Human Rights Committee' or DHRC, which is composed of one representative of each Member State and is chaired by one – non-voting – member of the Commission. For defining the particular type of committee, the same Article refers to the 1999 Comitology decision (Council Decision 1999/468/EC)¹⁰⁴⁰ and determines that the mentioned committee is a management committee and that the procedures established for such committees in the just mentioned decision apply (in particular Article 4 and 7 of Decision 1999/468/EC). Indeed, the general rules of the Comitology decision foresaw the management procedure for measures with substantial budgetary implications, as in the case of assistance.¹⁰⁴¹ On 1 March 2011 a new Comitology regulation, adopted on the basis of the Treaty of Lisbon by the Parliament and the Council, entered into force.¹⁰⁴² It replaced the management procedure by a so-called examination procedure, which from then on also applied to existing legislation, except for pending procedures.¹⁰⁴³ Under the 1999 EIDHR regulations, the respective committee, which was then called the 'Human Rights and Democracy Committee', was a regulatory committee, which implied a stronger position for the Member States.¹⁰⁴⁴

As mentioned, the DHRC receives the final draft of a SP and an AAP and discusses it in a time-frame established by the chairman of the Committee. Previously, under the 1999 EIDHR legal framework, the Committee had to decide on individual measures (beyond 1 million Euros) and on country- or regional programmes, as far as they existed, which meant a much higher workload, without being able to sufficiently influence the overall strategy. The Council therefore called for the relevant changes in the 2006 EIDHR regulation in order to be involved only in the programming of SPs and AAPs rather than to approve a long list of individual projects.

¹⁰³⁸ Common Framework for Thematic Lines, at 7.

¹⁰³⁹ See, for example, E. Vos, *50 years of European Integration, 45 years of Comitology*, Maastricht Working Papers Faculty of Law No. 3 (2009); D. Chalmers, G. Davies, and M. Monti, *European Union Law* (2nd ed. 2010), at 117f.

¹⁰⁴⁰ Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, 1999/468/EC, OJ 1999 L184/23.

¹⁰⁴¹ Art. 2(a) of Council Decision 1999/468.

¹⁰⁴² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ 2011 L55/13.

¹⁰⁴³ *Ibid.*, Art. 13 and 14.

¹⁰⁴⁴ Art. 13 and Art. 14 of the 1999 EIDHR regulations.

Decisions by the DHRC are taken by qualified majority, whereby the votes of each represented Member State are weighted according to the rules for qualified majority voting by the Council (Article 205(2) ECT, Art. 16(5) TEU, Article 238 TFEU, and Article 3 of the Protocol (No. 36) on Transitional Provisions annexed to the TEU).¹⁰⁴⁵ Overall, practice during the period 2007-2010, for which detailed data is available, shows that the DHRC basically never gave an unfavourable opinion on a draft Commission EIDHR document.¹⁰⁴⁶ The reason is the engagement with the Member States during the drafting phase and the conscious efforts by the Commission, not least in view of comitology, to take the views of the Member States into account as a priority.¹⁰⁴⁷

In any case, the specificities of each of the various comitology procedures lie in the procedures that follow an unfavourable opinion by the committee on the Commission proposal. In the case of the management procedure the Commission could adopt its decision despite an unfavourable opinion of the DHRC (adopted by qualified majority). The role of the committee was considered to be that of ‘fire-warning’, without being able to extinguish the fire.¹⁰⁴⁸ If this happened, the Commission had to communicate the disagreements to the Council, which could, within 30 days adopt a different decision. In the meantime the Commission could, but did not have to, defer the implementation of measures decided and go ahead with an SP or AAP. All in all, the Member States could therefore in principle replace the Commission’s decision with its own, however, only by a decision in the Council, not in the committee.¹⁰⁴⁹

According to the new examination procedure, the Commission is not allowed to take a decision, if the committee delivers a negative opinion. If the implementing act is considered necessary, the Commission can either submit an amended version of the draft implementing decision to the committee or submit the original draft to the newly introduced ‘appeal committee’. This committee basically replaced the Council, which is no longer directly involved in the examination procedure. The appeal committee is similarly composed as a regular committee and submits opinions in the same way as the regular committee. It can suggest amendments, which can or cannot be accepted by the chair of the committee, that is, the Commission representative. If the opinion of the ‘appeal committee’ is again negative, the Commission cannot adopt the act and it finally fails. All in all, the new procedures are, however,

¹⁰⁴⁵ See in this respect also the introduction of a new ‘dual majority system’ for Council majority voting, which, introduced by the Treaty of Lisbon, becomes, under reservation, applicable from 1.11.2014 on. See Art. 16 TEU and Art. 238 TFEU.

¹⁰⁴⁶ Report from the Commission on the working of Committees during 2010, COM(2011) 879 final, 12.12.2011, at 20; Report from the Commission on the working of Committees during 2009, COM(2010) 354 final, 2.7.2010, at 17; Report from the Commission on the working of Committees during 2008, COM(2009) 335 final, 3.7.2009, at 101; Report from the Commission on the working of Committees during 2007, COM(2008) 3844 final, 15.12.2008, at 82.

¹⁰⁴⁷ S. Hix, *The Political System of the European Union* (2nd ed., 2005), at 57.

¹⁰⁴⁸ D. Chalmers, C. Hadjiemmanuil, G. Monti and A. Tomkins, *European Union Law: Text and Materials* (2006), at 160.

¹⁰⁴⁹ Council Decision 1999/468, Art. 4.

due to the use of the appeals committee and the various possibilities to amend draft acts, geared towards achieving a jointly agreeable solution.¹⁰⁵⁰ While the Council has no formal role during the examination procedure, it can, due to its new right of scrutiny, at any time indicate to the Commission that, in its view, the Commission exceeds its implementing powers.¹⁰⁵¹ The Commission has to inform the Council (and the Parliament) of its intended actions. This right only applies in cases where the basic act has been adopted following the ordinary procedure.

The comitology decision and regulation foresee special rules for situations of urgency. A case in point is the urgent measures or *ad hoc* grants possible under the EIDHR programme, which allow for a quicker adoption of the decision by the Commission.¹⁰⁵²

It has been mentioned that the Parliament's view are already taken into account during the first stage of programming (Article 3(4) of the 2006 EIDHR regulation). Additionally, since 2006 the Parliament is also involved in the stage of comitology, even if in a different way and not to the same extent as the Council. Already the 1999 Comitology Decision gave the Parliament the right to be informed about various aspects of the comitology proceedings and, in particular, in cases in which the instrument was decided under the co-decision procedure, like the 2006 EIDHR regulation, to receive a copy of the draft measures to be adopted by the committee.¹⁰⁵³ The new Comitology regulation grants the European Parliament a more extensive right to information and the transmission of all draft implementing acts on which committees have to decide.¹⁰⁵⁴ Further, just like the Council's new general right of scrutiny inserted by the 2011 Comitology regulation, the Parliament was given this right in 1999. It therefore can, if the legislative act was adopted under the codecision or the ordinary legislative procedure, at any stage express its opinion, that the Commission has exceeded the implementing powers it was granted in the basic act to the Commission.¹⁰⁵⁵ The Commission, under no legal obligation to act in a specific way, only has to inform the other institutions of whether it intends to maintain, amend, or withdraw the draft implementing act.

Overall, the Parliament has over the last decade and, in particular, since an increasing number of issues are decided under co-decision, pushed for a greater role for itself in comitology procedures, not least because the Parliament's powers to control the adoption of implementing acts has not developed in the same way as its legislative powers. It suggested its own stronger involvement during the legislative procedure leading to the adoption of the 1999 EIDHR regulations, which was rejected by the Commission and Council and could, due to the use of the

¹⁰⁵⁰ Parliament and Council Regulation No 182/2011, Arts 5 and 6.

¹⁰⁵¹ Ibid, Art. 11.

¹⁰⁵² Ibid, Art. 8.

¹⁰⁵³ Council Decision 1999/468, Art. 7(3).

¹⁰⁵⁴ Parliament and Council Regulation No 182/2011, Art. 9(4).

¹⁰⁵⁵ Council Decision 1999/468, Art. 8; Parliament and Council Regulation No 182/2011, Art. 11.

consultation and cooperation procedures also not be pushed for by the Parliament.¹⁰⁵⁶ When the 2006 EIDHR regulation was drafted, the Parliament made a new effort of increasing its powers in implementation. One of the responsible parliamentary committees preparing a report, the Committee on Foreign Affairs, suggested the introduction of a so-called ‘structured dialogue’ that would have involved the Parliament in the implementation of the EIDHR programme in a similar way to comitology.¹⁰⁵⁷ Given the continued objections by the Commission and Council to such involvement, the plenum deleted the request in its final vote on the programme. More recently, has again tried to push for greater powers. It used a Commission proposal to amend the EIDHR regulation, which had to be adjusted as regards the question of the eligibility of using EU funds for taxes, to propose that SPs and AAPs should be considered ‘delegated acts’ according to Article 290 TFEU. In that case, the Parliament would on the basis of primary law be on an equal footing to the Council involved in the scrutiny of Commission implementing acts, like SPs and AAPs. The procedure, decided under the ordinary legislative procedure, made the establishment of a conciliation committee necessary. The eventually adopted regulation only made the necessary changes to the 2006 EIDHR regulation as regards taxes and duties, without accepting the Parliament’s demands as regards delegated acts. An attached statement by the Parliament and the Council made clear that the issue was not solved but postponed for the discussion during the adoption of new acts under the next multiannual financial framework.¹⁰⁵⁸

(3) The Formal Approval

The final step in the process of adopting SPs and AAPs is the formal decision by the Commission. It usually takes a collective decision, except where one of its members calls for a vote, in which case the Commission decides by majority voting.¹⁰⁵⁹

All in all, the programming process is a complex and lengthy process, which is steered and decided by the Commission and, due to its powers also strongly influenced by this institution.

¹⁰⁵⁶ European Parliament, Committee on Development and Cooperation, Recommendation for Second Reading on the common position established by the Council with a view to the adoption of a Council Regulation laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms (5240/1/99 - C4-0036/99 - 97/0191)(SYN)), 18.3.1999.

¹⁰⁵⁷ European Parliament, Committee on Foreign Affairs, Report on the proposal for a regulation of the European Parliament and of the Council on establishing a financing instrument for the promotion of democracy and human rights worldwide (European Instrument for Democracy and Human Rights)(COM(2006) 354 – C6-0206/2006 – 2006/0116(COD)), Rapporteurs: Hélène Flautre and Edward McMillan-Scott, at 39.

¹⁰⁵⁸ European Parliament and Council Regulation No 1340/2011. See the annexed Statement by the European Parliament and the Council on the use of delegated acts in the future multiannual financial framework (MFF) 2014-2020.

¹⁰⁵⁹ Commission, Rules of Procedure of the Commission, OJ 2000 L308/26, Art. 8.

The various Commission DGs, services and Union Delegations have much expert knowledge that flows into the programming process; however, the Commission is required to receive and also interested in receiving inputs from various other actors, that is, European and local civil society, the Member States, and the European Parliament. Regular contacts with European NGOs and foundations allows these actors to have a voice on SPs and AAPs; it is questionable though, whether they really have a say on crucial issues, like the definition of thematic priorities or whether their input is limited to more technical aspects of implementation. Member States are involved through a management committee and, since 1 March 2011, an examination committee, but in practice hardly (if ever) object to suggested SPs and AAPs, not at least because the Commission takes Member States preferences *a priori* into account. The European Parliament and, since the entering into force of the new Comitology regulation in 2011, the Council can scrutinize the draft programming documents on whether they do not go beyond implementing powers of the Commission.

ii. Programming the Mainstream Development Programmes

The programming process of mainstream development programmes has many similarities with EIDHR programming, but also crucial differences, in particular as regards the involvement of the public authorities of the target states. Such involvement has always been a standard element of development aid, but has over the last decade even intensified as part of the effort to render aid more effective, like in the OECD framework.¹⁰⁶⁰ Issues like the ownership of the development process and alignment to national development strategies are crucial here and also foresee, next to involving the final recipients of aid, like local businesses and civil society, a strong involvement of the target state's government.

The aim of this section is to briefly review the various stages of mainstream development aid programming, in particular, in order not to be repetitive, as regards those elements that differ from EIDHR programming. The high number of EU development programmes adopted and implemented during the last two decades does not allow a detailed discussion of each programme here. If provisions of individual regulations are exemplarily cited, reference should primarily be made to the DCI. It also covers the so-called thematic programmes that apply also in ENP states, in particular the thematic programme for 'Non-state actors and local authorities in development', which is one of the programmes that can be considered to contain a strong democratization-related element.

¹⁰⁶⁰ See the Paris Declaration on Aid Effectiveness and Accra Agenda of Action adopted in the framework of the OECD.

Programming in the case of the Mainstream Development Programmes

In the mainstream development programmes, the idea of strategic planning has been a topic much earlier than in the framework of the EIDHR. Basically all regulations adopted in the early 1990s already made reference to the establishment of multiannual programming documents. The terminology used for the individual programming documents, their exact content, and their duration, however, differed from regulation to regulation. For example, the ALA regulation of 1992 envisaged indicative, five-year programmes for each objective, country or, possibly, region; the 1996 MEDA programme spoke of three-year indicative programmes, which MEDA 2000 replaced by six-year Strategy Papers and three-year national and regional indicative programmes; and the 1999 Tacis regulation introduced national and multi-country indicative programmes with a duration of three to four years and action programmes with a duration of one to two years. None of these earlier regulations regulated in detail the exact content of the strategic documents and their detailed rules for adoption.

As already indicated, in the mid-to-late 1990s the OECD reviews of EU development aid, different evaluations by independent experts, and the Court of Auditors increasingly criticized the lack of aid effectiveness and identified the lack of sufficient strategic planning as one cause.¹⁰⁶¹ Consequently, as part of the broader reform of the management of the Commission's external aid programmes, the programming process was accorded more importance also in the framework of the mainstream programmes.¹⁰⁶² A uniform model and common procedure for the programming process were suggested by the Commission and welcomed by the Council in 2000 and should be applied to basically all external assistance programmes as well as the implementation of the EDF – the Common Framework for Strategy Papers.¹⁰⁶³ It has since then been updated and slightly revised in 2004, 2005 and in 2006, in particular with a view to introducing joint multiannual programming, that is, to allow a synchronization of EU and Member States' programming cycles and coordination of their activities. The new document is accordingly entitled: Common Framework for Drafting Country Strategy Papers and Joint Multiannual Programming.¹⁰⁶⁴

Given the large number of aid recipients, the overall number of SPs and other programming documents adopted over the last decade is high. Since the introduction of the Common Framework, two 'rounds' of adopting SPs can be distinguished. In the first half of the 2000s, most SPs covered the period 2002-2006 or 2003-2006, although there were also some

¹⁰⁶¹ For example, Court of Auditors, Special Report No 21/2000.

¹⁰⁶² Commission, Reform of the Management of External Assistance.

¹⁰⁶³ European Commission, SEC(2000) 1049.

¹⁰⁶⁴ Communication from the Commission to the Council and the European Parliament, Increasing the impact of EU aid: A common framework for drafting Country Strategy Papers and joint multiannual programming, COM(2006) 88 final, 2.3.2006.

covering shorter periods of time.¹⁰⁶⁵ MIPs adopted during that time covered periods of 2-3 years.¹⁰⁶⁶ In the following round of programming, SPs overall outlined a strategy for the time frame 2006-2013, in conformity with the multiannual financial framework. MIPs were adopted for the period 2006-2010 and 2011-2013.¹⁰⁶⁷ SPs for the thematic programmes, like relating to ‘Non-state actors and local authorities in development’, covered shorter periods (2006-2010, 2011-2013), as they formally do not envisage MIPs. Overall, the EU has over the last decade drafted over 200 SPs, over 400 MIPs, and 1000-odd AAPs.

The General Character of Mainstream Development Programming Documents

SPs in mainstream development programmes are adopted for countries – Country Strategy Papers (CSPs) – and regions – Regional Strategy Papers (RSPs) – and therefore have a focus on a clearly delimited area. At times, like in the case of Central Asia, one RSP regulates assistance to all five covered countries rather than just adding a regional component to several national programmes, as is usually the case with RSPs. Importantly, each CSP (and RSP) intends to outline a strategy for development, possibly including democracy assistance, in the particular state (or region) addressed.

Thematic programmes are more similar to the EIDHR. Although the individual operations will also be carried out in different countries or regions, the SPs for thematic programmes aim at identifying a single, international strategy with universal objectives that apply in all countries.

The Legal and Regulatory Basis for Programming Mainstream Development Programmes

Just like in the case of the EIDHR, the types, required content, and procedure for the adoption of strategic documents is regulated in the various acts of secondary law that establish the respective assistance programmes as well as the mentioned Common Framework for Strategy Papers of 2000 and 2006.

Due to the process of standardization in programming since the early 2000s, the various regulations now foresee very similar, but not necessarily identical rules for programming documents and procedures. Differences occur when, for example, individual programmes have a special focus, like the cross-border programmes under the ENPI, which do not exist under other programmes, and originate in the fact that the ENPI covers countries at the outer borders of the Union.¹⁰⁶⁸ The DCI regulation includes a separate Title (Title III) on programming, which

¹⁰⁶⁵ <http://eeas.europa.eu/sp/2002.htm> (last accessed on 10.2.2012).

¹⁰⁶⁶ Ibid.

¹⁰⁶⁷ http://eeas.europa.eu/sp/index_en.htm (last accessed on 10.2.2012).

¹⁰⁶⁸ ENPI regulation, Art. 6.

introduces the various types of programming documents to be adopted, sets out some programming principles, outlines the general character of the documents, their content, duration, and the rules for adoption (Article 18 – 22 of the DCI regulation). Different provisions refer to mainstream geographically focused programmes and to the various thematic programmes. The content and rules for adoption of annual action programmes is included in a separate title (Title IV, called ‘Implementation’).

The Common Framework for Drafting Country Strategy Papers and Joint Multiannual Programming of 2006 provides more detailed rules on the exact content of SPs and the process of adoption. Of particular interest for democracy assistance is that each CSP has to devote a section to analyzing the political situation in the country concerned, which involves a discussion of the human rights situation and requires identifying “priorities and objectives permitting progress towards respect for fundamental human rights”. Further, the CSP has to discuss the “observance of democratic principles”, in particular as regards the last electoral process, but also beyond.¹⁰⁶⁹ This required focus, while not able to ensure the inclusion of democracy assistance, necessarily, however, requires this topic to be considered.

Types of Programming Documents and their Essential Content: Strategy Papers, Multiannual Indicative Programmes and Annual Action Programmes

The basic programming documents of mainstream development programmes are the same as in the case of the EIDHR: Strategy Papers (SPs) and Annual Action Programmes (AAPs). Additionally, the mainstream development programmes explicitly foresee the adoption of Multiannual Indicative Programmes (MIPs), which take, in terms of specificity, a position between SPs and AAPs. It has been mentioned that SPs and, consequently, MIPs and AAPs are adopted for countries (CSPs) and for regions (RSPs). Additionally, there are SPs and AAPs for the thematic programmes, but, similar to the EIDHR no MIPs. Just like in the case of the EIDHR, the Commission can fund ‘special measures’ that are not foreseen in programming documents, but only in unforeseen and duly justified cases related to natural disaster, civil strife or crises (for example, Article 23 of the DCI regulation).

The DCI regulation is brief on the content of SPs, which are foreseen for individual countries, regions as well as for each of the five thematic programmes. Their purpose is to provide a coherent framework for cooperation between the EU and the target state or region, broadly defined, within the purpose and scope of the DCI regulation. They should cover no more than the period of validity of the DCI regulation, that is, from 2006 to 2013 and should be reviewed at mid-term or *ad hoc* if necessary. The DCI also lays down some general rules for the

¹⁰⁶⁹ COM(2006) 88 final, at 12-13.

adoption and implementation of SPs, such as that the principles of aid effectiveness have to be applied and are to be based on dialogue with the partner country and or region, including the level of civil society and regional and local authorities.¹⁰⁷⁰ Given that no MIPs are foreseen for the thematic programmes, the SPs for thematic programmes require a more detailed content and shall not only generally set out the strategy for the theme concerned, but also the EU's priorities, the international situation, and the activities of the partners.¹⁰⁷¹ The exact content of each Strategy Paper is outlined in the Common Framework for Country Strategy Papers of 2000 and 2006.

MIPs for geographic programmes under the DCI, drawn up on the basis of the SPs, shall set out the priority areas selected for funding, the specific objectives, the expected results, performance indicators, and an indicative financial allocation, both overall and by priority area. They shall be reviewed where necessary, for example if SPs are amended.¹⁰⁷² AAPs, next to repeating objectives and other elements of the MIPs, also contain a description of the operations to be financed and the management procedures.¹⁰⁷³

The DCI regulation allows for a quick procedure to review the various programming documents in emergency situations, including where there are threats to democracy and human rights, which makes a quick adjustment possible.¹⁰⁷⁴

Procedures in the Adoption of Programming Documents

Programming in the case of mainstream development programmes follows the same three broad stages as EIDHR programming.

First, there is the stage of drawing up the first version of the draft SP. The leading role is here played by the Union Delegation in the respective target state, which has the main responsibility for drawing up the draft SP. It works in close cooperation with the geographically responsible unit in the Commission headquarters in Brussels, that is, before the most recent restructuring, with the relevant units in DG RELEX and DG Development, since the reform, with the responsible departments in the EEAS. Just like in the case of EIDHR programming, this first stage involves extensive consultations with a broad range of actors. First and foremost – and different from the EIDHR – the SPs are established in cooperation with the target state's government. Each recipient state has a responsible administrative body and person, specifically created or appointed to act as a reference point for development and assistance issues. Such National Coordinating Unit or Point is often situated in the Ministry of Finance, Development,

¹⁰⁷⁰ DCI regulation, Art. 19 (1)-(3).

¹⁰⁷¹ Ibid, Art. 20.

¹⁰⁷² Ibid, Art. 19(4).

¹⁰⁷³ Ibid, Art. 22.

¹⁰⁷⁴ Ibid, Art. 19(5).

or Foreign Affairs, with the relevant minister being the responsible individual. Delegations keep a regular dialogue with these national contact points, as they constitute the key link to the target state's government. Secondly, efforts of donor coordination and aims of joint programming necessitate close cooperation with Member States as well as other major donors present in the target country. Interactions with these happen locally in Union Delegations, in regular or especially organized meetings, or in the headquarters in Brussels, via Member States experts working in the Commission. Thirdly, over the last decade there have been intensive efforts to involve civil society as well as public authorities at regional and local level in the programming process, in particular of local NGOs.¹⁰⁷⁵ In some regions, in particular the ACP region, these efforts have been stronger and have also been regularly assessed. For example, during the programming process of the 10th EDF, of about 64 countries analyzed, 33 had consulted non-state actors and local authorities in the drafting process, while 31 had only informed them of the events at a later stage in the process.¹⁰⁷⁶ A final draft SP is then circulated among the various Commission units of different DGs and services that can give further inputs, like DG Development and Cooperation – Europeaid and DG Trade. It leads to the finalization of the draft document by the responsible unit in Brussels.

The second stage consists of quality control by the iQSG. It is followed by the comitology procedure. Each assistance regulation establishes its own committee, without naming it specifically, and regulates its role in programming. As regards some of the applicable rules, reference is made to the Comitology decision of 1999, which foresaw the use of the management procedure in the case of all implementing acts with substantial budgetary implications, as in the case of assistance regulations.¹⁰⁷⁷ As discussed above, in 2011 this procedure was replaced by a so-called examination procedure, which from then on also applied to existing legislation, except for procedures pending.¹⁰⁷⁸ For the particular roles and powers of individual actors, reference shall be made to the discussion of the EIDHR.

The European Parliament is involved through its right of scrutiny, which it has since the adoption of the new assistance regulations under the co-decision procedure in 2006 – a precondition for the right – taken very seriously.¹⁰⁷⁹ Rather than just pointing to issues that the Parliament considers an overstepping of its implementing powers, it has usually resent draft SPs to the Commission with a large number of suggested amendments and called for the withdrawal

¹⁰⁷⁵ Ibid, Art. 19(3) and (8).

¹⁰⁷⁶ European Commission, DG Development, Non-State Actors (NSA) and Local Authorities (LA) Consultation in the Elaboration of the 10th EDF Country Strategy Papers in ACP Countries, at 4.

¹⁰⁷⁷ Art. 2(a) of Council Decision 1999/468/EC.

¹⁰⁷⁸ Parliament and Council Regulation No 182/2011, Art. 13 and 14.

¹⁰⁷⁹ Council Decision 1999/468, Art. 8; Parliament and Council Regulation No 182/2011, Art. 11.

of SPs when, for example, a single focus area was chosen or a high share of the funds were reserved for few objectives.¹⁰⁸⁰

After quality control, comitology and the involvement of the Parliament, amendments are made to the draft SP or it is finalized by the Delegations in agreement with the governments of the recipient states.

Finally, there is the decision on the Strategy Paper by the Commission. The SPs are, in principle, not signed as an agreement with the target state's government. However, the MIPs should, if possible, be subject to an agreement with the country or region.¹⁰⁸¹

d) Project Identification and Formulation (with a Financing Decision)

Project identification refers to the process of identifying project or programme ideas that are consistent with the SPs, to assess their relevance and feasibility, and to prepare financing proposals. Formulation relates to the process of preparing more detailed project designs, including detailed decisions on management arrangements, financing plans, monitoring, etc. There are differences between different programmes and projects types, which should be neglected here.¹⁰⁸²

i. Project Identification under the EIDHR

The currently two prevailing forms of project identification under the EIDHR are, primarily, 'calls for proposals', in the case of which the Commission publicly asks a clearly defined group of actors to suggest, until a certain date, projects that fall within a more or less broadly defined thematic scope, and, secondarily, identification by the Commission or by a selected partner (targeted projects), in the case of which project ideas emerge and are further developed by the Commission or any third party. Until the late 1990s a third mode of project selection – the provision of grants upon spontaneous applications by NGOs – was also used, in particular in Latin America, Africa, and the Mediterranean states.¹⁰⁸³ It was appreciated for its flexibility and increased interaction between Commission Delegations and applicants. However, for lack of

¹⁰⁸⁰ See, for example, European Parliament resolution on the draft Commission decisions establishing Country Strategy Papers and Indicative Programmes for Malaysia, Brazil and Pakistan, P6_TA(2007)0045, B6-0067/2007.

¹⁰⁸¹ DCI regulation, Art. 19(4).

¹⁰⁸² European Commission, Project Cycle Management Guidelines, at 27f and 33f.

¹⁰⁸³ Court of Auditors, Special Report No 12/2000, at 13-5; COM(95) 191 final, at 15; COM(96) 672 final, at 37. For MEDA Democracy see: Final Report, Implementation of the MEDA Democracy Programme 1996-1998 (April 1999); for ACP states see: External Evaluation of Community Aid concerning positive actions in the field of human rights and democracy in the ACP countries 1995-1999 (28 August 2000), at 42.

transparency it was first restricted by the Commission in 1998 and, eventually, legally excluded by the Financial Regulation of 2002.¹⁰⁸⁴

The Financial Regulation 2002 also rendered calls for proposals the primary form of project identification.¹⁰⁸⁵ Formulation by the Commission or the choice of a project developed by a third actor without a call were legally made exceptional instruments, only allowed “in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary leave no other choice for a given action”.¹⁰⁸⁶ The 2006 EIDHR regulation uses this exception for allowing the Commission to adopt the already introduced special measures in case of exceptional circumstances, usually referred to as an urgent measures, and to provide *ad hoc* grants to human rights defenders as urgent protection mechanism.¹⁰⁸⁷ Further, the provision is relied on when contributions are made to projects or funds of UN agencies, which classify as unique actors. The underlying motivations for the restrictions on targeted projects were increasing critique of the lack of transparency surrounding the Commission’s choice of projects and partners, including by the Court of Auditors.¹⁰⁸⁸

The advantages of calls for proposals include the use of expertise of key actors in the field to identify problems and to offer possibly new and innovative solutions and methods of implementation (‘demand-led approach’).¹⁰⁸⁹ The Commission has pointed to several other positive features of the model, such as ensuring ownership, a crucial factor for aid effectiveness, that they give visibility to EU action and to the topic of democratization more generally,¹⁰⁹⁰ that they involve competition that improves the quality of projects, and that they mobilize a broad range of actors for democratization.¹⁰⁹¹ They are also a cost-effective way of project identification and are therefore, to a certain extent, an administrative necessity. Last but not least, calls for proposals ensure higher transparency in the provision of EU funds.¹⁰⁹² The obvious disadvantage of calls for proposals is the EU’s dependence on proposals and the inability to guarantee the implementation of projects in clearly identified areas. The advantage of targeted projects is the

¹⁰⁸⁴ European Commission, Vade-mecum on Grant Management (1998), at 19; Report from the Commission to the Council and the European Parliament on the implementation in 1993 of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy, and development, adopted on 28 November 1991, COM(94) 42 final, at 7.

¹⁰⁸⁵ Financial Regulation of 2002, Art. 110(1).

¹⁰⁸⁶ *Ibid.*

¹⁰⁸⁷ 2006 EIDHR regulation, Arts. 7 and 9.

¹⁰⁸⁸ Court of Auditors, Special Report No 12/2000, at 15.

¹⁰⁸⁹ European Commission, European Initiative for Democracy and Human Rights Programming Document 2002-2004, at 12. From now on referred to as EIDHR Programming Document 2002-2004.

¹⁰⁹⁰ COM(96) 672 final, at 37.

¹⁰⁹¹ Commission of the European Communities, Report on the implementation of measures intended to promote observance of human rights and democratic principles in external relations for 1996-1999, COM(2000) 726 final, Brussels, 14.11.2000, at 81.

¹⁰⁹² Court of Auditors, Special Report 12/2000, at 15.

just mentioned disadvantage of calls, that is, the ability to (quickly) address problems identified as particularly important.

As mentioned above, the strong use of calls for proposals in the implementation of the EIDHR meant that (potential) aid recipients were given an important role in this process. Even if the EU, in cooperation with consulted actors, like civil society organizations, determines thematic focus areas and allocated funds and took the final decision on projects (based on a framework of quality criteria), its decisions were conditioned by the submitted proposals.

ii. Project Identification under the Mainstream Development Programmes

Project identification under the mainstream programmes is more diverse. First, an increasing part of the available budget is delivered via budget and sector support, which leaves it to the recipient state to formulate individual programmes and projects, while the EU only remains involved at a general level. Secondly, the Commission, in particular the Delegation present in a country in question, identifies a programme or project in cooperation with the government or the target state. Third actors, like international organizations such as the OSCE or UN, can at this stage already be involved and would at a later stage also be made responsible for the further formulation and implementation of a programme or project. Thirdly, once a project is identified, the Commission or, in the case of decentralized management, the target state, launches a call for tenders to identify an actor that, on the basis of a service contract, further formulates details of a project and implements it. Fourthly, mainstream development aid can also foresee programmes that are eventually implemented through calls for proposals, just like the EIDHR. At times, individual projects, if they are comprehensive, can involve various of the just outlined models of project formulation.¹⁰⁹³

e) Technical Implementation (i.e. implementation in a more limited sense)

Once projects are formulated, the Commission takes a financing decision and signs a contract with the implementing organization or body. Chapter 6 will analyze several aspects of this stage of technical implementation of the EIDHR in some more detail, in particular, project types, project sizes, and partners in implementation. Due to the enormous number of projects under the mainstream programmes, the fact that many of these programmes are implemented by the

¹⁰⁹³ See, for example, Action Fiche No 1 for Kazakhstan, 2011 Annual Action Programme for Kazakhstan and other AAPs published at http://ec.europa.eu/europeaid/work/ap/aap/2010_en.htm (last accessed on 10.2.2012).

target states and not by the EU, and the lack of detailed information, a similar analysis cannot be provided for democracy assistance under the mainstream programmes.

f) Evaluation & Audit

The last stage in the project cycle is the process of evaluation, that is, a systematic and objective assessment of an ongoing or completed project, its design, implementation and results.¹⁰⁹⁴ Evaluation is a complex topic that cannot be discussed here in detail. The major assistance regulations, like DCI and ENPI, and the 2006 EIDHR regulation, explicitly foresee that the Commission ‘regularly’ evaluates the respective programmes, where appropriate by means of independent external evaluators.¹⁰⁹⁵ The Council and the Parliament can suggest such evaluations to be carried out, which the Commission should take into account when deciding about its annual work-programme concerning which programmes and project should be evaluated during a particular year. Results should be communicated to the Parliament and the relevant committee established by the regulation. Importantly, the regulations also explicitly call for the results to “feed back into programme design and resource allocation”.¹⁰⁹⁶ The Commission has set up a unit responsible for evaluations, that has developed its own approaches and methodologies, which it expects those who evaluate EU programmes to follow.¹⁰⁹⁷ As indicated, as not each programme and project can be evaluated each year, the Commission makes a choice in an annual work-programme, decided by various Commissioners, in particular those responsible for Development and the ENP, and, formerly, for External Relations.¹⁰⁹⁸

Of the numerous reports on evaluations, funded by the EU but carried out by external, independent experts and published by the Commission (DG Development and Cooperation – Europeaid), either on the general website of the evaluation unit or in the specific section on the EIDHR,¹⁰⁹⁹ very few explicitly and exclusively focused on EU democracy assistance, in particular from evaluations carried out more recently. Those which did, are four evaluations carried out in the late 1990s: the evaluation of the Phare/Tacis Democracy Programme (1997),¹¹⁰⁰ the evaluation of the MEDA Democracy Programme (1999),¹¹⁰¹ the evaluation of the EIDHR micro-

¹⁰⁹⁴ Project Cycle Management Guidelines, at 46.

¹⁰⁹⁵ DCI regulation, Art. 33, ENPI regulation, Art. 24, 2006 EIDHR regulation, Art. 16.

¹⁰⁹⁶ For example, DCI regulation, Art. 33.

¹⁰⁹⁷ Currently, the responsible unit ‘Evaluation’ is part of DG Development and Cooperation – Europeaid, Directorate B Quality and Impact. For its methodology see http://ec.europa.eu/europeaid/how/evaluation/methodology/index_en.htm (last accessed on 10.2.2012).

¹⁰⁹⁸ http://ec.europa.eu/europeaid/how/evaluation/work_programme/index_en.htm (last accessed on 10.2.2012).

¹⁰⁹⁹ http://ec.europa.eu/europeaid/what/human-rights/studies_evaluations_en.htm (both last accessed on 10.2.2012).

¹¹⁰⁰ Evaluation of the Phare and Tacis Democracy Programme 1992-1997 (1997).

¹¹⁰¹ Final Report, Implementation of the MEDA Democracy Programme 1996-1998 (April 1999).

project facility (2001)¹¹⁰² and, at least in part, the evaluation of ‘Positive Actions financed by the EC in the fields of Human Rights and Democracy in ACP States’ 1995-1999 (2000).¹¹⁰³ Further, in the early 2000s, the Commission commissioned the production of a kind of review report on all previous evaluations that related to external human rights and democracy support.¹¹⁰⁴ Several other reports only touch upon the topic of democracy assistance. First, the Commission has, next to the just referred to evaluation of positive actions on human rights and democracy in ACP states also asked for at least one further broad evaluation of EU human rights assistance, published in 2011, which also to a larger or minor extent addresses programmes and projects in the sector of democratization.¹¹⁰⁵ Secondly, over the last years, several studies on the implementation of the EIDHR programme in individual countries and one region have been carried out, in particular in Russia, Georgia, Ukraine, Angola, Sri Lanka, and the Andean Community, which to some extent cover democracy assistance projects. They do not, however, provide a detailed study thereof, as the focus is usually on individual human rights projects.¹¹⁰⁶ Thirdly, some evaluations of individual, larger projects cover democratization-related assistance, like a study on a joint EU-Council of Europe project in Russia and Ukraine.¹¹⁰⁷ Finally, various broader evaluations of mainstream programmes, like ALA, Tacis, MEDA, and of thematic programmes, like Tacis-LIEN and of Budget line B7-6000 (Co-financing with NGOs), at times shed some light on the democracy elements of that assistance programme, but usually only to a very minor extent.

Overall, there is strong need for specific, country focused analysis of EU democracy assistance, like a study on EU democracy assistance in Russia, Ukraine, Egypt etc., covering assistance under the EIDHR and mainstream programmes. Additionally, the specific democracy components of the EIDHR should be the subject of a separate evaluation, just as other thematic features of the EIDHR have given rise to assessments on subjects like human rights, the ICC and torture, as well as each mainstream programme.

The Court of Auditors, which has the task to audit the EU’s financial affairs, including the external assistance programmes, has published various special reports on individual assistance

¹¹⁰² Eva-EU Association, Evaluation of the Micro-Projects Facility operating under the European Initiative for Democracy and Human Rights (October 2001).

¹¹⁰³ External Evaluation of Community Aid concerning Positive Actions in the Field of Human Rights and Democracy in the ACP countries 1995-1999 (28 August 2000).

¹¹⁰⁴ Synthesis Report on EC Activities in the Field of Human Rights, Democracy and Good Governance (10 August 2001).

¹¹⁰⁵ Thematic Evaluation of the European Commission Support to Respect of Human Rights and Fundamental Freedoms (2011).

¹¹⁰⁶ All mentioned evaluations, as well as others focusing on thematic issues under the EIDHR, are published at http://ec.europa.eu/europeaid/what/human-rights/studies_evaluations_en.htm (last accessed on 10.2.2012).

¹¹⁰⁷ Joint Programmes between the EC and the Council of Europe for strengthening federal structures and local government, introducing human rights protection mechanisms, and supporting reforms of the law and legal system in the Russian Federation and Ukraine (September 2000).

programmes or thematic issues (on the basis of Art. 287(4) TEU). Not infrequently, criticism in such reports has provided an additional push for changes, like in the case of the major RELEX reform in the early 2000s.¹¹⁰⁸ There are few reports specifically dealing with democracy or human rights assistance, with the major exception of Special Report No 12/2000 on this topic, and a report on an election observation and assistance mission.¹¹⁰⁹ However, there are several reports dealing with question of aid implementation, which are of relevance to democracy assistance.¹¹¹⁰ Further, the numerous reports on mainstream development programmes at times touch on the topic.

III. Conclusion

Chapter 5 has focused on the major steps in the policy cycle of EU democracy assistance, distinguishing between the stage of policy-making and policy-implementation. Its main aim has been to provide a general overview of the various steps taken from the inception of the idea of democracy assistance to the final evaluation of a project, to identify the most crucial acts adopted at each stage, to highlight the role and relative importance of EU institutions and other actors in the process, and to do discuss the underlying procedures used for the adoption of these acts.

As regards policy-making in democracy assistance, Chapter 5 has exposed that the field of EU democracy promotion and assistance is not a field dominated by new forms of governance that have become increasingly widespread over the last fifteen years, but a field in which policy-making very much occurs according to the classic, although ‘refined’ Community or supranational method. This implies, at a basic, underlying level, that the adoption of secondary law and the acts of adopted secondary legislation constitute crucial elements in EU policy-making. The EIDHR regulation and the various mainstream development regulations provide, although not regulating everything in detail, important basic principles and guidelines on the policy and its implementation. Further, and this is what the concept of ‘Community method’ more directly refers to, law is made by the three EU institutions, Commission, Council, and the European Parliament, according to the traditional powers attributed to them in Treaties: The Commission initiates legislation through a legislative proposal and the two legislative institutions; Council and Parliament adopt an act of secondary law according to the foreseen legislative procedure.

¹¹⁰⁸ Court of Auditors, Special Report No 21/2000.

¹¹⁰⁹ Ibid; Court of Auditors, Special Report No 4/96 on the accounts of the European Electoral unit set up by the Joint Common Foreign and Security Policy Action concerning the observation of the Palestinian elections.

¹¹¹⁰ Court of Auditors, Special Report No 12/2000; Court of Auditors, Special Report No 10/2004 concerning the Devolution of EC external aid management to the Commission Delegations.

Features of the ‘refined’ character of the outlined Community method are, first, the increasingly strong involvement of the European Parliament in the legislative process, which has, especially been achieved through the introduction legislative procedures that increase the powers of that directly elected institution. The Parliament has clearly used its powers to influence the structure and content of assistance regulations, in particular the 2006 EIDHR regulation. Secondly, while civil society has always played a strong role in implementation, it has over the last decade also been increasingly integrated in the policy making process, in particular, through its consultation on the legislative proposal for the EIDHR.

Law-making is not, however, the only process in democracy assistance-related policy making. The three above-mentioned institutions also provide input into policy-definition through non-legally binding conclusions, reports, and resolutions that have continued to add basic principles and guidelines on the policy in an inter-active process. Indeed, throughout most of the 1990s, these non-binding documents were the only papers outlining the policy, as the first EIDHR regulations were only adopted in 1999. Chapter 5 has shown that all three institutions have contributed a high number of policy-papers, either in response to the initiative of others or upon their own and have in this way contributed to the development of the policy. There have been periods when the Commission and the Parliament have dominated the field; more recently the Council has shown strong interest in tabling policy-initiatives, although mainly with a focus on inter-pillar issues and questions of coherence, rather than on defining the policy tool of democracy assistance in more detail.

The second main part of Chapter 5 has addressed the various stages of implementation in EU democracy assistance. It has initially introduced the currently used three types of aid delivery – the project, macro (or budget), and sector approach – and mentioned that the EIDHR is, due to its very character basically exclusively implemented through the project approach and therefore through programmes and projects in the formulation and implementation of which the EU retains a crucial role. Assistance provided through mainstream programmes can also be provided via the other two approaches, which largely foresee a transfer of funds into the budget of the target state and in general involve a stronger role of the recipient government. However, detailed data on how much democracy assistance is channeled through budget and sector support is unknown.

Further, in outlining the various standard stages of an EU project, Chapter 5 has mainly concentrated on the programming phase. It was defined as the process of developing, on the basis of secondary law and non-binding policy documents, a more concrete EU strategy or plan for assistance during a particular period of time that involves, in particular, the selection of more specific thematic objectives and the allocation of funds for each objective in order to reach a

specific goal. Programming has been accorded more importance and has been developed since the early 2000s, when strong critique of the lack of aid effectiveness was, amongst others, related to lack of strategic programming. One central element in this reform was the introduction of standard models for the programming of geographical and thematic programmes and quality control. Given important differences, the EIDHR and the mainstream programmes were looked at separately.

Since the early 2000s EIDHR programming involves the adoption of strategic documents. Initially these were called 'Programming' documents; since 2007 the EU works with Strategy Papers (SP) with a duration of 3-4 years and Annual Action Programme (AAPs). In practice, SPs also include a section on multiannual programming. The EIDHR SPs have been drafted with a global perspective and aim to provide a strategy for the implementation of the EIDHR programme rather than to provide a whole range of individual, targeted democracy and human rights strategies for all target countries. In other words, the SP presents a number of thematic objectives that should be implemented in all target states worldwide. Possibilities to adjust this global strategy to local circumstances are provided through, first, a relatively broad definition of focus in the case of Country Based Support Schemes (CBSS), EIDHR sub-programmes that are implemented by the Union Delegations, and secondly, by allowing Delegations to make adjustments. The Commission has recently indirectly criticized the – in its own words – 'one size fits all approach' and intends to draft individual human rights strategies for all third states that should serve as guiding tools. Their relevance for democracy assistance and EIDHR programming remains to be seen. It should be stressed though that the programming process, although this might appear, so is no top-down process, but that the global focus areas are determined on the basis of input from below.

The drafting of SPs and AAPs is steered by the Commission and belongs to one of its key executive tasks. It launches the process and takes the final decision on the document. In the Commission itself, several units and services are contacted to participate in the drafting process, including the Union Delegations in the target countries. The Commission is obliged, by the EIDHR regulation, to involve several other actors. Consultation meetings with European civil society are held in Brussels. Rather than having a major say on substantive issues, the participating civil society organizations appear to be mainly involved as a group of prospective recipients of assistance. Their input is predominantly on technical issues, which are important, but less so for strategic issues. Civil society in the target state has to be involved through the Union Delegations, but is not yet systematically invited to discuss EIDHR programming documents.

Coordination is sought with Member States aid programming through contacts with the Member States in Brussels and in the target states. Additionally, a management committee and – since the most recent reform of comitology in March 2011 – an examination committee ‘assists’ the Commission and has to give an opinion on the draft SP and AAP. The Council and now, the new appeals committee, can block a Commission SP or AAP. In practice, that basically never happens. The Parliament has, since the 2006 EIDHR regulation was adopted with the use of the co-decision procedure, a right of scrutiny, which allows it to communicate to the Commission when it considers the Commission exceeds its implementing powers. Since March 2011, the Council has the same right.

Mainstream development programmes, basically all of which envisage democracy assistance, are transformed into more detailed strategies in Strategy Papers (SPs), Multiannual Indicative Programmes (MIPs), and Annual Action Programmes (AAPs). Overall, there are many similarities with programming the EIDHR. The most important difference is that the target country’s government has to be involved in the programming exercise and indeed, is the core partner of the Delegation in the elaboration of the SPs, MIPs and AAPs. Usually, MIPs result in an agreement between the EU and the focus country.

Next to the programming process, Chapter 5 has briefly addressed the other major stages of implementation. It has briefly mentioned that EIDHR projects are predominantly formulated in calls for proposals and therefore allow the final recipients of grants a strong voice in the final distribution of funds among thematic priority areas. Mainstream development projects are formulated in more diverse ways. Finally, the chapter has briefly pointed to the lack of evaluations of EU democracy assistance.

Chapter 6: Democracy Assistance under the EIDHR: An Analysis of the EU's Specific Programme for Democracy Assistance

I. Introduction

Chapter 6 analyses the EIDHR, the EU's specific programme for EU democracy and human rights assistance and aims at exposing several key features of the EU's overall strategy of democracy assistance that derive from the EIDHR. The Chapter addresses four broad topics. It first provides a quantitative account of the EIDHR that gives insight into the development of financial commitments and expenditure since the inception of EU activities in the fields covered by the EIDHR. The second topic addresses the thematic distribution of EIDHR funds, which is the core question of any democracy assistance strategy. It presents in which of the various sub-fields of EIDHR democracy assistance the EU has concentrated its efforts and thereby exposes the EU's primary approach to democracy assistance, i.e. whether, following Thomas Carothers' categories introduced in Chapter 2, it is rather a political or developmental approach. Thirdly, Chapter 6 analyses the geographical focus of the EIDHR, addressing the distribution of funds among major world regions and countries. A last set of questions focuses on three topics relating to the stage of implementation of the EIDHR programme: project identification, project types and implementing partners.

The Chapter adopts a 'macro' view, analysing the EIDHR in a global perspective as programme implemented in a large number of countries and presenting globally valid guidelines, substantive contents, and distributions, rather than a 'micro' perspective focusing on individual countries. Such a macro view has limitations, as aggregate, global data does not necessarily reflect the exact EU strategies in individual states, which are the main target of democratization policy. Nevertheless, the global perspective is also legitimate, as the EU works with globally valid EIDHR principles and guidelines that are in the phase of implementation translated into the national context. At the same time, the global perspective constitutes by itself a relevant part of the overall jigsaw of EU democracy promotion through assistance.

The scope of the analysis covers in part the entire EIDHR, in particular if data is only available for the entire programme, and in part EIDHR democracy assistance only, that is, that part of the EIDHR that is primarily promoting democracy rather than human rights or another

issue. As regards the frame of analysis, the Chapter attempts to be as comprehensive as possible and to cover the period since the start of democracy assistance and 2011. However, the absence of available data provided by the EU has in many sections restricted the analysis to shorter periods of time, in particular to the period 2000 to 2006. Finally, it should be noted that lack of comprehensive, accurate and transparent reporting by the Commission during some periods renders some analysis of this Chapter very difficult. Overall, the Commission has fallen short of its obligations on reporting foreseen in Articles 18 and 19 of the various EIDHR regulations, in particular since 2006, when the new EIDHR regulation stipulated more detailed criteria on the details of reports.

II. An Analysis of the EIDHR

1. A General Quantitative Account of the EIDHR

As indicated in Chapter 2, it is possible to distinguish between two types of quantitative data on EU assistance. First, there is data on how much money the EU is willing to or plans to provide each year for democracy and human rights assistance. It is to some extent expressed in the so-called ‘financial envelopes’ included in assistance regulations, which mention the overall amount available for a programme during the time of duration of the respective regulation, and, even more importantly, in the so-called ‘commitment appropriations’ entered into the annual EU budget. These commitment appropriations are legal pledges by the EU to provide a certain amount of funding for a programme or certain activities during a particular financial year.¹¹¹¹ Secondly, there is quantitative data on how much the EU has in fact spent for democracy and human rights assistance during particular years, (ideally) documented in regular implementation reports and/or project lists.

Both types of data are legitimate representations of EU activities. The first constitutes an important political signal by the three major EU institutions, which together decide on the budget, of the relevance accorded to EU democracy assistance. The second is relevant because it shows what the EU has actually been doing. Commitment data is comprehensive, transparent and easily available, while expenditure data is, due to problems in reporting, difficult to obtain.

In principle, the two sets of data on planned and actual expenditure should – in the long run – largely be identical, as all committed funds should eventually be spent. Exceptions apply to the small part of funds that are de-committed either because changed circumstances in third

¹¹¹¹ For an explanation of budgetary terms, see http://ec.europa.eu/budget/index_en.cfm (last accessed on 20.5.2011).

states render the implementation of a project impossible, or because the disbursement appears for administrative reasons highly unlikely, like when delays in implementation have resulted in high amounts of non-disbursed funds that stretch back many budgetary years. Although detailed data on de-committed EIDHR funds has not been published systematically, it overall appears to be rather small. One known example was the de-commitment of about 24 million Euros of the 1998 budget, intended for micro projects,¹¹¹² which were not contracted in time due to administrative problems.¹¹¹³

It is important to stress that comparisons between the data on EIDHR commitments and expenditure are problematic. As mentioned, the implementation of a particular budget does not entirely happen during the same budgetary year, but usually stretches over a longer period of time and differs from project to project and from year to year.¹¹¹⁴ According to the Commission, between 1999, 2000 and 2001 it took on average 3.85, 4.09, and 4.52 years respectively, to pay committed funds under the EIDHR. In 2002 the average time was reduced to 2.54 years,¹¹¹⁵ and the more recent ‘2003-2006 project list of EIDHR signed contracts’ implicitly suggests an even shorter delay of 1-2 years only, which is also due to new financial rules.¹¹¹⁶ Overall, with awareness of the difficulties in comparing commitment and expenditure data and taking an average time of delay of 2-3 years into account, it appears that at least during the period 1990-2004 the large majority of committed funds were actually disbursed.

a) EU Budgetary Commitments for the EIDHR

As mentioned in Chapter 4, any lawful EU expenditure requires, next to the usually needed authorizing basic act of secondary law, to be entered into the EU budget, adopted annually in a special legislative procedure. Accordingly, any amount foreseen for EU democracy and human rights assistance has from the beginning on – even before the adoption of basic acts in 1999 –

¹¹¹² European Commission, Commission Staff Working Document, Report on the implementation of the European Initiative for Democracy and Human Rights in 2000, SEC(2001) 801, 22 May 2001, at 71-2; EIDHR Programming document for 2005 and 2006, Annex 1, at 34.

¹¹¹³ According to the then applicable 1977 Financial Regulation, they had to be contracted by the end of the following year at the very latest.

¹¹¹⁴ On delays and RALs (*reste à liquider*), which refers to outstanding unpaid commitments, see: European Commission, Annual Report 2004 on the European Community’s development policy and external assistance, at 138 and European Commission Annual report 2003 on the European Community’s development policy and the implementation of external assistance in 2002, at 218f.

¹¹¹⁵ European Commission, Annual report 2003 on the European Community’s development policy and the implementation of external assistance in 2002, at 218f.

¹¹¹⁶ The Financial Regulation of 2002 foresees that not used appropriations are not transferred into the next budget and that contracted funds have to be disbursed until the end of the following year. 2002 Financial Regulation, Art. 9.

been included as ‘commitment appropriations’ in the annual EU budget.¹¹¹⁷ The entry for the EIDHR is made in the budget’s section on Commission ‘Expenditure’, however, its exact position has changed several times over the last two decades. Most importantly, between 1996 and 2003, the EIDHR had its own, famous Title B7-7, which was part of Section B7 on ‘External Actions’ and was subdivided into Chapters, Articles, and Items. Since a major budget restructuring in 2004, the appropriations for the EIDHR are in Chapter 19 04, which forms part of Title 19 (‘External relations’) of the Commission’s budget, and which is, as before, subdivided into Articles and, sometimes, into Items.

Table 10 provides the ‘commitment appropriations’ entered into the EU budget for the EIDHR and its forerunners for the period from 1978, when appropriations were first entered for human rights projects, and 2011. Importantly, it is therefore not only concerned with democracy assistance *per se*, but with all sectors covered by the mentioned programmes, in particular also what the EU considers human rights and conflict-related programmes/projects. It needs to be stressed that it is impossible to provide data on budget commitments for EIDHR democracy assistance only, as the EU budget has hardly ever explicitly distinguished between democracy and human rights assistance. Table A, included in the Appendix, contains a more elaborate version of Table 10 and lists the titles of the various programmes funded each year and their individual allocations.

Table 10 shows the significant increase of EU activities in the field of democracy and human rights promotion since their beginning in the late 1970s. EU commitments increased from 200.000 Euros for the EC’s first human rights-related projects in 1978 to 157.7 million for human rights and democracy-related EIDHR projects in 2011. They more than tripled between 1994, when the ‘European Initiative for Democracy and Human Rights’ first appeared as budget Chapter with individual headings, and 2011, in total augmenting from 45 to 157.7 million Euros. According to the financial envelopes discussed in the next section, annual allocations of about 158 million Euros can also be expected until 2013. All in all, the increase between 1978 and 2011 was, as regards the individual budget-lines for specific programmes and as regards the overall annual commitments for the EIDHR, a rather constant one. Once a budget line was inserted into the budget it usually remained equal during certain periods, grew by 50% or even 100% during other periods, but only very exceptionally considerably decreased or was abolished. In those few cases where budget-lines were abolished, they were usually incorporated into broader,

¹¹¹⁷ The budget also includes so-called ‘payment appropriations’, which stipulate how much is authorized in cash or bank transfers to beneficiaries in a particular budgetary year for the particular programme/project for which a commitment appropriation is entered. The two types of appropriations normally differ (and are therefore called ‘differentiated appropriations’) because multi-annual programmes are usually committed in the year they are decided and are paid over the years as the implementation of the programme progresses.

geographical lines, which did therefore not lead to major overall reductions in the budget.¹¹¹⁸ All in all, during the period 1978 and 2009 the EU committed about 2.1 billion Euros for the EIDHR and its forerunner programmes.

Table 10: EIDHR Commitments in the EU Budgets 1978-2011 (in million ECUs/Euros)¹¹¹⁹

Year	Budget Chapter or Title	Commitment appropriations
1978	293	0.2
1979	293	0.2
1980	293	0.2
1981	293	0.2
1982	293	0.2
1983	293	0.2
1984	293	0.35
1985	293	0.35
1986	293; 992	2.35
1987	303; 992	2.37
1988	303; 992	3.9
1989	303; 992	6.3
1990	303; 992; 3021	21.8
1991	A-3030; B7-5073; B7-5078; B7-5076	17
1992	A-3030; B7-5073; B7-5078; B7-5076; B7-6000	32.3
1993	A-3030; B7-5073; B7-5078; B7-5079; B7-5076; B7-6000	44.4
1994	Chapter B7-52	45.1
1995	Chapter B7-52	60
1996	Title B7-7	84.8
1997	Title B7-7	78.6
1998	Title B7-7	97
1999	Title B7-7	98
2000	Title B7-7	95
2001	Title B7-7	102
2002	Title B7-7	104
2003	Title B7-7	106
2004	Chapter 19 04	125
2005	Chapter 19 04	118.6
2006	Chapter 19 04	127.7
2007	Chapter 19 04	130
2008	Chapter 19 04	137.1
2009	Chapter 19 04	148.4
2010	Chapter 19 04	154.2
2011	Chapter 19 04	157.7
Total		2101.52

¹¹¹⁸ See the unification of budget lines for Latin America in the early 1990s, Table A in the Appendix.

¹¹¹⁹ Source: EU budgets 1978-2008, as published in the OJ. For a list of the OJs see Table A, published in the Appendix to this thesis. Inexplicably, some secondary sources, like the Annual Commission implementation reports on development policy and external assistance in part provide slightly diverging numbers, while stating that they take information from the same EU budget.

In 2005 and 2007 appropriations were first entered into ‘reserves’ and only later transferred to Chapter 19 04, as at the time of preparation of the budget the existence of a basic act was insecure due to the expiry of the then applicable EIDHR regulations.

The most notable increases in EIDHR expenditure include the increase from 350.000 ECUs in 1985 to 2.35 million ECUs in 1986, which was due to the start of the EU's first democracy assistance programme in Chile. The second remarkable increase occurred in 1990, when the budget of the then existing three democracy and human rights budget lines (for 'NGOs in Chile', 'Democracy in Chile and Central America', and 'NGOs in human rights promotion') more than tripled compared to 1989. This increase was triggered by the democratization processes in Latin America and by the starting discussions about external human rights and democratization policies more generally, that was itself caused by the changing development paradigm and the arrival of the third wave of democracy in Central and Eastern Europe. Following the crucial November 1991 resolution on the EU's external human rights and democratization policy, the budget for related programmes increased from 17 ECUs to 32.2 ECUs in 1992. In particular, a programme for ACPs and the Phare Democracy Programme were started and allocated 5 million Euros each. The increases in 1995 (from 45.1 to 60 million ECUs) and in 1996 (from 60 to 84.8 ECUs) resulted from a 100% increase of the allocations for the former Communist states in Central and Eastern Europe and the former Soviet Union (Phare and Tacis democracy), as well as from the start of the MEDA Democracy Programme. It demonstrated an increased engagement in the membership-applicant states as well as the geographically closer (western) NIS and ended the exceptional position of the MEDA states, that had until then been excluded from democratization policies. Finally, there was a remarkable increase of about 18% in 2004, when 125 million Euros were committed, which reflected a more general commitment to a continuing and enhanced engagement in the field. All in all, there were no major increases after the publication of the EU's main policy papers in the field, like of COM(1995) 567 and COM(2001) 252 final, which were mainly of relevance for substantive or procedural aspects concerning the EIDHR, but not its growth.

In 1991, 1997, 2000, and 2005 the budgetary allocations for democracy and human rights programmes slightly decreased. While for 2000 and 2005 the reasons for the decrease are unclear, in 1997 the decrease resulted from the cancellation of the 1996 budget line 'Enforcement of sanctions in former Yugoslavia', which was used to cover expenditure on technical and administrative assistance to enforce sanctions and indeed constituted a very exceptional, abnormal use of the 'positive' EIDHR programme to enforce a negative tool.¹¹²⁰ The decrease in 1991 resulted from the reduction of funds of the NGO programme in Chile, which was caused by the creation of a new specific democracy programme for Chile and Central America.¹¹²¹

¹¹²⁰ Table A in the Appendix and budgetary remarks to line B7-7002 of the 1996 budget.

¹¹²¹ Table A in Appendix.

Overall, the mentioned decreases were minor though and were usually corrected in the subsequent budget, which included an allocation that was higher than the preceding one.

When the budgetary commitments for the EIDHR are compared with the EU's overall commitments for external assistance (without the EDF budget, that is separate from the EU budget), which include, among others, commitments for the various general socio-economic assistance programmes, EU enlargement-related assistance, humanitarian aid and food aid, it becomes evident that the EIDHR receives a very small share of the overall amount.¹¹²² Between 2002 and 2007 the commitments for the EIDHR on average only constituted 1.5 % of the overall commitments for external assistance programmes managed by the Commission. For example, in 2006 the overall budget of the Commission for the various external assistance programmes amounted to 8 500 million Euros, while the allocation for the EIDHR was 127.7 million Euros. By comparison, in the same year 'macroeconomic assistance and the EBRD' was allocated 92 million Euros, food aid 428.7 million Euros, and humanitarian aid 645.5 million Euros. The various general geographical programmes received a much higher allocation, like 1177.6 million Euros for MEDA, 1209.23 million Euros for ALA, and 527.58 million Euros for the Tacis programme. It has to be stressed though, that some, although a minor part, of this money has been spent for democracy assistance (see Chapter 7).

b) Financial Envelopes in the EIDHR Regulations

As indicated, the various EIDHR regulations include 'financial envelopes', 'financial reference amounts', or 'financial frameworks' that indicate the envisaged total amount of funding for the entire duration of the programme.¹¹²³ Regulated in inter-institutional agreements, they are not binding law, but still create some form of obligation, from which the institutions are only permitted to depart in cases of "new, objective, long-term circumstances".¹¹²⁴ Table 11 provides an overview of the financial reference amounts in the five EIDHR regulations adopted so far.

A comparison of the reference amounts and the commitment allocations included in the budgets shows that during the periods 1999 to 2004 and 2005 to 2006 the EU committed more money for the EIDHR than it had initially foreseen. During the first period commitments were

¹¹²² For the overall annual budgets for Commission-managed external assistance see the various Annual Reports on development policy and external assistance.

¹¹²³ For example, 2006 EIDHR regulation, Art. 19. Financial envelopes were first envisaged in a joint declaration by the three legislative institutions and later regulated in interinstitutional agreements. See the Declaration by the European Parliament, the Council and the Commission on the incorporation of financial provisions into legislative acts; 1999 Interinstitutional Agreement on budgetary discipline; 2006 Interinstitutional Agreement on budgetary discipline.

¹¹²⁴ 1999 Interinstitutional Agreement on budgetary discipline, at point 33; 2006 Interinstitutional Agreement on budgetary discipline, at point 37.

even 50% higher than envisaged, while during 2005 to 2006 they were still 16% higher. While such divergence is against the original intention of reference amounts, it is proof of a growing interest in the tool of democracy and human rights assistance in the period 1999 to 2006.

Table 11: Financial Reference Amounts in the EIDHR Regulations (in million Euros)¹¹²⁵

Regulations on the EIDHR	Financial envelopes
Reg. 975/1999 (on developing countries, 1999-2004))	260
Reg. 976/1999 (non-developing countries, 1999-2004)	150
Total EIDHR 1999-2004	410
Reg. 975/1999 extended/amended by Reg. 2240/2004 (2005-2006)	134
Reg. 976/1999 extended/amended by Reg. 2242/2004 (2005-2006)	78
Total EIDHR 2005-2006	212
Reg. 1889/2006 (2007-2013)	1104
Total EIDHR 2007-2013	1104

The following period 2007 to 2013 shows a different picture. The total financial envelope of 1104 million Euros for the 2007-2013 period would have required an allocation of 158 million Euros in each annual budget. Table 10 shows that in 2011 this amount was (nearly) reached, however, that all annual allocations in the previous years were lower. It therefore strongly appears that during the 2007-2013 period the sum of annual allocations will not meet the total intended envelope. It does not mean thought that the EU's interest in the instrument decreased, but rather the concern that the Commission did not have the administrative capacities to implement an every growing number of projects. As mentioned above, the failure to meet financial envelopes does not, however lead to legal consequences.

c) EU Expenditure under the EIDHR

i. Total EU Expenditure under the EIDHR

Table 12 provides data on EU expenditure under the EIDHR and its forerunner programmes between 1992 and 2006. The compilation of the Table has been very difficult and, unfortunately, the product is not complete and has to be consulted with considerable caution. The reason is that the Commission, despite the publication of numerous documents, has largely failed to provide regular and comprehensive information on the exact amounts disbursed under the EIDHR during certain periods, together with an identification of the exact budgetary source from which the funds were taken, that is, the budget year. The smaller time frame of Table 12 than of Table

¹¹²⁵ Source: Articles 10, 11, or 19 of the relevant regulations.

10 is due to lack of reports for the pre-1992 period and of insufficient reporting for the post-2006 period. For the period 2007 to April 2009 the Commission has only published a total amount, which is not reproduced in Table 12, but just provided in the text. According to the Commission, about 1 % of all EIDHR projects are not being reported on in order to protect the recipients of funds.¹¹²⁶

After analysing numerous EU publications containing data on the EIDHR, the following documents have proven to be, for individual periods, either the only or the most complete sources and have been used to compile Table 12. For the period 1992 to 2000, data has been taken from four specific EIDHR implementation reports, published in November 1993 (covering 1992 and 1993)¹¹²⁷, in July 2005 (covering 1994)¹¹²⁸, in November 2000 (covering 1996-1999)¹¹²⁹, and in May 2001 (covering 2000)¹¹³⁰, all of which provide data on overall EIDHR expenditure as well as breakdowns for different geographical regions and/or thematic areas. A similar report for the year 1995, published in January 1997¹¹³¹, only gives a descriptive account of EIDHR activities and lacks to provide complete financial data. As also no other reports, compendia, or lists of projects exist for that year, Table 12 cannot provide information for that particular period of time.¹¹³² Data for the years 2001¹¹³³ and 2002¹¹³⁴ is taken from the Commission's annual reports on the EC's development policy and implementation of external assistance, which, although not specifically focusing on the EIDHR, devotes a small section to the EIDHR. Data for the period 2003-2006 is taken from a Commission table of EIDHR contracts signed between 2003 and 2006.¹¹³⁵

¹¹²⁶ Information from Commission official (October 2008).

¹¹²⁷ Commission des Communautés Européenne, Rapport sur l'utilisation des ressources financière pour la défense des droits de l'homme et la promotion de la démocratisation (pour les années 1992-1993), Bruxelles, le 26/11/1993.

¹¹²⁸ COM(95) 191 final.

¹¹²⁹ COM(2000) 726 final.

¹¹³⁰ SEC(2001) 801.

¹¹³¹ COM(96) 672 final.

¹¹³² An alternative source for data could have been the Court of Auditor's Special Report No 12/2000. Annex 2 of that report contains an overview of projects 1994-1998. Problematically, the data diverges for each year (!) from data provided in Commission reports, which renders their joint use impossible.

¹¹³³ European Commission, Annual Report 2001 on the European Community's development policy and the implementation of external assistance, Brussels, 2002, at 38-9. It should be mentioned that the Council's European Union Annual Report on Human Rights 2002 lists projects implemented in 2001 amounting to 99 million, which inexplicably diverges from the Commission's Annual Report 2001.

¹¹³⁴ European Commission, Annual Report 2003 on the European Community's development policy and the implementation of external assistance in 2002, Brussels, 2003, Financial Tables at 183f. This reports states that data is for 'commitments', however, the mentioned commitments are for individual, chosen projects rather than commitment appropriations in the budget. This justifies their use as data on expenditure.

¹¹³⁵ European Commission, Excel-Eidhr-contracts-signed-2003-2006. A Commission official confirmed the tables contained a complete list of all contacts signed in a particular year. For simplification, the date of signature of the contact has been considered equivalent to date of expenditure.

Data for the 2007-April 2009 period has been published in the EIDHR Compendium January 2007-April 2009.¹¹³⁶

Table 12: EU Expenditure under the EIDHR and its Forerunner Programmes 1992-2006 (in million ECUs/Euros)¹¹³⁷

Year	Budget Chapter or Title	Expenditure
1992	A-3030; B7-5073; B7-5076; B7-5078; B7-6000	26.7
1993	A-3030; B7-5073; B7-5076; B7-5078; B7-5079; B7-6000	29.8
1994	Chapter B7-52	54.4
1995	Chapter B7-52	-
1996	Title B7-7	75.5
1997	Title B7-7	76
1998	Title B7-7	63.7
1999	Title B7-7	93.7
2000	Title B7-7	97.3
2001	Title B7-7	107
2002	Title B7-7	73.9
2003	Title B7-7	135.3
2004	Chapter 19 04	64.4
2005	Chapter 19 04	147.7
2006	Chapter 19 04	146.8
TOTAL (without 1995)		1113.7

For the post-2006 period the Commission has not published data for individual years, but only for the longer period of January 2007 to April 2009. The respective Commission report, that is, the EIDHR Compendium 2007-April 2009, mentions the implementation of 502 projects for a total amount for funding of 194.2 million Euros. Problematically, the main part of the Compendium, which claims to report on these 502 projects, only describes 400-odd projects that amount to a total funding of about 121.7 million Euros. It is therefore slightly unclear how much the EU has (annually) spent for the EIDHR since 2006.

Table 12 shows that, just as budgetary commitments grew from the early 1990s on, (obviously) also expenditure increased during the 1992-2006 period. While 26.7 million ECUs were spent in 1992, 146.8 million Euros were spent in 2006. In total, the EU spent about 1.1 billion Euros during the period 1993 and 2006, excluding 1995.

Overall, the annual expenditures developed much less gradually than the commitments. As mentioned, the main underlying reason for the fluctuating pattern of increases and decreases of EIDHR expenditure lies in implementation cycles, which are not always following annual

¹¹³⁶ The European Instrument for Democracy and Human Rights (EIDHR) Compendium January 2007-April 2009: Promoting Democracy & Human Rights Worldwide (from now referred to as EIDHR Compendium January 2007-April 2009).

¹¹³⁷ Data source are the various reports just mentioned in the main text.

patterns. In some years there were fewer or more calls for proposals and, depending on the date of the call and the deadline for submission, fewer or more decisions on projects than in other years. Consequently, even if commitment appropriations are similar in certain years, the expenditure can be entirely different. For example, in 2002, 2003 and 2004, the budgetary allocations were, with 104, 106 and 125 million Euros respectively, relatively constant. At the same time, the expenditures in 2002, 2003, 2004, and 2005 were with 73.9, 135.3, 64.4 and 147.7 million Euros respectively, very diverse. The reason is that major EIDHR calls were only published in 2002, using parts of the 2002 and 2003 budgets, and in 2004, with contracts to be signed/grants disbursed in 2003 and 2005 respectively. Consequently the expenditures were higher in 2003 and 2005 and lower in 2004. The expenditure in 2004 consisted of expenditure for smaller EIDHR calls, which concerned specific topics, and micro and targeted projects.

ii. EU Democracy Assistance under the EIDHR

Unlike data on commitment appropriations, it is possible to provide data on EU expenditure for democracy assistance as different from all EIDHR assistance, at least from 1996 on. However, it is not possible to provide a single table tracing the annual evolution of expenditure for EU democracy assistance since then, as the Commission has not reported on each individual year. For the periods 2000 to 2006 and, 2007 to April 2009, data is only available for the entire periods.¹¹³⁸

In the choice of which EIDHR funds constitute democracy assistance rather than other EIDHR assistance, this section overall follows the Commission's own categorization, except where Commission reporting has been unclear or imprecise. In these cases, assistance in the following fields has been included: activities that relate to elections, free media and freedom of expression, freedom of association, civil society (in particular NGO) development, civic and political participation and pluralism, public institutions like local councils, parliaments, political society, the rule of law, in particular, the judicial sector, and public administration reform. The data also includes, where available, expenditure for election observation, which is not democracy assistance *per se*, but financed from the EIDHR and usually included in reports on the EIDHR.

Reference should at this point be made to the conceptual overlap of democracy and human rights and the fact that, as will be seen further below, some (but by way not all!) projects in the sector human rights have also had a direct impact on democratization. Due to their

¹¹³⁸ The author is aware that the year 2000 is covered in both Tables. The reason is that the Statistics of activities 2000-2006 are only available for the entire period, while a specific, quite comprehensive separate report is available for the year 2000. The author did not want to neglect this report, in particular also because the statistics 2000-2006 included few projects from the year 2000.

primary objective or focus they were (and had to be) classified as human rights projects, just as many democracy assistance projects also had a direct impact on human rights but were (and had to be) classified as democracy assistance projects. On the whole, when consulting the following Table and information in the text, the reader needs to keep in mind that the overall amount of EIDHR projects that directly facilitated democratization was slightly bigger than represented.

Table 13: EU Expenditure for Democracy Assistance under the EIDHR and its Forerunner Programmes 1996-2000 (in million Euros)¹¹³⁹

Year	1996	1997	1998	1999	2000	Total
Expenditure	29.2	29.6	25.1	34.6	48.1	166.6

Although the time period covered in Table 13 is relatively short, it shows a constant growth of expenditure for EU democracy assistance under the EIDHR programme from 29.2 million Euros in 1996 to 48.1 million Euros in 2000. Only in 1995 did EU expenditure decrease slightly. In total, about 166.6 million Euros were spent during the entire period. The evolution corresponded largely to the overall evolution of EIDHR expenditure between 1996 and 2000. In other words, the share of EIDHR democracy assistance with respect to all EIDHR assistance remained, with about 45%, relatively constant in all years.

During the period 2000-2006 about 286 million Euros were spent for democracy assistance (including election observation). This constituted a share of about 39% of all EIDHR assistance spent during that time.¹¹⁴⁰ This shows that, while average annual expenditure for democracy assistance increased in relation to the previous period, its share of all EIDHR expenditure was overall slightly smaller than during 1996-2000.

Data for the subsequent period from January 2007 to April 2009 is problematic. As indicated, the Commission only reports in more detail on about 121.7 million Euros of funding, while mentioning that in total 194.2 million were spent. Of the 121.7 million Euros, about 23.3 million Euros were spent for democracy assistance, which constitutes only 19% of the total EIDHR expenditure. These numbers do not include funding of election monitoring though, which has definitely retained a major share in EIDHR expenditure (– according to EIDHR programming documents up to 24% of all planned expenditure). All in all, data for the period January 2007 to April 2009 is therefore to be consulted with care.

On the whole, the general quantitative account of the EIDHR has shown that the EU's budgetary allocations to its democracy and human rights programmes strongly increased since the

¹¹³⁹ Source: COM(2000) 726 final and SEC(2001) 801.

¹¹⁴⁰ Source: European Commission, Statistics of activities 2000-2006.

start of activities in the late 1970s. It rose steadily from 200.000 ECUs in 1978 to 157.7 million Euros in 2011, a level at which it can be expected to remain at least till 2013. At the same time, the EIDHR's share of the EU's budget for external assistance, including money for general socio-economic programmes and other specific lines, was, with about 1.5%, rather small.

Reflecting increased allocations in the EU budget, EU expenditure for democracy and human rights projects also increased between 1992 and 2006. While they amounted to only 26.7 million in 1992, they had increased to 146.6 million in 2006. However, the lack of a regular pattern in the implementation of the EIDHR has led to considerable fluctuations in the annual expenditure under the EIDHR. EIDHR expenditure for democracy assistance developed in a similar way during the period 1996 to 2000 and overall increased from 29.2 million Euros in 1996 to 48.1 million Euros in 2000. During the subsequent period, about 286 million Euros (including election observation) were spent for democracy assistance. Data for the post 2006 period is problematic and requires more detailed reporting by the Commission. All in all, between 1996 and 2006, the share of EIDHR democracy assistance of the entire EIDHR ranged between 39% and 45%. According to an approximate calculation, the total amount of democracy assistance (including election observation) provided under the EIDHR constituted only about 0.7% of all external assistance.¹¹⁴¹

2. The Thematic Distribution of EIDHR Funds

This section focuses on the thematic or sectoral distribution of EIDHR funds and aims to reveal how the available EIDHR funds were distributed among the numerous thematic issues covered by the programme and how funds spent for EIDHR democracy assistance were distributed among its various sub-themes. This substantive dimension is definitely one of the core elements of the question on the EU's strategy, exposing its primary approach to democracy assistance as well as giving insights into the underlying conception of democracy. Analysis of the human rights section of the EIDHR is carried out in order to determine which parts of that element of the EIDHR were also of relevance for democracy assistance, for example, because they focused on democracy-related human rights. Lack of data has limited the analysis to the period 1996 to 2006 and, with caution, to the period 2007 to April 2009.

The section first analyses the EIDHR regulations, the EU budget, as well as the various EIDHR programming documents that have been adopted since 2001 in order to see at which stage in the policy-making and implementation process which crucial decisions are taken that determine or at least influence the final distribution of EIDHR funds.

¹¹⁴¹ Based on data on commitments and expenditure.

a) The Determination of the Thematic Distribution of the EIDHR

i. The EIDHR Regulations

The EIDHR regulations 1999 and 2006 give considerable attention to the topic of the thematic dimension of EIDHR assistance. Of particular relevance are Articles 1 and 2 of the EIDHR regulations, which define the outer limits of possible assistance, provide a quite comprehensive, but non-exhaustive list of possible fields of engagement, and, in particular since 2006, identify several primary, albeit partly broad, aims of EIDHR support. However, beyond this, the regulations do not in detail determine which specific fields should receive more or less attention at particular points of time or levels of democratization nor suggest any sequencing of aid.

Article 2 of the EIDHR regulations provide quite comprehensive lists of themes that are envisaged as areas of support for the EIDHR, which are presented in Tables 14 and 15 (see further below). As is visible in the Tables, the 1999 and 2006 regulations list three to four broader thematic sectors of EIDHR assistance and between three and ten specific sub-fields in each of these sectors. The three/four main themes of the EIDHR regulations are exhaustively enumerated and therefore determine the outer limits or circumscribe the borders of possible EIDHR assistance. The 1999 EIDHR regulations mention human rights, democratization, and conflict prevention as three main sectors of assistance. Slightly differently, the 2006 EIDHR regulation stipulates that EIDHR assistance shall focus on democratization, human rights, the international framework for their protection, and elections. The field of conflict has since 2007 on been covered by the Instrument for Stability (IfS). Any assistance provided under the EIDHR has to fall within one of the three or four main sectors. For example, programmes or projects relating to general socio-economic assistance, humanitarian assistance, or food aid can therefore not be provided under the EIDHR. Importantly, the EIDHR regulations exclude the indirect approach to facilitating democratization through socio-economic assistance.

Further, Tables 14 and 15 list a whole range of possible (sub-)fields of assistance under the EIDHR. They are not exhaustively enumerated, which implies that the Commission can therefore also finance activities that are not expressly mentioned. For example, the EU already before 2007 engaged in support for human rights defenders, even if this topic was not expressly mentioned in the 1999 regulations. Further, it is suggested here that support to political parties can also in principle be provided under the EIDHR, even if this is not expressly mentioned. Importantly, any non-expressly mentioned topic financed under the EIDHR has to remain within the scope of the broader sectors suggested by the expressly mentioned themes. For example, the themes suggested under the broader sector of democratization suggest political aid, which implies

that any new topic would also have to constitute assistance focused on the political system, including political actors, institutions, or processes. For example, socio-economic assistance would fall outside the possible scope, while aid to political parties would be included.

Table 14: Summary of Provisions defining the Thematic Scope of EIDHR Assistance in the 1999 EIDHR Regulations (Article 2 of Regulations 975 and 976/1999, as amended by Regulations 2240 and 2242/2004)¹¹⁴²

1999 EIDHR Regulations (Article 2)
Promoting and defending human rights and fundamental freedoms, proclaimed in the UDHR and other int. instruments, in particular
<ul style="list-style-type: none"> - Promotion & protection of civil and political rights; - Promotion & protection of economic, social, and cultural rights; - Promotion & protection of rights of discriminated, poor, or disadvantaged; - minorities, ethnic groups, indigenous people; - support to bodies and institutions involved in human rights protection; - organizations providing help to torture victims; - education, training, consciousness-raising in area of human rights; - human rights monitoring; - equal opportunity and non-discrimination, incl. racism and xenophobia; - freedom of opinion, expression, conscience, language.
Supporting democratization, in particular
<ul style="list-style-type: none"> - rule of law, incl. independence of judiciary, human prison system, constitutional and legislative support, abolishment of death penalty; - separation of powers, support to institutional reform; - promotion of pluralism at political and civil society level, support to NGOs, independent media, free press, freedom of association and assembly; - good governance, administrative accountability and anti-corruption. - participation of people in decision-making at national, regional, and local level; equal participation of men and women in society; - election support, incl. election commissions, assist preparation of elections, measure to promote participation of specific groups in elections, training observers; - separate civilian and military functions, training civilian and military personnel in human rights; - support efforts to establish groupings of democratic countries within UN bodies, specialized agencies and regional organizations.¹¹⁴³
Conflict prevention and consequences of conflict, in particular
<ul style="list-style-type: none"> - capacity building, incl. local early warning systems; - balancing opportunities and bridging dividing lines among different ethnic groups; - facilitating the peaceful conciliation of interests, incl. support for confidence building, to prevent conflicts and restore civil peace; - support to int., regional, and local organizations involved in conflict prevention or dealing with consequences of conflict, incl. support for int. criminal tribunals and ICI.

¹¹⁴² Reg. 2240/2004 and Reg. 2242/2004 inserted Art. 2(2)(h) into the 1999 EIDHR regulations. The move was related to efforts supporting the establishment of democratic groupings in UN bodies, special agencies and regional organizations.

¹¹⁴³ Ibid.

Table 15: Summary of Provisions defining the Thematic Scope of EIDHR Assistance in the 2006 EIDHR Regulation (Article 2 of Regulation 1889/2006)

2006 EIDHR Regulation (Article 2)
Promoting participatory and representative, including parliamentary democracy, and the processes of democratization, mainly through civil society organizations, inter alia:
<ul style="list-style-type: none"> - freedom of association, assembly, movement, opinion and expression, incl. artistic and cultural expression, independent media, access to information, fight censorship; - rule of law, incl. independence of judiciary, legal and institutional reform, access to justice; - support ICI, <i>ad hoc</i> int. criminal tribunals and processes of transitional justice and truth and reconciliation commissions, - effective and transparent democratic accountability and oversight, incl. that of security and justice sectors and against corruption, - political pluralism and democratic political representation, encouraging political participation by citizens, in particular marginalized groups, in democratic reform processes at local, regional and national level; - equal participation of men and women in social, economic, and political life, equality of opportunity and participation and political representation of women; - supporting measures to facilitate the peaceful conciliation of group interests, including support for confidence building measures relating to human rights and democratization.
Promoting and protecting human rights and fundamental freedoms, as proclaimed in the UDHR and other instruments, mainly through civil society organizations, inter alia:
<ul style="list-style-type: none"> - abolition of the death penalty, prevention of torture, ill-treatment and other cruel, inhuman and degrading treatment or punishment, rehabilitation of torture victims; - human rights defenders (in terms of Art. 1 of the UN Declaration on human rights defenders); - fight against racism, xenophobia, discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation; - rights of indigenous people and rights of persons belonging to minorities and ethnic groups, - rights of women as proclaimed in CEDAW and its Optional Protocols, including measures to combat female genital mutilation, forced marriages, crimes of honour, trafficking, any other form of violence against women; - rights of the child, as proclaimed in the CRC and its Optional Protocol, including fight against child labour, child trafficking, child prostitution, and the recruitment and use of child soldiers; - rights of persons with disabilities, - promotion of core labour standards and corporate social responsibility, - education, training and monitoring in the area of human rights and democracy in area of peaceful conciliation of group interests, including support for confidence building measures relating to human rights and democratization; - support for local, regional, national or international civil society organizations involved in protection, promotion or defense of human rights and field of peaceful conciliation of group interests, including support for confidence building measures relating to human rights and democratization.
Strengthening of the int. framework for the protection of human rights, justice, the rule of law and promotion of democracy, in particular
<ul style="list-style-type: none"> - support for int. and regional instruments concerning human rights, justice, the rule of law and democracy, - fostering cooperation of civil society with int. and regional intergovernmental organizations, support civil society activities aimed at promoting and monitoring the implementation of int. and regional instruments concerning human rights, justice, the rule of law and democracy; - promoting observance of int. humanitarian law.
Building confidence in an enhancing the reliability and transparency of democratic electoral processes, in particular
<ul style="list-style-type: none"> - European Election Observation Missions, - other measures of monitoring electoral processes, - developing electoral observation capacity of civil society organizations at regional and local level, supporting their initiatives to enhance participation in, and the follow-up to the electoral process, - supporting measures implementing European Union Election Observation Missions, in particular through civil society organizations.
Mainstreaming clause
<ul style="list-style-type: none"> - gender equality, right of the child, rights of indigenous people, rights the disabled, principles such as empowerment, participation, non-discrimination of vulnerable groups and accountability shall be taken into account whenever relevant by all EIDHR assistance measures.

Both the 1999 and 2006 regulations envisage a broad thematic scope. As regards human rights, the EIDHR regulations refer to the promotion and protection of civil, political, social, economic, and cultural rights, and therefore embrace a comprehensive conception that has been the EU's preferred approach in external relations since the early 1990s and expressed, for example, in the 28 November 1991 resolution of the Council and the Member States. As regards democratization, they envisage support as regards all core political and civil rights or essential elements of a democracy, that is, election-related rights, the freedom of association, assembly, and expression. In relation to the latter, they expressly mention the support to independent media. Further, they refer to the development of the rule of law, including the independence of the judiciary, legal and institutional reform, and access to justice. Several references relate to citizen participation in social and political life at local, regional and national level, either as individuals, especially of particularly discriminated groups, or in the framework of civil society. One of the two major (and complementary) innovations as regards democracy assistance in the 2006 regulations is the more explicit reference to civil society as a key area of development and as agent of reforms in a broad range of sectors. Further, while the 1999 regulations also envisaged assistance in the sector of institutional reform and issues of good governance, these are no longer fields of engagement under the 2006 regulation, except for the justice sector and issues of transparency and democratic accountability and oversight. Parliaments can benefit, if support cannot be provided under other programmes. The EIDHR was therefore increasingly rendered a civil society-focused instrument, while institutional reform was shifted to the mainstream development programmes. Finally, both regulations envisage action as regards civilian control of the security sector, in particular the military, and as regards the equality of men and women in social, economic, and political life.

The 1999 regulations only stipulated the outer scope of assistance and provided a list of possible fields of engagement, but did not further identify specific focus areas of reform. Differently, the 2006 regulation also identifies several more specific aims of the EIDHR that should receive primary attention. Article 1 of the 2006 regulation mentions support for civil society organizations as promoters of reform, support to human rights defenders and victims of repression and abuse, support to the international and regional framework of protection and the role of civil society therein, and election support, in particular election observation and local civil society involved in the process. Some of these more specific aims are of course considerably broadly defined (civil society development), while others are more specific (human rights defenders). In any case, they constitute a more precise guideline for the Commission on where assistance should primarily focus on. Reference should at this point also be made to recital 22 of

the 2006 regulation, which, although in a non-binding way, limits expenditure for EU Election Observation missions: It should “not take up a disproportionate amount” of the available funds.

As regards the approach to democracy assistance, the EIDHR regulation does not express a clear preference for either the political or the developmental approach. There are clear features of both, that is, the focus on elections and on core civil rights and freedoms, which is characteristic of the first, as well as the focus on civil society organizations as agents of change, the promotion of citizen participation at local level, and on legal and institutional reform in the justice sector, which is characteristic of the second. Also the shift expressed in the text of the 2006 EIDHR regulation does not indicate a clear move towards the first or the second approach. The removal of governance and institutional reform from the scope of the EIDHR indicates a preference for the political approach, while the increasing relevance attributed to civil society organizations and their role in local development and governance means a strengthening of the developmental approach. All in all, the EIDHR regulations therefore suggest pursuing a mixed approach.

On the whole, the EIDHR regulations shape the thematic distribution of EIDHR funds by defining the outer scope, providing possible fields, and since 2006 identifying primary fields of engagement. In substance, the regulation does not express a clear preference for the political or developmental approach to democracy assistance. However, they do not predetermine the exact distribution and also do not further foresee any hierarchy among the various enumerated themes and sub-sectors, any sequence in the concentration of assistance, or any preference for a focus at certain levels of democratic development.

ii. The EU Budget

The EU budget does not only provide the overall commitment appropriations for the entire EIDHR in a particular financial year but also to some, albeit usually limited extent determines the thematic and the geographical distribution of funds. The extent to which this has been done and how much the budget has allocated to which field has differed from year to year. Overall, before 2001 geographic determinations were widespread, mainly due to allocations to geographically-focused programmes, like Tacis Democracy.¹¹⁴⁴ Since 2002 the budget rather includes one broad thematic allocation for democracy and human rights, as well as, at times, specific smaller allocation for particular topics.

¹¹⁴⁴ The 2001 budget constituted the transition from mainly geographically-determined allocations to thematically-determined allocations, and, exceptionally, allocated funds to themes and, in the budgetary remarks, to regions.

Since 2001, the major thematic allocations in the budget were the following: the 2001 budget allocated the sectors human rights and democracy 35 million Euros each; the ICC was given individual allocations of 3-7 million Euros between 1997 and 2006; human rights defenders were allocated 7 million Euros in each budget between 2004 and 2006; the European Inter-University Centre in Venice was allocated 1.7 million Euros in 2005 and 2006; and election monitoring was allocated 31 million Euros in 2008.

Overall, while the budget contains some thematic allocations, as regards democracy assistance the budget's role in the predetermination of sectors of support has been limited.

iii. The Programming Stage

Based on the EIDHR and the budget, the Commission addresses the question of the thematic distribution of EIDHR funds in the (globally-focused) EIDHR programming documents. As mentioned, since 2001 five of such documents have been developed and adopted by the Commission in a special procedure involving the various Commission units, the Delegations, European civil society, as well as the relevant Member States' Committee (Human Rights and Democracy Committee/Democracy and Human Rights Committee). Most of the documents have also been updated and concretized in Updates or Annual Work Programmes.

All documents are quite complex, have chosen different structures and terminologies in the presentation of thematic priority areas, and have differed on whether and to which extent they allocate financial amounts to these areas or not. Table 16 presents the main parts of the various programming documents as regards the selection of priority areas and financial allocations.

The selection of thematic priority areas has been one of the central elements of each of the five programming documents. As is visible from the extracts provided in Table 16, the Commission has over the last decade experimented with various structures and terminologies in presenting these priority areas and has changed the model of presentation with each new programming document except for the most recent one. The various changes were amongst others the result of critique by NGOs involved in the implementation of the EIDHR of lack of 'clarity and coherence' in the thematic areas. In any case, due to the similarity of the EIDHR Strategy Paper 2011-2013 with its predecessor, the Commission now seems to be satisfied with the chosen structure.

Table 16: Thematic Priority Areas as Defined in the four EIDHR Programming Documents adopted since 2001 (in particular for democracy assistance)

Programming Human Rights and Democracy – Exercise 2001
12 ‘thematic priorities’
(A) The Promotion and Protection of Human Rights (35 million Euros): (1) Education, training and awareness-raising in the area of human rights; (2) Racism, xenophobia, minorities, indigenous people; (3) Freedom of opinion, expression and conscience; (4) Rights of the child; (5) Death penalty. (B) Democracy and Governance (35 million Euros): (6) Rule of law, independence of the judiciary and humane prison system; (7) Political and civil society pluralism, strengthening institutions and NGOs, free media; (8) Good governance, supporting administrative accountability and anti-corruption; (9) Participation of people, in particular equal participation of men and women. (C) Conflict-related Issues (19 million Euros): (10) Preventing, resolving and dealing with the consequences of conflict. (11) Election observation and assistance (5 million Euros); (12) ICC and Int. Criminal Tribunals (3 million Euros). ¹¹⁴⁵
2002-2004 EIDHR Programming Document and Updates for 2003 and 2004
4 ‘principal thematic areas of action’ and various sub-fields (mentioned amounts relate to the year 2002)
(1) ‘support to strengthen democratization, good governance, and the rule of law’ (60 million Euros): <ul style="list-style-type: none"> • strengthening the capacity of civil society (12 million Euros), • human rights education and training (5 million Euros), • freedom of expression and independence of the media (5 million Euros), • actions concerning elections (15 million Euros), • the legal system and strengthening (judicial) institutions (11 million Euros), • governance (8 million Euros), • conflict prevention and resolution (4 million Euros); (2) ‘activities in support of the abolition of the death penalty’ (4 million Euros); (3) ‘support for the fight against torture and impunity and for international tribunals and the ICC’ (13 million Euros); and (4) ‘combating racism and xenophobia and discrimination against minorities and indigenous people’ (17 million Euros).
EIDHR Programming for 2005 and 2006 and Annual Work Programmes
4 ‘campaigns’ (mentioned amounts relate to the year 2005)
Campaign 1: Promoting justice and the rule of law (11 million Euros); Campaign 2: Fostering a culture of human rights (38.5 million Euros); Campaign 3: Promoting the democratic process (44,63 million Euros of which 13 million Euros are for election observation); and Campaign 4: Advancing equality, tolerance, and peace (17.5 million Euros).
Campaign 3 on democracy consisted of the following lots and priorities. Lot 1: Underpinning and developing the democratic electoral processes: Priority 1: Civic & voter education/voter information programmes; Priority 2: Capacity building and specific technical assistance for local observers’ organisations and regional organizations; Priority 3: Capacity building and technical assistance for media and media monitoring programmes; Priority 4: Promoting political pluralism; Priority 5: Training of legal/judicial professionals and parliamentarians; Lot 2: Strengthening the basis for civil society dialogue and democratic discourse: freedom of association: Priority 1: Alignment of national legal regimes and practices with internationally recognised standards and principles in the area of freedom of association; Priority 2: Promote awareness raising regarding the contribution of freedom of association to the democratic process;

¹¹⁴⁵ Torture victims were addressed in a separate call.

<p>Priority 3: Capacity building and technical assistance for media and media monitoring programmes; Lot 3: Strengthening the basis for civil society dialogue and democratic discourse: freedom of expression: Priority 1: Promotion of adequate media legislation Priority 2: Foster legitimate unimpeded access to internet.</p>
<p>'Strategy Paper' for 2007-2010 and Annual Action Programmes</p>
<p>5 principal objectives (mentioned amounts relate to the year 2007)</p>
<p>Objective 1: Enhancing respect for human rights/fundamental freedoms in countries/regions where they are most at risk (14 million Euros); Objective 2: Strengthening the role of civil society in promoting human rights and democratic reform, in peaceful conciliation, and in political participation and representation (45 million Euros); Objective 3: Supporting actions concerning EU Human Rights Guidelines (19 million Euros); Objective 4: Supporting the international and regional framework for human rights/justice/rule of law/democracy (16.3 million Euros); Objective 5: Election observation and assistance (35.1 million Euros).</p>
<p>Objective 2 envisaged action in four areas of activity: (1) the pursuit of common agendas for human rights/democratic reform by civil society; (2) building of consensus on disputed or controversial areas of policy by civil society; (3) enhancing political representation and participation; and (4) enhancing the inclusiveness and pluralism of civil society.</p>
<p>'Strategy Paper' for 2011-2013 and Annual Action Programmes</p>
<p>5 principal objectives (mentioned amounts relate to the year 2011)</p>
<p>Objective 1: Enhancing respect for human rights/fundamental freedoms in countries/regions where they are most at risk (15.7 million Euros); Objective 2: Strengthening the role of civil society in promoting human rights and democratic reform, in peaceful conciliation, and in political participation and representation (55.1 million Euros); Objective 3: Supporting actions concerning EU Human Rights Guidelines (approx. 29.3 million Euros); Objective 4: Supporting the international and regional framework for human rights/justice/rule of law/democracy (15.8 million Euros); Objective 5: Election observation and assistance (36.4 million Euros).</p>
<p>Objective 2 envisaged action in four areas of activity: (1) the pursuit of common agendas for human rights/democratic reform by civil society; (2) building of consensus on disputed or controversial areas of policy by civil society; (3) enhancing political representation and participation; (4) enhancing the inclusiveness and pluralism of civil society; (5) promoting issues covered by human rights dialogues at local level.</p>

Each of the programming documents has identified several broader EIDHR priority areas or objectives, of which one or two usually related to democratization rather than one of the other fields covered by the EIDHR (human rights, etc.). The various broader priority areas did in part represent the broader thematic sectors of the EIDHR regulation, but in part also considerably departed from the structure and text of the EIDHR regulation. Importantly as regards the predetermination of the distribution of EIDHR funds, the programming documents allocated specific amounts of money to each of the several broader priority areas or objectives. For example, in 2005 Campaign 1 on 'Promoting Justice and the Rule of Law' was allocated 11 million Euros and Campaign 3 on 'Promoting the democratic process' was allocated 44,63 million Euros of which 13 million Euros was reserved for election observation.

In addition to the selection of broader priority areas, the programming documents have identified several more specific sub-fields for each broader priority area or objective. Until 2006, these sub-fields were usually specific thematic fields, like civic and voter education or adequate media legislation. Since 2007, these more specific fields have in part been more broadly defined,

like the building of consensus on disputed areas of policy or the pursuit of common agendas for democratic reform, which can itself concern a whole range of themes. In any case, this selection of sub-fields constitutes a form of prioritization, that is, of the EIDHR programming documents limiting the scope of EIDHR activities during a certain period of time. For example, from 2002 on election observation and election assistance received increasing attention, while judicial reform and institutional reform were no longer identified as priority. However, besides the identification of specific sub-themes, the programming documents did overall hardly allocate specific sums to these more specific priority areas and therefore not entirely predetermine the distribution of funds. The major exception in this respect was in 2002, when, driven by the desire to be strategic and to strongly predetermine EU actions, the Commission attempted to allocate specific amounts also to individual sub-areas. The exercise failed in the implementation stage, when calls for proposals did not produce enough projects to spend all envisaged funds in particular sub-fields. Already in 2003 the exercise was not repeated.¹¹⁴⁶

On the whole, the programming documents play a role as regards the final distribution of EIDHR funds, however, only as regards the determination of how much the sector democratization receives in total as well as regards the selection of priority areas. They do not, however, specify how much each sub-sector receives. Beyond these determinations and prioritizations, the final distribution of EIDHR funds among the various sub-fields is only decided when the financing decision is taken. Obviously, the EU can further influence the final distribution when taken this decision. However, its decisions are conditioned by the pool of available applications for projects and the demand of recipients therefore plays a considerable role in the final sectoral distribution of EIDHR funds.

b) The Thematic Distribution of EIDHR Expenditure

The focus now shifts to the actual thematic distribution of EIDHR expenditure. It presents how, based on the EIDHR regulations, the budget, the programming exercises, the submission of project proposals, and the financing decisions, EIDHR funds were distributed among the various sub-sectors covered by the programme. While the presented data expresses preferences and a hierarchy among the various fields, it cannot provide insights into any sequencing of different types of assistance.

Due to limitations of data, the two sections focus on the period 1996 to 2006 or, albeit with awareness of the limitation of data for that period, on 2007 to April 2009. Separate tables are provided for different periods in order to allow comparisons between them and to trace

¹¹⁴⁶ EIDHR Programming document for 2005 and 2006, at 12.

evolutions.¹¹⁴⁷ The section first looks at the entire EIDHR and then at EIDHR democracy assistance alone.

The problems and difficulties in the selection of sub-categories have been pointed out in Chapter 1. The following Tables largely follow Commission reports. However, as the Commission has continuously changed its categorizations or used the same denominator for a different scope of projects, some changes were made and, in particular, some sub-categories were introduced in some of the Tables in order to render them more comparable. For example, while the Commission Statistics of activities 2000-2006 only refer to the category of (democratic) governance, Tables 17 and 18 mention individual sub-categories thereof, which have been extracted from a separate project compendium for the same period, that is, the EIDHR Project compendium 2000-2006 by theme.¹¹⁴⁸ Unfortunately, as different Commission reports on the same time-spans do often not report same expenditures, there are at times some divergences in the presented data.¹¹⁴⁹

i. The Thematic Distribution of the Entire EIDHR Expenditure

Tables 17 and 18 present the thematic distribution of EIDHR expenditure for the periods 1996 to 2000 and 2000 to 2006 in million Euros and in % of total expenditure.

Although it is difficult to clearly differentiate between human rights and democracy as there are conceptual overlaps and as projects can and do fall into both categories, the relative shares of each of the main fields of the EIDHR have nevertheless been pointed out in the Tables. These show that human rights assistance (as classified by the Commission) has always received a slightly larger share than democratization-related assistance (including election observation, which is actually a different form of democracy promotion than assistance, but has increasingly been financed through the EIDHR). While the field of human rights received 47% of all EIDHR funds in the 1996-2000 period, its share increased to 53% in the subsequent period. As indicated, no reliable comprehensive data is available for the post-2006 period, which makes it difficult to see whether this trend has continued. An analysis of the 400-odd projects

¹¹⁴⁷ The author is aware that the year 2000 is covered in both Tables. See explanation above, footnote no. 1098.

¹¹⁴⁸ European Commission, EuropeAid: EIDHR European Initiative for Democracy & Human Rights 2000-2006, *Ambitious in scope... ..Global in reach: More than € 731 Million in EIDHR Funding Supporting more than 2400 Projects in more than 140 Countries* (from now on referred to as EIDHR Project compendium 2000-2006 by theme).

¹¹⁴⁹ Statistics on activities 2000-2006; EIDHR Project compendium 2000-2006 by theme; Compendium by location EIDHR activities 2000-2006 (from now on referred to as EIDHR Project compendium 2000-2006 by location).

Table 17: EIDHR Thematic Distribution of Expenditure 1996 to 2000 (in million Euros and %) ¹¹⁵⁰

Sector/sub-sector	Expenditure in million Euros	% of total expenditure
Human Rights		
Human rights education and public awareness	59.7	16%
Victims of Torture	33.6	9%
Children	16.9	5%
Equal opportunities and non-discrimination	13.3	4%
Women	13	4%
Human rights monitoring	12.4	3%
Public bodies and the defence of human rights	8.9	2%
Indigenous people	5.9	2%
National minorities	5.2	1%
Refugees and Displaced Persons	4.9	1%
Sub-total	173.8	47%
Democratization		
Civil society and civic participation	54.4	15%
Rule of Law	45.7	12%
Media/freedom of expression/journalists	30.4	8%
Election Support	20.6	6%
Parliaments	6.7	2%
Transparency/anti-corruption	6.6	2%
Civil-military relations	2.2	<1%
Sub-total	166.6	45%
Conflict resolution	16.3	4%
International Justice	14.6	4%
Total	371.3	100%

Table 18: EIDHR Thematic Distribution of Expenditure 2000 to 2006 (in million Euros and %) ¹¹⁵¹

Sector/sub-sector	Expenditure in million Euros	% of total expenditure
Human Rights		
Promoting human rights	143.8	20%
Torture	75.5	10%
Women	42.3	6%
Racism, xenophobia, discrimination	28.6	4%
Children	28.4	4%
Rights of indigenous peoples	24.2	3%
Abolition of death penalty	11.9	2%
Minorities and ethnic groups	8.7	1%
Human rights dialogues	5.8	<1%
Trafficking of human beings	4.9	<1%
Persons with disabilities	4.4	<1%
Human rights protection mechanisms	3.4	<1%
Human rights defenders	2.1	<1%
Total	384	54%
Democratization		
Election observation	101.2	14%
Civil society/civic participation	85.7	10%
Rule of law, justice, penal system	46.3	6%
Media/freedom of expression	27	4%
Election assistance	14	2%
Public institutions	12.5	2%
Anti-corruption	8.2	1%
Total	294.9	39%
Conflict Resolution/Peaceful conciliation	21.5	3%
International criminal justice	31.8	4%
Total	732.2	100%

¹¹⁵⁰ Data extracted from COM (2000)726 final and SEC (2001)801.

¹¹⁵¹ Data extracted from Statistics of activities 2000-2006 and the EIDHR Project compendium 2000-2006 by theme.

described in the 2007-April 2009 EIDHR Compendium suggests that it does.¹¹⁵²

The various sub-categories of the sector human rights should briefly be looked at, in particular, to see whether and to what extent they also benefit democratization. The major sub-category of human rights to be supported during both periods was the field of ‘human rights education and awareness raising’ and ‘promoting human rights’.¹¹⁵³ This preference was to some extent the result of UN calls for a strong engagement in the field.¹¹⁵⁴ Projects implemented overall aimed at increasing the general and specialized knowledge about human rights among NGOs, specific target groups (teachers, minority groups, etc.), state bodies (police, military, etc.), and largely consisted of training activities and the production and distribution of information on human rights.¹¹⁵⁵ The Commission did not report on the relative focus among the various kinds of human rights covered by the programme, but reports show that the focus was either a very general one, focusing on international human rights instruments, or on specific civil, political, or social rights, or on specific target groups.¹¹⁵⁶ To some extent the projects were therefore facilitating democratization, just as projects in the democracy assistance sector did. There is evidence that social rights were hardly promoted.¹¹⁵⁷

A considerably high share of 9-10% of the expenditure was used during both periods for the very specific focus group of ‘torture victims’, in the form of such things as rehabilitation centres. This has a long tradition in the EU.¹¹⁵⁸ Most of the remaining funds were spent for specific focus groups, most notably women and children, which in both periods received between 4% and 6% of the funding. Projects benefiting women either concerned gender-based violence issues or the role of women in public, in particular, political life, which, again, has relevance for democratization.¹¹⁵⁹ Other specific groups benefiting, usually with slightly smaller shares (between 1% and 4%), were indigenous people, ethnic and other minorities, refugees and internally displaced persons, the disabled, and from the early 2000s on, also human rights defenders.¹¹⁶⁰ This latter category also overlaps with democracy assistance, as human rights defenders are frequently important figures in local pro-democracy movements. Most of these groups benefited

¹¹⁵² Of 400-odd projects about 85% pertained to the human rights sector, while only about 19% were used for democracy assistance projects. As these numbers do not take election observation into account, the real share of the democratization sector was therefore surely larger.

¹¹⁵³ The category ‘promoting human rights’ was, next to several others, included in the field ‘human rights education and awareness raising’.

¹¹⁵⁴ COM(2000) 726 final, at 22, referring to the U.N. General Assembly’s establishment of the ‘Decade for Human Rights Education’ in 1994.

¹¹⁵⁵ COM(2000) 726 final, at 22-5; SEC(2001) 801, at 24-7, EIDHR Project compendium 2000-2006 by theme, at 189-316.

¹¹⁵⁶ Ibid.

¹¹⁵⁷ EIDHR Project compendium 2000-2006 by theme, at 286-7.

¹¹⁵⁸ COM(2000) 726 final, at 53; EIDHR Project compendium 2000-2006 by theme, at 431-64.

¹¹⁵⁹ EIDHR Project compendium 2000-2006 by theme, at 470-535.

¹¹⁶⁰ Ibid, at 139-43, 148.

also from projects in the overlapping categories ‘equal opportunities and non-discrimination’ (1996-2000) and ‘racism, xenophobia, discrimination’ (2000-2006).¹¹⁶¹ Other projects foresaw public awareness raising campaigns of the various groups’ rights, targeted information and education for the concerned groups, the establishment and capacity development of relevant NGOs, and training programmes for experts in the field, like lawyers.¹¹⁶² One specific right, the right to life, was addressed in projects against the death penalty (2% of all funds during 2000 and 2006).

Next to the target group- and rights-focused, attention was also given to different kinds of human rights (protection) instruments, in particular monitoring and human rights dialogues (each between less than 1% and 3%). It assisted international NGOs and UN agencies carrying out monitoring, which the EU would use as a basis for policy decisions.¹¹⁶³ Projects in the sector ‘human rights dialogues’, foreseen in the EIDHR Programming document for 2005-2006, mainly supported the EU-China dialogue via academic seminars and a special network on the topic.¹¹⁶⁴ Finally, the EIDHR supported specific institutions active in the promotion and protection of human rights (‘public bodies and the defence of human rights’, ‘human rights protection mechanisms’, less than 1% to 2% of the shares). Projects mainly focused on national or regional ombudsman offices, national commissions for human rights, human rights ministries, and human rights documentation centres and foresaw training, institutional and logistical support, and the organization of conferences.¹¹⁶⁵

Next to the broad sector human rights, the sector ‘conflict resolution/peaceful reconciliation’ received 4% and 3% of EIDHR funds during the respective periods, with projects financing campaigns, discussions and public opinion polls on peace and conflict resolution, dialogues and mediation efforts, but also the social and economic reintegration of refugees, displaced persons, and returnees.¹¹⁶⁶ It had featured as an important future theme in COM(95) 567 on the EU’s external human rights policy, and became a core topic in the 1999 EIDHR regulations.¹¹⁶⁷ The 2006 regulation attributes it minor importance, as the Instrument for Stability (IfS) now mainly covers the topic.

Finally, the sector ‘international criminal justice’ received about 4% of all EIDHR funds between 1996 and 2006 with the funds mainly being used for the International Criminal Court (ICC) and the various *ad hoc* tribunals (ICTY, ICTR).

¹¹⁶¹ COM(2000) 726 final, at 25; SEC(2001) 801, at 27.

¹¹⁶² COM(2000) 726 final, at 44 and 48; SEC(2001) 801, at 44f and 49; EIDHR Project compendium 2000-2006 by theme, at 30-53.

¹¹⁶³ COM(2000) 726 final, at 36; SEC(2001) 801, at 37.

¹¹⁶⁴ EIDHR Project compendium 2000-2006 by theme, at 144-8.

¹¹⁶⁵ COM(2000) 726 final, at 17-8; SEC(2001) 801, at 18.

¹¹⁶⁶ COM(2000) 726 final, at 30; EIDHR Project compendium 2000-2006 by theme, at 164-86.

¹¹⁶⁷ COM(95) 567, at 13.

All in all, the most important insight of the overview of EIDHR projects in other fields than democratization was that democratization has also directly (not just indirectly) benefited from various human rights projects, which were, due to their primary focus, classified as the latter. Although a distinction can (and should) be made for analysis, the overlap has to be born in mind.

ii. The Thematic Distribution of EIDHR Expenditure for Democracy Assistance¹¹⁶⁸

Tables 19, 20, and 21 present the thematic distribution of EIDHR expenditure in the sector ‘democratization’ for the periods 1996 to 2000, 2000 to 2006, and 2007 to April 2009 in million Euros and in % of all democracy assistance provided during the respective period. While some of the data has already been provided in Tables 17 and 18, Tables 19, 20, and 21 are more detailed and, in particular, include more sub-categories of democratization-focused aid. Importantly, Table 21 does not include data for election observation and can therefore not easily be compared to Tables 19 and 20, in particular, as regards the shares of the individual sub-fields.

Tables 19 and 20 show that election observation – as indicated, a different form of democracy promotion than assistance but (since the early 2000s exclusively) financed through the EIDHR – received an increasingly large share of the available EIDHR funds. While during 1996-2000 only about 3% of all EIDHR funds were used for election monitoring as many missions were then also financed under the CFSP budget, during 2000-2006 its share increased to approximately 14%. Its share of all democratization-related assistance increased from about 6% to 39%. Most funds were spent for EU EOMs proper, some amounts for the training of EU observers, and some for the production of the ‘Handbook for European Union Election Observation Missions’ by SIDA, which provides a basic source of information for participants in the EU EOMs.¹¹⁶⁹ Although no expenditure data on election observation is available for the post-2006 period, it appears that the share of election observation has further increased since 2007. The EIDHR Strategy Paper 2007-2010 foresaw an indicative amount of 131.1 million Euros for election observation during 2007-2010, which is about 23.7% of all envisaged funds for that period. The Commission also mentioned in the same document that it would ensure that expenditure for EU EOMs would normally not exceed 25% of all expenditure, or, in duly justified cases, not more than 30%, recalling recital 22 of the 2006 EIDHR regulations.¹¹⁷⁰ The

¹¹⁶⁸ Similar Tables as those provided in this section and the analysis, devised and carried out by the author, have been published in OPPD, *Getting Acquainted: Setting the Stage for Democracy Assistance*, at 48f.

¹¹⁶⁹ COM(2000) 726 final, at 8f; SEC(2001) 801, at 9f.

¹¹⁷⁰ Recital 22 of the preamble of the 2006 EIDHR regulation.

Table 19: Thematic Distribution of EIDHR Expenditure for Democracy Assistance 1996-2000, including Election Observation (in million Euros and in % of total democracy assistance)¹¹⁷¹

Categories and sub-categories of democracy assistance	Amount per sub-category	Total amount per category	% of total democracy assistance
Civil society and civic participation (in particular NGOs) ¹¹⁷²		54.4	33%
Rule of law		45.7	28%
• Legal reform, independent judiciary	30.6		18%
• Access to justice (legal assistance)	6.3		4%
• Magistrates, lawyers, court, prison staff	3.2		2%
• Humane prison system	2.9		2%
• Military, police, security forces	2.7		2%
Media/freedom of expression/journalists		30.4	18%
Election support		20.6	12%
• Election assistance	10.3 ¹¹⁷³		6%
• Election observation	10.3 ¹¹⁷⁴		6%
Parliaments		6.7	4%
Transparency/anti-corruption		6.6	4%
Civil-military relations (subordination of armed forces to civil authorities)		2.2	1%
Total		166.6	100%

Table 20: Thematic Distribution of EIDHR Expenditure for Democracy Assistance 2000-2006 including Election Observation (in million Euros and % of total democracy assistance)¹¹⁷⁵

Categories and sub-categories of democracy assistance	Amount per sub-category	Total amount per category	% of total democracy assistance
Election Support		115.2	39%
• Election observation	101.2		34%
• Election assistance	14		5%
Civil society and civic participation (in particular NGOs)		85.7	29%
• Strengthening civil society (in particular NGOs)	56		19%
• Civic participation/political participation	23.2		8%
• Equal participation in civil and political life	6.4		2%
Rule of Law		46.3	16%
• Access to justice	20.3		7%
• Constitutional and legislative reform	8.5		3%
• Humane prison system	4.5		2%
• Independence of the judiciary	0.6		0.2%
• Not specified	12.4		4%
Media/Freedom of Expression		27	9%
• Media	14		5%
• Freedom of Expression	13		4%
Public institutions other than parliaments (local councils, trade unions, etc.)		11.8	4%
Transparency/Anti-corruption		8.2	3%
Parliaments		0.7	0.2%
Total		294.9	100%

¹¹⁷¹ Source: COM(2000) 726 final and SEC(2001) 801.

¹¹⁷² No sub-categories are provided in Commission reports.

¹¹⁷³ Due to lack of data, this is an approximation suggested by COM(2000) 726 final and the EU budget.

¹¹⁷⁴ Ibid.

¹¹⁷⁵ Source: Statistics of activities 2000-2006, and EIDHR Project compendium 2000-2006 by theme.

Table 21: Thematic Distribution of 105-odd EIDHR Democracy Assistance Projects 2007-April 2009, excluding Election Observation(!) (in million Euros and % of total Democracy Assistance)¹¹⁷⁶

Categories and sub-categories of democracy assistance	Amount per sub-category	Total amount per category	% of total democracy assistance
Civil society and civic participation (in particular NGOs)		11.1	48%
• Strengthening civil society (in particular NGOs)	7.2		31%
• Civic participation/political participation	2.4		10%
• Equal participation in civil and political life	1.5		7%
Media/Freedom of Expression		4.7	20%
• Media	1.1		5%
• Freedom of Expression	3.6		15%
Rule of Law		4.5	19%
• Access to justice	3.3		14%
• Constitutional and legislative reform	0.7		3%
• Humane prison system	0.3		1%
• Independence of the judiciary	0.2		1%
Election assistance		1.6	7%
Transparency/Anti-corruption		0.9	4%
Parliaments		0.3	1%
Public institutions other than parliaments (local councils, trade unions, etc.)		0.2	1%

EIDHR Strategy Paper 2011-2013 foresees about 22.4% of the funds for election monitoring and therefore remains more or less around the same level as during the previous programming period.¹¹⁷⁷

A share of about 23% for election monitoring also means though – considering that during 1996-2006 about 43% of EIDHR funds are used for democracy assistance including election observation – only about 20% of all EIDHR funds remained for democracy assistance. Tables 17 and 18 showed that the growing share of election observation of EIDHR funds during 1996 and 2006 (or even 2009) happened at the expense of democracy assistance. While the shares of human rights projects, international justice, and conflict resolution remained equal or even increased during that period, the share of democratization became smaller. At the same time, the share of election observation increased, while the individual shares of different forms of democracy assistance decreased.

The second type of election support, election assistance, only received about 2-3% of all EIDHR funds during 1996-2006 and also rather little funding (1.6 million Euros) in the most recent period, January 2007-April 2009. Its share of all EIDHR democracy support was about 5-7%. Projects focused mainly on public awareness-raising campaigns about elections and electoral participation, on targeted civic and voter education for groups like women and young people, on

¹¹⁷⁶ Source: EIDHR Compendium January 2007-April 2009. Of approximately 400 EIDHR projects mentioned in the compendium, about 105 were primarily focusing on democracy assistance.

¹¹⁷⁷ EIDHR Strategy Paper 2011 – 2013, at 36.

the strengthening of local monitoring capacities, on the development of research methods to measure the role of media during elections, on media training on election reporting, and support to electoral commissions and the provision of equipment (in particular in Iraq).¹¹⁷⁸ The Commission's indication to invest more in election assistance from 2000 on in order to complement election observation therefore mainly led to an increase in election-focused activities under general cooperation programmes rather than under the EIDHR.¹¹⁷⁹ It should also be noted though, that also some projects from other categories, like on women, have election assistance elements.¹¹⁸⁰

A major share of EIDHR funds was always provided to the sector civil society and civic and political participation. It received about 15% of all EIDHR funds during 1996-2000 and (albeit with increased actual funding) 12% during 2000-2006. Of the 105-odd EIDHR democracy assistance projects mentioned in the 2007-April 2009 report, nearly half belonged to the sector. Its share of all EIDHR democracy support was 33% and 29% during the two periods 1996-2000 and 2000 to 2006. As indicated, its reduction in share was mostly due to the growing share of election observation. However, given the even stronger focus on civil society in the 2006 EIDHR regulation, the field can be expected to remain a major field of engagement. Most projects – approximately 70% – were used for strengthening civil society organizations through capacity development, like increasing their professionalism in advocacy and in the management of projects. The focus was in particular on NGOs, frequently on human rights- and political rights-focused NGOs, but also on community-based voluntary organizations engaged in service delivery and community development. A second group of projects concentrated on the promotion of civic and political participation, in particular at the local level. It comprised projects that increased the awareness of the concept of civic and political participation among specific groups, like women and young people, increased the participation of NGOs in local governance, and trained community leaders, including such in public functions, on the possibilities of involving civil society and citizens in local governance. Finally, there were numerous specific projects promoting the equal participation of men and women in civil and political life, a category that overlapped with at least two others of the human rights dimension (women, non-discrimination).¹¹⁸¹

Rule of law received 12% of all EIDHR assistance between 1996 and 2000. Its share dropped considerably in the subsequent period (to 6%), as did its expenditures in absolute amounts. Its share of all democracy support decreased from 28% to 16%. This development was

¹¹⁷⁸ COM(2000) 726 final, at 8f; SEC(2001) 801, at 9f; EIDHR Project compendium 2000-2006 by theme, at 86-95.

¹¹⁷⁹ COM(2000) 191 final.

¹¹⁸⁰ Additionally to the reported amounts, about 1 million Euros were spent for election-related assistance through projects reported on in other categories.

¹¹⁸¹ COM(2000) 726 final, at 28.

part of a shift of institutionally-focused assistance to the general assistance programmes for individual regions, that began in the early 2000s. Rule of law projects focused mainly on access to justice issues, which included the training of judges and lawyers, support to providers of legal assistance and to advocacy groups, capacity development of NGOs, information and education campaigns for citizens and disadvantaged groups, like rural populations and the poor.¹¹⁸² A second major rule of law sector was support for constitutional and legislative reform, frequently in the penal law area, but also on other issues. For example, the EIDHR supported, channeled through UNDP, the Constitutional Committee of Iraq in its elaboration of a new constitution (with 5 million Euros). Other projects supported NGOs advocating for reforms or lawyers who were drafting new laws, funded training programmes and campaigns for the ratification and implementation of international human rights conventions, or supported institution building of courts, penitentiary institutions, ministries of justice, and general prosecutors, as well as trained judges, lawyers, and prosecutors.¹¹⁸³ Other projects aimed at establishing a humane prison system through support for prison staff, monitoring activities, and capacity development for NGOs. Tables 20 and 21, which provide more detailed data on the independence of the judiciary than Table 19, show that few projects directly concerned with the independence of the judiciary, which was, for example, promoted through the development of judicial transparency.¹¹⁸⁴ This indicates that the EU overall rather adopted a more developmental, bottom-up approach to rule of law development via access to justice projects rather than a more direct focus on the independence of the judiciary.

The sector media/freedom of expression received about 8% of all available EIDHR funds during 1996-2000. Its share and also average annual expenditure in total amounts decreased quite considerably in the subsequent period, 2000-2006, when it only received about 4% of all funds. Its share of EIDHR democracy support decreased from 18% to 9% between the first and the second period in question. The strong decrease is surprising, also given that the media featured in all programming documents from 2001-2006. In more recent years, the share appears to have increased again though. Projects mainly focused on the development of an independent press and broadcasting media, the professionalization of the media, the improvement of media relations with state and regional authorities, and support for and the capacity development of NGOs working in the sector of freedom of expression. Projects included training programmes for journalists on general professional topics and specific issues, like reporting on elections and conflicts, the establishment of journalists' institutes and networks, and media monitoring.¹¹⁸⁵

¹¹⁸² EIDHR Project compendium 2000-2006 by theme, at 362-74, 397 and 383.

¹¹⁸³ *Ibid*, at 350-3, 381.

¹¹⁸⁴ COM(2000) 726 final, at 14; EIDHR Project compendium 2000-2006 by theme, at 361.

¹¹⁸⁵ COM(2000) 726 final, at 21; EIDHR Project compendium 2000-2006 by theme, at 74-85.

The Commission reports on several other smaller categories of support. The so-called sector on ‘public institutions’, which relates mainly to local councils, local administrations, offices for the administration of justice, but also included projects on NGOs, trade unions, and citizens more generally, in order to increase their capacity for participation in (local) governance. The sector received about 2% of EIDHR funds and 4% of EIDHR democracy funds during 2000-2006.¹¹⁸⁶

Until 2000, the Commission expressly targeted civil-military relations, which received a minor share of less than 1% of all EIDHR expenditure. It mainly consisted of projects subordinating armed forces to civilian control, promoting good civil-military relations, and projects promoting human rights within the military.¹¹⁸⁷ While it was neglected during the 2000-2006 period, the 2007-2010 EIDHR Strategy Paper again mentioned the topic expressly, although as topic for NGO engagement.

Projects on transparency and anti-corruption also received about 1-2% of all EIDHR funding or 3-4% of all EIDHR democracy assistance during the period 1996-2006. They mainly targeted the local level and concentrated on reforming communal self-administration through the training of local officials, the introduction of more transparent procedures, and greater openness towards civil society organizations and citizens. Fewer projects targeted national institutions.¹¹⁸⁸

Finally, from 1996 to 2000 the EIDHR funded several projects concerning parliaments, which in total amounted to 6.7 million Euros or 2% of all funds (4% of all EIDHR democracy assistance). Such projects decreased strongly in the subsequent period, when only about 0,7 million Euros or 0.2% of all EIDHR funds were used for projects on parliaments. Also the 2007-2009 EIDHR report mentions only two projects in the field. Overall, projects in the sector provided training to parliamentarians and parliamentary staff on basic issues of parliamentary democracy, law-making procedures, the role of international human rights law in national law, forms of cooperation with civil society, and the management of information with the help of IT.

All in all, applying Thomas Carother’s division between the political and developmental approach to democracy assistance, EIDHR implementation has in the period between 1996 and 2006 (or even 2009) shown features of both, as is suggested by the text of the EIDHR regulations. Its primary focus has, in particular since 2000, been on election support, which constitutes a key feature of the political approach. Of course, the EIDHR has rather spent funds for election observation – which is not democracy assistance *per se* – and only to a much more limited extent invested in election assistance (34% and 5%, respectively, of all EIDHR

¹¹⁸⁶ Ibid, at 130-4.

¹¹⁸⁷ Ibid, at 34.

¹¹⁸⁸ COM(2000) 726 final, at 20; SEC(2001) 801, at 19.

democratization-related assistance during 2000-2006). The focus, however, still constitutes a form of politically-focused engagement. Secondly, many EIDHR projects in the sector civil society and civic participation, which was during all analyzed periods a major sector of engagement (around 31% of all EIDHR democratization-related assistance during 1996-2006), supported NGOs working on political rights and pursuing advocacy functions. Thirdly, the sector media and freedom of expression constituted a further main focus area, albeit with decreasing shares during 2000-2006. Finally, some projects in the sector rule of law explicitly focused on developing the independence of the judiciary. The shift of institutional assistance and rule of law development to the mainstream assistance programmes in the early-mid 2000s, further supported the EIDHR's political approach. All in all, while a concentration on the mentioned topics is characteristic of the political approach, the case of the EIDHR nevertheless constitutes a rather moderate form thereof. The main reason for this is that it neglects work with political parties and engagement with political leaders more generally, in particular with the political opposition, and only to a limited extent focused on parliaments and civil military relations.

At the same time, the thematic distribution of EIDHR assistance has also shown clear features of the developmental approach. The main indication of this approach is the strong focus on civil society, which is, even more since the 2006 EIDHR regulation, considered as a major agent in democratic reforms. The underlying idea is to support a broad range of civil society organizations in various fields, which should gradually move on the democratization process from below. Obviously, this focus also involves engagement with a broader range of NGOs than political rights groups, in particular also to NGOs and community-based organizations engaged in community development and service delivery rather than advocacy. Further, numerous EIDHR projects have focused on local governance issues rather than at the national level, trying to facilitate the strengthening of democratic procedures at the level of local government through the encouragement of citizen participation, the development of local civil society organizations, as well as the form of local public bodies. Finally, the majority of rule of law projects did not focus on judicial independence, but on broader developmental issues in the justice sector, like access to justice programmes focusing on the underprivileged, and reforms in the penal law sector. All in all, the EIDHR cannot, therefore, easily be allocated to the political or developmental approach to democracy assistance, but contains elements of both approaches.

3) The Geographical Distribution of EIDHR Funds

This section analyses how EIDHR funds were distributed among the major world regions and among different countries of these regions. While the analysis of the regional distribution focuses

on the period 1996 to 2006, the discussion of the distribution among different countries of one region is, due to lack of data, limited to the period 2000 to 2006 and, moreover, due to lack of space, only looks at countries of four selected world-regions. The analysis first shows to what extent and how the EU planned the geographical distribution of funds, and to what extent it gave room to the demand-led approach and let recipients influence the final distribution. In the choice of world regions, the section in general follows the Commission's own categorisation, which in most documents, albeit not always, differentiates between seven major world-regions.

a) The Determination of the Geographical Distribution of EIDHR Funds

i. The EIDHR Regulations

Neither the 1999 EIDHR regulations nor the currently applicable 2006 regulation address the geographical distribution of funds, but have left this decision to the budget and/or programming stage.

ii. The EU Budget

As indicated, until 2001 the annual EU budget was highly relevant in the regional distribution of funds. It allocated specific amounts to individual regions, mainly via allocations to geographically-focused forerunner programmes of the EIDHR. For example, the annual budget 1999 stipulated that Tacis states would receive 10 million Euros and ACP states would get 17 million Euros.¹¹⁸⁹ The only exception concerned those very few budget lines that were not geographically but thematically focussed, like the programme for 'NGOs pursuing human rights activities', for which the budget did not identify a geographical focus with specific allocations. Since 2002 the budget only mentions a broad and several smaller thematically-focused appropriations. The reorganization was part of the process of strengthening the EIDHR programming phase, during which all crucial decisions should be taken.

Different from the regional allocation of funds, the budget very seldom included country-specific allocations or explicitly mentioned that certain sums of a regional allocation should be used in a particular country. The separate lines for Nigeria (B7-7022 in 1998 and 1999) and Turkey (B7-5241 in 1994) during some years, or occasional budgetary remarks that a particular amount should be spent for a particular activity in a particular state, usually inserted by the Parliament, were highly exceptional.

¹¹⁸⁹ See Table A in the Appendix for data on the budgetary allocations.

iii. The Programming Stage

It has already been stipulated that since 2002, the pre-determination of regional and country-specific allocations happens during the programming phase. Over the last decade, the Commission has experimented with several different models of predetermination.

The 2002-2004 EIDHR Programming document and its annual updates allocated specific sums to individual regions, just as the budget had done, and retained some allocations for global projects, for which no detailed regional allocations were made. At the same time, as part of the overall effort of rendering the EIDHR more 'strategic' and 'prioritised', the Commission also tried to exercise strong control over the distribution of funds among states.¹¹⁹⁰ It concentrated about 60-70% of the EIDHR budget in about 32 pre-selected 'focus' countries, that were allocated specific amounts for targeted, micro, and macro projects.¹¹⁹¹ The approach proved to be unfeasible when in almost half of the countries the allocated funds could not be spent due to a lack of project proposals that met quality and administrative standards.¹¹⁹² Comprehensive predetermination was incompatible with the project selection mode of global calls for proposals.

During 2005 and 2006 the EIDHR Programming exercise only stipulated which regions and countries (so-called 'designated countries') were eligible to benefit under the various individual thematic campaigns of the EIDHR and foresaw minimum numbers of regions and countries that should benefit under each campaign.¹¹⁹³ While the EU ensured a certain spread of funds among different regions, no specific allocations were made and the level of financial predetermination was small. An exception applied to the micro-project scheme, for which individual countries were of course identified *a priori*. While the approach with eligible countries had been the result of negative experiences with a too specific predetermination practised in the previous period, it was abandoned because of its complexity.

A further implication of the approaches pursued during the period 2002-2004 and 2005-2006 was the strong limitation as regards the number of countries that could at all or to a more than minor degree benefit from the EIDHR. Both, the selection of focus states and of designated countries considerably reduced the scope of potential beneficiary states. For example, during 2005-2006 only 31 states could benefit from macro projects under the democracy campaign (Campaign 3). Given the character and specificity of the EIDHR, such limitation was unacceptable.

¹¹⁹⁰ The idea of focus states was first outlined in COM(2001) 252 final, at 15. The concurrently drafted 2001 Programming Exercise used the term 'focus countries', but did neither suggest such, nor restrict funds to them. SEC(2001) 891.

¹¹⁹¹ See EIDHR Programming Document 2002-2004, at 17.

¹¹⁹² EIDHR Programming document for 2005 and 2006, at 12.

¹¹⁹³ EIDHR Programming document for 2005 and 2006, at 20.

The approach pursued since 2007 resembles the simpler pre-2002 approach, while also containing elements of the others. The EIDHR Strategy Papers allocate specific amounts to individual regions for specific EIDHR ‘objectives’, that is, thematic priorities identified in the programming document. Further, specific countries are allocated exact amounts of money for the CBSS. At the same time, there are numerous global calls for proposals, for which no specific regional or country-focused allocation is foreseen and which are open to all states. However, as regards these global calls, the programming documents foresee that a regional balance should be ensured in the allocation of funds.

All in all, due to different models used during the last decade it is difficult to make general arguments on the extent to which the regional and country-specific allocation of EIDHR funds was predetermined during the programming phase. It seems though, taking into account the various project types and systems, that overall this predetermination was made for about half of the available EIDHR funds. For the remaining part, the final distribution of funds among countries was determined with the decision on which projects would be financed, which dependent strongly on the submitted proposals, that is, the demand of applicants.

In those cases where the EU chose regions and countries, the decisive criteria for the selection were, according to the Commission, the political importance of countries, to be derived from EU policies and documents, in particular CFSP documents, and the extent to which substantive work in the field of democratization and human rights promotion was already carried out through other EU programmes or by other donors, which would be complemented by the EIDHR. The Commission mentioned also the aim to ensure some ‘geographical balance’, without, however, clarifying what exactly this implied.¹¹⁹⁴ Further, the Commission declared a preference for states with a ‘favourable situation’ with regards to democracy and human rights assistance, that is, some governmental commitment to reform and/or enough freedom for NGOs to carry out projects. This criteria excluded EIDHR assistance in highly authoritarian states, but otherwise does not indicate any preferences for concentrating assistance at different stages of the democratization process. The situation changed with the programming document for 2007-2010, where about 10% of all EIDHR funds were reserved for projects in countries where human rights and freedoms were ‘most at risk’. Planned projects in those countries rather pertained, however, to the human rights sector than to democratization.¹¹⁹⁵

¹¹⁹⁴ EIDHR Programming Document 2002-2004, at 16 and 23.

¹¹⁹⁵ EIDHR Strategy Paper 2007-2010, at 28-9.

b) The Regional Distribution of EIDHR Expenditure 1996-2006

Tables 22 to 25 present the regional distribution of all EIDHR expenditure over three periods, 1996-1999, 2000, 2000-2006, which allows the evolutions to be traced, as well as during the entire period 1996-2006.¹¹⁹⁶ Table 26 presents the average share of each state in each region during 1996-2006. Due to lack of (aggregate) data, no Table can be provided on how EIDHR democracy assistance was spent in the various world regions.

Table 22: Regional Distribution of EIDHR Expenditure between 1996-1999 (in %)¹¹⁹⁷

Region	CEEC, SEE, NIS	ACP	LA	MEDA	Global	Asia
% of total EIDHR	35%	21%	17%	14%	12%	1%

Table 23: Regional Distribution of EIDHR Expenditure in 2000 (in %)¹¹⁹⁸

Region	ACP	CEEC, SEE, NIS	LA	Global	MEDA	Asia
% of total EIDHR	24%	24%	19%	12%	11%	10%

Table 24: Regional Distribution of EIDHR Expenditure between 2000-2006 (in %)¹¹⁹⁹

Region	Sub-Saharan Africa	LA	MEDA	Asia	Global	NIS
% of total EIDHR	22%	19%	12%	12%	10%	7%

Europe (including CEE)	SEE	Caribbean and Pacific	Central Asia	North America
7%	6%	4%	1%	<1%

Table 25: Regional Distribution of EIDHR Expenditure between 1996-2006 (in %)¹²⁰⁰

Region	ACP	LA	MEDA	Global	NIS	CEE	Asia	SEE	Others
% of total EIDHR	24%	18%	12%	12%	10%	9%	8%	6%	1%

¹¹⁹⁶ The regional distribution of budgetary allocations (until 2001) is visible in Table A, included in the Appendix to this thesis.

¹¹⁹⁷ COM(2000) 726 final.

¹¹⁹⁸ SEC(2001) 801.

¹¹⁹⁹ Statistics of activities 2000-2006.

¹²⁰⁰ COM(2000) 726 final; SEC(2001) 801; Statistics of activities 2000-2006.

Table 26: Average Share of all EIDHR Funds of Each State in the main Regions between 1996-2006 (in %)¹²⁰¹

Region	MEDA	SEE	LA	CEEC	NIS	Asia	ACP
Average share in%	1.36%	1.12%	1%	0.93%	0.80%	0.40%	0.30%

Overall, the ACP region was the region that during the entire period 1996-2006 received most and also an increasing share of all EIDHR funds (24%). However, despite the high share as region, each individual ACP state on average received the smallest share of all states, which considerably changes the picture.

Latin America was the area in which EU democracy assistance began in the mid 1980s/early 1990s and which remained the major recipient of funds until 1996. During 1996-2006 it received a quite remarkable and stable share of 18% of the available EIDHR funds, indicating a continuing interest in the region. At the same time, the average share of each state in Latin America was also considerably high.

The Mediterranean states received about 12% of all EIDHR funds during the 1996-2006 period.¹²⁰² The share in the early years of this period was with 14% remarkably high, considering that the specific democracy programme for the region, MEDA Democracy, was only established in 1996.¹²⁰³ Further, the MEDA region is the region with the highest average share of EIDHR funds per country, which is also about 20% higher than the region with the second largest share (the SEE states) and more than four times higher than an ACP state received on average. Overall, the MEDA states are therefore major EIDHR recipients.

Although the Commission did not publish separate data on EIDHR expenditure for the former Communist states during 1996 and 2000, based on budgetary allocations it appears that during 1996-2006 the NIS region was the fourth largest recipient of EIDHR funds (10%). Overall, however, its annual shares decreased considerably between 1996 and 2006.¹²⁰⁴ Average shares of individual countries of the region were smaller than in most other regions, except for Asian states and the ACP countries. Data on the NIS also point to the unbalanced distribution of funds among countries of a single region, as the Central Asian region only received 1% of

¹²⁰¹ The Table shows the average share of EIDHR funds received by each state in each region. For example, one ACP state on average received 0.3% of all EIDHR funds, while one MEDA state on average receive 1.36% of all EIDHR funds disbursed during 1996 and 2006. Importantly, average shares are in most cases of course not identical and most likely not even approximately close to actual shares of individual states, however, they allow determining the extent to which the EU took the number of countries covered by one region into account when distributing funds among regions.

¹²⁰² For an overview of democracy assistance to the Mediterranean, in particular through the EIDHR, see D. Huber, 'Democracy Assistance in the Middle East and North Africa: A Comparison of US and EU Policies', 13 *Mediterranean Politics* 1 (2008), at 43.

¹²⁰³ See the allocation of 9 million in the EU budget 1996, compared to 0 in 1995. See Table A in the Appendix for comparisons with evolutions of other lines.

¹²⁰⁴ This percentage is based on the budgetary allocations. See Table A in the Appendix to this thesis.

EIDHR funds between 2000 and 2006, while the western NIS and the Caucasian states received 7% (a topic addressed in more detail in the next section).

The group of CEECs received about 9 % of the EIDHR expenditure disbursed between 1996 and 2006.¹²⁰⁵ Its share as a group considerably decreased during the entire period (from about 14% in 1996-1999 to 4% in 2000-2006),¹²⁰⁶ not least because of the EU membership of most CEECs in 2004. This reduction also has to be kept in mind when considering that each CEEC on average only received 0.93% of all EIDHR funds. The share of each CEE was higher in the late 1990s and early 2000s than later.

SEE countries only accounted for about 6 % of all EIDHR fund disbursed during 1996 and 2006; however, due to limited number of countries in that region, each state received about 1.12 % of all EIDHR funds and therefore a considerably large share of EIDHR funds (only superseded by the MEDA states).

Asia was the last region to benefit from a specific democracy programme in 1998. Unlike the case of MEDA, the EU started the Asian programme with lower annual budgetary allocations that were only gradually increased in the following years. Therefore, as shown in Table 22, between 1996 and 1999 only about 1% of the funds were spent in Asia, while its share in 2000 and 2000-2006 was already 10% and 12% respectively. The increase was made possible by the reduction of the shares of the MEDA states, the NIS and CEECs. Overall, between 1996 and 2006 Asia received about 7.6% of all EIDHR funds and a very minor share if one takes the number of countries in the region into account.

About 1% of the funds was spent in other countries, including the EU and the US. Projects in the EU did not aim at improving the human rights and democratic situation in European states¹²⁰⁷ but were only carried out in European states while benefiting people from third states, mostly torture victims.¹²⁰⁸ Projects in North America concerned the campaign against the death penalty in the US.¹²⁰⁹ Finally, between 1996 and 2006 a relatively stable percentage of 12% of the EIDHR funds were spent for global projects, which were implemented in more than one region.

The distribution of EIDHR funds during 1996 and 2006 shows that the EU intended to devote a non-negligible portion of the EIDHR funds to each geographical area and therefore to ensure a visible presence worldwide. However, the distribution is far from providing equal shares

¹²⁰⁵ The numbers were calculated on the basis of an approximate percentage of 4% for the CEEC in the 2000-2006 period.

¹²⁰⁶ Data based on budgetary allocations and project compendia.

¹²⁰⁷ An exception was a grant to the Council of Europe for the European Social Charter. EIDHR Project compendium 2000-2006 by location.

¹²⁰⁸ Ibid.

¹²⁰⁹ Ibid.

to regions, neither in terms of overall funds, nor if the number of states in the regions is taken into account, nor in terms of a combination of both.

The most salient feature of the pattern of distribution is that the EU – if taking the number of countries per region into account – favoured countries that were geographically closer to the EU and (therefore) politically more relevant, in particular the MEDA states, the SEE countries, and the CEECs. In other words, the EU invested more efforts into establishing democracies and increasing human rights protection in states at its land and sea borders and, obviously, in future member states than in countries farther away and/or having no prospect of EU membership. This pattern is also visible in the post-2006 period, with the EIDHR programming documents foreseeing more aid in the ENP and Western Balkans than other regions.¹²¹⁰ The only exception in this pattern during 1996-2006 was Latin America, whose exceptionally high shares of EIDHR funds can be traced to the origins of EU democracy assistance in that region and a lack of willingness to break the pattern of regular attributions.

Finally, it is not possible to discern a clear pattern as regards any EU preference for regions that are on average more advanced in their democratization processes and/or have higher standards of human rights protection or a preference for regions that do not show such positive signs. While most of the major recipient regions fared better in both fields, like the CEECs and Latin America, the largely non-democratic MEDA region also received a considerable high share of EIDHR funds, in particular when taking average shares per country into account.¹²¹¹

c) The Distribution of EIDHR Expenditure among Countries 2000-2006

This section provides data on the distribution of EIDHR funds among target countries. It first focuses on the entire EIDHR and subsequently on EIDHR democracy assistance only (without data for election observation, which is not available). For reasons of lack of time and space it concentrates on four main regions, the former Soviet States, Asia, the Mediterranean and Middle East, and Latin America, and for lack of data on the period 2000 to 2006. Before presenting the detailed data, several preliminary comments need to be made.

First, Tables 27 to 30 only provide data on EIDHR funds spent for targeted, macro, and micro projects, leaving aside expenditure for election observation and for funds spent in individual countries through regional and global projects. Data for the latter is not available or it cannot be determined how much of it benefited individual countries.

¹²¹⁰ EIDHR Strategy Paper 2007-2010, at 14 and 16.

¹²¹¹ For levels of the protection of human rights and levels of democracy see the ratings for civil and political rights and liberties of Freedom House, below at section 3) c).

Secondly, the primary data source for the Tables is the Commission's EIDHR Project Compendium by location 2000-2006 and the sister compendium to this report, which is structured by theme of EIDHR projects.¹²¹² The source has one major weakness, that is, it reports on fewer country-specific and regional projects than are mentioned in the Commission's 2000-2006 Statistics on EIDHR expenditure in the various regions.¹²¹³ However, as it constitutes the only available source for the distribution of EIDHR funds among countries, it has to be relied on.

Thirdly, the Tables provide information on the recipient states' level of democratic development in order to establish the relevance of these factors for the EU's level of engagement. For the level of democratic development, the Tables use Freedom House's average score for political rights (PL) and civil liberties (CL) for the period 2000-2006, published in its annual reports on 'Freedom in the World'.¹²¹⁴ The PL and CL scores range from 1 to 7, with 1 representing the highest and 7 the lowest level of freedom.¹²¹⁵ Therefore, the lower the respective scores, the closer a country is to be an electoral or even a liberal democracy. The arrow '↓' following a score indicates that there was a tendency for the score to become lower during the period in question, indicating that the situation as regards civil and political rights improved. The arrow '↑' indicates that the score became higher during the period in question, which means that the actual situation worsened.

Fourthly, 'Rank *per capita*' in Tables 27 to 30 indicates which country of a region received most EIDHR funds on the basis of the *per capita* allocation.¹²¹⁶

Finally, reference should be made to Tables C and D, included in the Appendix, which provide a single list of the major recipients of EIDHR assistance and EIDHR democracy assistance of all four analysed regions in absolute terms and *per capita*, which allows quick comparisons among the countries of all regions.

¹²¹² EIDHR Project compendium 2000-2006 by location.

¹²¹³ Statistics of activities 2000-2006, at 3.

¹²¹⁴ Freedom House allocates the scores on the basis of answers to a standard set of 'checklist questions' on political rights and civil liberties. Political rights questions concern the electoral process, political pluralism and participation, and the functioning of government, while and civil liberties questions relate to the freedom of expression and belief, associational and organizational rights, the rule of law, personal autonomy and individual rights. See: http://www.freedomhouse.org/template.cfm?page=351&ana_page=363&year=2010 (last accessed on 25.5.2011).

¹²¹⁵ While Freedom House only provides scores from 1 to 7, Table 10(a)-(d) in part also gives scores with decimal places, like 3.5 or 4.5. The reason is that the Table provides the average score for the period 2000 to 2006.

¹²¹⁶ Population Reference Bureau: 2003 World Population Data Sheet, at http://homepage.ntu.edu.tw/~psc/WorldPopulationDS03_Eng.pdf (last accessed on 31.3.2009).

i. The Distribution of all EIDHR Funds among Countries 2000-2006

The exact allocation of EIDHR funds for country-specific macro, micro, and targeted projects to individual countries and their comparative share can directly be consulted in Tables 27 to 30 and should not be repeated here. Reference should only be made to some striking data, like the extremely high amounts of funding provided to Colombia, which during the period 2000-2006 received nearly 40% of all EIDHR funds spent in Latin America as well as a considerable share *per capita*. At the same time, Colombia is also the major recipient of all countries of all four analysed regions and receives double as much as the second-ranked Russia and the third-ranked Georgia. For this and all following aggregate data of all regions, see Table C in the Appendix.

Among the NIS, Russia and Georgia received high amounts of funding and very high shares of all regional EIDHR assistance compared to other countries in the region (each around 30%). At the same time, Georgia was also the main recipient *per capita* (with 2.81 Euros) and, indeed, was also one of the main recipients *per capita* of all four regions (in particular, if allocations to Israel and Gaza/West Bank are considered separately), and a major recipient in absolute terms of all analyzed regions (rank 3 of all states of all four analyzed regions).

In the MEDA and Middle East, attention was mainly given to the Palestinians, who benefited from allocations for Gaza and the West Bank as well as those given to Israel and therefore in total received about 30% of all funds. They also appear as a major recipient *per capita* of all four analysed regions (especially when uniting expenditure for Israel and Gaza and the West Bank). Next to the Palestinians was also Iraq was, with 18% of all regional EIDHR expenditure, a major recipient.

Finally, in Asia, Cambodia was a major recipient of EIDHR assistance between 2000-2006, as it was the major recipient *per capita* and received a major part of the EIDHR funds in absolute terms (17.6%). Nepal too was a major recipient in absolute terms and *per capita*, as it received about 12.8% of EIDHR funds and had the second-largest *per capita* allocation. Although China was the major recipient in absolute terms, its share appears much smaller if the population is taken into account.

Table 27: EIDHR Expenditure for Country-specific Macro, Micro, and Targeted Projects per Country in the NIS 2000-2006¹²¹⁷

No.	Country	Expenditure in million Euros	% of regional expenditure	Expenditure per capita in Euros	Rank per capita	FH PR/CL
1	Russia	13.38	30.5%	0.092	8	5↑/5
2	Georgia	13.227	30.0%	2.81	1	3.5↑/4
3	Ukraine	7.007	16.0%	0.15	7	4↓/3.5↓
4	Kazakhstan	4.125	9.4%	0.28	4	6/5
5	Armenia	1.987	4.5%	0.62	2	4.5↓/4
6	Kyrgyzstan	1.515	3.4%	0.303	3	6↓/5↓
7	Tajikistan	1.083	2.5%	0.16	6	6/5.5↓
8	Moldova	0.845	1.9%	0.2	5	2.5↑/4
9	Azerbaijan	0.66	1.5%	0.08	9	6/5
10	Uzbekistan	0	0.0%	0	10	7/6↓
11	Turkmenistan	0	0.0%	0	10	7/7
12	Belarus	0	0.0%	0	10	6.5↑/6
	Total	43.829				

Table 28: EIDHR Expenditure for Country-specific Macro, Micro, and Targeted Projects per Country in Asia 2000-2006¹²¹⁸

No.	Country	Expenditure in million Euros	% of regional expenditure	Expenditure per capita in Euros	Rank per capita	FH PR/CL
1	China	8.105	17.8%	0.0063	13	7/6
2	Cambodia	8.035	17.6%	0.64	1	6/5
3	Indonesia	5.841	12.8%	0.026	7	3↓/4↓
4	Nepal	5.828	12.8%	0.23	2	4↑/4↑
5	Pakistan	5.148	11.3%	0.034	5	6/5
6	India	3.883	8.5%	0.00236	14	2/3
7	Bangladesh	2.497	5.5%	0.017	10	3.5↑/4
8	Philippines	1.679	3.7%	0.02	9	2↑/3
9	Burma	1.441	3.2%	0.029	6	7/7
10	Vietnam	0.984	2.2%	0.012	11	7/6↓
11	Malaysia	0.931	2.0%	0.037	4	5↓/4.5↓
12	Sri Lanka	0.455	1.0%	0.024	8	3/3.5↓
13	Laos	0.394	0.9%	0.07	3	7/6
14	Afghanistan	0.295	0.6%	0.01	12	6↓/6↓
15	Maldives	0	0.0%	0	14	6/5
16	North Korea	0	0.0%	0	14	7/7
17	Mongolia	0	0.0%	0	14	2/2↓
18	Bhutan	0	0.0%	0	14	6↓/5↓
19	Singapore	0	0.0%	0	14	5/4↓
20	Brunei	0	0.0%	0	14	6↓/5
21	Thailand	0	0.0%	0	14	2↓/3
	Total	45.516				

¹²¹⁷ Source: EIDHR Project compendium 2000-2006 by location. Additionally about 6 million Euros were spent for regional projects.

¹²¹⁸ Ibid. Additionally, about 9.3 million Euros were spent for regional projects.

Table 29: EIDHR Expenditure for Country-specific Macro, Micro, and Targeted Projects per Country in the Mediterranean and the Middle East 2000-2006¹²¹⁹

No.	Country	Expenditure in million Euros	% of regional expenditure	Expenditure per capita in Euros	Rank per capita	FH PR/CL
1	Iraq	11.006	18.3%	0.45	4	7/6↑
2	Israel	9.096	15.2%	1.36	2	-
3	Gaza/West Bank	8.655	14.4%	2.4	1	6/6↓
4	Egypt	7.144	11.9%	0.099	9	6/5
5	Algeria	5.538	9.2%	0.17	7	6/5
6	Iran	4.265	7.1%	0.064	10	6/6
7	Tunisia	3.766	6.3%	0.38	6	6/5
8	Morocco	3.559	6.0%	0.12	8	5/4.5↓
9	Lebanon	3.399	5.7%	0.81	3	6↓/5↓
10	Jordan	2.245	3.7%	0.4	5	5/5
11	Syria	0.956	1.6%	0.055	11	7/7
12	Yemen	0.396	0.7%	0.02	12	5.5↓/5
13	Oman	0	0.0%	0	13	6/5
14	Saudi Arabia	0	0.0%	0	13	7/7
	Total	60.025				

Table 30: EIDHR Expenditure for Country-specific Macro, Micro, and Targeted Projects per Country in Latin America 2000-2006¹²²⁰

No.	Country	Expenditure in million Euros	% of regional expenditure	Expenditure per capita in Euros	Rank per capita	FH PR/CL
1	Colombia	26.901	39.6%	0.61	4	4↓/4↓
2	Guatemala	10.612	15.6%	0.86	1	4/4
3	Mexico	5.662	8.3%	0.054	11	2/2
4	Peru	4.964	7.3%	0.18	8	2/3
5	Ecuador	4.469	6.6%	0.68	2	3/3
6	Brazil	3.908	5.7%	0.022	14	2/3↓
7	Bolivia	2.96	4.4%	0.34	6	2↑/3
8	El Salvador	2.29	3.5%	0.35	5	2/3
9	Chile	1.63	2.4%	0.68	3	1.5↓/1
10	Venezuela	1.549	2.3%	0.06	10	3/4
11	Nicaragua	1.246	1.8%	0.23	7	3/3
12	Argentina	0.989	1.5%	0.027	13	2/3↑
13	Honduras	0.7	1.0%	0.1	9	3/3
14	Costa Rica	0.15	0.2%	0.036	12	1/2↑
15	Panama	0	0.0%	0	15	1/2
16	Paraguay	0	0.0%	0	15	3.5↓/3
17	Uruguay	0	0.0%	0	15	1/1
19	Cuba	0	0.0%	0	15	7/7
	Total	68.03				

¹²¹⁹ Ibid. Additionally, about 14 million Euros were spent for regional projects.

¹²²⁰ Source: EIDHR Project compendium 2000-2006 by location. Additionally about 15 million Euros were spent for regional projects.

Overall, the distribution of EIDHR funds among countries between 2000 and 2006 was highly unbalanced. In three of the four regions – the NIS, Asia, and Latin America – one fourth of the states received between 72% and 75% of the EIDHR funds, while one fourth received no EIDHR funds at all. About half of the states in each region received very minor shares. One reason for this imbalanced distribution was the EU's 'prioritised' approach from 2002 to 2004, whose impact is strongly visible in the Tables, as all 32 focus countries received the largest shares in their respective regions. However, even beyond the 2005-2006 period the distribution was imbalanced.

The imbalances in the allocations are also strongly visible in the per capita allocations. Overall, the *per capita* allocations range from 3.76 Euro in Palestine (if Israel and Gaza/West Bank are considered together) or 2.81 Euro in Georgia, to 0.00236 Euro in India, with individual countries receiving various amounts between these maximum and minimum amounts. The EU did therefore not take the population size into account when allocating funds to individual countries.

The only exception to this imbalanced picture is the Mediterranean region, where the EU not only attempted to engage in all states but also more or less ensure a relatively equal allocation of funds (in absolute terms), except for a stronger focus on assistance for the Palestinians. Within its closer neighbourhood, the EU was therefore putting more efforts into facilitating democratization processes and improving human rights protection in all countries of the region. In areas farther away it is more willing to accept imbalances and that many countries are left without EIDHR support.

It should be added that the increasing use of CBSS, in the case of which individual countries are usually allocated between 300,000 Euros and 3 million Euros, has already started to correct the imbalances. On the one hand, the scheme has also become operative in countries that did not receive funds in the 2000-2006 period (like Mongolia, Panama, Paraguay) and it has increased shares of countries that during the 2000-2006 period received smaller shares (like Kyrgyzstan, Yemen, Jordan, Morocco).

As regards the preference for some and negligence of other countries of particular regions it is difficult to discern a really clear pattern. At most, the distribution confirms the EU's preference for 'politically important' states. Relevance of a particular state can result from various factors, like the geopolitical importance of states, as in the case of Russia and China, which were major recipients in terms of total amounts, albeit not *per capita*. Importance can be a function of particular problems with effects for the EU, like narcotics production and trade in Colombia, the presence of long-lasting conflicts of particular international interest, as in the case of Palestine, and extra ordinary situations, as in the case of Iraq. All these states are the major recipients per

overall amount in their respective regions, albeit not always major recipients *per capita*. In these cases, the level of protection of civil and political rights and freedoms did not play a major role in the choice, as the group includes countries with higher and lower Freedom House rates.

Among the states that received no or hardly any EIDHR funds is a considerably high number of countries with very bad Freedom House ratings of 6 or even 7, like Turkmenistan and Uzbekistan, indicating, on the one hand, the difficulties of implementing democracy and human rights programmes in such countries, but also, on the other hand, a lack of real effort by the EU to engage in such difficult environments. As stipulated above, only from 2007 on were 10% of all EIDHR funds reserved for countries in which human rights were most at risk. At the same time, among the group of states that hardly benefited from the EIDHR are also states with high levels of freedom, in which the EU considered engagement less necessary, like in Thailand and Mongolia and many states in Latin America. At the same time, many non-recipient states were also high income countries, like Singapore, Brunei, Saudi Arabia, indicating hesitation to run democratization and human rights programmes by the EU (in addition to these states being authoritarian and therefore critical of such programmes).¹²²¹

All in all, the final distribution of funds was therefore the result of a complex mix of numerous factors.

ii. The Distribution of EIDHR Expenditure for Democracy Assistance among Countries 2000-2006

As regards detailed data on EIDHR expenditure for democracy assistance in each country of the four selected regions during 2000-2006, reference should be made to Tables 31 to 34, while only some remarkable features should be pointed out here. Among the NIS, Georgia appears as a major democracy assistance recipient. About 40% of all democracy assistance provided to the NIS was spent in that country, it is the major recipient *per capita*, and also received a considerably higher *per capita* share (1.65 Euros) than the second-ranked Armenia (0.34 Euro *per capita*). Indeed, Georgia is also the major recipient per capita of all four analysed regions and the second-largest recipient of EIDHR democracy assistance funds in absolute terms (after Iraq). A considerable amount of democracy assistance was also spent in Russia (about 20%). It is the fourth largest recipient of all four analyzed regions, however, it is a much less remarkable recipient in *per capita* terms.

¹²²¹ For the level of socio-economic development see the OECD/DAC list of aid recipients.

Table 31: Expenditure for EIDHR Democracy Assistance for Macro, Micro, and Targeted Projects per Country in the NIS 2000-2006¹²²²

No.	Country	DA in million Euros	% of regional DA	DA per capita in Euros	Rank per capita	FH PR/CL
1	Georgia	7.762	40.0%	1.65	1	3.5↓/4
2	Russia	3.912	20.0%	0.027	9	5↑/5
3	Kazakhstan	2.703	14.0%	0.18	3	6/5
4	Ukraine	2.003	10.0%	0.042	7	4↓/3.5↓
5	Armenia	1.08	6.0%	0.34	2	4.5↓/4
6	Kyrgyzstan	0.913	5.0%	0.18	4	6↓/5↓
7	Azerbaijan	0.36	2.0%	0.04	8	6/5
8	Tajikistan	0.428	2.0%	0.06	5	5/5.5↓
9	Moldova	0.261	1.0%	0.06	6	2.5↑/4
10	Belarus	0	0.0%	0	0	6.5↑/6
11	Uzbekistan	0	0.0%	0	0	7/6↓
12	Turkmenistan	0	0.0%	0	0	7/7
	Total	19.422				

Table 32: Expenditure for EIDHR Democracy Assistance for Macro, Micro, and Targeted Projects per Country in Asia 2000-2006¹²²³

No.	Country	DA in million Euros	% of regional DA	DA per capita in Euros	Rank per capita	FH PR/CL
1	Indonesia	1.861	26.0%	0.008	5	3↓/4↓
2	Pakistan	1.338	19.0%	0.009	4	6/5
3	Cambodia	0.979	14.0%	0.078	1	6/5
4	Burma	0.92	13.0%	0.019	3	7/7
5	Nepal	0.854	12.0%	0.034	2	4↑/4↑
6	China	0.515	7.0%	0.0004	11	7/6
7	Vietnam	0.233	3.0%	0.0029	9	7/6↓
8	Bangladesh	0.176	2.0%	0.0012	10	3.5↑/4
9	Afghanistan	0.099	1.0%	0.0034	8	6↓/6↓
10	Sri Lanka	0.071	1.0%	0.0037	7	3/3.5↓
11	Laos	0.04	1.0%	0.0072	6	7/6
12	Bhutan	0	0.0%	0	12	6↓/5↓
13	Maldives	0	0.0%	0	12	6/50
14	North Korea	0	0.0%	0	12	7/7
15	Singapore	0	0.0%	0	12	5/4↓
16	Brunei	0	0.0%	0	12	6↓/5
17	Malaysia	0	0.0%	0	12	5↓/4.5↓
18	India	0	0.0%	0	12	2/3
19	Mongolia	0	0.0%	0	12	2/2↓
20	Philippines	0	0.0%	0	12	2↑/3
21	Thailand	0	0.0%	0	12	2↓/3
	Total	7.086				

¹²²² Source: EIDHR Project compendium 2000-2006 by location.

¹²²³ Ibid.

Table 33: Expenditure for EIDHR Democracy Assistance for Macro, Micro, and Targeted Projects per Country in the Mediterranean and Middle East 2000-2006¹²²⁴

No.	Country	DA in million Euros	% of regional DA	DA per capita in Euros	Rank per capita	FH PR/CL
1	Iraq	9	36.0%	0.37	2	7/6↑
2	Egypt	7.144	29.0%	0.099	5	6/5
3	Gaza/West Bank	2.464	10.0%	0.68	1	6/6↓
4	Algeria	2.325	10.0%	0.073	6	6/5
5	Morocco	1.149	5.0%	0.038	7	5/4.5↓
6	Tunisia	1.049	4.0%	0.106	4	6/5
7	Jordan	0.632	3.0%	0.115	3	5/5
8	Syria	0.621	3.0%	0.035	8	7/7
9	Lebanon	0.051	0.2%	0.012	9	6↓/5↓
10	Iran	0	0.0%	0	0	6/6
11	Oman	0	0.0%	0	0	6/5
12	Saudi Arabia	0	0.0%	0	0	7/7
13	Yemen	0	0.0%	0	0	5.5↓/6
14	Israel	0	0.0%	0	0	
	Total	24.435				

Table 34: Expenditure for EIDHR Democracy Assistance for Macro, Micro, and Targeted Projects per Country in Latin America 2000-2006¹²²⁵

No.	Country	DA in million Euros	% of regional DA	DA per capita in Euros	Rank per capita	FH PR/CL
1	Peru	3.15	18.0%	0.12	4	2/3
2	Colombia	3.034	18.0%	0.069	7	4↓/4
3	Guatemala	2.992	18.0%	0.24	2	4/4
4	El Salvador	2.29	13.0%	0.35	1	2/3
5	Ecuador	1.726	10.0%	0.14	3	3/3
6	Bolivia	1	6.0%	0.12	5	2↑/3
7	Mexico	0.72	4.0%	0.007	12	2/2
8	Honduras	0.7	4.0%	0.1	6	3/3
9	Venezuela	0.6	4.0%	0.02	9	3/4
10	Argentina	0.38	2.0%	0.01	11	2/3↑
11	Chile	0.296	2.0%	0.02	10	1.5↓/1
12	Costa Rica	0.15	1.0%	0.036	8	1/2↑
13	Cuba	0	0.0%	0	0	7/7
14	Nicaragua	0	0.0%	0	0	3/3
15	Paraguay	0	0.0%	0	0	3.5↓/3
16	Brazil	0	0.0%	0	0	2/3↓
17	Uruguay	0	0.0%	0	0	1/1
18	Panama	0	0.0%	0	0	1/2
	Total	17.038				

¹²²⁴ Ibid.

¹²²⁵ Ibid.

In Asia, 45% of all money spent for democracy assistance was spent in Indonesia and Pakistan. However, if looking at the expenditure *per capita*, Cambodia and Nepal emerge as main recipients. Comparing countries of all regions, Asian countries received considerably little democracy assistance in absolute numbers as well as in *per capita* terms.

In the Mediterranean and Middle Eastern region, Iraq appears a major democracy assistance recipient (36% of all regional democracy assistance). It received most money (9 million Euros) as well as a considerable amount *per capita* (0.37 Euros). Iraq is also the major recipient of all four regions, and is the third largest recipient *per capita* of all regions (Table C in the Appendix). Further, Egypt too was a major recipient of EIDHR democracy assistance in the MEDA & Middle East (7.144 million Euros), and in comparison with countries of all regions (rank three of all major recipients). Its *per capita* share is smaller though, within the region as well as when looking at all four regions. Finally, Gaza and the West Bank were the major recipients *per capita*; however, were only the third-largest recipients in absolute terms within the region (and received only about one fourth of the funds spent in Iraq).

Finally, in Latin America considerable attention was given to Guatemala, which received about 18% of all regional EIDHR democracy assistance and had the major *per capita* allocation. Further, also Peru and Colombia received equally high shares of all regional assistance, but lower *per capita* allocations.

The following two general observations can be made on the overall distribution of democracy assistance among countries. First, the distribution of democracy assistance among countries was slightly different from the distribution of all EIDHR funds among countries. Nevertheless, in most regions the major recipients of EIDHR funds were also the major recipients of democracy assistance. There were therefore hardly states with much activity in the human rights sector and little in democratization or vice versa, but the majority of recipient states had projects in both. The major exception to this pattern was China, which was the major recipient of EIDHR assistance in Asia, but where considerably little was done in the sector of democratization. Secondly, the distribution of democracy assistance among the various countries of one region was highly imbalanced. Indeed, the imbalance is even higher as regards democracy assistance than as regards all EIDHR assistance. In all four regions, about one fourth of the states received between 74% and 85% of all democracy assistance, one fourth to half of the countries received about 15% to 26% of democracy assistance, while the remaining one fourth to half of the states received nothing. The imbalance is particularly strong in Asia, where five of 21 states received 84% of the provided democracy assistance, and ten states did not receive any democracy assistance at all.

Just like with the overall distribution of EIDHR funds, it is difficult to identify clear, underlying patterns in the distribution of EIDHR democracy assistance. Political relevance seems to play a role in some cases, like Iraq and Russia, but is less decisive than in the overall distribution of EIDHR funds. As regards democratization, the major recipients of EIDHR democracy assistance in all four analyzed regions include regionally better performing states, like Georgia, Indonesia, and Peru, as well as regionally worse performers, like Kazakhstan, Pakistan, and Colombia. There is also no clear indication that the EU is mainly engaging in states, which show positive trends in democratization. While several of the major recipients had slightly improving political and civil rights and liberties ratings during 2000-2006, like Georgia, Indonesia, Colombia, the EU also strongly engaged in countries with declining rates, in particular in Russia. Moreover, numerous countries with improving situations received minor EIDHR shares or no assistance, for example Kyrgyzstan, Lebanon, and many states in Asia. Similarly, despite Georgia, the other countries that had undergone colour revolutions, Ukraine and Kyrgyzstan, did not receive considerably high shares. All in all, there is therefore no clear link between level of democratization and trends in democratization and EU democracy assistance.

4. Core Features of the Stage of Implementation

This last section of Chapter 6 sheds more detailed light on three issues of the stage of the technical implementation of EIDHR: project types, project sizes, and partners in implementation. Reference should at this point be made to the more general discussion of the stages and procedures in EIDHR implementation and, especially, the project cycle in Chapter 5. That Chapter, amongst others, introduced the primary modes of project identification, that is, calls for proposals and formulation by the Commission or by a selected partner, which, as will be seen shortly below, directly related to project types and other project features discussed in the following paragraphs.

a) (Technical) Project Implementation

i. Project Types

The two types of project identification discussed in Chapter 5 – calls for proposals and formulation by the Commission or a selected partner – are closely linked to the different types of projects, in Commission jargon also called EIDHR instruments, through which the EIDHR is being implemented. Until 2007 the major EIDHR instruments were (1) macro projects, at times

referred to as ‘calls for proposals’,¹²²⁶ which were larger projects selected by the Commission headquarters, implemented by Western and/or local actors, and administered by the Commission headquarters and/or the EU Delegations, (2) micro projects, which were smaller projects identified through local calls for proposals, implemented by local actors only, and administered by the Delegations,¹²²⁷ and (3) targeted or ‘*ad hoc*’ projects, devised by the Commission, implemented by Western or local actors, and administered from Brussels. From 2000 on the EU often mentioned election-related projects, including electoral observation and some types of observation mission-related electoral assistance, and urgent projects as separate categories rather than as targeted projects. Unlike from other targeted projects, urgent or emergency measures do not need to be envisaged in programming documents and are adopted according to speedier procedures.¹²²⁸

Since 2007 the Commission has partly changed these categories and used a different terminology. It now distinguishes between projects selected through (1) ‘centralized calls for proposals’, which largely correspond to macro projects, (2) ‘country based support schemes’ (CBSS), which are similar to the micro-project scheme but foresee larger grants, (3) targeted projects and cooperation with international organizations, (4) election observation, and (4) other support measures, which include urgent projects.¹²²⁹

Table 35 provides an overview of the use of the major project types during 2000-2006 in number of projects, EIDHR funds disbursed through various project types, and the percentage of overall funds disbursed through project type, as published by the Commission in the document ‘Statistics of activities 2000-2006’.¹²³⁰ It shows the dominance of macro projects (55%), followed by micro projects (25%), election observation (14%), and targeted projects (6%). Analysis of various other documents suggests a slightly different distribution (about 45% for macro projects, 20% for micro projects, 15% for election observation, 15% for targeted projects, and 5% for administrative expenditure and contingencies).¹²³¹

¹²²⁶ Calls for proposals is therefore a type of project selection as well as a term used to denominate macro projects. It has to be recalled that also micro projects are identified through calls for proposals.

¹²²⁷ For a study on the implementation of the micro-project scheme in the Mediterranean see the article by Bicchi, ‘Democracy Assistance in the Mediterranean’.

¹²²⁸ Art. 14 of the 1999 EIDHR regulation (for developing countries); Art. 7 of the 2006 EIDHR regulation.

¹²²⁹ EIDHR Strategy Paper 2007-2010.

¹²³⁰ Statistics of activities 2000-2006.

¹²³¹ SEC(2001) 801, at 72, which reports on a higher amount provided to targeted projects in 2000 than during the entire 2000-2006 period; EIDHR Programming Document 2002-2004; 2003 EIDHR Programming Update; 2004 EIDHR Programming Update; EIDHR Annual Work Programme for 2005 and Annual Work Programme for 2006.

Table 35: Distribution of EIDHR Expenditure through EIDHR Instruments 2000-2006 (in numbers of projects, million Euros, and % of all EIDHR expenditure)¹²³²

Project type	Macro projects	Micro projects	Election observation	Targeted Projects
No. of projects	635	1348	388	39
Expenditure/project type (million Euros)	399.8	183.7	101.2	46.6
% of all EIDHR expenditure	55%	25%	14%	6%

Before 2000 the distribution was different. In the early 1990s, when the three project types macro, micro, and targeted projects were only used under the Phare and Tacis Democracy Programme, the largest part (70%) was used for macro projects, while micro projects only slowly started to be developed (11%).¹²³³ By the late 1990s, the share of targeted projects had risen to 35% and, in 2000, even to 65%(!).¹²³⁴ Due to criticisms and mentioned legal changes, their share considerably reduced again from then on.

At the same time, the micro-project facility was increasingly used, reflecting an interest in small and, even more, local NGOs as promoters of democracy and human rights. In 2001 it was first used beyond the Phare and Tacis countries and introduced in China, and from then on extended to an increasing number of states. While only 20 states were allocated funds for micro projects in 1999, the number had risen to 52 in 2006.¹²³⁵ Table B, provided in the Appendix to this thesis, provides more details on the evolution of the micro-project scheme. The CBSS, the successor of the micro-project scheme, which, however, uses larger grants, was launched in 48 states in 2007¹²³⁶ and currently already operates in about 82 countries and receives about 40% of all EIDHR funds (for 2011).¹²³⁷

ii. Project Sizes

As indicated, a major differentiating factor of most projects types is their grant size. Minimum and maximum grants are influenced by administrative capacities in the Commission (headquarters and Delegations) and have a strong impact on the scope of eligible partners, that is, smaller or larger NGOs, local or Western partners. Overall, the EU has experimented with various minimum and maximum grant sizes over the last decade in order to adjust to its own capacities and (expected) capacities of recipients. Co-funding by applicants was necessary to 20% (until

¹²³² Statistics of activities 2000-2006.

¹²³³ PTDP Evaluation Report, at 33; COM(95) 191 final, at 7.

¹²³⁴ SEC(2001) 801, at 72.

¹²³⁵ SEC(2001) 891, Section 4; Micro-project Facility; EIDHR Programming document 2005-2006, Annex 1, at 34-5; EIDHR Annual Work Programme 2005, Annex 2; EIDHR Annual Work Programme 2006, Annex 2.

¹²³⁶ EIDHR Strategy Paper 2007-2010, Annex II.

¹²³⁷ EIDHR Strategy Paper 2011-2013.

2001 for 10%), except if a higher contribution by the EU was necessary for the realization of the project.¹²³⁸

For most of the period since 2001, the minimum grant for macro projects was 300.000 Euros, while the maximum grant was 1.5 million Euros. Between 2004 and 2006, the threshold was lowered for local applicants (to 150.000 Euros, but only for up to 20% of all EIDHR funds) in order to increase their chances and following a debacle in 2002, when there were not enough applications to disburse all funds. Since 2007, the Commission has adopted a more flexible approach, adjusting minimum and maximum grants to the themes of the call, without, however, treating local applicants more favourably. Minimum grants range between 150.000 and 500.000 Euros, while maximum grants range between 1.2 and 1.5 million Euros.¹²³⁹

An analysis of the 175-odd macro projects in the NIS and MEDA region and the thematic sector democratization during 2000 and 2006 reveals that overall there was a broad range of project sizes and that the average macro project grant was around 610.000 Euros, with very minor differences between local and EU-based applicants.¹²⁴⁰ The threshold was therefore not discriminating local applicants to the extent that they could not apply.

Macro project took on average three years to be implemented, which corresponds to the envisaged time frame.

The minimum and maximum grants for micro projects rose from 3.000 Euros and 50.000 Euros in 1999 to 10.000 Euros and 100.000 Euros in 2006. Delegations had the possibility to make small adjustments though, which they used according to administrative needs and policy-considerations. There was therefore always a gap between macro and micro projects, which precluded projects of a middle size.¹²⁴¹

An analysis of 640-odd micro projects implemented in the NIS, MEDA states and the category of democracy assistance between 2000 and 2006 shows that in all three categories there was considerable variation in grant sizes. On average, grants in the NIS amounted to 54.000 Euros, those in the MEDA states to about 78.000 Euros, and democracy assistance projects to

¹²³⁸ Financial Regulation, Art. 169.

¹²³⁹ Call for Proposals, SCRE/111700/C/G, European Initiative for Democracy and Human Rights issued by the European Commission (2001), at 1; European Commission, The European Initiative for Democracy and Human Rights, Support for Democratization, Good Governance and the Rule of Law, Guidelines for Applicants to Call for Proposal 2002, Budget Line B7-701, at 5 and 8; European Commission, The European Initiative for Democracy and Human Rights, Support for Democratization, Good Governance and the Rule of Law, Guidelines for Grant Applicants responding to the restricted Call for Proposal for 2004, Budget line 19.04.03, at 3; For more recent calls see the link 'Funding' at the EuropeAid website, at http://ec.europa.eu/europeaid/index_en.htm (last accessed on 30.5.2011).

¹²⁴⁰ Data source for the analysis: EIDHR Project compendium 2000-2006 by theme and the sister report to this compendium, that is, the EIDHR Project compendium 2000-2006 by location.

¹²⁴¹ COM(95) 191 final, at 7; Guidelines for Applicants 1999, at 6; Commission Staff Working Document EIDHR Programming Document 2002-2004, at 13; EIDHR Programming for 2005 and 2006, at 29.

about 63.000 Euros. An evaluation carried out for the EU considered the sizes adequate for the absorption capacity of targeted NGOs.¹²⁴²

Micro projects took on average 15 (in MEDA states) 20 (in NIS) months to be implemented, which was more than the envisaged 12 months.

Since the launch of the CBSS, the Delegations can determine minimum and maximum grant sizes. These vary considerably, with minimum grants, for example in the NIS, ranging between 30.000 Euros and 100.000 Euros, and maximum grants ranging between 100.000 Euros and 300.000 Euros. Overall, CBSS projects can therefore be expected to be larger than micro projects.¹²⁴³

Targeted projects, which are since 2002 mainly contributions to projects of international organizations, like UN agencies, and urgent projects, by definition do not have minimum or maximum sizes. In the MEDA states, the average grant for a targeted project was between 2000 and 2006 about 1.3 million Euros. In the NIS, EU contributions to targeted projects were on average smaller (600.000 Euros), as most were co-financed to 50% by the Council of Europe.¹²⁴⁴

iii. Partners in Implementation

A further important question on the implementation of EIDHR projects concerns the eligibility of grant recipients. Both EIDHR regulations have regulated this personal scope.

Articles 4 and 5 of the 1999 EIDHR regulation, which basically wrote into law what had by the mid-late 1990s been practiced and mentioned in various COMs,¹²⁴⁵ enumerated the following eligible applicants in an exclusive way: “regional and international organisations, nongovernmental organisations, national, regional and local authorities and official agencies, community-based organisations and public or private-sector institutes and operators”. The 2004 amendment to the EIDHR regulations added, for the case of election observation missions, natural persons as eligible partners.¹²⁴⁶ They had to be based in the EU or one of the targeted states.

Overall, the scope of eligible actors envisaged in the 1999 regulation was very broad and hardly excluded any entity from the public and private sector.¹²⁴⁷ The vague terminology was used to extend the scope even further: for example, to ‘public and private sector institutes and operators’, mainly applying to universities and other educational or research institutes, which was

¹²⁴² Evaluation of the micro-projects facility, at viii.

¹²⁴³ See the various calls under the link ‘Funding’ at the EuropeAid website.

¹²⁴⁴ Statistics of activities 2000-2006, at 1; EIDHR Project compendium 2000-2006 by location.

¹²⁴⁵ COM(96) 672 final, at 37 and COM(95) 191 final, at 15.

¹²⁴⁶ Art.1 (2) and (3), 2004 amendment to the 1999 EIDHR regulation (for developing countries).

¹²⁴⁷ See also the Vade-mecum for grant management, which does not rule out grants to private applicants, but limits them to special situations. European Commission, Vade-mecum for Grant management (2000), at 23.

also interpreted to include profit-making businesses, like media institutions, as long as the grant was for non-commercial purposes.¹²⁴⁸ In principle, political parties could also be seen as ‘public sector’ operators; however, the prevailing view was that they were excluded as potential applicants (but not necessarily as beneficiaries of a project). The term ‘nongovernmental organization’ was understood as a more general category of non-profit-making organizations and included foundations, political foundations, charities, and trade unions.¹²⁴⁹

While the regulations provided the scope of eligible partners, they did not further regulate any preference for or balance among the various actors. The Commission could restrict the scope in individual calls for proposals and did so, for example in micro projects, for which only local civil society organizations could apply. From 2002 on, it excluded public institutions as eligible applicants, which formed part of efforts to render the EIDHR increasingly a civil society tool (not only as target, but also as key partners).

The 2006 EIDHR regulation provides a non-exhaustive list of the following eligible beneficiaries in Article 10: civil society organizations, as part of which it amongst others expressly refers to NGO, independent political foundations, and community based organizations. Further, it mentions public sector non-profit agencies, institutions and organizations and international and regional organizations. Private persons are deemed eligible if this is necessary for the objectives of the regulation,¹²⁵⁰ as in the case of election observation missions or in the case of urgent requests by human rights defenders.¹²⁵¹ Parliamentary bodies are eligible if their support is necessary for the objectives of the EIDHR and when the measure cannot be financed under a different EU programme, for example a geographical programme. Finally, other non-enumerated bodies can exceptionally receive funding, if that is necessary for achieving the objectives of the EIDHR. As regards location, applicants can now also be from the EEA or from candidate countries.¹²⁵²

The major novelty of the 2006 regulation is the exclusion of public authorities as potential applicants and the limitations concerning parliaments, which confirms the mentioned policy shift to strengthen the EIDHR’s character as civil-society focused programme. It expressly refers to political foundations, which have increasingly important become actors in democracy assistance and to human rights defenders, which occupy a special role as recipients. Finally, the regulation

¹²⁴⁸ Art. 109(2) of the Financial Regulation of 2002. See also the earlier inclusion of the principle in the Vade-mecum on Grant management (2000), at 23.

¹²⁴⁹ See, for example, the EIDHR calls which refer to ‘non-profit-making legal persons, in particular NGOs’ rather than NGOs alone. EIDHR call 2002 and 2004, at 5.

¹²⁵⁰ See in this respect also Article 114 of the Financial Regulation of 2002, which stipulates that in principle legal persons should receive grants, but that exceptionally also private persons may do so.

¹²⁵¹ Art. 14 of the 2006 EIDHR regulation.

¹²⁵² See Art. 14(1)-(3) of the 2006 EIDHR regulation.

gives the Commission the possibility to extend the scope of potential applicants, if it is considered necessary.

Two more factors, not expressly mentioned in the regulation, should be addressed. While the EU has for a long time required applicants, except where they are private persons, to be 'legally constituted and registered' under national law,¹²⁵³ since late 2006 non-registered NGOs can also receive grants.¹²⁵⁴ Further, while the Phare/Tacis Democracy Programme, required the partnership of a Western and a local partner for the implementation of a macro project,¹²⁵⁵ it was no longer foreseen as a requirement but just as a possibility under the EIDHR after 1999, which would, however, be positively valued.¹²⁵⁶

An analysis of all macro projects implemented in the NIS and MEDA region, as well as of all democracy assistance projects worldwide between 2000 and 2006 shows that about 80% of the projects were implemented by civil society organizations, in particular by (European and local) NGOs and foundations. Western NGOs included a broad range of NGOs that differed in size and focus. Local recipients were usually NGOs with a specific human rights and democracy agenda or with a specific focus on particular topics, like women's rights. About 14% of projects were implemented by universities, in particular local universities, and about 6% of the projects were implemented by Western political foundations, in particular the major German Politischen Stiftungen. Of all 175-odd projects analysed, only one was implemented by a local public authority, and none by a trade union.

Micro projects, which can by definition only be implemented by local NGOs, show a similar pattern. More than 90% of all micro projects were implemented by NGOs, some by research institutes and media organizations, and very few by trade unions. No project was carried out by an Islamic civil society organization (which does not show whether some applied or not though). In the NIS, many NGOs had a specific human rights and democratization focus, a focus on groups like women, minorities, and the disabled, or on social topics. In the MEDA region, NGOs that focused on groups and social topics dominated. There was considerable variation among states on whether NGOs were rather based in the capital or in the regions.

Main partners in the implementation of targeted projects were UN agencies, especially UNDP and UNICEF, and in the NIS, the Council of Europe and the OSCE (especially the ODIHR).

Finally, as regards the share of Western and local involvement in project implementation, the analysis shows that about 37% of all macro funds were given to local partners, while 63%

¹²⁵³ Vade-mecum on Grant management (2000).

¹²⁵⁴ Council Regulation No 1995/2006, Art. 114(2)(a).

¹²⁵⁵ EIDHR Guidelines for Applicants 1999, at 12; PTDP Evaluation, at 6.

¹²⁵⁶ For example, EIDHR 2004 call, at 6.

were channelled through western partners. Western partners also implemented slightly more macro projects than local partners. Overall, western NGOs, universities, and foundations were therefore more strongly involved in the implementation of macro projects. However, given that micro projects were exclusively implemented by local NGOs and constituted about 25% of all funds, in total more funds were implemented through local organizations: about 43.5% of all EIDHR funds were provided to local organizations, and 31.5% were channelled through local NGOs.¹²⁵⁷

On the whole, in the technical implementation of the projects, the EU has mainly used calls for proposals and only secondarily targeted projects, formulated by itself or a selected partner. The EU has mainly worked with three types of projects, macro, micro, and targeted projects, which differ as regards project identification, size, recipients, and location of selection and administration. While macro projects (with average grants of about 610.000 Euros) have overall been the major types of instruments since 2000, the micro project facility (with average grants of about 65.000 Euros) has increasingly been developed, reflecting the EIDHR's increasing focus on local civil society. In 2007 the CBSS replaced the micro project facility, which however works with larger projects. As regards implementing partners, macro and micro projects have overwhelmingly been implemented by NGOs (over 90%) and only to a very limited extent by other eligible bodies, like universities, trade unions, and parliaments. While more western NGOs have implemented macro projects, overall, most EIDHR funds have been paid to local civil society organizations.

III. Conclusion

Chapter 6 has analyzed the EU's specific programme on promoting democratization and the respect for human rights, the EIDHR, and has provided a detailed insight into four major issues: the quantitative scope of the EIDHR, the thematic distribution of funds, the geographical dimension of the EIDHR, as well as, on several topics relating to the stage of EIDHR implementation (project identification, project types, and implementing partners). Although the major aim of Chapter 6 has been the analysis of EIDHR democracy assistance, the inclusion of human rights and democracy-issues in a single regulation, necessitated a broader view, which also allowed comparing EU engagement on democratization with human rights assistance. The analysis intended to be as comprehensive as possible and to cover the period since the start of EU democracy through EIDHR forerunner programmes and 2011. However, lack of available data has in many sections restricted the focus to a shorter period of time, in particular to the

¹²⁵⁷ Based on the distribution of EIDHR types of instruments in the EIDHR Statistics 2000-2006.

period 2000 to 2006, for which the Commission has published detailed and comprehensive compendia on EIDHR projects.

Chapter 6 has, first, provided data on EU commitments and expenditure under the EIDHR. Commitments relate to annual allocations in the EU budget, drafted by the Commission and jointly agreed by the Parliament and the Council. The presented data has demonstrated the strong surge in commitments for democracy and human rights assistance under the EIDHR and its forerunner programmes between 1978, when the EU first provided human rights assistance, and 2011. The annual allocations grew from 200.000 Euros in 1978 to 157.7 million Euros in 2011, at which level they can, on the basis of the financial envelopes of the EIDHR regulations, expected to remain at least until 2013. The increase was overall, if considering individual budget lines implemented under the EIDHR umbrella as well as the overall amounts, a rather steady one, with budget lines, once inserted, remaining steady or increasing but hardly being reduced or abolished. Particularly strong increases occurred in 1990 and 1992, when events in Latin America, the CEECs, and other part of the world brought democracy promotion on the agenda of basically all western donors and the EU, in November 1991, publicly proclaimed its policy shift. Other major increases, like in 1995 and 2009, were either caused by the start of a new regional programme or simply the result of increasing interest in the policy instrument. Importantly, compared to EU commitments for democracy assistance under the EU's mainstream development programmes, discussed in Chapter 7, which only started to increase several years after the November 1991 policy declaration, the EU much more quickly, and indeed even before 1991, provided democracy assistance under the EIDHR's forerunner programme. Until 1999, the EIDHR was the main budget line for assistance in the sector of democratization. Nevertheless, compared to the overall EU budget for external assistance, allocations for democracy assistance appear small. Between 2002 and 2007 only about 1.5% of all external assistance was committed for democracy and human rights assistance under the EIDHR. In total, the EU committed about 2.1 billion Euros under the EIDHR for democracy and human rights assistance between 1978 and 2011.

Chapter 6 has also looked at expenditure data on the EIDHR. Data on expenditure has been much more volatile, due to a lack of regular, in particular, annual patterns of aid implementation. In total, during the period from 1992 to 2006, for which data is available, about 1.2 billion Euros have been paid for democracy and human rights projects under the EIDHR (excluding 1995, for which no data is available). While data on commitments and payment are difficult to relate to each other and compare, it seems that, overall and considering an average delay of 2-3 years, at least during the period 1990 and 2004, all committed funds were paid.

Chapter 6 has not only provided expenditure data on the entire EIDHR, but also on democracy assistance alone (including on election observation missions, i.e. EUEOMs). During the period 1996 and 2000, in total about 166.6 million Euros were spent for EIDHR democracy assistance, which constituted about 45% of all EIDHR assistance. In the subsequent period from 2000 to 2006, about 286 million Euros were spent for democracy assistance, which was about 39% of the entire EIDHR. While expenditure for democracy assistance therefore increased after 2000, it decreased in terms of the share of all EIDHR assistance. A comparison with democracy assistance under the mainstream programmes, discussed in Chapters 7 and 8, shows that only from about 2004 on, did expenditure under the mainstream programmes begin to outweigh expenditure under the EIDHR.

The second set of questions of Chapter 6 has related to the thematic distribution of EIDHR funds among its numerous sub-headings. It has first demonstrated that in the case of the EIDHR the final distribution among funds is the result of the interplay of different institutions and bodies and different stages. Importantly, and different from democracy assistance under the EU's mainstream development programmes, the recipients of EIDHR assistance, in particular NGOs applying for grants, play a major role in final distribution of funds among sub-sectors. EIDHR programming documents determine how much of the entire EIDHR will be used for democratization and predetermine priority areas, however, the final decision on how much money will be used for the sub-sectors depends on the proposals of (potential) aid recipients.

As regards the relative shares of democracy and human rights assistance, which constitute the two major thematic fields covered by the EIDHR, Chapter 6 has shown that the share of EIDHR funds used for democratization has become smaller during the period 2000-2006 (39% of all funds) than during the previous period of analysis, 1996-2000 (45% of all funds). At the same time, the relative share for human rights projects increased from 47% to 54%. A further important insight has been that the share of election observation considerably increased during both periods (from 3% to 14%), which implies that the share of democracy assistance (without election observation) decreased considerably. The more detailed presentation of human rights assistance has shown that much of the provided assistance focused on individual rights that did not necessarily have an (immediate) impact on democratization. However, the major category of human rights assistance, which focused on human rights education and awareness raising, also covered political and core civil rights and therefore to some extent overlapped with democracy assistance.

Further, the analysis of the thematic distribution of EIDHR funds used in the sector of democratization has exposed the relative shares of the major sub-fields as identified by the Commission. Two major trends in the development of the relative shares during the period 1996

to 2006 or even 2009 were, first, the growth of the share of election observation, and secondly, the reduction of assistance for institutional reform and rule of law, which was shifted, as governance issues, to the mainstream programmes. During the more recent period of investigation, 2000-2006, election observation received the largest share of democratization-related assistance (34%), civil society development and civil participation received about 29 %, rule of law development about 16%, media/freedom of expression received about 9%, election assistance about 5%, public institutions (local councils, trade unions, etc.) about 4% of all funds, transparency/anti-corruption about 3%, and parliaments about 0.2% of all EIDHR democratization-related funds.

The picture of the thematic distribution has revealed that the EIDHR was pursuing both, a moderate political, as well as developmental approach to democracy assistance. On the one hand, it strongly focused on election support (although mainly at election observation), provided assistance to political rights-focused NGOs, developed advocacy functions of (nationally acting) civil society organizations, and financed projects on the independence of the judiciary. It therefore addressed core institutions and procedures of a democracy or of democratization processes. However, as it lacked to work with political parties and, in particular the political opposition, the approach was only a moderate form of the political approach. At the same time, the EIDHR had clear features of the developmental approach. It strongly focused on the development of civil society as agent of reform, it supported NGOs engaged in community development and service delivery, it promoted local level developments rather than such at the national level only, and its rule of law engagement had a strong developmental features. All in all, the EU's approach to democracy assistance through the EIDHR therefore constituted a mix of both ideal-typical approaches.

EIDHR assistance addresses all features of Dahl's list of minimum procedural conditions of democracy: elections, freedom of information and expression (the media), and associational autonomy (civil society). Additionally, the rule of law is, even with decreasing attention, being addressed. EIDHR assistance therefore neatly fits into a very basic model of liberal democracy. When looking at the various more specific conceptions of democracy that have been introduced in Chapter 2, the argument could be made that the EIDHR, though its strong and growing focus on elections, is promoting a form of elitist democracy. However, given that has always also been a very strong emphasis on supporting the establishment and capacity development of civil society organizations and on increasing their participation in local policy-making and implementation, this argument does not hold. There is also no real proof of the EU building pluralist, participatory, or social democracy, features of which are present, but not extensively promoted.

Thirdly, Chapter 6 has analyzed the geographical distribution of EIDHR funds among regions and countries. As regards the regional distribution of all EIDHR funds it has shown that the EU overall invested more funds into democracy and human rights promotion in regions that were geographically closer to the EU and therefore politically, geopolitically, and economically more important. At the same time, it attempted to achieve some geographical balance among the major world regions. Levels of democratic development or human rights protection did apparently not influence its choice. During 1996 and 2006, the major recipients of EIDHR funds were, taking the number of countries per regions into account, the MEDA states, followed by states in South-Eastern Europe, Latin America, Central and Eastern Europe, and the NIS. The average amount of EIDHR funds spent in individual Asian and ACP states was very low. Aggregate data on entire regions show a different picture, with the ACPs receiving the largest share, followed by Latin America, the Mediterranean region and the Middle East, the NIS, global projects, the CEEC, Asia and SEE countries.

The analysis of the distribution of EIDHR funds among countries showed that the distribution was highly unbalanced. Some states received remarkable shares in absolute amounts and *per capita*, like Colombia, Guatemala, Russia, Georgia, West/Bank Gaza (in particular including expenditure in Israel), and Iraq, while some states received nothing. In all regions except the MEDA region, about three fourth of the funds were given to one fourth of the states, while one fourth received nothing, and about half of the states received very minor shares. The MEDA exception suggests that the EU put more efforts into ensuring engagement in all countries geographically closer to the EU. The conscious choice to focus on a limited number of target countries from 2002-2004 accounts for some these imbalances, but not for all. The introduction of CBSS and its use in an increasing number of countries will correct some of the imbalances.

It is difficult to discern a clear underlying pattern for the (unbalanced) distribution. At most, the distribution confirms the preference for politically more important states, in particular if overall aid flows rather than *per capita* flows are considered. Importance can flow from the geopolitical role of a state, specific problems like narcotics production, or on-going conflicts. Levels of human rights protection and of political freedoms did not play a role in the distribution of funds in these states. It also appears thought that countries with very negative Freedom House ratings hardly received funds, suggesting difficulties to run programmes in these countries, but also lack of efforts by the EU.

Further, data on the distribution of democracy assistance among countries also does not expose a clear pattern. Political relevance appears to play a role in some countries, but is overall

little decisive. Levels of democracy and (negative or positive) trends in democratization have not decisively affected the distribution.

Finally, as regards the technical implementation of the EIDHR, Chapter 6 has shown that (according to the Commission) most EIDHR projects during 2000 and 2006 were macro projects (55%; with average grants of about 610,000 Euros), followed by micro projects (25%; with 65,000 Euros), election observation (14%), and targeted projects (6%).¹²⁵⁸ A major trend that has started in the early 2000s and has continued until today is the increasing use of the micro project facility, or, since 2007, the CBSS, which indicates a stronger belief that democracy promotion (and human rights promotion) should to a large degree happen through the involvement of local organizations and other bodies.

As regards implementing partners, macro and micro projects have overwhelmingly been implemented by NGOs (over 90%) and only to a very limited extent by other eligible bodies, like universities, trade unions, and parliaments. While more western NGOs have implemented macro projects, overall most of EIDHR funds have been paid to local civil society organizations (about 43.5% of all funds, as compared to 31.5% of all funds).

¹²⁵⁸ The average sizes of projects relate to projects implemented in the NIS, the MEDA region and for democracy assistance projects.

Chapter 7: Democracy Assistance as Part of the EU's Mainstream and Special Development Assistance Programmes: An Overview of the Programmes

I. Introduction

The evolutionary account of EU democracy assistance provided in Chapter 3 has shown that next to the EIDHR the EU also provides democracy assistance in the framework of its mainstream development programmes. Indeed, in its crucial 28 November 1991 resolution on 'human rights, democracy, and development', the Council did not mention the various programmes founded by the Parliament, which should eventually be assembled under the umbrella of the EIDHR and later become the EIDHR programme, but only foresaw EU democracy assistance as part of existing development activities. Throughout the 1990s and early 2000s this parallel system of providing democracy assistance under the mainstream development programmes and the specific EIDHR consolidated. Further, democracy assistance within development cooperation became increasingly important, not at last because of the limited funds available under the EIDHR programme and therefore the need to also use mainstream development funds.

Chapter 7 and Chapter 8 concentrate on democracy assistance under the EU's general and specific development programmes and should be read together. Chapter 7 introduces the numerous programmes and Chapter 8 concentrates on their implementation. Both aim at determining elements of the EU's overall strategy of democracy assistance that derive from these mainstream and special development programmes, especially the financial scope of democracy assistance, the geographical focus of assistance, and the thematic focus of assistance that allows drawing conclusions on an underlying model of democracy and strategy of democratization.

As just mentioned, Chapter 7 introduces the various programmes that – beyond the EIDHR – finance democracy assistance. It provides a comprehensive overview of the numerous general and special EU development assistance programmes that have been adopted and implemented during the last two decades. It presents each programme, the underlying assistance regulation(s), and the general thematic focus and financial scope of a programme. The core focus of analysis is on the provisions on democracy promotion and assistance in the regulations in

order to see to which extent such policy and activity are foreseen and regulated in secondary law. The discussion also briefly addresses the context in which the assistance regulations are being implemented, that is, other relevant policy tools that affect or determine democracy assistance in a certain region, for example, by adding possible fields of engagement.

Chapter 7 does not address programmes adopted in the framework of the enlargement dimension, which are excluded from this study, some very small programmes of minor relevance to democracy assistance, the very limited activities carried out by EU institutions and bodies, like by the European Parliament's Office for the Promotion of Parliamentary Democracy (OPPD), and the few rule of law missions adopted and implemented in the framework of CFSP that have been briefly addressed in Chapter 4.

II. Overview of the EU's General and Specific Development Assistance Programmes

The following presentation of the major EU programmes that had/have a democracy-related component is structured along two dividing lines: it first looks at the general development programmes before and after 1 January 2007 and then at the theme- and actor-specific programmes before and after this date, when as part of the major EU reform of external assistance discussed in Chapter 3, a whole range of new assistance regulations entered into force.

As indicated, assistance to the CEECs and the Balkan states is excluded from the study and the Phare, OBNOVA and CARDS programmes, as well as the Instrument for Preaccession (IPA) are therefore left aside.¹²⁵⁹ Moreover, several smaller thematic programmes are not discussed in more detail, like 'Aid to up-rooted people in Asia and Latin America', 'Gender equality in development cooperation', 'Conservation and sustainable management of tropical forests', 'Assistance in the areas of migration and asylum', 'Rehabilitation and reconstruction in developing countries', and the Instrument for Nuclear Safety Cooperation (INSC).¹²⁶⁰ Although

¹²⁵⁹ Council Regulation (EC) No 1628/96 of 25 July 1996 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia, OJ 1996 L204/1 (OBNOVA programme); Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC, OJ 2000 L306/1 (CARDS programme); Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic, OJ 1989 L375/11 (Phare programme); IPA regulation. For an analysis see, for example, C. Pippan, 'The Rocky Road to Europe: The EU's Stabilization and Association Process for the Western Balkans and the Principle of Conditionality', 9 *European Foreign Affairs Review* 2 (Summer 2004), at 219f.

¹²⁶⁰ Regulation (EC) No 2130/2001 of the European Parliament and of the Council of 29 October 2001 on operations to aid uprooted people in Asian and Latin American developing countries, OJ 2001 L237/3; Regulation (EC) No 806/2004 of the European Parliament and of the Council of 21 April 2004 on promoting gender equality in development cooperation, OJ 2004 L143/40; Regulation (EC) No 2494/2000 of the European Parliament and of the Council of 7 November 2000 on measures to promote the conservation and sustainable management of tropical forests and other forests in developing countries, OJ 2000 L288/6; Regulation (EC) No 491/2004 of the European

most of the regulations establishing these programmes envisage the provision of some democracy assistance within their thematic framework, they are financially of minor importance and have not or only to a very limited extent given rise to democracy assistance projects in practice.¹²⁶¹

Table 36 summarizes all programmes discussed in the following pages and also shows the relation of the old and new programmes to each other, that is, which programme succeeded which in the reform of 2007.¹²⁶²

Table 36: Overview of Major EU Development Programmes before and since 1.1.2007 (except for CEECs and Western Balkans)¹²⁶³

	Before 1.1.2007	Since 1.1.2007
General Assistance Programmes	ALA	DCI
	Special Programmes for South Africa	
	Tacis	ENPI
	MEDA	
	Special Programmes for Palestine	Cotonou Agreement (since 2000)
	Lomé I-IV Conventions, Cotonou Agreement (since 2000)	
Cooperation with Industrialized Countries	ICI	
Actor- and Theme-Specific Assistance Programmes relevant for Democracy Assistance	Co-financing with European NGOs (B7-6000)	Non-State Actors and Local Authorities in Development (Thematic Programme/DCI)
	Decentralized Cooperation (B7-6002)	
	RRM	IFS

1. Overview of the General Development Assistance Programmes

Before 1 January 2007

a) Asia and Latin America: The ALA Regulation

The ALA regulation¹²⁶⁴ was between 1992 and 2006 the legal basis for the EU's socio-economic assistance programme(s) for about 17 developing states in Asia, 18 developing countries in Latin

Parliament and of the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS), OJ 2004 L80/1; Council Regulation (EC) No 2258/96 on rehabilitation and reconstruction operations in developing countries, OJ 1996 L306/1; Council Regulation (Euratom) No 300/2007 of 19 February 2007 establishing an Instrument for Nuclear Safety Cooperation, OJ 2007 L81/1.

¹²⁶¹ Description of implemented acts by the Commission on its website.

¹²⁶² It is not visible in this Table that the Central Asian states, which until 1.1.2007 received support under Tacis, and are now covered by the DCI.

¹²⁶³ For the full title of programmes and/or the meaning of the acronyms, see the discussion of each programme below.

America, and some states in the Middle East that were not covered by the Mediterranean policy, in particular Yemen. It succeeded a smaller programme for the same group of countries that had mainly foreseen aid for the very poor populations of a state and was implemented between 1976 and 1992.¹²⁶⁵ The reason for including countries of such diverse continents under a single regulation lies in the evolution of EEC development cooperation and can mainly be traced back to the differentiation between the two large groups in the early 1970s, that is, ‘associated’ developing countries comprising the ACP countries and ‘non-associated developing countries’ comprising all others.¹²⁶⁶ However, despite the existence of a single ALA regulation, the EU institutions always clearly distinguished between the various regions covered and even between sub-regions and rather spoke of ‘assistance for Asia’ and ‘assistance for Latin America under the ALA regulation’ rather than of the ALA programme.

The general focus of the ALA regulation was on the poor, the rural and the food sector, the environment and national resources, the fight against drugs, culture, demographic questions, national institutions, support for specific groups like women, children, and ethnic minorities¹²⁶⁷ as well as on economic cooperation.¹²⁶⁸ Rather unique for EU assistance regulations, the ALA regulation was adopted for an unlimited period of time and remained unchanged until its repeal by the DCI in 2007. The ALA’s annual budget for Asia rose from about 140 million Euros in 1986 to about 696 million Euros in 1996 and 834 million Euros in 2005. The budget for Latin America increased from about 160 million Euros in 1986 to about 486 million Euros in 1995. During 2002 and 2005, Latin American states were allocated about 300-350 million Euros each year.¹²⁶⁹

For the time of adoption, the ALA regulation was remarkably outspoken as regards democracy promotion and assistance. This was the consequence of, on the one hand, the new and strong interest in the policy in 1991/92, and, on the other hand, the explicit call for democracy promotion by Latin American states, most of which had undergone transitions to

¹²⁶⁴ Council Regulation (EEC) No. 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America, OJ 1992 L52/1 (or, short, ALA regulation).

¹²⁶⁵ The relevant legal basis for this ALA-predecessor was only provided with Council Regulation No. 442/81 on financial and technical aid to non-associated developing countries, OJ 1981 L48/8.

¹²⁶⁶ See, for example, Pippan, at 29-31; Arts, at 100-2. Suggestions by the European Parliament to split the regulation were made redundant by the entire overhaul of the external assistance programmes in 2007 European Parliament, Committee on Development and Cooperation, Report on the proposal for a European Parliament and Council regulation concerning Community cooperation with Asian and Latin American countries and amending Council Regulation (EC) No 2258/96 (COM(2002) 340 – C5-0368/2002 – 2002/0139(COD)) of 8 October 2003.

¹²⁶⁷ Arts. 4-5 of the ALA regulation.

¹²⁶⁸ Arts. 7-8 of the ALA regulation. See the Communication from the Commission, Guidelines for Cooperation with Developing Countries in Latin America and Asia, COM(90) 176 final, 11.6.1990; Court of Auditors, Special Report No 4/2005 concerning the Commission’s management of economic cooperation in Asia, together with the Commission’s replies.

¹²⁶⁹ Evaluation of E.U. Development Aid to ALA States, Phase III-Synthesis Report (15 March 1999), at 5; EU budgets 2002-2006, budget lines B7-3 and, after 2004, Title Chapter 19 09 and 19 10.

democracy in the 1980s.¹²⁷⁰ Recall in this respect, that also assistance under the EIDHR forerunner programmes had started in Latin America in the mid-late 1980s. The absence of democratization processes in Asia and more hesitant approach of the EU in that region did not harm in drafting of the ALA regulation.

Article 1 of the ALA regulation stipulated the general objective of democracy promotion: “in...connection” with financial, technical and economic cooperation, “the Community shall attach the utmost importance to the promotion and protection of human rights, support for the process of democratization, good governance,...”. This should be done with three instruments. First, Articles 5 and 6, pertaining to the section on ‘financial and technical assistance’, referred to democracy assistance. They mentioned that “(A)id should...be allocated, *inter alia*, to specific projects for the spread of democracy, good governance and human rights” and that assistance in the more advanced ALA countries should, amongst others, in particular be provided for the “spread of democracy and human rights”. The provisions did not enumerate specific themes of democracy support though and remained therefore rather general. The regulation also did not reserve funds for democracy assistance projects. Secondly, according to Article 2 of the ALA regulation, those countries most committed to upholding democratic principles should receive “increased support”, “particularly for positive incentives to put them in practice”. This constituted a very early example of ‘incentive conditionality’ that should only much later, in the early-mid 2000s, become a more popular EU tool. There is no evidence that the EU ever used the tool in the ALA context, in particular, it did not operationalize it in a way similar to current incentive instruments, like the Governance Initiative in Africa, that is, with governance reports that allow assessments of reforms.¹²⁷¹ Different from current instruments of this type, the ALA regulation foresaw the use of extra funding for democracy-related measures themselves rather than projects in other sectors.

The third instrument of democracy promotion envisaged in the ALA regulation was a political conditionality clause that allowed the EC to amend or even suspend the implementation of cooperation in case of “fundamental and persistent violations of human rights and democratic principles” (Article 2 of the ALA regulation). It was the first unilateral assistance regulation to include a conditionality clause and preceded the use of the standard, essential element clause that was only to become practice in the mid-1990s.¹²⁷² Rather exceptionally among regulations, ALA also explicitly explained the motivation for democracy promotion, by stressing that

¹²⁷⁰ See, for example, the Declaration of the EC and the Rio Group of Countries of 20 December 1990 which affirmed the countries’ attachment to human rights and democracy as well as the support to their promotion. See Fierro, at 215.

¹²⁷¹ See the discussion further below, in section II. a) ix..

¹²⁷² See in this respect recital seven of the ALA regulation, which refers to the June 1991 Luxembourg European Council. Fierro, at 354.

democratization was a precondition for real and lasting economic and social development (Article 2 of the ALA regulation).

The ALA regulation did of course not operate in a vacuum, but in its programming process and implementation other policy documents, in particular COMs and, in particular, also cooperation agreements concluded by the EC/EU and the numerous countries also played a role, even if this was not explicitly stipulated in the regulation.¹²⁷³ For example, if the parties of a cooperation agreement identified one field as particularly important, it would be supported through ALA, as long as it was in principle covered by the regulation.¹²⁷⁴ Detailed provision on democracy assistance in an agreement could therefore further define the thematic scope of ALA democracy assistance.

An analysis of the numerous policy documents exposes considerable differences between Latin America and Asia. As regards Latin America, basically all COMs adopted in the last two decades stressed the centrality of democratic principles in EU-Latin American relations and called for more action in the sector.¹²⁷⁵ Further, the cooperation agreements with Latin American states were among the first to include political conditionality clauses, in particular also upon insistence of these states. The clauses express both parties' commitment to upholding democratic principles and allow for suspension of the agreements in case of their violation.¹²⁷⁶ However, only very few (bilateral or regional) agreements of the EU and the Latin American states – five of 20-odd – also explicitly refer to democracy as a particular field of cooperation.¹²⁷⁷ The partnership and cooperation agreement with Mexico, signed in 1997, includes one of the most detailed provisions in this respect, that is definitely also much more specific than the ALA regulation.¹²⁷⁸ It foresees that “cooperation on human rights and democracy” should mainly be carried out through support to the development of civil society by means of education, training and public awareness programmes, training and information measures designed to help institutions function more effectively and to strengthen the rule of law, election assistance and observation, and human

¹²⁷³ As will be seen, many other assistance regulations establish a direct link between the regulation and cooperation agreements. In the case of ALA this was not done, especially also because ALA preceded most agreements and was not amended until its repeal in 2007.

¹²⁷⁴ Recall in this respect Case C-403/05 (*Philippine Border Mission* case).

¹²⁷⁵ For example, COM(2005) 636 final, at 13-4.

¹²⁷⁶ Fierro, at 215.

¹²⁷⁷ Next to the agreement with Mexico, these are the agreements with Paraguay of 1992, with the Central American states of 1993, and with the Andean Community and Central American countries of 2003. The latter two have been signed in 2003 but have, due to lack of ratification by all states, not entered into force yet. See the Council agreements database on the individual agreements, at <http://www.consilium.europa.eu/showPage.aspx?id=252&lang=EN> (last accessed on 21.11.2011).

¹²⁷⁸ Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States of the other Part, OJ 2000 L276/45.

rights monitoring.¹²⁷⁹ The 2003 agreements with the Andean Community and the Central American countries, both of which have not entered into force yet, mention a very similar focus on state institutions and civil society, as well as the rule of law.¹²⁸⁰ It remains to be seen whether the inclusion of a title on democracy in the more recent agreements – 2003 – has been the beginning of a trend to do this in all future agreements.

Different from Latin America, EU policy documents towards Asia have always been more hesitant when addressing democratization.¹²⁸¹ The topic entered discussion belatedly and continues to be addressed more generally and cautiously than in other regions, even if the topic has definitely increasingly gained importance over the last decade.¹²⁸² Moreover, there was always a strong emphasis on little intrusive and positive tools, in particular on (political) dialogue.¹²⁸³ It was, indeed, under the bilateral agreements with Vietnam, Cambodia, and Laos, concluded in the late 1990s, that sub-groups or sub-committees on human rights were first created in the framework of political dialogues established by the respective agreements in order to ensure a regular discussion on the topics.¹²⁸⁴ This provided the blueprint for the widespread use of such sub-committees in EU external relations today. The increased provision of democracy assistance, especially through the EIDHR, was first called for in 2001 and 2003, without going into detail on the financial and thematic scope though.¹²⁸⁵ EU external agreements with individual Asian states and regional organizations include political conditionality clauses, if concluded after the early 1990s. However, with the partial exception of an agreement with Sri Lanka, that envisages human rights projects, the topic of democracy support is not addressed in any of the agreements.¹²⁸⁶

¹²⁷⁹ Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, OJ 2000 L276/45.

¹²⁸⁰ Political dialogue and Cooperation Agreement between the European Community and its Member States, of the one part, and the Andean Community and its Member Countries (Bolivia, Colombia, Ecuador, Peru and Venezuela), of the other part; Political Dialogue and Cooperation Agreement between the European Community and its Member States, of the one part, and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, of the other part; both signed on 15.12.2003.

¹²⁸¹ A communication of 1994 even stressed the relevance of the modernization approach in democratization in Asia, which was inconsistent with the EU's approach of that time and indeed also not followed up in subsequent policy documents. European Commission, *Towards a new Asia Strategy*, COM(1994) 314 final, Section I, Overall Objectives.

¹²⁸² Ibid. See also the Nuremberg Declaration on an EU-ASEAN Enhanced Partnership, adopted at the first EU-ASEAN summit in 2007.

¹²⁸³ COM(1994) 314 final; European Commission, *Europe and Asia: A strategic framework for enhanced partnerships* COM(2001) 469 final; European Commission, *A new partnership with South East Asia*, COM(2003) 399/4. The only exception was Burma, which has since 1990 been targeted with sanctions.

¹²⁸⁴ See, for example, the Cooperation Agreement between the European Community and the Socialist Republic of Vietnam, OJ 1996 L136/29.

¹²⁸⁵ COM(2001) 469 final, at 15 and 22; COM(2003) 399/4, at 17.

¹²⁸⁶ Cooperation Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on partnership and development, OJ 1995 L85/33.

b) The Newly Independent States (NIS): The Tacis Programme

The Tacis Programme – based on three successive regulations – was between 1993 and 2006 the major EU assistance programme for twelve of the 15 successor states to the former Soviet Union as well as, until 2004, for Mongolia¹²⁸⁷ – the acronym Tacis standing for ‘Technical Assistance for the Commonwealth of Independent States’.

The origins of the programme go back to the 1990 Dublin and Rome European Council meetings that first envisaged, next to food aid, an EEC assistance programme for the Soviet Union in order to respond to the growing socio-economic crisis in that state as well as to send a signal of support for Gorbachev’s economic and political reforms.¹²⁸⁸ This was only shortly after first official relations between the EEC and the USSR had been established in mid-1988.¹²⁸⁹ The first assistance regulation concerning ‘technical assistance’ for the Soviet Union, covering 1991 and 1992, was adopted in July 1991 and mainly envisaged projects on public and private-sector management training, financial services, energy, transport and foodstuffs distribution.¹²⁹⁰ Given the continuing bad socio-economic situation in the successor states of the – in the meantime dissolved – Soviet Union, it was in July 1993 followed by the first of three Tacis regulations. The first of these regulations covered the period 1993-1995¹²⁹¹, the second the period 1996-1999¹²⁹², and the last the period 2000-2006¹²⁹³. The envisaged thematic scope of assistance was extended by each regulation and by 1999 encompassed, next to the already enumerated areas, the fields of macroeconomics, privatization, the rural economy, nuclear safety, the management of natural resources, infrastructure and investment, legal reform, the social sector, and civic [!] society.¹²⁹⁴ Moreover, from 1999 on, the Tacis regulation should also be an instrument for the

¹²⁸⁷ Mongolia requested its inclusion into Tacis because of its economic links with the (former) Soviet Union and similarities in socio-economic problems. Before 1993 and after 2004 it was covered by ALA. The three Baltic were from the beginning on treated as part of the group of CEECs and recipients under the Phare programme.

¹²⁸⁸ Bull. EC 6-1990, I.19 and Bull. EC 12-1990, I.30.

¹²⁸⁹ Joint Declaration on the Establishment of Official Relations between the EC and the Council of Mutual Economic Assistance (CMEA), Bull. EC 6-1988, 2.2.42 and 1.5.1.-4. For more details on the relations see M. Niedobitek, ‘Die Europäische Union und Rußland: Zum Stand der Beziehungen’, 2 *Europarecht* (1997), at 107.

¹²⁹⁰ Council Regulation (EEC, Euratom) No 2157/91 of 15 July 1991 concerning the provision of technical assistance to economic reform and recovery in the Union of Soviet Socialist Republics, OJ 1991 L201/2, in particular Art. 3.

¹²⁹¹ Council Regulation (Euratom, EEC) No 2053/93 of 19 July 1993 concerning the provision of technical assistance to economic reform and recovery in the independent States of the former Soviet Union and Mongolia, OJ 1993 L187/1. (From now on referred to as 1993 Tacis regulation).

¹²⁹² Council Regulation (Euratom, EC) No 1279/96 of 25 June 1996 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia, OJ 1996 L165/1 (1996 Tacis regulation).

¹²⁹³ Council Regulation (EC, Euratom) No. 99/2000 of 29 December 1999 concerning the provision of assistance to the partner states in Eastern Europe and Central Asia, OJ 2000 L12/1. (From now on referred to as 1999 Tacis regulation).

¹²⁹⁴ See in particular Annex II of the various regulations.

implementation of the Partnership and Cooperation Agreements (PCAs),¹²⁹⁵ that is, the comprehensive trade and cooperation agreements that had entered into force with most NIS between December 1997 and July 1999.¹²⁹⁶

Between 1991 and 1999 the EC committed about 4 221 million Euros under the various Tacis programmes and its forerunner.¹²⁹⁷ The third and last Tacis regulation mentioned a financial reference amount of 3 138 million Euros for the period 2000-2006. The annual EU budgets, however, foresaw smaller allocations of on average about 350 million Euros annually during the same period.¹²⁹⁸

The provisions on democracy promotion and democracy assistance were different in each of the three Tacis regulations and its forerunner-regulation. Overall, each of the subsequent regulations attributed an incrementally greater relevance to the topic. The 1991 regulation did, little surprising for its time of adoption, not address democratization at all. The 1993 Tacis regulation stressed the relevance of democratization for the success of socio-economic reform and assistance in its preamble,¹²⁹⁹ but did not really follow up on this in the main body of the regulation. It mentioned ‘strengthening of the civic society’ and ‘legal reform’ as focus areas, however, not expressly as part of democratization.¹³⁰⁰ Article 1 even suggested, in contradiction to the preamble and EU policy ideas of the early-mid 1990s, that democracy would follow economic development.¹³⁰¹ Unlike the slightly older ALA regulation, Tacis 1993 also did not include a political conditionality clause.

The 1996 Tacis regulation abolished the allusion to the modernization approach in Article 1 and apparently – while still using an ambiguous wording – made democracy promotion an objective of the regulation. Article 3(1) of the 1996 Tacis mentioned that “(T)he programme ...shall mainly take the form of technical assistance in support of the economic reform in progress in the partner States for measures aimed at bringing about the transition to a market economy and reinforcing democracy.” It also included a rather special political conditionality clause, which only consisted of a suspension clause but lacked an essential elements clause.¹³⁰²

¹²⁹⁵ Article 2(1) of the 1999 Tacis regulation and European Commission, Explanatory Memorandum to the Commission, IV. The means to achieve the priority objectives, a) Dialogue-driven programming.

¹²⁹⁶ The PCAs with Belarus and Turkmenistan are not yet in force. For all other see the Council agreements database.

¹²⁹⁷ COM(2000) 835 final, at 60f.

¹²⁹⁸ See the various annual commitments in the budgets 2000 – 2006 and Figure 1 (“Tacis Global Commitments”) in Evaluation of Council Regulation 99/2000 (Tacis) and its Implementation, Synthesis Report, Volume 1, (January 2006), at 15.

¹²⁹⁹ See the third recital in the 1993 Tacis regulation.

¹³⁰⁰ See Annex II, which lists the mentioned areas under the heading of ‘human resource development’.

¹³⁰¹ Art. 4(1) of the 1993 Tacis regulation stipulated that “(T)he programme referred to in Article 1 shall take the form of technical assistance for the economic reform under way in the beneficiary States for measures aimed at bringing about the transition to a market economy and *thereby* reinforcing democracy”. [emphasis added by the author.]

¹³⁰² Art. 3(11) of the 1996 Tacis regulation. Fierro, at 355.

However, except for the already mentioned fields of civic society and legal reform, no further democracy assistance was expressly envisaged.

Finally, the 1999 Tacis regulation contained an entirely revised Article 1, which unequivocally stipulated that the Tacis programme was “(A) programme to promote the transition to a market economy and to reinforce democracy and the rule of law in the partner state”.¹³⁰³ This statement was reinforced through linking the programme to the principles and objectives of the PCAs, which explicitly mentioned ‘respect for democratic principles’ in their political conditionality clauses and envisaged “support [to] efforts of democratization”.¹³⁰⁴ Despite this clear objective, the 1999 Tacis regulation did not explicitly mention democracy assistance as one of the six ‘areas of cooperation’, but some themes under the heading ‘institutional, legal and administrative reform’ constituted democracy assistance: rule of law development, support for executive and legislative bodies (national, regional, local), and support for civil [!] society.¹³⁰⁵ Overall, the 1999 Tacis regulation remained therefore rather general on the possible area of democracy support. At the same time, Article 2(2) of the 1999 Tacis regulation, which required the Tacis programming documents (Indicative Programmes) to concentrate on at most three of the possible six areas of cooperation, also mentioned that the programme shall in particular take into account “the need to promote democracy and the rule of law” in the various countries covered. This constituted a quite special explicit call for attention to democracy assistance, without, however, reserving a certain share for the topic, that was later only repeated in the ENPI. Further, the 1999 Tacis regulation contained the same political conditionality clause as the 1996 regulation.¹³⁰⁶

Next to regional and national Tacis programmes, the Commission also devised and implemented various so-called small project programmes (SPPs), which were not foreseen in the Tacis regulation. They usually foresaw smaller projects on specific topics and worked with simpler implementation procedures.¹³⁰⁷ Three SPPs appear as particularly relevant for democracy assistance. First, the programme ‘Link inter-European NGOs’ or LIEN,¹³⁰⁸ implemented between 1993 and 2001, aimed at stimulating citizens’ initiatives and strengthening the capacity of NGOs and other non-profit organisations working in the social sector. During 1993 and 1998 about 14 million Euros were spent under the LIEN programme.¹³⁰⁹ Secondly, the Tacis City

¹³⁰³ Art. 1 of the 1999 Tacis regulation.

¹³⁰⁴ Recital 7 and Art. 2 of the 1999 Tacis regulation. For example, Articles 1 and 2 of the PCA with Ukraine.

¹³⁰⁵ Annex II to the 1999 Tacis regulation.

¹³⁰⁶ Art. 16 of the 1999 Tacis regulation.

¹³⁰⁷ European Commission External Relations Directorate General, Guide to Tacis small project programmes and other support structures: What they are, and how to benefit from them (2000), at 5-6.

¹³⁰⁸ For an evaluation of the LIEN programme, see the Mid Term Evaluation of Tacis LIEN Programme (2000).

¹³⁰⁹ Ibid, at 2 and 53.

Twinning Programme (CTP)¹³¹⁰ operated between 1996 and 2001 and aimed at supporting local and regional authorities in the improvement of their administrative services and working practices, including through the involvement of civil society in local policy-making processes.¹³¹¹ Only incomplete financial data is available on the programme; for example, its 1998 budget was 2.7 million Euros.¹³¹² Both SPPs operated through linking Western and local partners. In 2001, LIEN and CTP were replaced by the ‘Institution Building and Partnership Programme (IBPP)/Support to Civil Society and Local Initiatives’.¹³¹³ This programme aimed at supporting NGOs, other not-for-profit professional organizations (like chambers of commerce, trade unions, associations of SMEs), and local and regional authorities in redefining and strengthening their role, so that they could contribute in the transition to democracy and to market economic systems.¹³¹⁴ As was the case under LIEN and CTP, this was mainly done through partnerships between EU and NIS-based actors. The overall budget of the new programme was with about 66,4 million Euros considerably larger than those of its predecessors.¹³¹⁵

Additionally, a very special democracy assistance programme under Tacis was the ‘Tacis Civil Society Development Programme for Belarus for 1997’.¹³¹⁶ Its roots lay in the suspension of most Tacis assistance to Belarus in 1996/1997¹³¹⁷ and the wish to complement this punitive measure with a positive signal to Belarusian civil society. The programme was, like Tacis and unlike the EIDHR, agreed with the Belarusian government, which pursued a policy of delaying rather than outright rejection of the EU’s initiative.¹³¹⁸ Agreement on a democracy assistance programme could also be reached as the Commission, with a single exception, proposed rather

¹³¹⁰ For an evaluation, see City Twinning Programme in the New Independent States and Mongolia, Evaluation Report (July 1998).

¹³¹¹ City Twinning Evaluation Report, at 46.

¹³¹² City Twinning Evaluation Report, at 15.

¹³¹³ A second line of the IBPP, entitled, ‘Key Institutions’ and focusing on twinning ministries, legislative bodies, courts, and central banks, has never become operational.

¹³¹⁴ See, for example, European Commission, Delegation of the European Commission to Russia, TACIS Institution Building Partnership Programme (IBPP) Support to Civil Society and Local Initiatives, Guidelines for grant applicants responding to the restricted call for proposals for Russia, Funded from 2005 Action Programme, Budget line BGUE-B2006, 2006, at 7.

¹³¹⁵ The amount is based on the various calls for proposals made between 2002 and 2007.

¹³¹⁶ Council Decision of 18 December 1997 on a Tacis Civil Society Development Programme for Belarus for 1997, OJ 1998 L1/6; European Commission, Tacis 1997 Civil Society Development Programme Results from Implementation Belarus, November 2002.

¹³¹⁷ There was apparently no formal decision on the basis of Art. 3(11) of the 1996 Tacis regulation to suspend the further provision of Tacis assistance, but the Council rather expressed its preference for a suspension as ‘position’ in various conclusions and declarations. See the fifth and sixth recital of Council Decision on a Tacis Civil Society Development Programme, which refers to a Council Conclusion of 24 February 1997, a Declaration of 29 April 1997, and Conclusions of 15 September 1997. See also Fierro, at 368-9; E. Piontek, ‘Chapter 16 Belarus’, in S. Blockmans and A. Lazowski (eds), *The European Union and Its Neighbours: A Legal Appraisal of the EU’s Policies of Stabilisation, Partnership and Integration* (2006), at 545.

¹³¹⁸ European Commission, Tacis 1997 Civil Society Programme Results from Implementation.

soft measures or activities in less critical thematic areas.¹³¹⁹ Interesting from a legal point of view was the programmes' adoption on the basis of the conditionality clause of the 1996 Tacis regulation, which was therefore used for a positive rather than negative measure.¹³²⁰ In total, 5 million Euros were spent for projects on the media, NGOs, and institutional twinning, especially in the field of higher education.

The broader framework of EU-NIS relations, as part of which Tacis operated, was replete with references to democracy and democratization, despite the lack of democratic reform and even democratic regression in many of the states during the previous 15 years. A facilitating factor behind the numerous references to democracy was definitely the membership of basically all NIS in the OSCE, which includes the objective of democratization as part of its human dimension basket.¹³²¹ The central instrument in EU-NIS relations was – and partly still is – the PCAs, the comprehensive trade and cooperation agreements concluded with most NIS.¹³²² Article 1 of the overall highly similar PCAs mentions as one of the objectives of the partnership, 'to support the third country's efforts to consolidate its democracy' and, uniquely, in the Russian PCA, the objective of 'strengthening political freedoms'.¹³²³ The envisaged tools of democracy promotion include a political dialogue that should, amongst others, ensure cooperation on 'the observance of the principles of democracy' and a political conditionality clause in the form of an essential elements clause. Further, about half of the PCAs – basically all adopted in and after 1996 – include a separate Title on 'cooperation on matters pertaining to democracy and human rights', which envisages the provision on democracy assistance and enumerates, non-exclusively, specific fields of action.¹³²⁴ The list includes technical assistance and/or training in the drafting of democracy- and human rights- related legislation and its implementation, the functioning of the judiciary, the operation of the electoral system, the facilitation of contacts and exchanges between administrative and judicial authorities, parliaments, and civil society organizations.¹³²⁵ The list is largely overlapping with the assistance foreseen in the Tacis regulation, with the exception of the

¹³¹⁹ The major exception was an NGO-project on a 'human rights network', carried out by the Belarusian Helsinki Committee, which, among others, provided legal assistance in human rights cases. According to the Commission it was of all the most difficult to implement. European Commission, Tacis 1997 Civil Society Development Programme Results from Implementation Belarus, November 2002.

¹³²⁰ See the second recital of Council Decision on the Tacis Civil Society Programme.

¹³²¹ Mongolia only asked to join the OSCE in 2011.

¹³²² For an analysis see, for example, B. Berdiyev, 'The EU and former Soviet Central Asia: A legal analysis of the Partnership and Cooperation Agreements', *22 Yearbook of European Law* (2003), at 463.

¹³²³ Differences in the PCAs relate to the prospect of a free trade area, to rules of competition and to social security. Cremona speaks of more advanced and more limited PCAs. M. Cremona, 'The European Neighbourhood Policy: More than a Partnership?', in M. Cremona (ed.), *Developments in EU External Relations Law* (2008), at 244f. ,

¹³²⁴ These are basically all agreements with the Caucasian states and the Central Asian states.

¹³²⁵ See, for example, Art. 68 of the PCA with Armenia; Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, OJ 1999 L239/1.

explicit reference to facilitating contacts and exchange, or, in EU jargon, ‘twinning’, as well as assistance concerning elections.

A further type of EU document stressed the relevance of democratization for the EUNIS context: the EU Common Strategies to Russia and to Ukraine.¹³²⁶ These politically highly relevant documents by the European Council, which between 1999 and 2003 defined the overall EU policy towards a country and/or region, repeatedly stressed the importance of democratization of the two target states as a condition for peace and prosperity and also mention that the EU should provide support for that process. The Common Strategy on Russia identified several fields of support, in particular, the rule of law, institutional reform, administrative reform, an independent judiciary, electoral support, support to NGOs and the freedom of the media, as well as, rather uniquely, the training of young politicians. The EU Common Strategy on Ukraine was less elaborate, but stressed efforts in the field of democratic local self-governance and the free media.¹³²⁷ It needs to be stressed though that these fields could also be promoted through the EIDHR.

c) The Mediterranean States: The MEDA Programme

The MEDA programme – taking its name from parts of its French title ‘mesures d’accompagnement’ – was between 1995 and 2006 the EU’s main assistance programme for the Southern Mediterranean region.¹³²⁸ It covered for the entire period Morocco, Algeria, Tunisia, Egypt, Jordan, Lebanon, Syria, and Gaza and the West Bank. Turkey, Malta, and Cyprus benefited under MEDA until being covered by specific pre-accession instruments, Israel could as a high income state only participate in regional programmes, and Libya, until 2004 under various kinds of EU sanctions, remained excluded from the programme. It was granted observer status in 2004.

EU assistance to the Mediterranean region started as part of the EEC’s ‘Global Mediterranean Policy’ in 1982.¹³²⁹ Unlike the cases of Asia and Latin America and following the ACP model, assistance was then provided on the basis of bilateral protocols that accompanied the various cooperation agreements concluded with the respective states in the mid-late 1970s.¹³³⁰

¹³²⁶ Common Strategy of the European Union of 4 June 1999 on Russia (1999/414/CFSP), OJ 1999 L157/1; European Council Common Strategy of 11 December 1999 on Ukraine, OJ 1999 L331/1.

¹³²⁷ Common Strategy on Russia, at Part II, (a) and (b); Common Strategy on Ukraine, at Part III, para. 50.

¹³²⁸ For a general overview, see Court of Auditors, Special Report No 5/2006 concerning the MEDA programme, together with the Commission’s replies, OJ 2006 C200/1.

¹³²⁹ K. Pieters, ‘The Mediterranean Countries (Morocco, Algeria, Tunisia, Libya, Egypt, Jordan, Syria and Lebanon)’, in S. Blockmans and A. Łazowski (eds), *The European Union and its Neighbours* (2006), at 396.

¹³³⁰ See, for example, Council Regulation (EEC) No 2210/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the People’s Democratic Republic of

A regulation of 1986 provided more detailed and harmonized procedural rules for the implementation of these numerous protocols.¹³³¹ The thematic focus of assistance was similar in all protocols and mainly encompassed the agricultural sector, industry and services, science and technology, trade, and the social dimension.¹³³² In 1992, as part of the so-called New Mediterranean Policy, new assistance protocols, a new regulation on the application of the protocols, and a new regulation on regional Mediterranean projects were adopted.¹³³³ The major thematic novelty was the additional focus on the environmental dimension, in particular in regional projects.¹³³⁴

The Barcelona Declaration of 27 and 28 November 1995 launched the Euro-Mediterranean Partnership (EMP), which brought considerable changes to the relationship of the parties.¹³³⁵ First, the objectives of the new partnership went far beyond earlier commitments, as the EMP envisaged three comprehensive sectors of engagement: the political and security dimension, which aimed at establishing a common area of peace and stability and encompassed democratization; the economic and financial dimension, which aimed at creating an area of shared prosperity and envisaged the progressive establishment of a free trade area and an increase in development aid; the social, cultural, and human dimension, which aimed at increasing understanding and exchanges between the various cultures and its civil societies.¹³³⁶

Secondly, the system of financial protocols was replaced by the unilateral MEDA programme, which from then on was to be the EU's principal instrument for the provision of aid to the countries of the region as well as for the realization of the three objectives of the EMP.¹³³⁷ Overall, however, the primary focus of the MEDA programme was the economic and trade dimension.¹³³⁸ In 2000 a planned amendment adjusted the programme to new developments.¹³³⁹

Algeria, OJ 1978 L263/1; Council Regulation (EEC) No 3177/82 of 22 November 1982 on the conclusion of a Protocol of financial and technical cooperation between the European Economic Community and the People's Democratic Republic of Algeria. In the same year, 1982, protocols were also concluded with Morocco, Tunisia, Egypt, Lebanon, Jordan, and Syria.

¹³³¹ Council Regulation no. 3973/86 'concerning the application of the Protocols on financial and technical cooperation concluded between the Community and Algeria, Morocco, Tunisia, Egypt, Lebanon, Jordan, Syria, Malta and Cyprus', OJ 1986 L370/5.

¹³³² See, for example, Arts. 1 and 3 of the Protocol on financial and technical cooperation in Algeria.

¹³³³ Council Regulation (EEC) No 1762/92 of 29 June 1992 on the implementation of the Protocols on financial and technical cooperation concluded by the Community with Mediterranean non-member countries, OJ 1992 L181/1; Council Regulation (EEC) No 1763/92 of 29 June 1992 concerning financial cooperation in respect of all Mediterranean non-member countries, OJ 1992 L181/5.

¹³³⁴ Ibid.

¹³³⁵ Barcelona Declaration adopted at the Euro-Mediterranean Conference 27th-28th November 1995.

¹³³⁶ Barcelona Declaration adopted at the Euro-Mediterranean Conference – 27-28/11/1995.

¹³³⁷ Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structure in the framework of the Euro-Mediterranean partnership, OJ 1996 L189/1.

¹³³⁸ Art. 2(2) and Annex II, sections I, II, and III of the MEDA regulation.

¹³³⁹ Council Regulation (EC) No 2698/2000 of 27 November 2000 amending Regulation (EC) No 1488/96 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership, OJ 2000 L311/1. See also P. Holden, 'The European

The new MEDA regulation (often referred to as MEDA II), applicable from 2000 to 2006, introduced some changes concerning procedural issues, like on comitology and the introduction of CSPs and added a new focus area ('underprivileged groups'). The 1996 MEDA regulation envisaged a financial reference amount of 3 424.5 million Euros, while the 2000 regulation mentioned that the EU planned to spend about 5 350 million Euros.¹³⁴⁰ According to the Court of Auditors, between 1995 and 2005 about 6 800 million Euros were committed under national programmes for the eight permanent Mediterranean aid recipients and for regional projects, which is about 626 million Euros annually for each covered country.¹³⁴¹

The various bilateral financial protocols in force under the Global and the New Mediterranean Policy did not foresee any democracy promotion, in particular also not after the 1991 November resolution by the Council and the Member States officially launched the EU's policy of democracy promotion. On the one hand, it has already been seen that the EU hesitated with the immediate implementation of the new policy in difficult regional contexts, for example, in Asia. On the other hand, several authors have explained the EU's cautious approach in the Mediterranean by more specific reasons, in particular, by fears of Islamist groups gaining power through democratic elections, as had happened in Algeria in 1991.¹³⁴²

Nevertheless, in the mid-1990s, with the launch of the EMP and the adoption of the MEDA programme, democracy and democratization finally also became a topic in EU-Mediterranean relations. There were some references in the Barcelona Declaration and the preamble of the MEDA programme that indicated a continuation of the hesitant approach, like an allusion to the sovereignty principle and references to, despite the goal of democracy promotion, the need for "respecting international law" and "the territorial integrity and...frontiers" of states, which was unseen in other regulations.¹³⁴³ However, at the same time the MEDA regulation also included similar provisions on the topic of democracy promotion as basically all other assistance regulations in force, like Tacis. It mentioned the general objective of contributing to the "reinforcement of political stability and democracy" in Article 2(1) and included a political conditionality clause in the form of an essential elements clause in Article 3.¹³⁴⁴ It envisaged the provision of democracy assistance, but was, similar to the 1996 Tacis

Community's MEDA Aid Programme: A Strategic Instrument of Civilian Power?, 8 *European Foreign Affairs Review* 3 (2003), at 347f.

¹³⁴⁰ Article 1(3) of the MEDA regulations.

¹³⁴¹ Court of Auditors, Special Report No 5/2006, at 12. Importantly, the MEDA funds given to Turkey, Cyprus and Malta are not included here.

¹³⁴² See, for example, R. Youngs, 'The European Union and Democracy Promotion in the Mediterranean: A New or Disingenuous Strategy?', 9 *Democratization* 1 (2002), at 40.

¹³⁴³ Preamble of the 1996 MEDA regulation.

¹³⁴⁴ Article 3 of the MEDA regulation. Fierro, at 357. The procedure for the use of the clause, in particular, that the Council would decide by qualified majority or unanimously, was due to disagreements by the Member States, only decided in 1998. Council Regulation (EC) No 780/98 of 7 April 1998 amending Regulation (EC) No 1488/96 as

regulation, general and unstructured as regards listing individual fields of support. Annex II to the MEDA regulation, which was devoted to more concrete measures of assistance, only mentioned democracy assistance very generally and, moreover, only as one of eleven sub-fields of the broader sector 'socioeconomic balance'. Additionally, civil society and media support were enumerated as part of the sub-field of 'good governance', without, however, clarifying the exact link between these concepts. Specific Council 'guidelines for the establishment of the NIPs', which constituted very particular and unique documents through which the Council influenced the MEDA programming process, stressed that considerable efforts would be devoted to democracy promotion, and that the development of civil society should be one specific field of engagement in the entire region.¹³⁴⁵ However, overall the particular fields of engagement remained weakly defined also in these documents. The amendment to the MEDA regulation in 2000 introduced two important changes as regards democracy assistance that rendered the relevant provisions slightly more precise. First, it expressly mentioned that the strengthening of democracy should primarily happen through NGOs and, secondly, it included the field of rule of law as focus area. More concretely, it mentioned cooperation in judicial and criminal matters, the strengthening of institutions, which guarantee the independence and effectiveness of the judicial system, and the training of national security services and civil protection. Like ALA and Tacis, no specific amounts or percentages of the overall funding were reserved for democracy promotion.

In the early 2000s, as part of several efforts to increase the profile of human rights and democratization in the EU-Mediterranean relationship, the Commission suggested the introduction of an instrument of incentive conditionality, which was not explicitly foreseen in the MEDA regulation, but could be based on it: the - later – so-called Democracy Facility.¹³⁴⁶ As discussed in Chapter 3, it promised extra funding for countries willing to draft and implement specific plans or strategies on human rights and democracy. In practice, only two countries – Morocco and Egypt – received additional funding under this facility, which was, from 2007 on, replaced by a different, ENPI tool.¹³⁴⁷

Other major policy tools of the EU-Mediterranean framework also referred to democracy promotion, mixing very explicit pro-democracy statements with hesitations to address the topic equally.¹³⁴⁸ As part of the EMP the EU concluded so-called 'Euro-Mediterranean association

regards the procedure for adopting the appropriate measures where an essential element for the continuation of support measures for a Mediterranean Partner is lacking, OJ 1998 L113/3.

¹³⁴⁵ Council Decision 96/706/EC of 6 December 1996 concerning the adoption of the guidelines for the indicative programmes concerning financial and technical measures to accompany the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (MEDA), OJ 1996 L325/20.

¹³⁴⁶ COM(2003) 294 final, at 14; Principles for the Implementation of a Governance Facility under ENPI, at 2.

¹³⁴⁷ Principles for the Implementation of a Governance Facility under ENPI, at 2.

¹³⁴⁸ For a broader overview of EU-Mediterranean relations in the early 2000s see: M. Maresceau and E. Lannon (eds), *The EU's Enlargement and Mediterranean Strategies: A Comparative Analysis* (2001).

agreements' with most of the MEDA states, which entered into force between 1998 and 2006 and are still valid.¹³⁴⁹ All of these agreements included a political conditionality clause that stressed both parties' adherence to democracy and human rights protection. Like the PCAs, the association agreements established a political dialogue, but unlike all PCAs, only the agreements with Jordan and Tunisia expressly foresaw that this dialogue should also discuss the topic of democratization.¹³⁵⁰ Moreover, different from the PCAs and several agreements in Latin America, none of the Mediterranean agreements included a whole title on cooperation on democracy and human rights. The only partial exception was the interim association agreement with Palestine of February 1997, that explicitly envisaged some form of democracy assistance (dialogue on democracy, active citizenship, etc.).¹³⁵¹

In 2000, the European Council adopted a Common Strategy on the Mediterranean Region – the third of in total three common strategies ever adopted by the European Council, which strongly stipulated that the promotion of democracy was one of the core objectives of the EU's policy towards the Mediterranean.¹³⁵² It devoted considerable space to determining the principle tools to be used in pursuing this objective, amongst which it stressed political dialogue and democracy assistance. It mentioned various fields of support, including support for judicial reform, institution building, freedom of expression, the media, and NGO development, most of which had already been identified in the MEDA programme. The major novelty was the reference to the freedom of expression. As with the Common Strategies on Russia and Ukraine, the objectives of this type of document could also be achieved through the EIDHR and did therefore not necessarily define the scope of the MEDA programme.

Finally, as already mentioned in Chapter 3, in 2003 the Commission published a very detailed and specific communication on EU democracy and human rights promotion in the Mediterranean region, which stipulated ten recommendations, what were welcomed by the Council.¹³⁵³ As regards the MEDA programme, it foresaw a stronger focus on good governance, democracy, and human rights in CSPs and NIPs, at national and regional level, as well as, the use of MEDA funds for the introduced Democracy Facility.¹³⁵⁴

¹³⁴⁹ See the collection of agreements in the Council's agreement database.

¹³⁵⁰ Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, OJ 2002 L129/3.

¹³⁵¹ Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestinian Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, OJ 1997 L187/3.

¹³⁵² Common Strategy of the European Council of 19 June 2000 on the Mediterranean Region (2004/45/CFSP), OJ 2000 L183/5. After having been extended once, it applied till 2006.

¹³⁵³ COM(2003) 294 final.

¹³⁵⁴ *Ibid*, at 16.

d) The ACP states: The Lomé Conventions and the Cotonou Agreement

EU development assistance to the group of African, Caribbean, and Pacific (ACP) states has always been provided in a different framework than assistance to all other geographical regions. Rather than by a unilateral regulation, assistance was foreseen in multilateral agreements concluded between the various ACP states, the EEC/EC, and the Member States, and funding originated from the European Development Fund (EDF), a fund that is separate from the EU budget. At the same time, the programmes have always been implemented by the Commission, just like other development programmes. ACP aid therefore constitutes a hybrid system, involving intergovernmental and supranational institutions and procedures.

The framework dates back to the 1950s and the foundation of the EEC. As indicated in Chapter 4, development policy was then not regulated in the EEC-Treaty, except for the relations with the overseas countries and territories (OCTs) that had a special, mainly colonial, relationship with individual Member States.¹³⁵⁵ They should be targeted with preferential trade measures and receive assistance for their social and economic development, which was, in particular, regulated in a special Implementing Convention annexed to the EEC-Treaty.¹³⁵⁶ Soon after the adoption of the Treaty of Rome a large number of the OCTs became independent – a situation that called for a redefinition of the relations with these states. In result, the EEC, its Member States, and 18 African States and Madagascar concluded the so-called Yaoundé Agreements, which entered into force in 1964 and 1971. In 1971 the so-called Arusha Agreement with three former British African colonies also entered into force.¹³⁵⁷ Not soon afterwards the EEC brought the – then already 48 – African, Caribbean and Pacific states into a single framework and concluded the first Lomé Convention (signed in 1975, in force in 1976). It was followed by Lomé II (signed in 1979, in force in 1981), Lomé III (signed in 1984, in force in 1985) and Lomé IV (signed in 1989, in force in 1990, with a revision in 1995).¹³⁵⁸ In the late 1990s, a broader revision of EU-ACP relations led to the signing of the Cotonou Agreement in 2000 that is valid until 2020 and is being revised in five-year intervals.¹³⁵⁹ By 2000, the number of ACP countries signatories to the agreement had risen to 78 countries. With the accession of Timor Leste in 2003, the number increased to 79. At the same time, the specific Treaty provisions on OCT's have always remained

¹³⁵⁵ See Part IV in the EC-Treaty (pre-Lisbon).

¹³⁵⁶ Art. 136 EC-Treaty (pre-Lisbon) and Treaty establishing the EEC - Implementing convention on the association of the overseas countries and territories with the Community annexed to the EEC-Treaty.

¹³⁵⁷ For an overview, see Phipan, at 29-31; L. Bartels, 'The Trade and Development Policy of the European Union', in M. Cremona, *New Developments in the EU's External Relations Law* (2008), at 135f.

¹³⁵⁸ Third ACP-EEC Convention signed at Lomé on 8 December 1984, OJ 1986 L86/3; Fourth ACP-EEC Convention signed at Lomé on 15 December 1989, OJ 1991 L229/1.

¹³⁵⁹ Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, OJ 2000 L317/3 (or Cotonou Agreement).

applicable for those countries and territories that did not gain independence, but retained special relationships with EU Member States.

As indicated, each of these agreements was accompanied by a special fund, the EDF, which provided the means for achieving the objectives of the agreements as well as covering aid to the OCTs. The EDF is established by an Internal Agreement of the Member States meeting with in the Council, which lays down the overall amount, the contributions of each Member State, as well as how the funds should be distributed among national, regional and other programmes.¹³⁶⁰ A specific Council Financial Regulation applicable to the EDF regulates the financial implementation of the funds and the presentation and auditing of the accounts.¹³⁶¹ Frequent calls for the integration of the EDF into the EU budget, which is suggested to increase democratic legitimacy (due to the involvement of the European Parliament) as well as the efficiency and effectiveness of aid and its implementation, have yet been delayed at least until 2013, when the current multiannual financial framework ends.¹³⁶² The 9th EDF, applicable for the period 2003-2007, had a budget of 15 200 million Euros and the 10th EDF, applicable for the period 2008-2013, is endowed with 22 700 million Euros, which is a high number, but is of course distributed among a very high figure of countries.

The main objectives of the four, broadly similar, Lomé Conventions were the promotion the economic, cultural and social development of the ACP states and the consolidation of EU-ACP relations in an ever growing number of sectors.¹³⁶³ A particular focus was always placed on trade, with the aim of integrating the ACPs into the world economy; however, preferential trading arrangements increasingly caused difficulties under WTO rules.¹³⁶⁴ Other fields identified in the Convention were the environment, agriculture and fisheries, food security, commodities, services, culture, and the social sector, which should also be a particular focus of EC assistance. The Cotonou Agreement explicitly added a political dimension that expressed itself in the aims of the Agreement and in a separate title on the political dimension. In addition to promoting the economic, cultural and social development of ACP states, Article 1 of the Cotonou Agreement also stipulates that this should be done “with a view to contributing to peace and security and to promoting a stable and democratic political environment”. The political dimension provides for a

¹³⁶⁰ Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on the financing of Community aid under the multiannual financial framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies, OJ 2006 L247/32.

¹³⁶¹ See, for example, for the 10th EDF: Council Regulation (EC) No. 215/2008 of 18 February 2008 on the Financial Regulation applicable to the 10th European Development Fund, OJ 2008 L78/1.

¹³⁶² J. Mackie, J. Frederiksen, and C. Rossini, *Improving ACP-EU Cooperation: Is 'Budgetising' the EDF the Answer?*, ECDPM Discussion Paper 51 (January 2004).

¹³⁶³ For example, Art. 1 of the Lomé III Convention.

¹³⁶⁴ Bartels, at 165.

political dialogue, envisages peace-building and conflict prevention and resolution policies, addresses migration, and includes the political conditionality clause of the agreement.

As regards democracy promotion and assistance, Lomé IV of 1989 was widely praised for having been the first EC external agreement to address the topic of human rights. It included something like a first kind of a human rights clause, albeit without using the essential elements terminology and without providing for a suspension mechanism. It only stressed the attachment of the parties to the agreement to all kinds of human rights and mentioned that development was centred on mankind and implied the respect for and promotion of human rights (Article 5(1) and (2) of Lomé IV). Further, upon request from ACP states, funds could be allocated to human rights projects (Article 5(3) of Lomé IV). Given that the signing of Lomé IV occurred before the EU's policy shift, there was unsurprisingly no mentioning of democracy promotion or assistance in the Convention.

The revision of Lomé IV in 1995 introduced important changes. It amended Article 5, which from then on also mentioned “democratic principles, the consolidation of the rule of law and good governance” as closely linked to development policy, without, however, explicitly identifying it as objective of the agreement. Several explicit references to the provision of democracy assistance strongly support that it had become an objective. First, just like in the sector of human rights, measures aimed at democratization, rule of law and good governance could be implemented upon request of an ACP state (Article 5(3) of revised Lomé IV). Secondly, “support for institutional and administrative reform measures, with a view to democratization and the rule law” was also foreseen as one of the regular fields of cooperation or assistance (Article 224(m) of revised Lomé IV). Thirdly, Article 5(3) of revised Lomé IV, together with Article 3 of the Second Financial Protocol, envisaged some kind of incentive conditionality. They reserved Euros for the period 1995-2000 for projects on ‘institutional and administrative reform’, with a view to democratization and the rule of law”, which countries willing to carry out such reforms would receive in addition to their national allocations.¹³⁶⁵ Overall, though, no more specific forms of democracy support were mentioned though in the Convention. The formerly vague human rights clause was replaced by an essential elements clause that allowed for the suspension of the agreement (Article 366a of revised Lomé IV). A particular feature of the Lomé clause was that a suspension had in principle to be preceded by consultations among the parties.¹³⁶⁶ All in all, while the revised Convention did not explicitly identify democracy

¹³⁶⁵ Agreement amending the Fourth ACP-EC Convention of Lomé signed in Mauritius on 4 November 1995, OJ 1998 L156/3, Article 224(m) of the Convention and Article 3(2)(iv) of the Second Financial Protocol.

¹³⁶⁶ See, for example, Pippan, at 154.

promotion as an aim of the agreement, it definitely envisaged the provision of democracy assistance.

The Cotonou Agreement (2000) – revised in 2005 and 2010 –, which until 2020 regulates EU relations with the ACP states, refers to democracy promotion and assistance in a much larger number of provisions than its predecessors and also more than all unilateral assistance regulations. It refers to democracy promotion in Article 1, first paragraph, which broadly stipulates the goals of the Agreement. But rather than mentioning democratization clearly as an objective of the agreement, it uses a slightly vague formulation (...“with a view to...promoting a stable and democratic political environment”). Article 1, fourth paragraph, expressly declares that building the institutional framework necessary for the functioning of a democratic society is an integral part of EU-ACP relations. Article 9 of the Agreement, which is entitled ‘essential elements and fundamental element’, repeats the general objective of democracy promotion by mentioning that the “(P)artnership shall actively support the promotion of human rights, processes of democratization, consolidation of the rule of law, and good governance”. Quite uniquely, Article 9 also provides a definition of democracy, while at the same time stressing that each country develops its own form. The definition remains general and mixes purposes, results, and organizational features of democracy. It mentions that “(D)emocratic principles are universally recognized principles underpinning the organization of the State to ensure the legitimacy of its authority, the legality of its actions reflected in its constitutional, legislative and regulatory system, and the existence of participatory mechanisms.” Article 9 also provides definitions of the rule of law and of good governance. It mentions that the rule of law entails “effective and accessible means of legal redress, an independent legal system guaranteeing equality before the law and an executive that is fully subject to the law” (Article 9(2)). The definition of good governance is more elaborate and refers to “the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption” (Article 9(3)). Compared to all other external agreements of the EC as well as unilateral assistance regulations, the Cotonou Agreement definitely goes much further in attempting to explain the content of concepts relevant for the partnership, even if it remains general and unspecific as regards some terms, like democracy.

Democracy assistance is not identified as a separate area of support, like, amongst others, economic development, structural development, social and human development, youth issues

and gender issues (Title I, Chapter 2 ‘Areas of support’ in development). The sector ‘Institutional development and capacity building’ (Article 33), includes several forms of democracy assistance though. It mentions that “(C)oooperation shall pay systematic attention to institutional aspects and in this context, shall support the efforts of the ACP States to develop and strengthen structures, institutions and procedures that help to: (a) promote and sustain democracy, human dignity, social justice and pluralism, with full respect for diversity within and among societies; (b) promote and sustain universal and full respect for and observance and protection of all human rights and fundamental freedoms; (c) develop and strengthen the rule of law; and improve access to justice, while guaranteeing the professionalism and independence of the judicial systems; and (d) ensure transparent and accountable governance and administration in all public institutions.

The Cotonou Agreement contains a similar political conditionality clause as its predecessor, including the demand for consultations among the parties, except in urgent cases, before aid (or other parts of the agreement) can be suspended.¹³⁶⁷ A more particular feature of the Agreement is the elevation of the principle of good governance as a ‘fundamental element’ – not essential element – of the agreement, which does not allow for suspension, but can give rise to a special consultation procedure.¹³⁶⁸

e) Palestine: Special Assistance Programmes

Palestine was one of the few entities that due to its specific status and EU interest for a quite long period of time benefited from special country-specific assistance programmes, next to receiving assistance through regional programmes. EU assistance to the West Bank and Gaza Strip started in 1971 with the first EEC contribution to the budget of the UN Relief and Works Agency (UNRWA) that continues until today.¹³⁶⁹ In the early 1980s, the EEC additionally started to provide direct assistance through an NGO support programme.¹³⁷⁰ Finally, following its pledge of support at the Washington donor’s conference after the signing of the Oslo Peace Accords in September 1993, the EU started a separate assistance programme that focused broadly on sustainable economic and social development (Regulation No 1794/94).¹³⁷¹ In parallel, Palestine benefited under regional MEDA Mediterranean programmes from 1994 on and received national

¹³⁶⁷ Art. 9 and 96 of the Cotonou Agreement.

¹³⁶⁸ Art. 9 and 97 of the Cotonou Agreement; Hilpold, at 53f.

¹³⁶⁹ Court of Auditors, Special Report No. 19/2000 on the management by the Commission of the programme of assistance to the Palestinian society, together with the Commission’s replies, OJ 2001 C32/1, at 5.

¹³⁷⁰ *Ibid.*, at para 5.

¹³⁷¹ Council Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories, OJ 1994 L182/4. Amended by Council Regulation (EC) No 2824/98 of 21 December 1998 amending Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories, OJ 1998 L351/13; Council Regulation (EC) No 2840/98 of 21 December 1998 amending Regulation (EC) No 1734/94 on financial and technical cooperation with the Occupied Territories, OJ 1998 L354/14.

funds under the MEDA programme from 1995 on.¹³⁷² From 1994 to 1999, EC total commitments under the three main budget headings on Palestine amounted to 639 million Euros, of which 447 million Euros were paid out in the same period.¹³⁷³

When Regulation No. 1794/94 was adopted in 1994, it did not mention democracy promotion as objective of the assistance programme and also lacked a political conditionality clause, apparently for fears of interrupting the peace process, but also in line with the general absence of democracy promotion in EU-Mediterranean relations. It did foresee the provision of democracy assistance though, as Article 2(1) of the regulation mentioned the “setting-up and improvement of institutions necessary for the proper working of the public administration and the advancement of democracy and human rights” as one priority area of support. The revision of Regulation No 1794/94 in 1998 brought important changes. Article 1 was revised to expressly refer to political development as objective of EU assistance and the development of civil society was added as field of support (Article 2 of Regulation No 1794/94).¹³⁷⁴

f) South Africa: Special Assistance Programmes

South Africa was the second state, which due to its specific problems and EU interest, in this case due to the apartheid regime, was targeted by a series of special EU assistance programmes. First EU efforts go back to a September 1985 decision by the EC Member States’ Foreign Ministers, which decided to pursue a twin-track approach of imposing sanctions as well as assisting disadvantaged communities and victims of apartheid.¹³⁷⁵ The resulting ‘Special Programme for the Victims of Apartheid’ was implemented between 1986 and 1990, with funds, due to the sensitivity of the issue, being channeled through European NGOs, rather than being directly administered by the EC.¹³⁷⁶ In 1991, when apartheid started to be dismantled, the thematically broader ‘Special Programme for South Africa’, that also had a socio-economic focus, started to be implemented. In a more relaxed atmosphere, the EC switched to self-management; however, the South African government remained excluded in the choice of themes of support, which is usually not the case with general assistance programmes.¹³⁷⁷ In 1994, after the first free elections in South Africa, the EU started to implement the ‘European Programme for

¹³⁷² Council Regulation (EC) No 1735/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories and amending Regulation (EEC) No 1763/92 concerning financial cooperation in respect of all Mediterranean non-Member countries, OJ 1995 L182/6.

¹³⁷³ Court of Auditors, Special Report No. 19/2000, at 1.

¹³⁷⁴ Regulation No 2840/98.

¹³⁷⁵ Pippin, at 300.

¹³⁷⁶ Court of Auditors, Special Report No 7/98 in respect of the European Community Development Aid Programme regarding South Africa (1986-1996) accompanied by the replies of the Commission, at 4 and 8.

¹³⁷⁷ Ibid.

Reconstruction and Development' (EPRD), which provided support to South Africa's own national development plan.¹³⁷⁸ It supported a much broader range of themes than before, including socio-economic topics, health, rural development, regional integration, and the environment. In 2000, the thematic scope was enlarged to also encompass trade and efforts for South Africa's integration into the world economy,¹³⁷⁹ which stood in direct connection with the signing of a comprehensive trade and cooperation agreement in 1999.¹³⁸⁰ The allocations for the programmes for South Africa rose from about 20 million Euros in 1986 to about 72 million Euros in the mid-1990s. From the late 1990s to 2006, they were about 130 million Euros annually.¹³⁸¹

Democratization featured in all assistance programmes. The official aim of the first special programme on apartheid was to foster the "transition to a peaceful, stable, democratic and non-racial South Africa by assisting the victims of political repression".¹³⁸² Similarly, the 1991 Special Programme for South Africa, envisaged assistance in the transition to democracy, which, in practice was also used for the preparation of the first free elections in 1994.¹³⁸³ The regulation underpinning the EPRD foresaw in Article 1 that the aim of EC cooperation was, next to promoting sustainable and social development, "to consolidate the foundations laid for a democratic society and a State governed by the rule of law in which human rights and fundamental freedoms are respected". Article 2 of the same regulation mentioned as the first type of operation to be carried out "support for democratization and the protection of human rights", without, however, going into more detail. After its revision in 2000, Article 2(c) added the "support to democratization, the protection of human rights, sound public management, the strengthening of local governments and the involvement of civil society in the development process" as one area of cooperation.

¹³⁷⁸ Council Regulation No 2259/96.

¹³⁷⁹ Regulation (EC) No 1726/2000 of the European Parliament and of the Council of 29 June 2000 on development cooperation with South Africa, OJ 2000 L198/1.

¹³⁸⁰ Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, OJ 1999 L311/3.

¹³⁸¹ EU budgets.

¹³⁸² Court of Auditors, Special Report No 7/98, at 4 and 8.

¹³⁸³ Pippan, at 302, fn. 901.

Since 1 January 2007¹³⁸⁴

g) The European Neighbourhood States in Eastern Europe and the Mediterranean:
The European Neighbourhood and Partnership Instrument (ENPI)

As mentioned in Chapter 3, following a reform process in the field of external development and cooperation policy, several new assistance regulations entered into force on 1 January 2007. Definitely the most notable of the new programmes – in particular in terms of the political relevance of its target states – is the European Neighbourhood and Partnership Instrument (ENPI), which was established by Regulation No 1638/2006 of 24 October 2006 (or ENPI regulation).¹³⁸⁵ It is, as the name indicates, the EU's principal programme in support of achieving the objectives of the European Neighbourhood Policy (ENP) and of the so-called Strategic Partnership with Russia, a state that preferred not to participate in the ENP.¹³⁸⁶ Since 2009, it also finances projects within the frameworks of the Euro-Mediterranean Partnership (Euromed) or Union for the Mediterranean and the Eastern Partnership, which supplement the ENP as regards Europe's southern and eastern neighbours and envisage upgraded engagement with these states.¹³⁸⁷ The ENPI therefore covers Russia and the countries that form part of the ENP: Ukraine, Moldova, Belarus, Armenia, Azerbaijan, Georgia, and Russia (in the East), as well as Morocco, Algeria, Libya, Tunisia, Egypt, Lebanon, Syria, Jordan, the Palestinian Authority of the West Bank and the Gaza Strip, and Israel (in the South).¹³⁸⁸ Given this geographical focus, the ENPI is basically the successor to the Tacis and the MEDA programmes, as well as to Regulation No 1734/94 on Palestine.¹³⁸⁹

While the general aim of the ENPI is the promotion of prosperity and good neighbourliness (Article 1(1) of the ENPI regulation), Article 8 of the regulation mentions a long list of themes of support, including trade, legal and regulatory approximation, environmental protection, social development, poverty reduction, health education, SME development, energy, transport, food safety, justice and security, culture, and border management (Article 2(2)(a)-(cc))

¹³⁸⁴ For an overview of the programmes since 1 January 2007 see also S. Bartelt, 'The legislative architecture of EU external assistance and development cooperation', in S. Bartelt and P. Dann (eds.), *Entwicklungszusammenarbeit im Recht der Europäischen Union – The Law of EU Development Cooperation* (Europarecht - Beiheft 2, 2008), at 10f.

¹³⁸⁵ OJ 2006 L310/1.

¹³⁸⁶ S. Blockmans, 'EU-Russia Relations through the Prism of the European Neighbourhood Instrument', 13 *European Foreign Affairs Review* (2008), 167f. On the ENP see, for example, M. Cremona, 'The European Neighbourhood Policy: More than a Partnership?', in M. Cremona (ed.), *Developments in EU External Relations Law* (2008), at 244f; E. Lannon (ed./éd.), *The European Neighbourhood Policy's Challenges/La Défis de la Politique Européenne de Voisinage* (2012).

¹³⁸⁷ D. Kochenov, *The Eastern Partnership, The Union For the Mediterranean and the Remaining Nee to Do Something with the ENP*, CRCEES Working Paper WP 2009/01, at 27f.

¹³⁸⁸ Annex to the ENPI regulation.

¹³⁸⁹ Recital 23 and Art. 31 of the ENPI regulation.

of the ENPI regulation). The regulation foresees a financial reference amount of 11 181 million Euros for the 2007-2013 period. The 2009 EU budget stipulated a total commitment of 1 650 million Euros, of which, next to some minor allocations, about 790 million were earmarked for the Mediterranean countries, about 410 million for Eastern Europe, and 300 million for Palestine.¹³⁹⁰ The numbers have increased since then, especially as regards the Eastern states.¹³⁹¹ Compared to the budgets of the Tacis and MEDA programmes, the ENPI is, in both covered regions, endowed with more funds than its predecessors.

The current thematic focus of the ENPI and, concurrently, the character of the ENPI as main development programme for the ENP countries and Russia, only emerged gradually during the reform process of EC external assistance policies. Its final thematic scope was strongly influenced by the wishes of the European Parliament and by the character of the other new assistance programmes, in particular the Development Cooperation Instrument (DCI), all of which were, of course, just pieces of a single jigsaw, which had to be adjusted to each other. Initially, the Commission envisaged a New Neighbourhood Instrument with a more limited thematic focus,¹³⁹² which should basically only support crossborder and regional cooperation activities, like projects concerning border management and the socio-economic development of external border regions of the EU.¹³⁹³ Something similar was carried out by the so-called 'neighbourhood programmes', that were – based on various existing regulations, like INTERREG, MEDA and Tacis – implemented from about 2004 on and constituted one of the first activities of the then young ENP.¹³⁹⁴ As such, the Commission envisaged the New Neighbourhood Instrument as a complementary measure to the planned Economic Cooperation and Development Instrument, which had been devised as the main development programme for basically all third, developing states, including the ENP countries.¹³⁹⁵ The Parliament objected to such a structure out of concern about its lack of influence due to the small number of assistance programmes and out of the fear of watering down the concept of development if all third states were addressed in a single instrument.¹³⁹⁶ Consequently, the New Neighbourhood Instrument was made a thematically more comprehensive assistance programme for the ENP region and

¹³⁹⁰ EU budget 2009.

¹³⁹¹ EU budget 2010.

¹³⁹² Communication from the Commission to the Council and the European Parliament, Wider Europe – Neighbourhood: A Framework for Relations with our Eastern and Southern Neighbours, COM(2003) 104 final, 11.3.2003, at 18.

¹³⁹³ COM(2004) 101 final/2, at 33; Communication from the Commission, European Neighbourhood Policy STRATEGY PAPER, COM(2004) 373 final, 12.5.2004, at 25.

¹³⁹⁴ Communication from the Commission, Paving the Way for a New Neighbourhood Instrument, COM(2003) 393 final, 1.7.2003, at 12.

¹³⁹⁵ COM(2004) 373 final, at 25.

¹³⁹⁶ Bartelt, at 14.

Russia,¹³⁹⁷ while the – in the meantime renamed – Development Cooperation and Economic Cooperation Instrument should not be applicable to the ENP states.¹³⁹⁸

The preamble of the ENPI regulation contains several references to democracy and democratization and, in particular, stresses that democracy and respect for human rights are ‘shared values’ of the EU and the various ENPI partner states (recitals (3) and (4) of the ENPI regulation) and that EU assistance should support the partner countries’ commitment to these ‘common values’ (recital (8)).¹³⁹⁹ Democracy promotion is also mentioned in the main text of the regulation, however, not in Article 1(1), which stipulates the overall objectives of the ENPI, that is, prosperity and good neighbourliness, but in Article 1(3), which forms part of the essential elements clause of the regulation. It stipulates that “(T)he European Union is founded on the values of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, and seeks to promote commitment to these values in partner countries through dialogue and cooperation”. Noticeable in this provision is the lack of a strong and direct language on the objective of democracy promotion (“seeks to promote commitment to...”), as has for example been used in the Tacis regulation and in the concurrently adopted DCI regulation. However, there is nevertheless no doubt about this objective. Article 1(3) of the ENPI also expressly mentions two instruments of democracy promotion, one of which is assistance (“cooperation”). Article 2(2), which contains a long but partly overlapping, 28-odd item list of possible themes of support under the ENPI, expressly mentions several more specific forms of democracy. The most relevant item is paragraph (l) of Article 2(2), which stipulates that assistance shall be provided for “supporting democratization, *inter alia*, by enhancing the role of civil society organizations and promoting media pluralism, as well as through electoral observation and assistance”. Paragraph (d) mentions “promoting the rule of law and good governance, including strengthening the effectiveness of public administration and the impartiality and effectiveness of the judiciary, and supporting the fight against corruption and fraud”. Paragraph (m) foresees measures “fostering the development of civil society and of non-governmental organizations”. Paragraph (k) envisages measures “promoting and protecting human rights and fundamental freedoms”, and, finally, paragraph (i) envisages, among other actions in the social sphere, actions in “respect for trade union rights”. All in all, the enumeration of types of democracy assistance in the ENPI regulation is quite detailed if compared to earlier regulations. However, like all other

¹³⁹⁷ COM(2004) 487 final, at 25.

¹³⁹⁸ Ibid, at 25-6.

¹³⁹⁹ See Cremona on a brief reflection on ‘shared values’, in M. Cremona, “The European Neighbourhood Policy: More than a Partnership?”, in M. Cremona (ed.), *Developments in EU External Relations Law* (2008), at 254.

programmes, no funds or percentages of available funds are reserved for democracy assistance and/or specific themes thereof.

The ENPI contains a political conditionality clause of a new type that is important for democracy assistance. While not only authorizing the parties to “take appropriate steps” in case of violations of essential elements, Article 28(1) of the ENPI regulation envisages, that “assistance shall primarily be used to support non-state actors for measures aimed at promoting human rights and fundamental freedoms and supporting the democratization process in partner countries”. Rather than suspending or reducing aid, it should therefore be redirected to democracy and human rights assistance. The provision has its direct roots in the EU’s actions towards Belarus following the 1997 suspension of most Tacis assistance and represents a new focus on conditionality that stresses positive features of the tool.

The ENPI uses conditionality, including political conditionality, in a further way, that is, as incentive conditionality. Article 7(2) of the ENPI regulation stipulates that, in allocating ENPI funds, account should be taken of, amongst others, the partner states’ “progress towards implementing agreed objectives, including on governance and on reform”. On the one hand, progress on governance reform is therefore one of the general criteria in deciding on country allocations. On the other hand, the Commission has developed the so-called ENPI ‘Governance Facility’, discussed in Chapter 3, which gives additional funds to those ENPI countries that show most progress in implementing governance aspects of the ENP Action Plans.¹⁴⁰⁰ During the 2007-2013 programming period, in total about 300 million Euros were reserved for the Governance Facility, which should each year only be given to at most two countries.¹⁴⁰¹ So far, Ukraine and Morocco, and later also Moldova, have benefited under the facility; however, it has overall kept a rather low profile and was criticized for lack of impact.¹⁴⁰² The additional funds do not necessarily have to be used for governance-related projects, even if this is encouraged.¹⁴⁰³ It can therefore be expected that at least some of these funds were used for democracy assistance.

Democracy and human rights assistance is further privileged, as support to civil society and non-state actors aimed at promoting democracy and human rights are exempt from the usual requirement of co-financing through national, public funds (Article 4(4) of the ENPI regulation). Finally, threats to democracy, the rule of law, and human rights allow an *ad hoc* review of the

¹⁴⁰⁰ Principles for the Implementation of a Governance Facility under ENPI (no date provided). On the Action Plans, see shortly below.

¹⁴⁰¹ European Commission, On Strengthening the European Neighbourhood Policy, COM(2006) 726, at 12.

¹⁴⁰² N. Popescu, ‘More for more in the Neighbourhood’, EU Observer Blogs, 4.4.2011, at <http://blogs.euobserver.com/popescu/>.

¹⁴⁰³ Ibid, at 9.

approved programme for a specific country (Article 7(6) of the ENPI regulation), which was, for example, done after the beginning of the Arab Spring in 2011.¹⁴⁰⁴

As mentioned, the ENP has not replaced the existing framework of relations between the EU and the ENP states, but has mainly added an additional layer of relations, with further objectives and tools. This means that the existing agreements with the ENP states, that is, the PCA and the Euro-Mediterranean agreements, have remained in force and continue to function as a major framework for the relations of the EU with the respective states. Indeed, the bodies established under these agreements participate in the implementation of the ENP, like the Cooperation Councils, which have to endorse the ENP Action Plans (APs). Nevertheless, the ENP in principal also envisages the conclusion of new ‘specific’ neighbourhood agreements, as explicitly stipulated in primary law (Article 8 TEU). So far, negotiations on a New Enhanced Agreement or Association Agreement, that will establish a free trade area, have only been launched (in March 2007) and are ongoing with Ukraine.¹⁴⁰⁵

So far, the most important new type of document introduced by the ENP is the Action Plans (APs). These are documents that outline a jointly defined agenda of how relations between the EU and an ENP state would further be developed and which reforms a state would undertake during a time-frame of, usually, three to five years.¹⁴⁰⁶ The APs matter as regards the ENPI, as both are instruments aiming to achieve the goals of the ENP: The APs define concrete steps to be undertaken in the short and medium term, while the ENPI is the principal instrument to assist in the implementation of the ENP. Nevertheless, the priority areas identified in the APs are not at the same time priority areas of intervention under the ENPI. The latter’s priority areas are identified in the country-specific and region-specific ENPI Strategy Papers (SPs) as well as Indicative Programmes (IPs). However, when adopting these ENPI SPs and IPs, the APs have to be/are taken into account. It has to be added – to render things even more complex – that in the case of Ukraine in 2010 the AP has been replaced by a so-called Association Agenda, that aims at preparing for and facilitating the entry into force of the new EU-Ukraine association agreement (which is still being negotiated). Based on the general Association Agenda, each year an Action Plan with specific priorities is agreed, which again factors into ENPI programming.

All APs (and the EU-Ukraine Association Agenda) follow a blueprint suggested by the Commission, according to which the topics of ‘democracy and the rule of law’ are addressed in the first thematic section of the AP, entitled ‘Political dialogue and reform’. Each AP therefore

¹⁴⁰⁴ COM(2011) 200 final, at 12; SEC(2011) 638; COM(2011) 303, at 3.

¹⁴⁰⁵ See the 2nd Joint Progress Report: Negotiations on the EU-Ukraine Association Agreement (no author and no date provided). In 2008, also the EU and Russia agreed to negotiate a new agreement.

¹⁴⁰⁶ While a draft document is prepared by the Commission, it has to be adopted by the relevant Association or Cooperation Councils established by the bilateral agreements with the individual states. All currently still valid ENP Action Plans have been adopted in 2005.

addresses the topic, however, the various specific topics mentioned in the APs differ from country to country, reflecting specific weaknesses and upcoming events or ongoing processes. For example, the EU/Ukraine AP, now replaced by the Association Agenda, called for free and fair presidential and parliamentary elections, the strengthening of local self-governance in line with the European Charter on Local Self-Governance, increased participation in governance by civil society, and the improvement of media freedom in accordance with Council of Europe recommendations. The EU/Jordan AP envisaged the establishment of a political dialogue between the European and the Jordanian Parliament, the promotion of a national dialogue on democracy, the reform of political party laws, the strengthening of the administration of justice, and the promotion of the freedom of expression.¹⁴⁰⁷ The broad and general nature of goals mentioned in the APs was criticized for not allowing monitoring and follow-up.¹⁴⁰⁸ However, the fact that democracy and rule of law are addressed in all APs makes it highly likely that the ENPI SPs and IPs also envisage democracy support. Indeed, basically all national (not regional!) ENPI SPs 2007-2013 and IPs 2007-2010 envisaged support in the sector.¹⁴⁰⁹

Some of the more recent policy initiatives in the field of democracy promotion in the Mediterranean have been discussed in Chapter 3, like the suggested ‘Partnership for Democracy and Shared Prosperity for the Southern Mediterranean’ (COM(2011) 200 final).

h) Developing Countries in Latin America and Asia (including former Soviet Central Asia): The Development Cooperation Instrument (DCI)

The Development Cooperation Instrument (DCI), established by Regulation No 1905/2006 (or DCI regulation), is since 1 January 2007 the second major new assistance programme and the EU’s principal programme for financing development measures in developing countries not benefitting under the ENPI or under Lomé and the EDF.¹⁴¹⁰ The DCI has quite a comprehensive geographical scope and currently covers 47 states, of which 18 are in Latin America, 19 in Asia, five in Central Asia, 4 in the Middle East, and one in Africa.¹⁴¹¹ These are largely the states previously covered by the ALA regulation, plus the former Soviet Central Asian states, which are not covered by the ENP and have therefore been shifted to the group of

¹⁴⁰⁷ All APs are published at http://ec.europa.eu/world/enp/documents_en.htm (last accessed on 1.6.2012).

¹⁴⁰⁸ R. del Sarto, T. Schumacher, E. Lannon, A. Driss, *Benchmarking Democratic Development in the Euro-Mediterranean Area: Conceptualizing Ends, Means, and Strategies*, EuroMeSCO Report, October 2006, at 44.

¹⁴⁰⁹ CSPs and IPs are published on the Commission website of the ENP.

¹⁴¹⁰ OJ 2006 L348/41.

¹⁴¹¹ Annex I to the DCI regulation, as amended by Commission Regulation (EC) No 960/2009 of 14 October 2009 amending Regulation (EC) No1905/2006 of the European Parliament and of the Council establishing a financing instrument for development cooperation, OJ 2009 L270/8, which deleted Saudi Arabia from the list, after it graduated from the OECD/DAC list in 2008.

developing countries, as well as South Africa, which has always been addressed in specific assistance programmes. As discussed in Chapter 4, the list of DCI beneficiary countries is linked to the OECD/DAC list of ODA recipients and changes with the regular review of this list. If a country graduates from the DAC list, it can also no longer benefit under the DCI, but will be added to the list of countries benefitting under the Instrument for Cooperation with Industrialized and Other High-Income Countries (ICI), as happened with Saudi Arabia in 2008/2009. It needs to be mentioned, though, that next to this primary geographical coverage, the DCI also finances five so-called ‘thematic programmes’ on the following topics/with the following titles: (1) ‘investing in people’, (2) ‘environment’, (3) ‘non-state actors and local authorities’, (4) ‘food security’, (5) ‘migration and asylum’.¹⁴¹² These programmes are not only implemented in the DCI states, but also in ENPI and ACP/EDF states. As regards these programmes, the geographical scope of the DCI is therefore much larger.

The primary objective of the DCI is the eradication of poverty in the context of sustainable development, the pursuit of (other) Millennium Development Goals (MDGs) and, as discussed shortly below, promoting democracy, good governance, human rights, and the rule of law (Article 2(1) of the DCI regulation). More specific objectives include the promotion of gender equality, the integration of developing countries into the world economy, and environmental protection (Article 2(1) of the DCI regulation). The regulation, which is applicable from 1.1.2007 to 31.12.2013, foresees a financial reference amount of 16 897 million Euros for the entire period, of which 2 980 million Euros are earmarked for geographical programmes in Latin America, 5 187 million Euros for programmes in Asia, 719 million Euros for programmes in Central Asia, 481 million Euros for the Middle East, and 980 million Euros (!) for South Africa. Latin American and Asian states receive slightly less than they did under the predecessor programmes, while the allocations for South Africa have slightly increased. The amount of 5 587 million Euros, or 33% of all DCI funds, are earmarked for the five thematic programmes.¹⁴¹³

The drafting of the DCI was marked by considerable disagreement between the Council, the Commission, the Parliament, and, at times, also between different parliamentary committees. Not only the text of the DCI was disputed, but, as already indicated, the overall structure of the new system of external assistance programmes and the position of the DCI therein.¹⁴¹⁴ While the eventually adopted text represents a compromise, the considerable influence of the Parliament (which could co-decide the measure) and, in particular, of the Parliament’s Committee on

¹⁴¹² See the discussion further below.

¹⁴¹³ Art. 38 of the DCI regulation and Annex IV.

¹⁴¹⁴ European Parliament, Committee on Development, Draft Recommendation for Second Reading on the Council common position for adopting a regulation of the European parliament and of the Council establishing a financing instrument for development cooperation (11944/2/2006-C6-0357/2006-2004/0220(COD)), Rapporteur: Gay Mitchell, at 6.

Development, is strongly evident. At the same time, the process leading to the adoption of the DCI is also an excellent example of the intensive informal processes that accompany formal legislative procedures, in this case, the co-decision procedure.

The first issue of discussion on the DCI, already mentioned, concerned the relation between the planned, new development programme and the neighbourhood programme. As discussed, the Commission first envisaged a geographically very broad new development programme that would also apply to ENP states and Russia, while the ENP programme would focus on cross-border activities only. In July 2004 it was decided that the ENP states and Russia would be targeted by a separate, thematically broad ENP programme, which left these states outside the scope of the planned development programmes.¹⁴¹⁵ However, with the settlement of this question, the dispute on the development programme was not over. The publication of the first proposal for the new “financing instrument for development cooperation and economic cooperation” (DCECI) in September 2004,¹⁴¹⁶ which was supposed to apply to all developing countries – including ENP states as well as ACP states – and all industrialized countries, gave rise to strong critique by the Development Committee of the Parliament. The body pointed out, amongst other things, the small number of new assistance regulations with long validity that reduced the Parliament’s influence overall, the inclusion of developing and industrialized countries into one programme that undermined the specificity of the concept of development, the insufficient substantive focus on development issues, and the inclusion of the EIDHR and of other programmes as a thematic programme rather than giving them a separate legal basis in a specific regulation.¹⁴¹⁷ Intensive informal consultations among the institutions started and continued until late 2005/early 2006. One important decision that influenced the proposal was taken in December 2005, when the European Council agreed not to integrate the EDF into the EU budget. This brought the ACP states outside the scope of the DCECI, which was, however, against the intentions of the Commission and the European Parliament. In early 2006 the institutions eventually decided to split the proposal on the DCECI into three separate texts: a proposal for a regulation on cooperation with developing countries (the (future) DCI), a proposal for a regulation on cooperation with industrialized countries (the (future) ICI), and a proposal for the EIDHR. The Commission also agreed to elaborate in more detail on development issues in the DCI, in particular, to create a link with the OECD. This informal agreement on important

¹⁴¹⁵ COM(2004) 487 final, at 25-6.

¹⁴¹⁶ Proposal for a Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation and economic cooperation, COM(2004) 629 final, 29.9.2004.

¹⁴¹⁷ European Parliament, Committee on Development, on the Proposal for a regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation and economic cooperation (COM(2004) 629 – C6-0128/2004 – 2004/0220(COD)), PE 353.674v02/00, A6-0060/2005, Rapporteur: Gay Mitchell.

points led to the first formal reading in the European Parliament on 18 May 2006, which accepted the Commission's first proposal but suggested the mentioned, major changes.¹⁴¹⁸ It was followed, only a few days later, by a modified proposal for the DCI by Commission, which took account of most of the mentioned issues.¹⁴¹⁹ The Commission insisted on keeping the five thematic programmes within the DCI, in order to reduce the number of regulations, which had indeed been one of the major objectives of the entire reform.¹⁴²⁰ Discussions continued during the summer and autumn of 2006, when final breaking points were settled, in particular on the percentage of ODA of all DCI assistance, on details concerning the thematic programmes, and on the involvement of the Parliament in the elaboration of DCI Strategy Papers and Indicative Programmes. In October, the Council adopted its common position, which was approved by the Parliament in December 2006.¹⁴²¹ All in all, intensive informal discussions went on for about 26 months, while the DCI regulation was adopted by the Parliament in the stage of the second reading, without recourse to the conciliation procedure.

Democracy promotion and assistance occupy important positions in the DCI regulation, indeed, more than in any other of the new general assistance regulations. Recital six of the preamble declares respect for democratic principles, human rights, and the rule of law, as 'fundamental' to long-term development. Article 2(1) of the DCI regulation mentions the promotion of democracy, good governance, human rights, and the rule of law, next to poverty eradication, as primary objective of the programme. Additionally, it stipulates that "cooperation with partner countries and regions shall: – consolidate and support democracy, the rule of law, human rights and fundamental freedoms, good governance, gender equality and related instrument of international law". This expressivity and prominence is remarkable, in particular also in comparison to the concurrently adopted ENPI regulation.

As regards democracy assistance, reference should first be made to Article 3(3) of the regulation, which mentions – as one of the general principles of the regulation – that the promotion of democracy, good governance, human rights, gender equality, the rights of the child and of indigenous people, environmental sustainability and combating HIV/AIDS should be mainstreamed into all programmes funded by the DCI. Additionally, strengthening the rule of law, access to justice, and supporting civil society, should be given particular attention (Article 3(3) of the DCI regulation). Article 5 of the DCI regulation focuses on democracy assistance

¹⁴¹⁸ European Parliament legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing a financing instrument for development and economic cooperation (COM(2004)0629 – C6-0128/2004 – 2004/0220(COD)), of 18 May 2006.

¹⁴¹⁹ COM(2004) 629/2 of 24.5.2006.

¹⁴²⁰ COM(2006) 628 final.

¹⁴²¹ Council of the European Union, Common position adopted by the Council on 23 October 2006 with a view to the adoption of the Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation, Statement of the Council's reasons, 23 October 2006, DEVGEN 205.

proper and lists the various thematic fields that the different geographical programmes for the various regions covered by the DCI (Latin America, Asia, Central Asia, the Middle East, and South Africa) shall focus on. Article 5(2)(f) – (j) is devoted to ‘governance, democracy, human rights and support for institutional reform’. It mentions in paragraph (f), again rather generally, “promoting and protecting fundamental freedoms and human rights, strengthening democracy, the rule of law, access to justice and good governance, including actions to combat corruption”. Paragraph (g) calls for support for an active civil society, promoting civic dialogue, participation, reconciliation, and institution-building. Paragraphs (h) to (j) refer to issues of governance, namely to policy reform in the fields of security and justice, including asylum, migration, trafficking of human beings and drugs, corruption and money laundering and to supporting effective multilateralism. Articles (6) to (10) of the DCI regulation identify areas of ‘additional attention’ for individual geographical areas. Several mention a particular focus on good governance, human rights, constitutional reform and civil society development, and in the case of South Africa there is an explicit call for special attention to be given to democracy promotion (Article 10). All in all, next to the strong commitment to democracy promotion, the enumeration of fields of democracy assistance remains more general than, for example, the ENPI regulation.

Article 37 of the DCI regulation contains a political conditionality clause. Different from the ENPI, the clause requires consultations of the partner countries, before ‘appropriate measures’ can be taken, except in cases of urgency or if such consultations are refused. The clause is in this respect similar to the Cotonou Agreement. Also different from the ENPI agreement, it is not foreseen that assistance should be reallocated or limited to democracy and human rights promotion.

As regards the framework in which the DCI operates, that is, other crucial policy instruments of the EU towards the covered regions and/or countries of the region, there have not been major changes since 2006. Overall, the same agreements are in force and many of the above mentioned communications are still defining EU policy towards the region. Overall, the objective of democratization therefore continues to be a key objective in the EU’s relations with the particular countries concerned, even if some newer documents, like COM(2009) 495/3 on EU-Latin America relations, do – differently from the topic of human rights – not refer to it explicitly.¹⁴²²

¹⁴²² Communication from the Commission to the European Parliament and the Council, The European Union and Latin America: Global Players in Partnership, COM(2009) 495, which updates COM(2005) 636 final.

i) The ACP states: The Cotonou Agreement

The reorganization of external assistance programmes, which was effective from 1.1.2007 on, did not affect the Cotonou Agreement, which remains applicable until 2020, and the EDF, which, as 10th EDF, is currently valid for the period 2008-2013. As regards both, reference can be made to the discussion above.

The most important novelty as regards democracy promotion in the ACP-EU context has been the introduction of the ‘Governance Initiative for ACP countries’ in mid-2006, discussed in Chapter 3.¹⁴²³ About 12% or 2.7 billion Euros were earmarked for the ‘Governance Initiative’ under the 10th EDF. Entirely different from the ENPI Governance Facility, which provided additional funding to three out of 16 countries, the ACP Governance Initiative provided additional funding to 67 of 79 ACP states. There was some variation in the amounts or percentages the individual states received; however, overall, the additional funding was due to its wide distribution considered very modest and therefore potentially ineffective, which was also noted by the Commission in a review of the Initiative in 2009.¹⁴²⁴ At the same time, the implementation of the Initiative has stimulated a stronger dialogue on governance issues, which has been judged highly positive and beneficial by all participants in the process.¹⁴²⁵

j) The Instrument for Cooperation with Industrialized and other High-Income Countries and Territories (ICI)

The Instrument for Cooperation with Industrialized and other High-Income Countries and Territories (ICI) is since 1 January 2007 the EU’s principal programme for ‘economic, financial, and technical and other cooperation’ with industrialized and other high-income countries and territories (Article 1 of the ICI regulation).¹⁴²⁶ It replaced a similar programme on cooperation and the promotion of commercial relations with industrialized countries.¹⁴²⁷ The ICI programme currently applies to about 17 states and territories, including the US, Canada, Australia, and New Zealand, several countries in the Near and Middle East, that is, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, as well as states and territories in Asia, namely,

¹⁴²³ COM(2006) 421 final, SEC(2009) 58 final.

¹⁴²⁴ SEC(2009) 58 final, at 6 and 9.

¹⁴²⁵ Ibid, at 9.

¹⁴²⁶ Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories, OJ 2006 L405/41.

¹⁴²⁷ Council Regulation (EC) No 382/2001 of 26 February 2001 concerning the implementation of projects promoting cooperation and commercial relations between the European Union and the industrialised countries of North America, the Far East and Australasia and repealing Regulation (EC) No 1035/1999, OJ 2001 L57/10.

Japan, Korea, Brunei, Chinese Taipei, Hong Kong, Macao, and Singapore.¹⁴²⁸ As mentioned, once a country emancipates from the OECD/DAC list of ODA recipients, it will also no longer be able to benefit from the DCI and be shifted to the ICI. Quickly growing countries, like Kazakhstan, might therefore soon be moved from the DCI to the ICI programme.

The general aim of the ICI is to strengthen links and to increase engagement with the target states in order to create a more favourable environment for the development of relations and of dialogue to, more generally, foster EU interests. The ICI therefore mainly finances, among others, partnerships between economic, academic, scientific parties, dialogues between political, economic, social actors and NGOs, educational and training programmes and exchanges, and projects on the enhancement of awareness about the EU (Article 4 of the ICI regulation). The financial reference amount for the programme during 2007-2013 is 172 million Euros, which is a comparatively small amount.

It has been mentioned that during the reform of EU external assistance, the programme for cooperation with industrialized countries was initially foreseen to be part of the thematically and geographically broader development and economic cooperation programme DCECI. Only upon strong critique by the Parliament's Committee on Development, which aimed at preserving development as an independent policy, the proposal was split, and DCI and ICI therefore separated. Interestingly, the Parliament's Committee on Trade, which was involved in the scrutiny of the DCECI and became the main committee to report on the ICI, preferred keeping a single instrument with 'two chapters', in particular because such an arrangement would have given the Parliament more powers in the legislative process (co-decision instead of consultation) as regards matters now covered in the ICI.¹⁴²⁹

The list of countries to which the ICI applies demonstrates that there can still be a demand for democracy promotion and assistance, even if a country is highly developed in socio-economic terms – basically none of the mentioned states or territories except for the four Western states and Japan and South Korea, is even an electoral democracy. However, the references to democracy promotion in the ICI are rather weak and would be entirely absent – as was the case under the predecessor of the ICI –¹⁴³⁰ if not for the explicit demands of the European Parliament during the consultation process. The ICI regulation now refers to the EU's foundational values/principles in recital (5) of its preamble and in Article 3(1), which also mentions generally that the EU “seeks to promote commitment to these principles in partner

¹⁴²⁸ Annex to the ICI regulation.

¹⁴²⁹ European Parliament, Committee on International Trade, Draft Report on the draft Council regulation establishing a financing instrument for cooperation with industrialized and other high-income countries and territories (11877/2006 – C6-0265/2006 – 206/0807(CNS)), Rapporteur: David Martin, of 29.9.2006.

¹⁴³⁰ Council Regulation (EC) No 382/2001 neither referred to human rights nor to democratization.

countries through dialogue and cooperation”. Article 4, which lists areas and forms of cooperation, does not expressly refer to democracy assistance, but does not exclude it either. While democracy assistance is not explicitly envisaged, it can be provided. Unlike all other major new regulations, the ICI lacks a political conditionality clause.

2. Overview of the Theme- and Actor-specific Development Assistance Programmes

Before 1 January 2007

a) Co-financing with European NGOs (or B7-6000)

The programme ‘Co-financing with European NGOs’, which was for some time also referred to under the name of its budget article ‘B7-6000’,¹⁴³¹ operated between 1976 and 2006. During the first 22 years of operation it was carried out on the basis of the EU budget only. General and specific programming guidelines by the EU institutions, in particular so-called ‘General Conditions’ by the Commission, provided rules on its implementation. Only in mid-1998 and after C-106/96 *UK v. Commission*¹⁴³² put in danger all programmes without a legal basis in secondary law, the Council adopted a regulation on the programme.¹⁴³³

‘Co-financing with European NGOs’ had several unique features among all EU programmes, including that it only provided funds to European development NGOs and that its thematic focus was very broadly circumscribed – ‘economic and social development needs, in particular poverty alleviation’ –, giving large freedoms to NGOs to suggest projects (‘right of initiative’ of NGOs or ‘demand-led approach’).¹⁴³⁴ These two features led to the characterization of the programme as ‘actor-focused’ rather than theme-specific, as were basically all other specific programmes except for the B7-6002 (see next section). A third specific feature of the programme was that the EU usually at most financed 50% of the total costs of a project or 75% of the total contributions, which was lower than is usually the case in EU projects with NGOs (that is, 80-100% of funding).¹⁴³⁵

The creation of the programme responded to the rise of NGOs as development actors. It was highly appreciated by NGOs, but also helped the EC in the development of its development

¹⁴³¹ From 2004 on, it was included in Chapter 21 02, Article 21 02 03.

¹⁴³² See Chapter 4 on C-106/96 *UK v. Commission*.

¹⁴³³ Council Regulation EC (No) 1658/98 on co-financing operations with European non-governmental development organizations (NGOs) in fields of interest to the developing countries, OJ 1998 L213/1.

¹⁴³⁴ Evaluation of co-financing operations with European non-governmental development organizations (NGOs) Budget line B7-6000 (December 2000), at 95.

¹⁴³⁵ *Ibid.*

policy, as it could use the expertise and more efficient procedures of NGOs.¹⁴³⁶ The programme was soon complemented by a regular, EU funded, EU – development NGOs dialogue. In financial terms, the programme grew from 2.5 million ECU in 1976 to 210 million in 2006, not least due to intensive NGO lobbying of the European Parliament. Between 1976 and 1997 about 775 NGOs received co-funding for more than 8000 projects.¹⁴³⁷ Major points of critique of the programme, which were only partly remedied in the early 1990s, was the focus on European NGOs and the project-by-project approach, that hardly allowed for long-term strategies.

Given the time of its start, democracy and human rights promotion was unsurprisingly not a focus of B7-6000 in the first years of its operation. However, the Council and Parliament mentioned both topics in the context of the programme in 1992, that is, as soon as the policy of democracy promotion had emerged.¹⁴³⁸ The 1998 regulation on the programme incorporated this link in secondary law and expressly stipulated that, next to primary focus on poverty alleviation, projects connected with “the strengthening of civil society and participatory development, and the promotion and defence of human rights and democracy” should be given particular attention (Article 2(1) of the regulation). All in all, democracy assistance projects under B7-6000 mainly constituted projects supporting local civil society organizations rather than other forms of democracy assistance.¹⁴³⁹

b) Decentralized Cooperation (B7-6002)

In 1992 the EC started to implement the programme ‘decentralized cooperation’, which aimed at placing the ‘agents’ of development, in particular those in development countries, at the core of EC development policy. It was linked to the rising concept of decentralization in development policies in the late 1980s/early 1990s, that is, to the devolution of decision-making and administrative powers from the central to regional and local states authorities and the increasing involvement of private actors, including civil society organizations and economic actors, in governance, in particular to produce better and more sustainable policies and strengthen democratic forms of policy-making.¹⁴⁴⁰ The programme B7-6002 was initially based on the EU

¹⁴³⁶ Commission of the European Communities, Relations between the European Communities and the non-governmental organizations (NGOs) specializing in development cooperation, COM(75) 504 final, 6.10.1975.

¹⁴³⁷ Evaluation of co-financing operations with European non-governmental development organizations, at 6-7.

¹⁴³⁸ European Parliament, Resolution of 14 May 1992 on the role of NGOs in development cooperation, OJ 1992 C150/271 and Council Conclusions of 18 November 1992, cited in recital 9 of Regulation 1658/98.

¹⁴³⁹ Evaluation of co-financing operations with European non-governmental development organizations, at 6-7; Thematic programme ‘Non-state actors and local authorities in development’, Strategy Paper 2007-2010, at 6.

¹⁴⁴⁰ B. S. Cheema and D. A. Rondinelli, ‘From Government Decentralization to Decentralized Governance’, in G. S. Cheema and D. A. Rondinelli (eds), *Decentralizing Governance, Emerging Concepts and Practices* (2007), at 2-4.

budget only¹⁴⁴¹ and was indeed a pilot project with the objective of increasingly using the decentralized approach also in general development programmes, like ALA.¹⁴⁴² However, in 1998 it was given a legal basis in secondary law as an independent programme, which was amended twice.¹⁴⁴³ All in all, the programme was very small though and on average only had an annual budget of about 6 million Euros between 1997 and 2006.¹⁴⁴⁴

Grants under the programme could only be given to ‘decentralized cooperation actors’, like local authorities, NGOs, citizens’ organizations, local traders’ organizations, trade unions, churches, research institutes and universities, and the media (Article 3 of Regulation No 1659/98, as amended by Regulation No 635/2004).¹⁴⁴⁵ Through the projects, these actors should be strengthened and encouraged to participate in local policy making. The thematic focus of projects was similar to the programme B7-6000, and concentrated on socio-economic development and poverty reduction (Article 1 of Regulation 1659/98). From 2004 on, the programme started to be particularly used in countries where official co-operation was unable to engage non-state actors or where general cooperation was suspended, like in Zimbabwe.¹⁴⁴⁶

Democracy promotion was an explicitly mentioned objective of the programme. Article 1 of Regulation No 1659/98 stipulated that the EC would support projects that contribute to “the diversification and reinforcement of civil society and grassroots democracy in the countries concerned”. Regulation 635/2004 added, in Article 2, that a priority field for cooperation under the Regulation was to be the “strengthening [of]...networks of social organizations and movements campaigning for sustainable development, human rights, in particular social rights, and democratization”. However, funds under the programme were, as mentioned, very limited.

c) The Rapid Reaction Mechanism (RRM)

The Rapid Reaction Mechanism (RRM), based on Regulation No 381/2001, emerged within the framework of the EU’s increasing engagement in civilian crisis management (CCM) in the late 1990s and should, as first pillar instrument, complement respective EU actions within the

¹⁴⁴¹ B7-643, B7-6002 and from 2004 on Chapter Article 21 02 13.

¹⁴⁴² See, for example, Art. 4 of the ALA regulation, which refers to decentralization.

¹⁴⁴³ Council Regulation (EC) No 1659/98 of 17 July 1998 ‘on decentralized cooperation’, OJ 1998 L213/6. The regulation was prolonged and amended twice, most importantly, by Regulation (EC) No 625/2004 of the European Parliament and of the Council of 31 March 2004 extending and amending Regulation (EC) No 1659/98 on decentralized cooperation, OJ 2004 L99/1.

¹⁴⁴⁴ See the various EU budgets 1997-2006..

¹⁴⁴⁵ See also Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, Participation of Non-State Actors in EC Development Policy, COM(2002) 598 final.

¹⁴⁴⁶ Article 1 of Regulation 1659/2004, as amended by Regulation 625/2004.

CFSP/ESDP pillar.¹⁴⁴⁷ It allowed the Commission to respond in a rapid and flexible manner to situations of urgency, crisis, or emerging crisis, situations posing a threat to law and order or the security and safety of individuals, situations threatening to escalate into armed conflict or to destabilize the country, in which the normal implementation of general assistance programmes was threatened or impossible. In such situations the Commission could quickly finance projects that aimed at preserving or re-establishing stable conditions in the target states (Article 3 of the RRM regulation). Additionally, the financed actions had to fall within the substantive scope of the general, geographical assistance programmes, like ALA and MEDA, or of specific, thematic programmes, like the EIDHR and B7-6000, with the exception of ECHO.

The importance and specificity of the RRM mainly lay in the speedy procedures, with which projects could be implemented, rather than the thematic scope of RRM projects. The procedure basically foresaw that the Commission decided on projects, after informing the Council, without the need for programming exercises (which were hardly possible, if actions should respond to situations of crisis) or the use of comitology (Article 4 and 6 of the RRM regulation). Projects were, however, limited to a six-month period, with exceptional supplementary actions (Article 8 RRM regulation). The annual budget of the RRM increased from about 20 million Euros in 2001 to 32 million Euros in 2006.¹⁴⁴⁸

Given the broad thematic focus of the RRM, democracy assistance could also be provided through RRM projects. In practice, it was mainly used for election-related assistance in the case of elections decided at short notice (Georgia, Ukraine, Afghanistan), the media (Macedonia, Liberia, Afghanistan), and rule of law reform (Georgia).¹⁴⁴⁹

Since 1 January 2007

d) The Instrument for Stability (IfS)

The Instrument for Stability (IfS) forms part of the new package of assistance regulations that entered into force on 1 January 2007.¹⁴⁵⁰ Its drafting process was marked by intensive discussions and disagreement between the EU institutions on delimiting the first and the second pillar as regards military aspects of peace-keeping and peace-support operations and disarmament

¹⁴⁴⁷ Council Regulation (EC) No 381/2001 of 26 February 2001 Creating a rapid-reaction mechanism, OJ 2001 L57/5. See Chapter 4 on CCM.

¹⁴⁴⁸ EU budgets.

¹⁴⁴⁹ List of RRM projects, at Commission website.

¹⁴⁵⁰ Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability, OJ 2006 L327/1.

measures and the clearance and destruction of stockpiles. While the Parliament and Commission suggested a broader reading of Article 179 and 181a ECT, the Council was eventually successful in securing a more limited interpretation, allowing the mentioned measures, except for civilian aspects, only to be pursued under the intergovernmental pillar.¹⁴⁵¹ Further, nuclear safety measures, initially foreseen to be covered by the IfS, had for reasons of incompatibility of legal bases, to be regulated in a separate regulation (Instrument for Nuclear Safety Cooperation (INSC)).

On the one hand, the IfS to a certain extent continues along the lines of the RRM and two smaller EU programmes only briefly mentioned above ('Aid for uprooted people in Asia and Latin America' and "Rehabilitation and reconstruction in developing countries"). On the other hand, it constitutes, in its form and scope, an entirely new type of programme in EU external relations. It consists of two components. First, similar to the RRM, it funds projects in times of urgency, emerging crisis, or crisis, like when democracy, law and order, human rights, and the security and safety of individuals are threatened, or when there is fear that a situation escalates into armed conflict or destabilizes a country or region (Article 3(1) of the IfS regulation). In such cases, like under the RRM, the Commission can decide quickly on so-called 'exceptional assistance measures' and must report to the Council and Parliament only after the adoption of the measure. Thematically, such operations should help to preserve, establish, or re-establish conditions of stability. They may have a maximum duration of 18 months, which can be extended for an extra four months. The second component the IfS finances, in the context of stable conditions, are EC operations that help build the capacity in third states to address specific global and trans-regional threats having a destabilizing effect, like terrorism and international crime, including illicit trafficking of people, drugs and arms, and risks relating to chemical, biological, radiological and nuclear materials, as well as to ensure preparedness for pre- and post-crisis situations (Articles 1(2)(b) and 4(1)-(3) of the IfS regulation). Unlike the first component, the just mentioned measures underlie the usual programming exercise applicable to external assistance programmes.

Democracy promotion is strongly present in the text of the IfS. On the one hand, a situation 'posing a threat to democracy' constitutes one of the expressly mentioned crisis situations that can give rise to exceptional measures under the first component of the IfS. On the

¹⁴⁵¹ COM(2004) 101/2 final/2, Building our Common Future, at 33; COM (2004) 487 final, at 26-7; Proposal for a Regulation of the Council establishing an Instrument for Stability (presented by the Commission), COM(2004) 630 final, 29.9.2004; Report of the Parliament's Committee on Foreign Affairs on the proposal for a regulation of the European Parliament and of the Council establishing an Instrument for Stability (COM(2004)0630 – C6-0251/204 – 2004/0223(COD)), PE 362.697v04-00, A6-0157/2006 of 2.5.2006 and the European Parliament legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing an Instrument for Stability (COM(2004)0630 – C6-251/2004 – 2004/0223(COD)) of 6.7.2006.

other hand, the IfS also explicitly enumerates various types of democracy that can be provided, including support for the development for democratic, pluralistic state institutions; support for effective civilian administration and related legal frameworks at national and local level, including the strengthening of civilian control and oversight of the security system; support for an independent judiciary; support for the development and organization of civil society and its participation in the political process; measures to promote independent, pluralist and professional media.

e) Non-State Actors and Local Authorities in Development

As mentioned, the DCI regulation has not only established the DCI but also five so-called thematic programmes that focus, as the name indicates, on specific substantive issues and that complement the general programmes in situations in which particular EU objectives cannot, due to different reasons, be sufficiently achieved by the general programmes (Articles 11-16 of the DCI regulation). Most notably, the thematic programmes are used in so-called difficult partnerships, when cooperation has been suspended or reduced or when a target state's government is not committed to the participatory approach.¹⁴⁵² It has also already been mentioned that the programme can be implemented in all third states, not just those covered by the DCI.

As regards democracy assistance, the most notable of all thematic programmes is 'Non-state actors and local authorities in development'.¹⁴⁵³ It by and large constitutes the successor to the two NGO programmes discussed above (B7-6000 and B7-6002). Its objective is, within the primary aim of poverty alleviation, the promotion of an inclusive and empowered society in developing states, in particular through capacity building of NGOs and local authorities (Article 14 DCI regulation). Additionally, it provides support for awareness-raising and information campaigns on development issues in EU Member States and supports cooperation and structured dialogues between civil society and local authority networks in the EU that serve development objectives (Article 14 DCI regulation). Eligible actors for funding are a broad range of non-state actors, including NGOs, universities, churches, media institutions, as well as independent political foundations (Article 24(2) of the DCI regulation). Responding to critique of the programme B7-6000, more funds are reserved for local actors than EU-based actors, and EU-based NGOs anyway have to have local partners, who must be the initiator of projects. The financial envelope for the programme is 1 639 million Euros for the 2007-2013 period, of which the large majority

¹⁴⁵² Thematic programme 'Non-state actors and local authorities in development', Strategy Paper 2007-2010, at 9-10.

¹⁴⁵³ Art. 11, 14, 20 and 22 of the DCI regulation.

is reserved for projects initiated by civil society (rather than information campaigns and networks). The majority is spent in ACP and ALA countries, while ENPI states received only about 7% of all funds during the 2007-2010 period (which more or less corresponds to the distribution under the predecessor programmes).¹⁴⁵⁴

The thematic programme on non-state actors and local authorities in development does not specifically mention democracy promotion or assistance and the primary underlying idea of strengthening civil society and local authorities in development policy and implementation is increasing aid effectiveness and efficiency rather than promoting democracy. However, many EU documents that elaborate on the principle of participation stress the crucial role of civil society organizations as promoters of democracy and human rights. Democracy promotion can therefore be seen as an implicit objective of the thematic programme.

III. Conclusion

Chapter 7 has provided a comprehensive overview of all major external assistance programmes the EU has adopted and implemented during the last two decades. It has left aside the enlargement dimension, which is excluded from the focus of this study, some smaller programmes of little relevance, the rule of law missions adopted in the framework of CFSP, as well as other, minor activities by the EU institutions. It has first presented those programmes that have a general socio-economic development focus and then those with a more limited, actor- or theme-specific focus. Further, it has distinguished between the time before 1.1.2007 and after this date, when, as part of a major overhaul of EU external assistance, a whole range of new regulations entered into force, that, in part, changed the previous geographical grouping of countries. To recall all discussed instruments, reference should be made to Table 36, inserted at the beginning of section II, which presents all programmes in a single framework.

As regards democracy promotion and assistance, the analysis of Chapter 7 has exposed the following details. First, the November 1991 resolution on human rights, democracy and development clearly stipulated the EU's policy shift to democracy promotion and declared that more funds would be allocated to that end in development programmes, EU assistance regulations and, where applicable, agreements, started to be adapted to this new objective. The EU did not immediately amend all acts of secondary law in order to insert a reference to democratization and envisage democracy assistance, but usually waited until a regulation or agreement expired or had to undergo a planned amendment. However, by the mid-1990s basically all acts of secondary law providing the basis for development assistance in one way or

¹⁴⁵⁴ Thematic programme, at 16 and 12.

another explicitly referred to democracy promotion and assistance. The most notable exception was the regulation on cooperation with industrialized countries.

Secondly, there were differences in the expressivity with which the newly inserted provisions referred to the topic of democracy promotion, reflecting an initial hesitation to pursue the policy. Some regulations immediately used a very strong and outspoken language, in particular the ALA regulation of 1992, which can be explained by the pro-democratic climate in Latin America (albeit not in Asia). Other programmes, like Tacis and MEDA, which applied to countries where authoritarian regimes continued to prevail, required several rounds of amendments until the respective legal acts contained a strong and clear commitment to democracy promotion and envisaged democracy assistance. There was apparently fear of opposition to aid programmes by third states' government, as, despite the unilateral nature of assistance regulations, the target states were/are involved in programming and implementation. Further, there was the idea that democracy assistance should primarily be provided through the EIDHR predecessor-programmes and only secondarily through the mainstream development programmes. In any case, in the course of the 1990s and in the context of prevailing interest in and support for the policy of democracy promotion, the language on democracy in development assistance regulations became increasingly outspoken. The changes introduced by the major overhaul of external assistance programmes that became effective on 1 January 2007, are just the final expressions of this trend that started in the early 1990s, and did not constitute a major, qualitative step forward.

Thirdly, although not envisaged in any basic policy document, basically all regulations followed and still follow the same general pattern when addressing democracy promotion and assistance. This general structure consists of:

- (1) a general reference to democracy or democracy promotion in the preamble, either generally underlining its relevance and/or stipulating the importance of democratization for successful development policies. For example, recital six of the preamble of the DCI regulation stipulates that respect for democratic principles is 'fundamental' for long-term development.
- (2) Further, there is basically always a general reference to the objective of democracy promotion in one of the first Articles. The exact formulations differ from programme to programme. For example, Article 1 of the 1999 Tacis regulation mentioned that Tacis was a programme "to promote the transition to a market economy and to reinforce democracy and the rule of law in the partner state". Article 1(3) of the ENPI regulation mentions that the Union is founded on the values of liberty, democracy, etc., and seeks to promote these values in partner countries through dialogue and cooperation. As

mentioned, in the course of the last twenty years, the objective of democracy promotion has been formulated increasingly clearly and outspokenly.

- (3) Most regulations envisage two to three different instruments of democracy promotion: conditionality, expressed through political conditionality clauses, that allowed/allow for the suspension or redirection of assistance in case of violation of democratic principles; less frequently, incentive conditionality, expressed as promise to provide more aid if certain conditions are met (for example, Article 7(2) of the ENPI regulation); and, usually, the provision of democracy assistance or support. As regards the latter, Article 5(2) of the DCI regulation stipulates, for example, that “assistance shall include actions within the following areas of cooperation: ...governance, democracy, human rights and support for institutional reform”.
- (4) Finally, the large majority of regulations specify the fields of democracy assistance, like election assistance or media assistance. Overall, there has been a trend to a more elaborate and more comprehensive enumeration of the various fields of democracy support since the early 1990s. For example, while the ALA regulation only generally referred to projects for the spread of democracy, the ENPI regulation mentions 10-odd topics of support. Importantly, the enumerations were/are always non-exhaustive, allowing the Commission to also finance projects on areas not explicitly mentioned. Nevertheless, the explicit mentioning suggests that the enumerated areas were the primarily envisaged sectors of engagement. The various regulations have not always neatly presented all sub-fields of democracy promotion under a single heading, but frequently they are spread out over several sections with different titles, which renders their extraction slightly difficult.

Fourthly, the following topics of democracy assistance have been *explicitly* suggested in the 15-odd programmes discussed above. As mentioned, these were the primarily envisaged fields of engagement. The EU could and did also finance projects in fields not expressly mentioned though. The enumeration in the assistance programmes and the following lists do not suggest any hierarchy among the various fields. It should be mentioned that none of the assistance regulations reserved a specific amount or share of the available funds for democracy assistance and/or the following listed sub-fields.

- Elections: observation and assistance (ENPI)
- Media support (MEDA 1996, MEDA 2000, ENPI, IfS)
- Civil society (incl. NGOs) (Tacis 1993, Tacis 1996, Tacis 1999, MEDA 1996, MEDA 2000, Regulation 1794/94 on Palestine, EPRD South Africa 2000, ENPI, DCI, B7-6000, B7-6002)

- Institutional reform and support (legislative and executive bodies, at national, regional, local level) (Tacis 1999, Lomé IV revised, Cotonou Agreement, Regulation 1794/94 on Palestine, EPRD South Africa 2000, ENPI, DCI, IfS)
- Rule of law: independence, professionalism and effectiveness of judicial system; training of security services; (Tacis 1999, MEDA 2000, Cotonou Agreement, ENPI, IfS)
- Civilian control of security system (IfS)
- Legal reform (Tacis 1993, Tacis 1996, Tacis 1999)

Additionally, numerous of the regulations also referred to two related concepts:

- Human rights (ALA, MEDA 1996, MEDA 2000, Cotonou Agreement, EPRD South Africa 1994, EPRD South Africa 2000, ENPI, DCI, B7-6000, B7-6002)
- Good governance (ALA, MEDA 1996, MEDA 2000, Cotonou Agreement, EPRD South Africa 2000, ENPI, DCI)

Reference should here also be made to the framework of other policy instrument that play a role for EU policy towards individual regions/countries. The analysis has shown that several of these other policy instruments also elaborate on democracy promotion and assistance and, for example, defined more specific fields of support. Reference should in this respect mainly be made to the three (CFSP) Common Strategies, which are now expired, and the cooperation agreements with some Latin American and former Soviet countries, some of which include a title on development and human rights, that provide a jointly agreed list of envisaged activities in the field. Overall, the fields enumerated in these documents do not go beyond the above outlined catalogue though and/or change basic approach.

As many of the sectors mentioned in the numerous assistance programmes and the other referred to documents are relatively generally defined, like civil society aid, it is difficult to determine whether democracy assistance under the general and specific development programmes clearly follows Carothers' developmental or political approach to democracy assistance. Overall, the developmental approach appears to prevail though. The very nature of most of the discussed programmes is to support processes of (mainly socio-economic) change in a mid- or long-term perspective, rather than to support individual actions at specific points of time and democracy assistance under the general development programmes is simply part of this longer term perspective, of slow, gradual change. Further, also the primarily envisaged fields of support point to the developmental approach: Institutional reform, developing an effective and professional judicial system, and supporting civil society to become a key factor in development and political change are core fields of engagement. Moreover, democracy assistance under the mainstream programmes is combined with work on human rights and good governance.

However, the political approach is not entirely absent. The ENPI expressly envisages activities concentrating on elections (election observation and assistance), several regulations referred to media support, and rule of law reform also focuses on the independence of the judiciary, which are features of a more political approach. Moreover, programmes like the RRM and the IfS allow for the swift provision of assistance in times of specific need or chance, just as envisaged by the political approach, which recognizes the existence of key moments. As in the case of the EIDHR, the provision of democracy assistance under the general programmes therefore pursues a mixed approach, having features of the developmental and political approach to democracy assistance, albeit with the developmental approach prevailing.

Due to the succinct nature of listing the individual thematic areas of support without providing more detailed information of the envisaged type of support, the lack of reserving a certain share or specific funds for individual topics, and the fact that the enumerations are non-exhaustive, it is hard to discern a specific model of democracy that should be promoted through assistance in the mentioned fields. Depending on the extent to which elections are supported or on the extent and form of civil society assistance, that it is possible to discern an elitist or participatory model of democracy. The only argument that can be made on the basis of the numerous EU assistance regulations is that all enumerated topics overall relate to the seven minimum procedural features of liberal democratic system, as well as to the additional feature of the rule of law.

Chapter 8: Democracy Assistance as Part of the EU's Mainstream and Special Development Assistance Programmes: The Implementation of the Programmes

I. Introduction

Chapter 8 provides a detailed analysis of the provision of democracy assistance under the EU's mainstream and specific development programmes introduced in Chapter 7. Just like Chapter 7, it aims at exposing core features of the EU's strategy of democracy assistance that emerge from the EU's mainstream and special development assistance programmes. In doing so and largely following Chapter 7, it addresses three main topics. First, it provides an overall quantitative account of the provision of EU democracy assistance in the framework of the mainstream and specific programmes during the period 1995 and 2009, distinguishing between commitment and expenditure data. Secondly, it addresses the thematic distribution of funds used for democracy assistance, which gives some insights into the model of democracy underlying the EU's policy and the predominant approach of democracy assistance in the case of the mainstream and special development programmes, i.e. the political or developmental approach. Thirdly, it takes a closer look at the activities in major geographical regions in order to see in which regions the EU has concentrated democracy assistance and whether there were major differences in the focus on specific sub-fields in the various regions. Unlike Chapter 7, lack of data does not allow for provision of a more detailed analysis of project identification, different project types, and implementing partners.

Just like Chapter 7, Chapter 8 adopts a 'macro' perspective, presenting a global and regional picture of EU democracy assistance under the EU's development programmes. It shows how much has globally been spent during the last fifteen years, in which thematic fields EU assistance has overall been concentrated, and in which regions the EU has been engaged to a greater or lesser extent and which sub-sectors it prioritized over others. The results are general statements on the overall EU strategy of democracy assistance, in particular, its model of democracy and model of democratization through assistance. Needless to say, EU actions in individual countries may and do diverge from this general pattern and a detailed picture of EU action in specific states would require analysis of EU action in that country.

As will be explained in more detail shortly below, the analysis of the implementation of democracy assistance under the mainstream and specific development assistance programmes suffers severely from limitations in the available data. The only available and used data source is the OECD database on official development assistance (ODA) flows, to which the Commission has reported since 1995.¹⁴⁵⁵ The major problems of the OECD sources are that they report (only) on ODA flows and therefore fail to report on some states of interest here, like Russia, while they report on countries which are excluded from this study, in particular the Western Balkans and Turkey. Further, the OECD database does not include a section on democracy assistance, but only the broader category ‘government and civil society – general’, from which data on democracy can be re-constructed. Finally, the OECD data includes the EIDHR, which has to be taken into account, when establishing EU engagement beyond the EIDHR. All in all, when reading Chapter 8, these limitations of OECD data have to be borne in mind.

II. An Analysis of Democracy Assistance under the EU’s Mainstream and Specific Development Assistance Programmes

1. A General Quantitative Account

Following the structure by which data on the EIDHR was represented in Chapter 5, this section also presents two types of quantitative data for democracy assistance provided under the mainstream and other specific development programmes: commitment and expenditure data. As explained in Chapter 5, both are legitimate representations of the EU’s financial engagement, showing political commitments as well as actual engagement and together providing an overall picture of its activities. Further, it has been mentioned that, while the two data sets should in the long run largely be identical except for those (usually small) amounts that are being de-committed, they cannot be easily compared on an annual basis due to natural and non-natural delays in implementation, which stem from the time needed to implement a programme and which stem from non-efficient procedures and which differ from programme to programme, project to project, and year to year. The average time needed to disburse committed funds under all mainstream programmes was over four years between 1999 and 2003, when the Commission last published detailed data on the topic. It was particularly high in the case of the ALA and MEDA programmes (on average 6-7 years) and speedier overall in the case of Tacis (on average 3 years).¹⁴⁵⁶ A more recent study of the Court of Auditors on aid implementation since 2004 has

¹⁴⁵⁵ <http://stats.oecd.org/qwids/> (last accessed on 21.12.2011).

¹⁴⁵⁶ European Commission, Annual report 2003, at 218.

found improvements, in particular due to the ‘decentralization process’, that is, the transfer of competences and tasks to the Commission Delegations present in the target countries, but without providing more detailed data.¹⁴⁵⁷

a) Commitments for Democracy Assistance under the EU’s Mainstream and Specific Development Programmes

While Chapter 5 on the EIDHR made recourse to the EU budget and its annual ‘commitment appropriations’, this is not possible in the case of democracy assistance under general and other specific development programmes because the EU budget usually only stipulates one commitment appropriation for the entire programme and overall, with very minor exceptions, does not single out specific appropriations for individual thematic fields, like democracy or human rights. The relevant decisions are taken during the programming and project/programme formulation or identification phase and therefore, with increasing detail as regards the thematic fields and the financial amounts, in the CSPs, NIPs, AAPs, and AWP. ¹⁴⁵⁸ Commitments as regards the democracy-related elements of general socio-economic programmes are therefore pledges made in the aforementioned documents rather than in the annual EU budget.

In principle, three data sources exist for the aforementioned commitments to provide democracy assistance. First, there are the just referred to original programming and programme or project formulation/identification documents. AAPs are a sub-optimal source for this thesis because they cover a shorter time frame (– they are basically only available since 2002) and would involve the analysis of a very high number of documents that cannot be done in the framework of this study (over 1500 documents). It has also not yet been done in any other study from which data could be obtained. A look at the available CSPs and NIPs alone, which are fewer in number, gives some general insight into whether the topic of democratization is addressed, but does not provide overall detailed financial information. Secondly, the Commission has since 2001 included general ODA commitment data for all aid sectors in its annual report on development and assistance policies.¹⁴⁵⁹ The disadvantage of these reports is that they are only available since 2001 and, moreover, only provide aggregate data for more general OECD categories, that is, for the aggregate category ‘government and civil society’. They do not provide data for individual sub-fields of this category and therefore for democracy assistance. Finally, the Commission has from

¹⁴⁵⁷ European Court of Auditors, Special Report No 1/2011, Has the Devolution of the Commission’s Management of External Assistance from its Headquarters to its Delegations led to improved Aid Delivery?, at para. 10-19.

¹⁴⁵⁸ See Chapter 3 for these programming documents.

¹⁴⁵⁹ All reports are available at http://ec.europa.eu/europeaid/multimedia/publications/index_en.htm (last accessed on 21.7.2011).

1995 on submitted financial data on ODA commitments (and, from 2002 on also on payments) in all external aid sectors to the OECD, which has published this data in its online database on ODA flows by all international donors.¹⁴⁶⁰ Due to its longer time-span and more detailed categories, this source is the most useful for this thesis and is used for the creation of the financial tables provided.

As indicated in Chapter 2 and in the Introduction to this Chapter, OECD data has some disadvantages. First, it only reports on ODA, that is, on aid flows to countries on the OECD/DAC list of aid recipients. It therefore disregards flow to several countries of interest here, like to Russia and, until 2005, to Ukraine and Belarus. At the same time, it includes data on several countries that are excluded from the analysis in this thesis, that is, the Western Balkans and Turkey. As mentioned in Chapter 2, aid to the CEECs was never included in the ODA statistics database. The following Tables therefore have to be consulted with this awareness about the covered countries, that is slightly different from the intended focus of this Chapter.

Secondly, the OECD does not work with a separate category of democracy assistance. As mentioned, it provides data on the sector ‘government and civil society’, which is sub-divided into two sub-sectors, ‘government and civil society – general’ and ‘conflict, peace, and security’. The first of these is further divided into the following eleven fields: (1) public sector policy and administrative development; (2) public financial management, (3) decentralization and support to sub-national governments; (4) anti-corruption organizations and institutions; (5) legal and judicial development, (6) democratic participation and civil society; (7) elections; (8) legislatures and political parties; (9) media and free flow of information, (10) human rights; (11) women’s equality organizations. Data for democracy assistance has to be constructed from among these various sub-fields. Following the substantive focus of the EIDHR, it is suggested that sub-sectors (5) to (9) be used in order to establish data for EU commitments in the field of democracy assistance. All other categories rather pertain to other sectors, that is, to good governance (in the more limited sense) and to human rights. However, this is only one possible construction of the field of democracy assistance and arguments can be made for also including some of the other sectors in the category, like decentralization and women’s equality organizations, which often have strong democracy promotion elements.¹⁴⁶¹ To do justice to this fluid borderline among the fields and overlapping character of the fields, the following discussion will provide data on both, the general OECD category ‘government and civil society – general’, as well as in the more limited field of democracy assistance. This will also allow an assessment of EU engagement in the sectors of

¹⁴⁶⁰ <http://stats.oecd.org/qwids/> (last accessed on 21.12.2011).

¹⁴⁶¹ See, for example, Carothers, who includes projects on support to local governments in his study of democracy assistance. Carothers, *Aiding Democracy Abroad*, at 187.

good governance and human rights, as compared to democracy assistance. To present data on the entire sector ‘government and civil society’, which includes data on ‘conflict, peace and security’ measures, is considered too broad.¹⁴⁶²

Finally, OECD data on ‘government and civil society – general’, as well as on democracy assistance extracted from this data, includes data on the EIDHR and therefore represents the EU’s overall engagement in the respective fields. In order to determine EU engagement in democracy assistance beyond the EIDHR – which is one of the main objectives of this Chapter – commitments for the latter therefore have to be taken into account. A problem here is that EIDHR data refers to ODA and OA and represents EU budget commitments rather than commitments made in programming documents, which are not necessarily identical, especially, not made in the same year. A simple subtraction of amounts committed for the EIDHR from OECD data is therefore not easily possible. Rather, EIDHR data should only be considered as approximate data for EIDHR commitments in a particular year.

All in all, these various features of OECD data render it difficult to provide precise quantitative data on EU democracy assistance beyond the EIDHR. However, if the data limitations are taken into account in the drafting and consultation of Tables, OECD data can still give insight into approximate financial commitments made by the EU over the last 15 years.

i. EU Commitments in the OECD Sector ‘Government and Civil Society – General’

Table 37 provides data on ODA commitments in the entire OECD sector ‘government and civil society – general’. Column two presents the overall financial commitments made by the EU in that sector, which includes commitments in the above mentioned eleven sub-categories. As mentioned, it relates to all external assistance programmes, including the EIDHR. Column three therefore provides data on EIDHR commitments (extracted from Table 10 in Chapter 6), which allows assessing the approximate extent of EU engagement in the sector beyond the EIDHR. The fourth column provides data on overall ODA flows, while the fifth column provides the percentage of commitments in the sector ‘government and civil society – general’ of all ODA. Both should render the relative importance of flows to the sector ‘government and civil society’ clearer.

It should also be recalled that the Table includes data on the European region, which includes, in the OCED database, the three Western NIS Ukraine, Moldova, and Belarus, as well

¹⁴⁶² Some research projects are doing so, without, however, justifying the equation of such broad category with democracy assistance. See, for example, the project *Assessing Democracy Assistance*, carried out by the World Movement for Democracy, to which FRIDE contributed financial data, that frequently related to data in the entire OECD sector ‘government and civil society’.

as the Western Balkans and Turkey, as well as the commitments under the rule of law programmes adopted under the CFSP pillar.

Table 37: EU ODA Commitments in the OECD Sector ‘Government and Civil Society – General’ 1995-2009 (in million Euros)¹⁴⁶³

Year	ODA commitments in sector ‘government and civil society – general’ (all programmes)	Commitments for EIDHR in EU budget (ODA and OA)	ODA commitments for all aid sectors	Sector ‘government and civil society – general’ of all ODA in %
1995	76.78	60	5923.88	1.3%
1996	113.13	84.8	6188.04	1.8%
1997	263.97	78.6	5381.53	4.9%
1998	201.36	97	6703.80	3%
1999	539.77	98	7153.04	7.5%
2000	527.43	95	9040.93	5.8%
2001	309.59	102	6513.91	4.8%
2002	490.94	104	6535.66	7.4%
2003	892.94	106	8589.70	10.4%
2004	1549.36	125	7719.22	20%
2005	1318.06	119	9618.02	13.7%
2006	1819.83	128	10456.38	17.4%
2007	1474.95	130	10035.77	14.7%
2008	1317.60	138	11768.87	11%
2009	1065.28	148	11703.81	9%
Total 1995-2009	11960.99	1613.4	123332.56	9.7%

Table 37 shows the strong increase of EU ODA commitments in the OECD sector ‘government and civil society – general’ during the period 1995 and 2009. While the EU committed 77.79 million Euros in 1995, the commitments reached 1819.83 million Euros in 2006, and, although again decreasing afterwards, still amounted to 1065.28 million Euros in 2009. In total, between 1995 and 2009, the EU committed nearly 12 billion Euros for good governance, democracy, and human rights assistance. Also the data on the share of commitments in the sector ‘government and civil society – general’ of all ODA indicates a strong growth. While in 1995 only 1.3% of all

¹⁴⁶³ Data extracted from the OECD database on ODA flows, except for data on the EIDHR, which is taken from the annual EU budgets 1995-2009 (Table 10, Chapter 6). OECD data is published in US\$ only at current costs. Conversions into Euros made by the author, based on average historical exchange rates for individual years, available at <http://www.oanda.com/lang/de/currency/average> (last accessed on 27.12.2011). This also applies to all following Tables.

The OECD database distinguishes between aid flows to ‘all developing countries’, to ‘all multilateral recipients’, like UN Agencies, and to ‘all recipients’, which is a combination of both. Preferably, this Chapter would have liked to present flows to all recipients. Unfortunately, the database does not always allow the extraction of data for each of these categories. In particular, for the sector ‘government and civil society – general’ and for the period 1995-2009, it is only possible to extract data for ‘all developing countries’ rather than for ‘all recipients’. It is possible though to extract data on the sector ‘government and civil society – general’ for ‘all recipients’ for the period 2004-2009. Surprisingly, this data is identical with the data for flows to ‘all developing countries’ in the 2004-2009 period, suggesting that there were no flows to multilateral recipients. Overall, comparisons in other OECD sectors indicate that flows to multilateral recipients are negligible in comparison with flows to countries (and constitute only about 4% of all flows). In any case, given the lack of data on flows to all recipient in the 1995-2009 period and the small or absent flows to multilateral recipients, data provided on ‘ODA commitments in the sector ‘government and civil society – general’ (column two) relates to flows to ‘all developing countries’, while data on ‘ODA commitments for all aid sectors’ (column four) relates to flows to all recipients.

ODA commitments were used for the sector, in 2004 the share had reached a remarkable, but so far also exceptional, 20%. Since then it has decreased again and in 2009 9% of all ODA commitments pertained to the sector ‘government and civil society – general’.

In comparison, in 2009 the second sub-sector of the category ‘government and civil society’, that is, ‘conflict, peace, and security’ received 446.07 million Euros or 3.8% of all ODA. The sectors education and health, both belonging to the same broad heading as ‘government and civil society – general’, that is, ‘social infrastructure and services’, received about 930 million Euros or 7.9%, and about 371.52 million Euros or 3.2% of all ODA, respectively. About 1183.95 million Euros or 10.12% of all aid were committed to the sector ‘economic infrastructure and services’, which included, among other things transport, energy, and banking.¹⁴⁶⁴

All aid sectors are legitimate spheres of attention and decisions on distributions are difficult to make and justify. Nevertheless, the EU’s overall commitments in the sector ‘government and civil society – general’ in the last two years of analysis – 2008 and 2009 – appear limited in view of the strong verbal commitments as regards the topic in the numerous assistance regulations and other policy documents (see Chapter 7) as well as the prevailing conviction that improvements in the sector are considered to be (pre)conditions for reform in other dimensions. Also a comparison with the major non-European donors – with the notable exception of Japan, which commits a rather low share of its ODA to the sector discussed here – shows that the EU overall committed a lower percentage of its overall ODA to the sector ‘government & civil society – general’. For example, in 2009, when the EU committed 9% of its ODA to this sector, Australia committed 24%, Canada 12% and the US 16%.¹⁴⁶⁵ Data for 2008 shows slightly smaller differences between the EU’s and the other donor’s commitments, but confirms the EU’s lower level of engagement. In a ranking of the EU and its Member States as regards the shares of commitments in the sector ‘government and civil society – general’ of all ODA, the EU occupies a middle place, usually committing larger shares than, for example, but surprisingly, the Netherlands, but smaller shares than, for example, Denmark and Sweden.¹⁴⁶⁶

The growth in financial commitments for ‘government and civil society – general’ until the years 2004/2006 resulted from and constituted the implementation of the increasing relevance attributed to the topic in EU foreign and development policies, outlined in Chapters 3 and 6. It is unclear though what has caused the decline in financial allocations since then. There was no change in policy objectives. On the contrary, documents like COM(2001) 252 final, the European Consensus on development of 2005, new policies like the ENP, and the series of new

¹⁴⁶⁴ Data based on the OECD database on ODA flows.

¹⁴⁶⁵ Data extracted from the OECD database on ODA flows. See also Tables 6 and 7 in Chapter 2 for data on major international donors.

¹⁴⁶⁶ Ibid.

assistance regulations that entered into force in January 2007 confirmed and even strengthened the position of democracy, human rights, and good governance and should have led to an increase rather than decrease of commitments. The volatility and decline can best be explained by the fact that the EU does not entirely and *a priori* determine the share of the sector ‘government and civil society – general’ of all ODA. Assistance regulations foresee engagement in the sectors and stress its importance, but do not reserve specific amounts or percentages for the sector. The budget (usually) only allocates an overall amount to the individual programmes. The relevant decisions on allocations are taken during the programming phase, in which the involved actors have considerable discretion to influence the actual distribution of funds among the possible fields. If several CSPs allocate fewer funds to the sector ‘government and civil society – general’, this can have important implications for the entire share of this sector of all ODA. In other words, there are no guidelines or mechanism that ensures a specific and stable share of the sector ‘government and civil society – general’, and changing shares are the result of numerous, unrelated programming exercises. It remains to be seen, if, over the next years, a stable share of around 10% will be consolidated.

Finally, Table 37 reveals another important insight into EU commitments for government and civil society assistance (and implicitly for democracy assistance) under the EU’s development programmes. Table 37 shows that up to 1998 a large part of the overall commitments in the sector ‘government and civil society – general’ were EIDHR commitments. In 1995, 1996 and 1998 about half to three quarters of all ‘government and civil society – general’ commitments pertained to the EIDHR, while only about one fourth to one half were commitments under other programmes. Only from about 1999 on did the EU therefore start to increasingly commit funds for democratization, human rights, and governance as part of mainstream development programmes rather than specifically under the EIDHR. It therefore took a long time from the November 1991 resolution and the inclusion of references to democracy promotion in the various development assistance regulations in the first half of the 1990s, to actual commitments in programming documents to provide assistance. The reasons for this delay were the same as those explaining hesitations in choosing a strong wording in assistance regulations mentioned in Chapter 6. On the one hand, the EU was initially rather cautious in pursuing a strong policy of democracy promotion in authoritarian states, on the other hand, the idea was widespread that democracy assistance should primarily be promoted through the EIDHR rather than general development programmes. Only from the mid-late 1990s on did this change.

ii. EU Commitments for Democracy Assistance

This section focuses on EU democracy assistance, as opposed to data on the broader sector ‘government and civil society – general’ discussed above. Column 2 of Table 38 provides data on all EU democracy assistance, constructed from sub-categories (5) to (9) of the OECD sector ‘government and civil society – general’. It therefore comprises EU commitments in the following fields: legal and judicial development, democratic participation and civil society, elections, legislatures and political parties, and media and free flow of information. As this data on democracy assistance relates to all EU commitments in the sector, column three provides approximate data on EIDHR commitments for democracy assistance, which allows assessment of the extent of EU engagement beyond the EIDHR or the extent of EU democracy assistance provided by the mainstream programmes. As data on EIDHR commitments for democracy assistance is not available due to the structure of the EU budget (see Chapter 5), it has been constructed on the basis of average expenditure data for the EIDHR.¹⁴⁶⁷ Importantly, it does not therefore represent actual EU commitments but just approximations in order to roughly determine EU engagement beyond the EIDHR. Columns 4 and 5 provide the shares of all EU democracy assistance of all ODA as well as of ‘government and civil society – general’.

Table 38 shows the increase of overall EU democracy assistance between the mid-1990s and the late 2000s. While until 1998 the EU committed at most about 65 million Euros annually for democracy assistance, in 2008 it committed over 500 million Euros and in 2009 still slightly over 350 million Euros. During the entire period from 1995 to 2009 the EU’s overall commitments in the field amounted to about 3550 million Euros. Also data on the share of the sector democracy assistance of all ODA is proof of the increasing EU engagement in the field. While in 1998 the share of EU democracy assistance was only 0.6% of all ODA, it reached 5.2% in 2004 and still stood at 3% in 2009. Table 37 showed that the EU’s commitments in the sector ‘government and civil society – general’ reached a peak in 2006 (when considering absolute amounts) and has decreased since then. Overall commitments as regards democracy assistance developed differently and have grown more or less continuously between 1999 and 2008 – except in 2001 and 2007. Shares of commitments for democracy assistance of all ODA reached a peak in 2004, but have also stayed relatively high since then. Overall, the development of EU commitments for democracy assistance (in overall amounts and shares) was therefore more in

¹⁴⁶⁷ Chapter 5 has revealed that between 1996 and 2000 and between 2000 and 2006 on average about 45% and 39%, respectively, of all EIDHR funds were spent for democracy assistance rather than for other fields covered by the programme, especially human rights. For 1995 45% and for the post-2006 period 39% of all EIDHR commitments are considered to have pertained to the field democracy assistance. Importantly, the data provided in column three of Table 2 only has the purpose of approximately determining the extent of EU commitments under its mainstream programmes.

line with the growing relevance attributed to the topic in EU policy documents over the last two decades than commitments for the entire sector ‘government and civil society – general’. As regards the more recent slump in 2009 it only has to be seen if this was the beginning of a new downward trend or an exception. The just provided insights relating to the global data on EU democracy assistance (see Section III.2.c), will, however, show that there was quite some variation among the various world regions as regards the development of commitments for democracy assistance, with many countries offering data that diverges from the overall pattern exposed here.

Table 38: EU ODA Commitments for Democracy Assistance 1995-2009 (in million Euros and %)¹⁴⁶⁸

Year	ODA commitments for democracy assistance (all programmes)	Approximate (!) commitments for democracy assistance under the EIDHR (ODA and OA)	ODA commitments for democracy assistance (all programmes) of all ODA in %	ODA commitments for democracy assistance (all programmes) of ODA for ‘government and civil society – general’ in %
1995	1.32	(27) ¹⁴⁶⁹	0.02%	1.7%
1996	30.74	(38.16) ¹⁴⁷⁰	0.5%	27.2%
1997	65.17	35.37	1.2%	24.7%
1998	40.25	(43.65) ¹⁴⁷¹	0.6%	20%
1999	120.36	44.1	1.7%	22.3%
2000	165.1	37.05	1.8%	31.3%
2001	70.07	39.78	1.1%	22.6%
2002	149.96	40.56	2.3%	30.6%
2003	279.42	41.34	3.3%	31.3%
2004	394.07	48.75	5.2%	25.4%
2005	455.46	46.41	4.7%	34.5%
2006	494.86	49.92	4.7%	27.2%
2007	406.99	50.7	4.1%	27.6%
2008	525.12	53.82	4.5%	39.9%
2009	351.97	57.72	3%	33%
Total 1995-2009	3550.86	654.33	2.9%	29.7%

Despite growth in absolute terms and its share since the mid-1990s, the EU spends less of its available funds on democracy assistance than other major international donors.¹⁴⁷² For example, in 2009 the EU spent about 3% of all ODA for democracy assistance, while the US and Canada spent about 10% and 7.7%, respectively. These countries also devote a higher share of all ‘government and civil society – general’ commitments to democracy assistance than to the other

¹⁴⁶⁸ Data is extracted from the OECD database on ODA flows, except for EIDHR data, which is calculated on the basis of the EU budget and expenditure data.

¹⁴⁶⁹ As approximate commitments for democracy assistance under the EIDHR cannot be larger than overall commitments for democracy assistance, there is some problem with OECD data for the years 1995 and 1996.

¹⁴⁷⁰ Ibid.

¹⁴⁷¹ Ibid.

¹⁴⁷² The following calculations are made on the basis of OECD data.

fields, that is, to human rights and good governance. For example, in 2009 about 65% of all Canadian and US commitments in the sector ‘government and civil society – general’ were used for democracy assistance rather than other sub-sectors. At the same time, EU commitments for democracy assistance only constituted 33% of all commitments in the sector ‘government and civil society – general’.

Finally, just like Table 37, Table 38 shows that EU commitments for democracy were until 1998 mainly commitments under the EIDHR. Only from about 1999 on did the EU increasingly engage in democracy assistance beyond its specific democratization instrument. As explained above, this late start was mainly the result of the initial belief among Commission officials and other actors involved in policy-implementation that democracy and human rights promotion should mainly be carried out through the EIDHR and a greater willingness to pursue the policy of democracy promotion from the late 1990s on.

b) Expenditure for Democracy Assistance under the EU’s Mainstream and Specific Development Programmes

This section provides data on EU expenditure or, in OECD jargon, disbursements on EU democracy assistance under its mainstream and various specific development programmes. It therefore shows how much the EU annually paid rather than only committed for programmes and projects.

There are three possible sources for expenditure data. First, there are the Commission’s annual reports on the EU’s development and assistance policies, which stipulate data on EU expenditure in various OECD sectors. As mentioned above, the reports are not ideal for this thesis, as they only mention data on the overall category ‘government and civil society’, without providing data on sub-categories. They do therefore not allow giving a more detailed insight into democracy assistance.

Secondly, Europaid provides an online database on implemented EU assistance projects: the so-called ‘CSR Search Tool for Grants and Contracts’.¹⁴⁷³ Also this database uses the OECD’s categories of sectors and sub-sectors and mentions all EU-funded development projects, providing their name, duration, beneficiary country, amount of funding, and DAC code. It definitely constitutes a highly valuable source for the study of EU democracy assistance. One major disadvantage is that it does not allow extracting aggregate data for entire sub-categories,

¹⁴⁷³ This name, which was used in 2008, is not mentioned anymore on the relevant EU website. The database can be found at: <http://ec.europa.eu/europeaid/work/funding/beneficiaries/index.cfm?lang=en> (last accessed on 12.12.2011).

regions, or years but only lists individual projects. Further, it does not indicate the budget source of a project and therefore whether it constitutes an EIDHR project or a project funded in the framework of a mainstream programme and from which budget (year) it was funded. The year in which a project is categorized, is apparently the year in which its contract was signed. Moreover, the Search Tool lists only projects implemented since 2007. This limited time span renders the tool a sub-optimal source for this thesis.

Finally, there is the OECD database on ODA flows, from which data on commitments has been extracted in the previous section. Unlike OECD data on commitments, OECD data on disbursements is only available since 2002. Nevertheless, due to this longer time frame than the CSR Search Tool and the fact that also commitment data was withdrawn from this database, the current section uses the OECD database as source. As regards the limitations of OECD data, in particular that it only refers to ODA and includes EIDHR data, reference should be made to the discussion above and in Chapter 2.

i. EU Expenditure in the OECD Sector ‘Government and Civil Society – General’

Table 39, provided on the next page, focuses on EU expenditure in the OECD sector ‘government and civil society – general’. Column 2 provides the relevant OECD data on disbursements in the category ‘government and civil society – general’ for all external assistance programmes and instruments. Column 3 provides expenditure data for the EIDHR, which is taken from Table 12 of Chapter 6, but is, due to lack of data for the post-2006 period, incomplete. If read in connection with column 2, it allows an approximate determination of how much the EU annually paid for democracy assistance beyond its specific human rights and democracy programme. Column 4 provides data on all ODA disbursements in individual years, which allows assessment, in Column 5, of the share of EU payments in the sector ‘government and civil society – general’.

Just as commitments in the sector ‘government and civil society – general’ rose, EU payments also increased considerably during the time-frame of analysis. While in 2002 the EU only paid about 105 million Euros for projects and programmes on democratization, human rights, the rule of law, and good governance, the payments were 1133.89 million Euros in 2009. According to OECD figures, an enormous surge occurred between 2004 and 2005, when payments increased from 141.1 to 949.78 million Euros. At the same time the share of payments in the sector ‘government and civil society – general’ of all ODA payments also increased considerably from 1.8% in 2002 to over 11% from 2005. Between 2004 and 2005, the share rose from 2% to 12.6%. This surge in absolute amounts and shares in 2005 resulted from growing

commitments in the sector in the late 1990s that showed effects with a four-five years delay and from the reforms in aid implementation carried out in the early 2000s, like the strengthened programming exercise, that also started to be effective in the mid 2000s.¹⁴⁷⁴

Table 39: EU ODA Disbursements in the OECD Sector ‘Government and Civil Society – General’ 1995-2009 (in million Euros)¹⁴⁷⁵

year	ODA disbursements in sector ‘government and civil society – general’ (all programmes)	Payments for EIDHR (ODA and OA)	All ODA disbursements	Sector ‘government and civil society – general’ of all ODA in %
2002	105.14	73.9	5775.01	1.8%
2003	180.97	135.3	6384.1	2.8%
2004	141.1	64.4	6962.82	2%
2005	949.78	147.7	7511.98	12.6%
2006	1293.7	146.8	8196.11	15.8%
2007	1179.15	-	8492.93	13.9%
2008	1038.62	-	8973.96	11.6%
2009	1133.89	-	9679.41	11.7%
Total 2002-2009	6022.35	-	61976.32	9.7%

A joint reading of columns 2 and 3 exposes that until 2004 a large share of all ODA payments in the sector ‘government and civil society – general’ were payments under the EIDHR. For example, in 2004, nearly half of all payments in the sector constituted EIDHR funding. Only from 2005 on did the EU therefore really start to increasingly disburse funds for programmes and projects in the sector ‘government and civil society – general’ under its mainstream development programmes to a more than minor extent and to an extent that reflected the increasing commitments in the field. This shows that the EU’s increasing commitments in the sector ‘government and civil society – general’ under mainstream and other specific development programmes that started around 1999, only started to have a practical effect from 2005 on. Further, it means that it took about 14 years until the November 1991 policy shift to democracy promotion started to have practical effects in the implementation of the policy. This delay can be explained, as indicated above, by initial hesitations in pursuing the policy of democracy promotion, by ideas that assistance should be provided through the EIDHR, and by natural and non-natural delays in implementation.

Column 5 of Table 39 confirms this delay also for the entire category of EU ODA ‘government and civil society – general’. While Table 37 has shown that from about 2003 on the

¹⁴⁷⁴ See Chapters 3 and 5 on these reforms.

¹⁴⁷⁵ Data is extracted from the OECD database on ODA flows, except for EIDHR data, which is taken from Commission reports that have been analyzed in Chapter 5.

EU annually committed more than 10% of all ODA in the field of ‘government and civil society’, only from about 2005 on did annual expenditures reach a similar scope.

ii. EU Expenditure for Democracy Assistance under Mainstream and other Specific Development Programmes

This last section of the overall quantitative account aims at providing data on EU payments for democracy assistance rather than democracy, human rights, and good governance assistance in total, in particular, under the EU’s mainstream and specific development programmes. Just like in the section on EU commitments, ODA data on democracy assistance, presented in Column 2 of Table 40, is constructed from sub-categories (5) to (9) of the OECD sector ‘government and civil society – general’. As this OECD data includes EIDHR data, column three of Table 40 provides approximate data on EU payments under the EIDHR, calculated on the basis of the average share of payments for democracy assistance under the EIDHR between 2000 and 2006.¹⁴⁷⁶ A joint reading of columns two and three allows for approximately determining EU payments for democracy assistance beyond the EIDHR. Columns 4 and 5 provide data on the shares of EU payments for all democracy assistance of all ODA and of ODA payments in the sector ‘government and civil society – general’.

Table 40: EU ODA Disbursements for Democracy Assistance (in million Euros and %)¹⁴⁷⁷

Year	ODA disbursements for democracy assistance (all programmes)	Approximate payments for democracy assistance under the EIDHR (ODA and OA)	ODA disbursements for democracy assistance (all programmes) of all ODA in %	ODA disbursements for democracy assistance (all programmes) of ODA for ‘government and civil society – general’ in %
2002	23.64	(28.8) ¹⁴⁷⁸	0.4%	22.5%
2003	45.72	(52.77) ¹⁴⁷⁹	0.7%	25.3%
2004	42.78	25.12	0.6%	30.3%
2005	293.01	57.6	3.9%	30.9%
2006	341.89	57.25	4.2%	26.4%
2007	304.68		4%	25.8%
2008	313.56		3.5%	30.2%
2009	383.64		4%	33.8%
Total 2002-2009	1748.92		2.8%	29%

¹⁴⁷⁶ Chapter 5 has shown that no detailed, annual data on payments for EIDHR democracy assistance exists for the post-2000 period. Reports for the period 2000-2006 indicate that about 39% of all EIDHR payments were made for democracy assistance, which is used as basis for this Table. See Chapter 5, at.

¹⁴⁷⁷ Data is extracted from the OECD database on ODA flows, except for EIDHR data, which is calculated on the basis of Commission reports (see Chapter 6).

¹⁴⁷⁸ There are problems with the data, as expenditure data for the EIDHR cannot be smaller than overall expenditure for the democracy assistance. This problem might be the result of the fact that the provided numbers are just approximate calculations made on the basis of the average share of democracy assistance of all EIDHR payments (39%) during the entire period 2000-2006.

¹⁴⁷⁹ Ibid.

Just as commitments for democracy assistance and payments in the sector ‘government and civil society –general’ increased, annual expenditures for democracy assistance also necessarily grew. While, according to the OECD database the EU paid around 25 million Euros in 2002, its payments have increased to 383.64 million Euros in 2009. In comparison, in the same years about 149.96 million Euros (2002) and 351.97 million Euros (2009) were committed for EU democracy assistance. Similarly, the shares of payments for democracy assistance of all ODA also increased from about 0.6% between 2002 and 2004 to around 4% from 2005 on.

Further, if column three is taken into consideration, Table 40 reveals, just as the previous sections have shown, that only from about 2005 was the EU started to disburse more funds for democracy assistance under mainstream and other specific development programmes than under the EIDHR alone. Until 2004, the EU mainly paid for programmes and projects with EIDHR funds.

On the whole, despite numerous data limitations of OECD statistics, the overall quantitative account on EU commitments and payments in the OECD sector ‘government and civil society – general’, which comprises good governance, democracy, and human rights assistance, and on EU democracy assistance, which has been constructed from several sub-sectors of this OECD sector (i.e. legal and judicial development, democratic participation and civil society, elections, legislatures and political parties, media and free flow of information), has provided some detailed data and has exposed some important general insights into the development of EU activities since 1995.

First, the overview has shown the strong increase in commitments in both sectors since the mid-1990s. Annual EU ODA commitments in the OECD category ‘government and civil society – general’ worldwide rose from about 76.78 million Euros in 1995 to about 1819.83 million Euros in 2006 and, while declining thereafter, still amounted to about 1065.28 million Euros in 2009. As this is ODA data, it does not include flows to Russia, until 2005 to Ukraine and Moldova, and onwards flows to the CEECs. Overall, the EU therefore committed (and paid) even higher amounts. During the entire period 1995 to 2009, commitments in the category ‘government and civil society – general’ constituted about 9.7% of all ODA commitments. There are no obvious reasons for the decline since 2007, as EU policy documents have continued to stress the relevance of the topics in EU external relations ever since the early 1990s. As no specific amount or share is a priori reserved for the sector ‘government and civil society – general’ or one of its sub-sectors, the resulting and changing shares are just the nearly accidental result of numerous, individual programming exercises and individual decisions on how limited sources are distributed among many legitimate development fields.

Commitments for EU democracy assistance rather than for the entire sector ‘government and civil society – general’, comprising assistance under the EIDHR and the mainstream development programmes, steadily increased between 1996 and 2008. In 1996, about 30.74 million Euros and in 2008 about 525.12 million Euros were committed to all EU democracy assistance. In 2009 the EU committed, with 351.97 million Euros, slightly less than in the preceding year. It remains to be seen whether this was the beginning of a trend or an exception. All in all, the increase in commitments for democracy assistance was more in line with the growing relevance attributed to the topic ever since the early 1990s; however, as will be exposed in more detail further below, the growth was not in all regions as steady as the aggregate data suggests, but, at times, varied considerably. During the entire period 1995 to 2009, the average share of commitments for democracy assistance of all external aid ODA commitments was 2.9%.

Secondly, while the growth in both mentioned sectors over the last 15 years is remarkable, the analysis of this section has shown that the EU spends smaller shares of its overall ODA commitments for ‘government and civil society – general’ and for democracy assistance than the major other non-European donors, in particular the US, Canada, and Australia. For example, while in 2009 about 11% of all EU commitments pertained to the sector ‘government and civil society’, the US committed 16%, Canada 12%, and Australia 24% for the same sector. Other years show similar distributions. Further, while only about 33% of all EU commitments in the sector ‘government and civil society – general’ constituted democracy assistance in 2009, the US and Canada spent about 65% of all its ‘government and civil society – general’ commitments for democracy assistance, rather than for human rights and good governance topics.

The third major insight exposed by the analysis is that until 1998 EU commitments in the sector ‘government and civil society – general’ and commitments for democracy assistance were overwhelmingly commitments under the EU’s specific democracy and human rights programme, the EIDHR. Only from 1999 did the EU really begin to increasingly commit funds for the relevant topics under its mainstream development programmes rather than EIDHR alone. It has been explained that the late start – eight years after the 1991 November resolution – was due to an initial hesitation to implement the policy shift of November 1991 in practice, especially in those regions where pro-democracy movements were weak and authoritarianism strong. This hesitation was also, as mentioned in Chapter 6, reflected in cautious references to democracy promotion in assistance regulations. Further, there was the belief that democracy and human rights should and would only or mainly be taken care of under the EIDHR, which was explicitly rejected in COM(1995) 457 final. During the period 2004 and 2009, between 7% and 14% of all funds committed in the sector ‘government and civil society – general’ were funds stemming from the EIDHR budget.

Fourthly, the section has provided data on the increasing EU payments in the field of ‘government and civil society – general’ and of democracy assistance. While disbursements for ‘government and civil society’ assistance amounted to only 105.14 million Euros in 2002, in 2005 they surged to 949.78 million Euros, and amounted to more than 1133.89 million Euros in 2009. Payments for democracy assistance increased from about 43 million Euros in 2004 to 384 million Euros in 2009. The analysis has again exposed that only from about 2005 on disbursements were made increasingly and substantially under mainstream development programmes rather than the EIDHR. This means that the policy declaration of November 1991 to provide democracy assistance, which only led to increasing financial commitments under development programmes from 1999, only resulted in increasing disbursements from 2005 on. It took the EU therefore about 14 years to give practical effect to a new policy instrument. In addition to the above mentioned reasons which explain the delay in disbursements, that is, a cautious approach towards authoritarian states and ideas about the role of the EIDHR, natural and non-natural delays in implementation, which, for example between 1999 and 2003 on average amounted to four years, also accounted for this long delay.

2. The Thematic Distribution of Funds

This section focuses on the thematic distribution of funds used for democracy assistance, that is, how the funds made available for democracy assistance under the numerous EU mainstream and specific development programmes have been distributed among the possible sub-sectors of democracy assistance. As mentioned before, this issue is one of the core questions on the EU’s strategy of democracy assistance and gives insights into the EU’s approach to democracy assistance and conception of democracy.

As in the previous section, the Tables devised for this section draw from the OECD database on ODA flows, which indeed constitutes the only available source of information over a longer time span. The Commission’s annual reports on development external assistance do not provide detailed data on individual projects and no specific reports on the implementation of individual programmes are being published. As mentioned, using OECD data involved several problems though, in particular, it only reports on ODA and it includes data on the EIDHR, which has to be taken into account when assessing EU engagement beyond this specific human right and democracy programme. Further, as mentioned, the OECD does not operate with a separate category of democracy assistance, but with the category of ‘government and civil society – general’ and eleven sub-groups. Five of these groups have been identified as pertaining to the sector ‘democracy assistance’ and detailed information on the thematic distribution of funds can

only be given for these pre-determined five sub-groups rather than for a broader spectrum of sub-fields.

Before providing the relevant financial Tables on the distribution of commitments and payments among the eleven sub-categories of the OECD sector 'government and civil society – general' the Chapter briefly analyzes the major EU external assistance regulations, the EU budget, and the major programming documents in order to show at which stage in the policy-making and implementation process which crucial decisions on the distribution of funds were taken.

a) The Determination of the Thematic Distribution of Funds

i. The EU's Mainstream and Specific Development Assistance Regulations

Chapter 5 has shown that since the mid-1990s the large majority of external assistance regulations explicitly referred to democracy assistance and enumerated areas of democracy support. The exact lists of fields of democracy assistance envisaged by the various regulations differed from programme to programme. Most included references to the following areas: media support, civil society support, institutional reform and support, and rule of law development. Fewer regulations explicitly referred to elections, civilian control of the security systems, and legal reform. As the lists were non-exhaustive, the Commission could also provide support in non-mentioned areas, which were, for example, identified in bilateral agreements between the EU and the respective third state or mentioned in broad policy guidelines like the Common Strategies. Nevertheless, the stipulation indicated a strong preference for those sectors expressly mentioned. Beyond the enumeration of possible and preferred fields of assistance, none of the regulations established a hierarchy among the fields or even reserved a certain amount of funding or percentage of the available budget for the individual sectors. There were also neither rules on whether certain political situations should be confronted with certain assistance measures, nor rules on a certain sequencing of democracy assistance.

Overall, secondary law therefore played a very minor role for the thematic distribution of funds. The numerous regulations indicated possible and preferred areas of support, but did not call for a specific distribution of available funds among these areas.

ii. The EU Budget

The annual EU budget in principle includes an appropriation for an entire programme, like Tacis or the ENPI, as well as for major sub-programmes or major sub-units of a general programme,

like a separate appropriation for the Mediterranean and Eastern ENPI states, for Palestine, and for ENPI cross-border cooperation programmes.¹⁴⁸⁰ Not infrequently, the budgetary remarks refer to democratization and call for the provision of democracy assistance, not envisaging certain amounts for this purpose though.¹⁴⁸¹ However, the budgetary allocations for the general programmes basically never single out the entire sector of democracy assistance or any related sector, like good governance or human rights, of an entire programme and allocate a specific amount to that field. Exceptionally, the EU budget at time includes individual appropriations for special democracy and human rights-related programmes, like in the 2008 budget, an appropriation of 2.5 million Euros for the programme ‘Minorities in Russia – developing culture, media, and civil society’.¹⁴⁸² Such specific allocations only constitute one part of the entire sector of democracy assistance though.

All in all, the annual EU budget plays a limited role in the choice of thematic areas of support in the field of democracy assistance and does not include specific allocations. Very seldom, the budget foresees a special democracy assistance programme and allocates a certain amount to it.

iii. The Programming Stage

Unlike Chapter 6, which has presented the five EIDHR programming documents adopted since 2001, this section cannot, for reasons of space, do the same for each development programme and each country. In order to see to what extent and how these various programming documents play a role in the determination of the thematic distribution of funds, the relevant democracy assistance-related and government and civil society-related sections of the programming documents of one exemplary country – Georgia – should be reproduced. If a document is not mentioned in the Table, like the Annual Action Programme (AAP) for 2009, it is because that document does not mention any democracy-relevant programme or project.

¹⁴⁸⁰ See, for example, the EU budget 2009, Chapter 19 08 European Neighbourhood Policy and Relations with Russia.

¹⁴⁸¹ See, for example, the EU budget 2010, Chapter 19 09 Relations with Latin America.

¹⁴⁸² Budget item 19 08 01 05 of the EU budget 2008.

Table 41: Thematic Priorities concerning Democracy Assistance in Tacis and ENPI Programming Documents concerning Georgia 2002-2013¹⁴⁸³

Country Strategy Paper 2002-2006 Georgia (23.9.2003)
Priority area 1 of 3: Support for institutional, legal, and administrative reform
National Indicative Programme 2002-2003 Georgia (27.12.2001)
Priority area 1 of 3: Support for institutional, legal, and administrative reform
<ul style="list-style-type: none"> • PCA implementation (esp. legal approximation)
Country Strategy Paper 2003-2006 [!] (23.9.2003)
Key area 1 of 3: Promoting rule of law, good governance and respect for human rights and democratic institutions, including the strengthening of civil society and the promotion of active participation of non governmental organisations in further transition towards democracy
National Indicative Programme 2004-2006 Georgia (23.9.2003)
Area of cooperation: Support for institutional, legal, and administrative reform: (11.5 million Euros)
<ul style="list-style-type: none"> • PCA implementation (esp. legal approximation) • Reforms in judiciary and law enforcement • Strengthening civil society and human rights – implemented especially through the IBPP
Action Programme 2004/2005 for Georgia
Area of Co-operation 1 : Support to institutional, legal and administrative reforms (6.8 million Euros)
<ul style="list-style-type: none"> • PCA implementation (esp. legal approximation) • Reform of the General Procurator's Office • Penitentiary reform • Assistance to Ministry of Interior
Action Programme for Georgia 2004 (Part II)
Area of Co-operation 1 : Support to Institutional, Legal and Administrative Reforms Millions (8.8 million Euros)
<ul style="list-style-type: none"> • Legal and administrative reform (7.5 million Euros)
Tacis Action Programme 2006 for Georgia
Area of Co-operation 1 : Support to Institutional, Legal and Administrative Reforms Millions (12 million Euros)
<ul style="list-style-type: none"> • Strengthening the rule of law in Georgia (7.9 million Euros): ministry of justice, criminal justice reform, legal aid, State Prosecution Service, etc.)
ENPI Annual Action Programme 2007 in favour of Georgia
Support to the public management reform in Georgia (16 million Euros; DAC sector: public finance)
ENPI Georgia Country Strategy Paper 2007-2013 (explicitly building on the EU-Georgia ENP AP)
Priorities:
Priority Area 1: Support for democratic development, the rule of law and governance
<ul style="list-style-type: none"> • Sub-priority 1.1: Democracy, human rights, civil society development • Sub-priority 1.2: Rule of law and judicial reform • Sub-priority 1.3: Good governance, public finance reform and administrative capacity building
ENPI Georgia National Indicative Programme 2007-2010
Priority Area 1: Support for democratic development, the rule of law and governance (31.5 million Euros/26% of total)
<ul style="list-style-type: none"> • Sub-priority 1.1: Democracy, human rights, civil society development (functioning of institution, citizen's involvement, freedom of expression, free media, NGOs, local governmental structures, social dialogue) • Sub-priority 1.2: Rule of law and judicial reform (independent criminal justice sector, Ombudsman) • Sub-priority 1.3: Good governance, public finance reform and administrative capacity building (quality and efficiency of public administration, fight against corruption, promoting transparency, strengthening public financial management)
ENPI Annual Action Programme Georgia 2007
<ul style="list-style-type: none"> • Support to the Public Finance Management reform in Georgia (16 million Euros; DAC sector: public finance management)
ENPI Annual Action Programme Georgia 2008 (15.7.2008)
Actions related to Priority Area 1:
<ul style="list-style-type: none"> • Support to the reform of criminal justice system in Georgia (16 million Euros; DAC sector: legal and judicial development) • Support to the peaceful settlement of Georgian internal conflict (6 million Euros; DAC sector: concerns

¹⁴⁸³ All cited documents are available at: http://ec.europa.eu/europeaid/where/neighbourhood/country-cooperation/georgia/georgia_en.htm (last access on 28.12.2011).

various sectors, including strengthening civil society)
ENPI Annual Action Programme Georgia 2010 (1.6.2010)
<ul style="list-style-type: none"> • Support to the Public Finance Management reform in Georgia, Phase II (DAC sector: public finance management)
ENPI Georgia National Indicative Programme 2011-2013
Priority Area 1: Democratic development, rule of law and good governance (45-63 million Euros/ 25-35 % of total) <ul style="list-style-type: none"> • Sub-priority 1.1: Media freedom, political pluralism, human rights, civil society development (improved division of powers, checks and balances, media freedoms, respect of human rights, sustainable democratic reform, civil society participation in policy making and monitoring) • Sub-priority 1.2.: Justice Sector Reform (strengthening rule of law, effective functioning of the judiciary, increasing public confidence in the judiciary) • Sub-priority 1.3.: Public finance management and public administration reform (sound and transparent public finance management system, stronger, stable, citizen-oriented public administration)
ENPI Annual Action Programme Georgia 2011 (13.7.2011)
<ul style="list-style-type: none"> • Support to the Criminal Justice Sector (18 million Euros; DAC sector: legal and judicial development) • Framework Programme in support of EU-Georgia agreements (9.73 million Euros; DAC sector: Public sector policy and administrative management)

Table 41 very well illustrates the increasingly detailed nature of the various subsequently adopted programming documents: while the CSPs identify priority areas and sub-priority areas, like ‘Support for democratic development, the rule of law and governance’, NIPs elaborate these areas in more detail and mention the financial allocation or at least approximate financial allocation for the entire priority area. Finally, Annual Action programmes (AAPs) identify the individual activities – programmes or projects – to be funded and stipulate the exact amount allocated to each activity. While CSPs therefore determine whether democracy assistance will receive any funding at all during the period of validity of the CSP, the NIPs stipulate the overall amount that the sector will receive. Most relevant though, it is during the stage of drafting and adopting the Annual Action programmes, which are jointly agreed by the EU and the target state’ governments, that the final thematic distribution of funds among various sub-sectors of democracy is decided. This constitutes a major difference to the EIDHR, in the case of which the final decision on the distribution of funds is fundamentally influenced by the demand of potential aid recipients, as decisions on projects are made on the basis of proposals, and in the case of which the distribution of funds is therefore not decided during the programming, but implementation stage.

b) The Thematic Distribution of Funds

This section presents the thematic distribution of funds committed by the EU in the OECD sector ‘government and civil society – general’ during the period 1995 and 2009 and therefore the overall result of the choices made in the just mentioned programming documents. As regards the data source, that is, the OECD ODA statistics, as well as the various limitations of this source, reference shall be made to the extensive discussion above (section III.1.a)). Only three limitations

that are particularly relevant for this section shall be addressed here. First, the database does not work with a separate sub-sector on democracy assistance. The latter has to be constructed from among the various sub-fields of the sector ‘government and civil society – general’. As indicated, based on the EU’s general documents on democracy assistance and the thematic focus of the EIDHR, sub-sectors (5) to (9) have been identified as constituting (primarily) democracy assistance rather than (primarily) another theme, like good governance or human rights. It should be stressed though, that also projects in other sectors can pursue a democracy agenda, like decentralization and women’s equality organizations. Their major objective is usually a different one though, like increasing aid efficiency through involving local NGOs and local institutions or improving the overall situation of women in society, which calls for a separate treatment.

A second problem of the OECD database is that it works with a limited number of sub-categories, which allows only a very general insight into EU democracy assistance. For example, OECD data for the sector ‘legal and judicial development’ is not further broken down into individual sub-categories. It is therefore impossible to determine to which extent projects support the development of an independent judiciary that is widely considered a core concern of democratization or only the drafting of new business laws and the reform of commercial courts that is mainly considered relevant for economic reform.¹⁴⁸⁴ Some sectors, like legislatures and political parties, have only been added to the list in 2009 and therefore currently only provide very limited information on EU engagement. Chapter 6 on the EIDHR, which could extract data from EU implementation reports on the EIDHR, has been able to provide a much more detailed list of sub-fields.

Finally, it should be recalled that OECD data includes data on EU commitments under the general development programmes as well as under the EIDHR. When discussing EU engagement under the mainstream programmes, as is the purpose of this Chapter, the EU’s actions under the EIDHR have to be taken into account in the discussion of the Tables.

A few observations should first be made on those sub-sectors of the category ‘government and civil society – general’, which are here not considered to be part of the core areas of democracy assistance. As is immediately visible, several thereof received considerable large shares of EU funds in the sector during the period 1995 to 2009. First, most notably, the sub-sector ‘public sector policy and administrative management’ received 50% (!) of all EU commitments during the period 1995 to 2009 and therefore by far much more than any other (nearly 6 billion Euros). It needs to be born in mind though, that the sector has a very broad substantive scope. Indeed, as mentioned in Chapter 2, until 2008 the OECD reported separately on ‘economic & development policy and planning’ and on ‘government administration’, both of

¹⁴⁸⁴ See in this respect also the call for a more detailed picture of EU activities by Wetzels and Orbie, at 712.

Table 42: Distribution of ODA Commitments for 'Government and Civil Society – General' 1995-2009
(in million Euros)¹⁴⁸⁵

Year/OECD category	1995	1996	1997	1998	1999	2000	2001	2002	2003
Public sector policy and admin. management	61.52	61.75	114.85	106.42	330.81	243.11	133.13	220.08	459.67
Public financial management	1.63	1.6	80.46	45.14	16.18	11.61	6.74	19.55	70.27
Decentralization and support to sub-national gov.									
Anti-corruption organizations and institutions									
Legal and judicial development	0.06	0.17	6.66	23.34	1.89	79.77	15.68	36.8	144.9
Democratic participation and civil society		24.61	16.2	8.19	91.1	46.54	38.76	78.95	91.23
Elections	1.26	5.96	42.26	8.72	25.85	27.5	14.03	30.51	34.06
Legislatures and political parties									
Media and free flow of info.			0.05		1.52	11.29	1.6	3.7	9.23
Human rights	2.46	9.13	2.36	8.72	61.52	105.4	91.73	93.32	81.03
Women's equality organizations	9.84	9.92	1.14	0.83	10.89	2.22	7.93	8.03	2.56
Total	76.77	113.14	263.98	201.36	539.76	527.44	309.6	490.94	892.95

Year/OECD category	2004	2005	2006	2007	2008	2009	Total	% of sector	% of all ODA
Public sector policy and admin. management	927.76	677.8	975.03	723.3	547.76	374.45	5957.44	50%	5%
Public financial management	68.68	63.49	208.42	159.84	61.75	44.77	860.13	7%	<1%
Decentralization and support to sub-national gov.						111.28	111.28	1%	<1%
Anti-corruption organizations and institutions						3.34	3.34	<1%	<1%
Legal and judicial development	188.19	153.3	161.42	131.87	356	173.97	1474.02	12%	1%
Democratic participation and civil society	49.67	160.23	186.84	164.54	124.82	62.55	1141.23	10%	1%
Elections	156.5	141.93	139.22	108.28	41.61	102.03	879.72	7%	<1%
Legislatures and political parties						13.42	13.42	<1%	<1%
Media and free flow of info.	2.71		7.38	2.3	2.69		42.47	<1%	<1%
Human rights	142.02	112.7	122.19	165.24	171.32	153.26	1322.4	11%	1%
Women's equality organizations	13.82	8.62	19.34	19.58	11.64	26.2	152.56	1%	<1%
Total	1549.35	1318.05	1819.84	1474.95	1317.59	1065.27	11960.99	100%	9.7%

¹⁴⁸⁵ Data extracted from the OECD database on ODA recipients. Some of the numbers provided in the Table slightly diverge from those in Table 37, which is due to the conversion from US \$ into Euros. Blank boxes indicate that the OECD database did not report any aid flows.

which on average received between 21% and 24% of all funds in the sector.¹⁴⁸⁶ Only from 2009 on were these two categories united in the new ‘super-sector’ ‘public sector policy and administrative development’. It has already been mentioned above that the EU devotes higher shares to governance-related topics than other major donors, in particular the US and Canada (Section III.1.b)ii., above), which is confirmed here. Basically all of these funds originated from mainstream development programmes rather than the EIDHR. An example of a project in the sector (or of the earlier sector ‘government administration’) is the DCI-funded project ‘Strengthening access to land and property rights for all citizens in Bangladesh’ (10 million Euros; AAP 2008) that aimed at modernizing the system of land records management, which was regulated by more than 100 legal acts and implemented by at least three different institutions.¹⁴⁸⁷

The sector ‘public finance management’ has received 7% of all EU funds committed in the sector ‘government and civil society – general’. Its growing shares have in part to do with the tendency in international development of providing increasing shares of foreign assistance as budget or sector support, foreseen, amongst others, in the Paris Declaration on Aid Effectiveness. As in that case the external funds usually become part of the national budget of a developing country, the external donors want to ensure the sound management of this budget, with clear and efficient procedures for adoption, implementation, and control. An exemplary project in the sector of ‘public finance management’ is ‘Support to the public finance management reform in Georgia’ (16 million Euros, AAP 2007). In that project, the finance reform should help in fighting poverty in the country, in particular through ensuring a better allocation of resources, improved service delivery, increased accountability and transparency in spending.

As indicated, the sector ‘Decentralization and support to sub-national governments’ has only been reported on separately since 2009, which to a large extent explains its minor share of 1% of all commitments in the sector ‘government and civil society – general’ during the 1995 – 2009 period. A look at the data of 2009 only, which reports on commitments of 111.28 million Euros, shows that the sector is indeed a major field of EU engagement. An example of a project in the sector is a joint UN project on ‘Local governance and decentralized service delivery’, implemented by UNDP in Somalia between 2008 and 2010 and supported by the EU with 5 million Euros (about 30% of the project costs). Its goal was to improve access to better health, water, and sanitation facilities and better education and housing through making these services available through local government acting in accountable and transparent ways.¹⁴⁸⁸

¹⁴⁸⁶ OPPD, *Getting Acquainted: Setting the Stage for Democracy Assistance*, at 72.

¹⁴⁸⁷ All following examples are included in the CSR Search Tool for Grants and Contracts and/or AAPs for the respective individual countries.

¹⁴⁸⁸ <http://www.so.undp.org/index.php/amina-testing.html> (last accessed on 18.12.2012).

Similarly, the share of the sector ‘Anti-corruption organizations and institutions’ is very small (much lower than 1% of all commitments in the sector ‘government and civil society – general’ between 1995 and 2009). Also this can be explained by the recent creation of the sub-sector. Before 2009 the EU funded projects in the field of anti-corruption, which was reported on the sector of government administration. Chapter 5 has shown, that between 1996 and 2006 about 14.8 million Euros were spent for anti-corruption projects under the EIDHR. Also the CSR Search Tool for Grants and Contracts of Europeaid mentions numerous projects for 2008. All in all, the exact share of anti-corruption projects is therefore hard to determine, but appears higher than the 3.34 million Euros reported on in the OECD database.

During the period 1995 to 2009 the EU spent about 1.3 billion Euros in the sector ‘human rights’, which was about 11% of all funds spent in the sector ‘government and civil society’. The evolution of this sector indicates that commitments for human rights only started to reach larger proportions in 1999, when OECD data mentions commitments of 61.52 million Euros. The low numbers before that year are, however, in slight contradiction to Table 12 (on EU Expenditure under the EIDHR and its Forerunner Programmes 1992 and 2006, provided in Chapter 5), which already indicate higher expenditure for human rights projects in the early 1990s. Overall, a comparison of the EIDHR data and Table 42 suggests that about 40-50% of all funds for human rights projects between 1995 and 2009 originated in the EIDHR budget.¹⁴⁸⁹ The mainstream development programmes have therefore only to a minor extent funded projects in that area, but worked with the assumption that it should primarily be the EIDHR that should fund the promotion of the respect for human rights.

The last not democracy assistance-specific sub-sector of the OECD category ‘government and civil society – general’ relates to ‘Women’s equality organizations’, which received about 152.56 million Euros, or 1% of the overall commitments in the entire sector between 1995 and 2009. A comparison with data on the EIDHR, in particular Table 17 and 18 of Chapter 5, shows that between one third and half of these funds were EIDHR funds.

As mentioned, the remaining five sub-sectors should be considered to constitute democracy assistance. The sector ‘legal and judicial development’ or, as called in Chapter 5, ‘rule of law’, has received the largest share of ODA funds related to democracy assistance. Between 1995 and 2009 about 1.5 billion Euros or 12% of all funds committed in the sector ‘government and civil society – general’ related to legal development and the justice sector. The evolution of the commitments shows a strong surge in commitments in 2003, since when they have annually always been between 100 and 200 million Euros (and in 2007 even 356 million Euros). A

¹⁴⁸⁹ Only approximate comparisons are possible, as Table 12 reports on expenditure, while Table 42 reports on commitments (in AAPs).

comparison with Table 17 relating to the EIDHR (see Chapter 5) shows that until 2000 about half of the funds used for the promotion of legal and judicial development were from the EIDHR budget, and that since then the large majority of rule of law projects have been funded under general development programmes. Between 2000 and 2006 only about 8% of all assistance on the promotion of rule of law have stemmed from the EIDHR budget. The reason for this development is not only a shift away from institutionally-focused aid, including the judiciary, by the EIDHR from 2000 on, but also, and even more importantly, a stronger focus on legal and judicial development in the case of mainstream development programmes. As mentioned in Chapter 6, (only) from 1999 on, newly adopted or amended mainstream development assistance regulations, like Tacis 1999, MEDA 2000, the Cotonou Agreement, and the ENPI, have explicitly mentioned the rule of law as a possible and preferred target sector for development aid.

As the title of the category suggests, two principal types of activities are covered by the sector 'legal and judicial development'.¹⁴⁹⁰ The first type relates to legal reform, like the enactment of new laws and regulations in fields unregulated, for example, due to the prior existence of a different (non-market) economic system or in fields badly (inconsistently) regulated, which is frequently the case in developing countries.¹⁴⁹¹ Thematically, the focus of most projects was on the economic and trade sector, often because the projects supported the implementation of trade and cooperation agreements signed between the EU and the respective third state(s). Many projects also related to the criminal law sector and aimed at reforming penal law codes. In several former Soviet countries the EU has for many years funded so-called policy and legal advice centres, like UEPLAC in Ukraine and GEPLAC in Georgia, which regularly advised the respective state's public bodies (parliament and ministries) in the drafting of new legislative or regulatory acts, in particular as regards PCA (and therefore predominantly trade-related) issues.¹⁴⁹² In other countries, projects just supported the local law-making institutions as regards a single law or topic.¹⁴⁹³ The second major type of projects of the sector related to the judicial branch (in the broad sense). Institutionally, many of these projects focused on ministries of justice, courts, public prosecutor's offices, law enforcement agencies (in particular the police), penitentiary institutions, legal education and training institutions and legal aid clinics and aimed at rendering these institutions and procedures more independent, transparent, professional, efficient, and effective. Thematically, there was, as already mentioned, a strong focus on the criminal law

¹⁴⁹⁰ The following analysis is based on the projects mentioned in numerous AAPs as well as in the CSR Search Tool.

¹⁴⁹¹ T. Carothers, 'The Rule of Law Revival', in T. Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006), at 5; L.-H. Piron, 'Time to Learn, Time to Act in Africa', in T. Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006), at 281.

¹⁴⁹² Ukrainian – European Policy and Legal Advice Centre and Georgian – European Policy and Legal Advice Centre at <http://ueplac.kiev.ua/en/> and <http://www.geplac.com/> (last accessed on 19.12.2011).

¹⁴⁹³ R. Isaaks, *The EU's Rule of Law Initiative in Central Asia*, EUCAM Policy Brief 9 (August 2009), at 4.

sector, aiming at rendering criminal investigation procedures more efficient, reducing corruption of involved public officials and judges, and improving the situation of prisoners. Frequently, projects concentrated on juvenile offenders and juvenile penitentiary institutions. Next to legal reform and the judicial sector, there was a third major area of focus of many EU projects: border management and border control issues, for example, to control human and drugs trafficking.

In comparison to rule of law projects under the EIDHR, there was overall much overlapping between EIDHR and mainstream development projects in terms of objectives, focus institutions, and themes, with the major exception of a weaker focus on the economic domain and a stronger focus on civil society organizations by the EIDHR. While many rule of law projects funded under the EIDHR supported NGOs and advocacy groups of lawyers and funded public information and education campaigns in order to improve access to justice, projects under the mainstream programmes hardly did so, but rather focused at work with public institutions.

The EU committed about 1141.23 million Euros on the sector ‘democratic participation and civil society’ between 1995 and 2009, which constitutes about 10% of all commitments in the sector ‘government and civil society – general’. About one tenth thereof was committed under the EIDHR, while the remaining, much larger share came from general or specific development programmes, in particular the specific NGOs programme B7-6000 and the Thematic programme ‘Non-state actors and local authorities in development’. Two types of projects appear to prevail in this sector. First, a large number of activities aim at the inclusion and representation of disadvantaged groups in the political process, in particular, in key processes of a democratic system, like an upcoming election campaign. Among the major groups targeted in this kind of projects are women, youth, children, disabled, and ethnic minorities, who are encouraged, trained, and supported to actively participate in the political process. Secondly, a large number of projects focus on the inclusion of civil society organizations in local development projects and on cooperation among non-state and local state actors.¹⁴⁹⁴ Thematically, such projects cover a very broad spectrum and can range from infrastructure projects like the building of bridges to social policy issues. Both types of projects usually involve the capacity development of NGOs, including advocacy and financial management training. Some of the funded NGOs were critical of governmental policies and provided opposition in certain policy fields; however, the programmes hardly financed civil society groups that explicitly and mainly pursued a pro-democracy agenda, including aiming at regime change. Rather, targeted NGOs were groups working on the broad spectrum of development issues. This constituted a major difference to the EIDHR, in the framework of which more politically-focused, regime-critical NGOs were supported.

¹⁴⁹⁴ There is an overlap with the OECD category ‘decentralization and support to sub-national governments’.

About 880 million Euros (or 7% of all EU funds) committed in the sector ‘government and civil society – general’ during the period 1995 and 2009 pertained to the sector ‘elections’, comprising election assistance and election observation. As only about 20% thereof were committed under the EIDHR (see Chapter 5), the major part of EU election assistance was therefore provided under the mainstream development programmes rather than the specific human rights and democracy programme. As noted in Chapter 5, the EU’s decision in 2000 to increasingly engage in electoral assistance, mainly led to an increase of activities under the mainstream programmes rather than the EIDHR.¹⁴⁹⁵ The evolution of commitments in the sector ‘elections’ in Table 42 also shows, that it took several years until the policy choice of COM(2000) 191 final showed effects on AAPs: only from about 2004 on did commitments for electoral assistance indeed increase. All in all, the Table 42 shows that there was no obsession with free and fair elections, as was frequently criticized, but also no lack of focus on elections, as was more recently remarked.¹⁴⁹⁶ Election assistance projects funded under the mainstream programmes frequently consisted of support to UNDP projects on electoral support. Thematically, they frequently covered the entire organization of an election, that is, in particular technical and material support to the central electoral commissions. Additionally, projects would also support voter and civic education programmes or local monitoring bodies. Another important insight of Table 42 is that the majority of EU funds used for electoral support relates to election assistance rather than election observation missions, which have since the early 2000s been exclusively funded under the EIDHR.

Little can so far be said about EU support to parliaments and political parties, as the OECD only allows independent reporting for this sector since 2009. In that year about 13.42 million Euros were committed for projects in this sector. The Europeaid SCR Search Tool on Grants and Contracts includes entries for about 8 major parliamentary support projects during between 2007 and 2010, basically all of which focused on the national parliament of a country, rather than political parties. In any, due to advocacy from within the European Parliament, in particular by the OPPD, there might be more projects in the sector in the future.¹⁴⁹⁷

Finally, the OECD database allows donors to report on projects in the sector ‘media and free flow of information’. According to the database, the EU only committed about 42.47 million Euros in this sector during the entire period 1995 and 2009. This number appears small, given that EU reports on EIDHR expenditure 1995 to 2009 mention higher amounts (62.1 million

¹⁴⁹⁵ COM(2000) 191 final.

¹⁴⁹⁶ Wetzel and Orbic, at 711.

¹⁴⁹⁷ See in this respect also the EU-funded report: Europeaid, International IDEA, ‘Engaging and Supporting Parliaments Worldwide. Strategies and Methodologies for EC Action in Support to Parliaments, Tools and Methods Series’ Reference Document No. 8 (October 2010).

Euros). While this inconsistency cannot be explained (but might in part be the result of differences in reports on commitments in the OECD database and on expenditure in EU EIDHR implementation reports), it shows that the overwhelming majority of projects in this sector are supported under the EIDHR.

All in all, Table 42 presents the thematic distribution of all EU funds used for democracy, human rights, and good governance assistance between 1995 and 2009. The shares of EIDHR funds from all expenditure differs from category to category, but overall ranges between very little (as in the case of public sector policy) to a rather high share of 50% (as in the case of human rights projects) or even 80% in the case of media and free flow of information. In most sectors of democracy assistance, between 8% and 20% of all funds have stemmed from the EIDHR rather than a mainstream programme. Table 42 exposes the very unbalanced distribution of funds among the eleven sub-sectors of the OECD category ‘government and civil society – general’. About 60% of the funds have been used in the sector good governance (administrative development, public finance management, decentralization, anti-corruption), the overwhelming majority of which came, as mentioned, from the budgets of the mainstream development programmes. About 11% of all funds were spent on human rights projects, half of which were, however, funded under the EIDHR. The remaining 30% of funds committed under ‘government and civil society – general’ were used for democracy assistance programmes and projects. About 12% (1.5 billion Euros) of the overall funds in the sector were used in the sector of ‘legal and judicial development’, about 10% (1.1 billion Euros) for projects on ‘democratic participation and civil society’, and about 7% (880 million Euros) for election assistance projects. The large majority of these funds came from the mainstream or specific development programmes rather than the EIDHR, indicating that a major share of EU democracy assistance is indeed provided under the mainstream rather than specific development programmes. The OECD database includes very minor shares for the sectors parliaments/political parties, which is mainly due to the more recent creation of these OECD categories.

The low number of different categories of democracy assistance and lack of more detailed, aggregate information about projects renders it difficult to draw valid conclusions as to the extent to which the EU has pursued the developmental and/or political approach to democracy assistance through the mainstream and special development assistance programmes. Nevertheless, analysis of Table 42 and of various projects included in the CSR Search Tool for Grants and Contracts in each category seem to confirm the results of the analysis of the legal texts of the regulations made in Chapter 6. It appears that the EU is primarily following the developmental approach when promoting democracy through its mainstream programmes. First, it has been shown that the EU emphasizes good governance reform to a stronger extent than

other major international donors. More than half of the funds spent in the sector ‘government and civil society’ have been used for this purpose. Secondly, also a look the five sectors of the OCED statistics that are considered to be democracy assistance shows a preference for the development approach. The main focus is on a broadly defined rule of law agenda, including legal reforms, in particular in the economic, trade and criminal law sectors and institutional reforms targeting ministries, courts, and law enforcement agencies. The question of an independent judiciary, which can act as a strong and independent power vis-à-vis the government (and parliament), is partly addressed in some projects, but does not appear as a major issue. Further, the EU supports a broad range of civil society actors, in particular at the local level, which should be enabled to participate in the elaboration and implementation of policies. However, while individual NGOs targeted in projects are regime critical and fight for democratization, such type of groups are not the primary target of EU support, but rather concerned with a broad range of less regime and government critical development issues.

Nevertheless, the political approach is also not entirely absent. Indeed, a considerable part of the funds under the mainstream programmes have been used for the organization of, participation in, and (local) monitoring of elections, which is a core element of the political approach. Additionally, as mentioned, some rule of law projects also focus on the independence of the judiciary and some civil society support projects train NGOs that are opposing ruling undemocratic governments. All in all, like the EIDHR, also the mainstream and specific development programmes have pursued a mixed approach to democracy assistance, with, however, the developmental approach prevailing over the political one.

3. The Geographical Distribution of Funds

While the previous sections have followed a global approach, this last section of Chapter 6 takes a closer look at EU democracy assistance in various major world regions. It first provides some more detailed insight into how much the EU committed in the sector ‘government and civil society – general’ and on democracy assistance in individual world regions and secondly how the EU distributed democracy assistance among the various sub-groups in those regions. Both topics need to be read in connection with the global data presented above and aim to present regional differences and variations as well as to expose some underlying pattern, like a stronger focus on democracy assistance in regions closer to the EU, as was discovered in the case of the EIDHR . The data source is again the OECD database on ODA flows in the sector ‘government and civil society – general’. Unfortunately, the OECD’s regional groupings do not entirely overlap with those suggested by the EU in its external assistance programmes. For example, the OECD group

‘Central America’ covers countries under the ALA and DCI programmes as well as ACP states, while the ENPI states are reported on in the OECD group ‘Africa North of the Sahara’ and, in part, the ‘Middle East’ and ‘Europe’. This divergence has to be taken into account when consulting the Tables and relating them to EU development programmes. Also all other limitations of OECD data, like its limitation to ODA and the inclusion of EIDHR data should be recalled. For lack of space and time, the distribution of funds among countries, which has been provided in Chapter 5 on the EIDHR, is neglected here. Just like other sections, the discussion should first focus on the question at which stage in the policy-making process, the crucial decisions were taken.

a) The Determination of the Distribution of Funds

i. The Regulations

As discussed above, the various mainstream and specific development programmes mention a financial reference amount, which suggests how much money will (approximately) be available for the specific programme in question during the entire duration of the regulation. However, the geographically-focused programmes, like Tacis, do not determine how much of this amount is going to be spent for individual areas, like ‘government and civil society’ or democracy assistance. Similarly, internationally-focused programmes, like the NGO programmes B7-6000, only envisage a general budget and do not determine, in secondary law, how the available funds are going to be distributed among the major world regions.

All in all, secondary law is therefore silent on the geographical distribution of funds in the sector ‘government and civil society – general’ and democracy assistance.

ii. The EU Budget

As discussed in the previous section, the EU budget includes an appropriation for an entire programme, like the ENPI, or a major sub-programme, like the Mediterranean and Eastern ENPI states. However, the budget basically never allocates exact amounts to the OECD sector ‘government and civil society’ or to differently defined areas like democracy, good governance or human rights. Exceptionally, individual democracy-related projects or programmes are allocated a specific sum of money, which only constitutes part of the entire sector.

All in all, the budget therefore does not play a role in the determination of the geographic distribution of fund in the OECD sector in question.

iii. The Programming Stage

Also in this section reference can be made to the above discussion of the programming stage as regards the thematic distribution of funds and to Table 41. As shown there, it is during the programming stage that crucial decisions are taken on how much of the available budget for an entire region is spent for democracy assistance or other substantive areas. These decisions are, in particular, taken in the NIPs, which allocate specific amounts to specific areas. AAPs, which include action fiches of individual programmes or projects, determine the allocation of funds into different sub-headings of ‘government and civil society – general’.

The development of NIPs, which are negotiated with the recipient states’ government and signed by the EU and that government, are therefore crucial for the determination of the percentage of available funds for the entire category ‘government and civil society – general’, while the AAPs are crucial for the allocation of funds to the various sub-sectors of this sector.

b) The Regional Distribution of Funds in the Sector ‘Government and Civil Society’

Table 43 provides a detailed picture of EU ODA commitments in the sector ‘government and civil society – general’ in the major world regions. As mentioned, the provided data has been extracted from the OECD ODA database and works with different regional categories than the EU usually does, which makes it difficult to relate the data to EU assistance programmes. It should also be mentioned that the data slightly – by 1-2% – diverges from the aggregate data provided in Table 37 above, which is partly the result of bringing data down to a round figure when converting OECD data in US\$ to Euros, but also the result of an internal inconsistency in the OECD database, that, due to its small degree, should be neglected here.

As absolute amounts committed in one region have to be assessed in relation to the number of countries covered by that region, Table 44 provides data on average commitments in the sector ‘government and civil society – general’ in country in each region. For example, it shows that in ‘Africa – North of the Sahara’, in each of the covered five states on average 133.3 million Euros were committed in the sector ‘government and civil society’ between 1995 and 2009. It should be stressed that the actual distribution of funds among countries was different. The main purpose of Table 44 is to relate the absolute regional expenditure to the number of countries.¹⁴⁹⁸

¹⁴⁹⁸ The size of a country in particular its population has been disregarded here.

Table 43: Commitments in the Sector ‘Government and Civil Society general’ 1995 – 2009 per major Region (in million Euros)¹⁴⁹⁹

Year/Region	1995	1996	1997	1998	1999	2000	2001	2002
Sub-Saharan Africa	36.49	40.74	89.82	93	310.32	259.05	65.48	141.02
Europe (incl. We NIS) ¹⁵⁰⁰	10.25	-	30.69	31.35	61.31	50.46	52.29	161.58
South and Central Asia	0.8	1.05	0.05		4.5	5.26	10.73	7.09
Middle East (incl. Iraq)		25.09	42.75	12.03	43.83	24.89	25.88	43.96
Africa North of Sahara				2.01	8.17	45.45	3.79	14.01
Central America	11.76	0.32	10.73	34.14	31.64	53.35	34.98	27.74
Far East Asia	-	11.34	-	12.86	20.07	6.26	23.73	17.9
South America	6.8	9.31	16.45	1.23	3.03	22.77	14.84	6.71
Oceania	0.97	0.6	0.49	1.17	3.76	2.35	10.91	2.3
Unspecified	9.7	24.66	72.9	12.42	36.34	56.48	60.37	66.79
Total	76.77	113.11	263.88	200.21	522.97	526.32	303	489.1

Year/Region	2003	2004	2005	2006	2007	2008	2009	Total
Sub-Saharan Africa	156.33	402.4	383.27	423.94	420.42	299.38	374.85	3496.51
Europe (incl. We NIS)	319.94	449.77	465.66	746.91	280.46	496.87	299.25	3456.79
South and Central Asia	124.06	126.9	143.49	173.43	95.7	107.77	69.72	870.55
Middle East	28.39	83.97	59.29	67.82	117.37	69.23	66.72	711.22
Africa North of Sahara	73.64	123.5	77.06	158.57	169.38	50.76		726.34
Central America	83.78	58.67	50.4	36	27.65	60.34	59.59	581.08
Far East Asia	36.08	41.76	20.6	49.01	20.27	25.11	16.44	301.43
South America	16.75	45.62	21.44	43.42	47.06	10.49	1.01	266.93
Oceania	11.7	7.66	2.38	9.7	25.52	10.18	3.46	93.15
Unspecified	30.35	177.68	93.42	46.22	266.79	187.48	170.22	1311.82
Total	881.02	1517.93	1317.01	1755.02	1470.62	1317.61	1061.26	11815.83

Table 44: Average EU Commitments in the Sector ‘Government and Civil Society- General’ per Country in each major Region 1995 -2009 (in million Euros)¹⁵⁰¹

Region	Europe	Africa North of Sahara	Sub-Saharan Africa	Middle East	South and Central Asia	South America	Central America	Far East Asia	Oceania
Average amount	230.5	144.4	68.6	50.8	51.2	20.5	20	15.85	4.9

Table 45 provides data on the average share of commitments of the sector ‘government and civil society – general’ of all ODA between 1995 and 2009 in all major OECD regions.

¹⁴⁹⁹ Data extracted from the OECD database on ODA flows. Calculations in Euros were made on the basis of average annual exchange rates. Blank boxes indicate that the OECD database did not report on any aid flows.

¹⁵⁰⁰ The region Europe covers the CEECs, the Balkans, the Western NIS, and Turkey. As countries, which have firm dates for accession to the EU, graduate from the DAC list of ODA recipients, the Table does not include data on aid flows to these states from varying fixed points of time. Russia is excluded due to its membership in the G8.

¹⁵⁰¹ For the list of countries covered by one OECD region, see the OECD database on ODA aid flows.

Table 45: Average Share of Sector ‘Government and Civil Society – General’ of all EU ODA Commitments in major Regions 1995- 2009 (in %)

Region	Europe	Middle East	South& Central Asia	Central America	Oceania	Sub-Saharan Africa	Africa North of Sahara	Far East Asia	South America	Un-specified
% of sector G&SC of all ODA	20.2%	10.3%	9.9%	9.7%	9.7%	9%	8.7%	8.1%	7.1%	8.6%

As regards the general insights provided by Table 43, reference can be made to the discussion of Table 37 above. Table 43 reports the same overall increase in commitments in the sector ‘government and civil society – general’ during the period 1995 and 2009, the peak (in absolute terms) in 2006, and decreasing commitments since then. It shows that many regions have followed this average pattern, even if some went a slightly different way, like Sub-Saharan Africa, which committed relatively high amounts already in the late 1990s, and Africa North of the Sahara and Oceania, which only reached a peak in commitments in 2007. Table 43 also shows, however, that the peak in commitments in 2007 was mainly due to a very high allocation in Europe (and there, in particular, in Turkey).

As regards the differences in the various regions, Table 43 shows that several regions spent considerably more money on governance and civil society issues than others. The frontrunners are Europe and Sub-Saharan Africa, where in each region during the entire period under analysis, over 3.4 billion Euros were spent for good governance, democracy, and human rights promotion. This was four times more than in South and Central Asia, the region with the third largest commitments, and much more than in all other regions. The picture looks slightly different, when also considering the number of countries in each region. Europe still appears as the region where most funds were spent in the sector government and civil society, followed by the five North African states. Very little has been invested in the field in the Far East Asia (a group that includes China). Table 45 shows that except in Europe, where a higher share of all ODA was committed in the sector government and civil society (20.2 %), in most other regions between 7.1 % and 10.3 % of all ODA was committed in the sector.

All in all, it strongly appears that more efforts were invested into ensuring that countries carry out reforms in the sector ‘government and civil society - general’ in regions closer to the EU, in particular in countries in Europe themselves (the Balkans, Turkey, the Western NIS), as well as in its closer neighbourhood (Africa North of the Sahara). These are the regions where most money has in the last 15 years been committed to that end, if taking the number of countries into account. At the same time, the EU also attempts to ensure that in all regions a certain share of

usually between approximately 7 % and 10 % is committed for democracy, human rights, and good governance aid.

c) The Regional Distribution of Funds for Democracy Assistance

Table 46 presents a detailed picture of how much was annually committed to democracy assistance in individual geographical regions. It needs to be mentioned that the individual and overall amounts of democracy assistance mentioned in Table 46 are in part slightly different from the amount stipulated in Table 38 above (divergence of 1-2%). This is again due to some minor data variations resulting from rounding up when converting US\$ to Euros and, in particular in 2006, an internal inconsistency in the OECD database, that might be due to a lack of reporting in the regional data on certain flows. Table 46 is nevertheless able to provide an interesting insight into regional similarities and differences as regards the attention for democracy assistance. As mentioned above, until 1998 most of the funds committed in the sector were from the EIDHR budget and only from 1999 on did the EU increasingly commit funds for democracy assistance under other programmes.

Table 46: Commitments for Democracy Assistance 1995 – 2009 per major Region (in million Euros)¹⁵⁰²

Year/Region	1995	1996	1997	1998	1999	2000	2001	2002
Sub-Saharan Africa	1.22	19.52	49.38	5.89	83.62	81.97	19.3	72.46
Europe (incl. We NIS) ¹⁵⁰³			0.47	3.57	9.69	6.9		23.98
South and Central Asia		0.13			0.34	1.2	3.78	2.88
Middle East (incl. Iraq)			14.66	5.23	12.42	22.84	19.9	25.51
Central America	0.06	0.21	0.31	10.73	2.68	0.46	11.87	15.9
Africa North of Sahara					6.26	33.91	0.49	5.81
Far East		10.82		12.55		1.48	4.54	0.77
South America			0.35		2.05	8.18	1.62	1.69
Oceania					0.09		3.49	0.07
Unspecified				2.02	2.65	6.13	5.35	2.38
Total	1.28	30.68	65.18	39.99	119.83	163.14	70.34	151.45

Year/Region	2003	2004	2005	2006	2007	2008	2009	Total
Sub-Saharan Africa	72.28	149.85	208.22	193.96	133.85	194.98	141.14	1427.64
Europe (incl. We NIS)	74.64	83.08	106.32	102.17	80.26	157.35	70.11	718.54
South and Central Asia	10.38	33.67	39.48	33.69	39.53	76.32	64.55	305.95
Middle East (incl. Iraq)	11.42	43.23	32.12	5.22	39.25	25.99	8.06	265.85
Central America	19.8	1.89	28.38	32.48	6.77	32.37	19.26	183.17
Africa North of Sahara	42.96	36.78	17.39		16.99	16.67		176.38
Far East Asia	31.38	8.94	16.31	27.5	2.01	9.12	12.93	138.35
South America	8.45	27.98	7.35	28.26	4.12	7.26		97.31
Oceania	1.64	0.32		4.88	4.99			15.48
Unspecified	2.25	11.4		12.77	76.38	4.9	35.92	162.15
Total	275.2	397.14	455.57	440.93	404.14	524.96	351.97	3490.82

¹⁵⁰² Data extracted from OECD ODA database. Blanc fields indicate that the OECD database did not report on aid flows.

¹⁵⁰³ The region Europe covers the CEECs, the Balkans, the Western NIS, and Turkey. As countries, which have firm dates for accession to the EU, graduate from the DAC list of ODA recipients, the Table does not included data on aid flows to these states from varying fixed points of time. Russia is excluded, due to its membership in the G8.

Table 47 shows the average commitments for democracy assistance per country in each major region between 1995 and 2009. As mentioned above, this average share is of course different from the actual amount committed and only has the purpose of relating the regional amount to the number of countries in the region.

Table 47: Average (!) Commitments for Democracy Assistance per County in each Major Region 1995 – 2009 (in million Euros)

Region	Europe	Africa North of Sahara	Sub-Saharan Africa	Middle East	South and Central Asia	Far East Asia	South America	Central America	Oceania
Average amount	45.23	35.43	28	19.2	17.9	7.68	7.49	6.23	1.01

Table 48 shows how much of the overall amount committed in the sector ‘government and civil society – general’ pertained to democracy assistance in individual regions.

Table 48: Average Share of Democracy Assistance of Sector ‘Government and civil society – general’ in major Regions 1995 – 2009 (in %)

Region	Far East Asia	Sub-Saharan Africa	Middle East	South America	South and Central Asia	Central America	Africa North of Sahara	Europe	Oceania	Unspecified
% of ODA in sector G&SC	45.9%	40.8%	37.3%	36.5%	35%	31.6%	24.4%	20.9%	20.6%	12%

Like Table 38, Table 46 shows the overall growth in commitments for democracy assistance programmes and projects over the period 1995 and 2009. At the same time, it also shows that in most regions the development was not a very steady one, as suggested by the aggregate data of Table 38, but rather a volatile one, with much variation from year to year. In some regions, most money was spent for democracy assistance in the early 2000s (especially 2003 and 2004), while in other regions a peak was reached in 2008. In several regions very low amounts or nothing was committed in individual years, in particular in 2003 and 2009. The steadily increasing commitments for democracy assistance presented in Table 38 were therefore mainly due to the three regions that spent most in the sector, Sub-Saharan Africa, Europe, and South and Central Asia. Overall, there is still a strong need to ensure that a certain, stable share of all ODA is committed for democracy assistance projects in each region during each programming period.

Table 48 on the share of democracy assistance of all ODA for ‘government and civil society – general’ in each region also provides important insights. Table 38 showed that during the period 1995 and 2009 the EU on average committed about 30% of all ODA in the sector ‘government and civil society – general’ for democracy assistance, which was less than major other international donors do. Table 48 shows that there were considerable differences among individual regions. Very surprisingly, in the region where most was (on average) spent for democracy assistance per country – Europe – the average share of democracy assistance of all ODA in the sector ‘government and civil society – general’ is only 20% and therefore considerably lower than in most other regions. Similarly, in North Africa, where each country on average received a relatively high amount between 1995 and 2009, only about 24% of all commitments in the sector ‘government and civil society – general’ were used for democracy assistance. At the same time, in two regions, Far East Asia (including China) and Sub-Saharan Africa, a relatively high share of 41% and 46%, respectively, of all funds committed for ‘government and civil society – general’ were used for democracy assistance. Overall, commitments for democracy assistance in Far East Asia were very minor though. The region Sub-Saharan Africa appears as quite a positive performer as regards democracy assistance, which is in stark contrast with the low share African states received under the EIDHR (see Chapter 5, Table 26). In Sub-Saharan Africa not only a very high overall amount was spent for democracy assistance between 1995 and 2009 (1427.93 million Euros) but a comparatively very high average amount per country (28 million Euros) and percentage of all ODA in the sector ‘government and civil society – general’ (40.8%) was also spent.

Overall, due to the different results emerging from Tables 47 and 48 – i.e. regions with high amounts spent for democracy assistance are at the same time regions with low shares of democracy assistance of all ODA – there are difficulties extracting some pattern of EU engagement. It nevertheless seems possible to say that, due to the high amounts committed in individual countries in Europe and Africa North of the Sahara, the EU engages more in regions close to its borders. At the same time, the region Sub-Saharan Africa is a remarkable example of a strong effort on behalf of the EU and the respective recipient states to devote not only a relatively high and stable share to democracy assistance projects, but also a relatively high and stable share of all ODA. Finally, as in the case of the EIDHR, it is not possible to discern a clear pattern of stronger or weaker engagement in more or less democratic regions.¹⁵⁰⁴ Among the major recipients per country as well as per percentage of all ODA are regions with lower (Africa North of the Sahara) and regions with higher average levels of democratic development

¹⁵⁰⁴ As regards average levels of democracy in individual regions, reference should be made on the data of Freedom House on individual countries.

(Europe). Similarly, among the minor recipients of democracy assistance are regions with higher (Central and Southern America) and lower levels (Far East Asia) of democratic development. All in all, levels of democratic development therefore seemed not to have been decisive for the provision of EU democracy assistance, with more or less democratic countries among major and minor recipients of democracy assistance.

d) The Regional Distribution of Funds among Sub-Sectors of Democracy Assistance

This last section concentrates on the question of how the funds committed for democracy assistance in individual regions were distributed among the five OECD sub-categories on democracy assistance. The discussion in particular aims at discovering regional differences and similarities and at exposing some underlying patterns. Table 49 (see next page) provides detailed data on how much money was committed in the five mentioned sectors in each individual region during the period 1995 and 2009. The Table is consistent with Table 46 above, however, in part diverges from Tables 38 and 42, in particular as regards the flows in the sector ‘democratic participation and civil society’ and ‘media and free flow of information’. As mentioned above, the reasons are small differences due to conversions and rounding-out, however, also an inconsistency in the OECD database, which provides slightly different results when searching for data on all recipients and for data on individual regions.

As in Table 42, the total amounts in Table 49 show that most EU democracy assistance was spent in the sector ‘legal and judicial development’ (40% of all democracy assistance), slightly less on the sector ‘democratic participation and civil society’ (31%), and 25 % on election assistance and observation (of which most part – over 80% - was used for election assistance projects). The sectors ‘legislatures and political parties’ and ‘media and free flow of information’ have received very minor shares. It needs, however, to be recalled that the first of these is a new sector of OECD reporting that has only existed since 2009, which explains the low numbers, while commitments on the media appear too limited in view of the information provided in EU reports on the EIDHR (see Chapter 6).

Table 49 shows that hardly any individual region follows this general pattern but each shows a specific, different picture. Nevertheless, in half of the regions the biggest share was committed in the sector ‘legal and judicial development’ and in three regions the biggest share was committed on ‘democratic participation and civil society’. ‘Elections’ rarely received the largest share of funds, except in Sub-Saharan Africa, where 36% of all funds were spent on both,

Table 49: Thematic Distribution of Commitments for Democracy Assistance in Major Regions 1995-2009 (in million Euros and in %)

Sub-Sector/ Region	Total Democracy assistance	Legal and judicial development	Democratic participation and civil society	Elections	Legislatures and political parties	Media and free flow of information
Sub-Saharan Africa	1427.64	389.35 (27%)	517.44 (36%)	507.74 (36%)	5.01 ($< 1\%$)	8.1 ($< 1\%$)
Europe	718.54	521.84 (73%)	168.2 (23%)	8.22 (1%)		20.28 (3%)
South and Central Asia	305.95	149.46 (49%)	24.93 (8%)	119.3 (39%)	8.41 (3%)	3.85 (1%)
Middle East (incl. Iraq)	265.85	57.42 (22%)	122.04 (46%)	85.53 (33%)		0.86 ($< 1\%$)
Central America	183.17	87.39 (48%)	45.71 (25%)	49.63 (27%)		0.44 ($< 1\%$)
Africa North of Sahara	176.38	129.46 (73%)	40.31 (23%)	6.61 (4%)		
Far East Asia	138.35	101.49 (73%)	14.77 (11%)	22.09 (16%)		
South America	97.31	27.64 (28%)	58.38 (60%)	11.29 (12%)		
Oceania	15.48	0.58 (4%)	11.24 (73%)	3.66 (24%)		
Unspecified	162.15	10.28	77.6	72.97		1.3
Total	3490.82	1474.91	1080.62	887.04	13.42	34.83
Total in %	100%	42%	31%	25%		1%
Approx. share of EIDHR of Total in %		50% (until 2000) 10% (after 2000)	10%	Approx. 20%		Nearly 100%

elections and civil society. In Europe, the remarkable high share of funds was spent for ‘legal and judicial development’ (73%), which is mainly due to the strong efforts in approximating and harmonizing national legislation with EU law.¹⁵⁰⁵ In Africa North of the Sahara and Far East Asia an equally high share of the funds was spent for rule of law reform (73%), there less driven by efforts to approximate legislation but apparently rather by fears to address more politically challenging topics. In both regions, election received rather little support. Remarkably high shares of funds were committed for ‘political participation and civil society’ in Latin America (60%), which can be explained by the EU’s strong interest in fighting inequality and exclusion of large parts of the population in that region. Finally, nearly 40% of the available funds were committed for election assistance in South and Central Asia, which is a remarkable high share, given the presence of authoritarianism in most of this region.

¹⁵⁰⁵ See, for example, A. F. Tatham, *Enlargement of the European Union*, at 327f.

Overall, the diverse distribution of funds among the different thematic fields in each region makes it again difficult to draw general conclusions as to an underlying pattern. In any case, the data seems to support the argument that in difficult, undemocratic environments, like in North Africa and in several countries in Far East Asia and South and Central Asia, the EU prefers to provide rule of law assistance rather than other forms. At the same time, in at least two of these regions, little is invested in the promotion of political rights (elections).

III. Conclusion

The main aim of Chapter 8 has been the analysis of the provision of democracy assistance in the framework of the EU's mainstream and specific development programmes. In this respect, the Chapter has intended to complement the analysis of the EIDHR in Chapter 6. As the data source for statistical information on EU democracy assistance, the OECD database on ODA flows, covers data relating to all EU external ODA assistance programmes, the data provided in Chapter 8 has usually included flows under the mainstream development programmes as well as the EIDHR. The Chapter has therefore provided an overall picture of EU democracy assistance between 1995 and 2009. In order to assess EU engagement under the mainstream programmes only and therefore beyond the EIDHR, flows under the latter programme have, as much as this is possible in view of data restraints on the EIDHR, to be taken into account and reduced.

The use of the OECD database had several other implications for the discussion in Chapter 8. Two issues warrant particular mentioning. First, as also mentioned in Chapter 2, the OECD does not operate with a separate category of democracy assistance but only with the broader field of 'government and civil society – general', which consists, since 2009, of eleven sub-categories. Aggregate data on democracy assistance has to be constructed from among these sub-sectors. Given the thematic scope of the EIDHR, the following five sub-sectors have been chosen to constitute democracy assistance: legal and judicial development, democratic participation and civil society, elections, legislatures and political parties, media and free flow of information. Acknowledging that this is only one possible choice, that might be objected to by some analysts, who envisage a broader or even narrower definition, and also allow assessing the scope of democracy assistance in relation to assistance in the fields good governance and human rights, the Chapter has also provided data on the entire category 'government and civil society – general', not only on democracy assistance alone. Secondly, the OECD database records data on ODA flows and therefore does not report on assistance to some countries of interest here, in particular Russia and, until 2005, other Western NIS, while reporting on some countries that have

been excluded from the scope of the thesis, in particular the Western Balkans and Turkey. The Tables provided in Chapter 8 have to be consulted with these limitations in mind.

Largely following Chapter 6, which has analyzed the EU's specific programme for democracy and human rights, Chapter 8 has analyzed three main questions. It has, first, focused on overall quantitative data on EU democracy assistance, distinguishing between commitment and expenditure data; secondly, on the thematic distribution of funds; and thirdly, on regional similarities and differences. Table 37 has shown the strong growth in commitments for the entire sector 'government and civil society – general' between 1995 and 2009. They increased from about 76.78 million Euros in 1995 to about 1819.83 million Euros in 2006 and, while declining thereafter, still amounted to about 1065.28 million Euros in 2009. The share of commitments for 'government and civil society – general' of all ODA increased from only 1.3% to 20% in 2004, and, while declining thereafter, still amounted to about 9% in 2009. A look at the commitments in the various covered regions shows that, with few exceptions, most regions have followed this average pattern of growth. Overall, it appears though that in regions closer to the EU – especially in Europe itself and in Northern Africa – higher amounts were committed for the sector 'government and civil society'. It is unclear what caused the declines in 2004 and 2006, as the topics of good governance, democracy, and human rights have ever since the mid-1990s been attributed increasing relevance in assistance regulations, as shown in Chapter 6. In particular, the various new regulations that entered into force on 1 January 2007 have continued the trend of stressing the importance of the themes and of focusing assistance in its respective fields, which has however not materialized. As shown in Chapter 6, secondary law does not require a certain share of funds to be spent for democracy, human rights, and good governance issues, and does therefore not ensure a stable share for each of the themes. Similarly, CSPs necessarily require addressing the issue, but also do not ensure that funds are devoted to that end. A comparison with other major international donors, like the US, Canada, and Australia, has shown that the EU provides a smaller share of its ODA for good governance, human rights, and democracy assistance. For example, in 2009, the EU committed about 11% of all ODA in the sector 'government and civil society – general', while the US committed 16%, Canada 12%, and Australia 24% for that field.

Looking at democracy assistance alone, which comprises the above-mentioned sub-fields, Chapter 8 has shown that the committed funds increased from about 30.74 million Euros in 1996 to about 525.12 million Euros in 2008. Commitments were smaller in 2009 (about 351.97 million Euros). It only has to be seen whether this was the beginning of a downward trend, as had, some years earlier, also happened in the case of the sector 'government and civil society – general'. A look at various regions has demonstrated that, despite the steady overall growth, in most regions

the development has been a rather volatile one, with much variation in the commitments from year to year. Despite the overall increase, there was no sign of a constant, annual, and growing or at least stable appropriation of funds for democracy assistance programmes. Most funds were committed for democracy assistance in countries in Europe or closer to its borders, in particular North Africa, as well as in Sub-Saharan Africa. During the entire period 1995 to 2009 the average share of commitments for democracy assistance of all ODA was about 3% and about 30% of commitments in the sector ‘government and civil society – general’. In six of nine regions the average share for democracy assistance of all commitments in the sector ‘government and civil society – general’ was even 30% and 45%. Interestingly, those regions where most was spent for democracy assistance – Europe and Africa North of the Sahara – had a considerably lower share of all ODA. In any case, EU shares for democracy assistance were comparatively little when compared with other international donors. For example, in 2009, the US, which spent a higher share of all ODA in the sector ‘government and civil society – general’ as well as a higher absolute amount (see Tables 6 and 7 in Chapter 2), devoted about 65% of all ODA in the sector ‘government and civil society – general’, in the field of democracy assistance. Table 50 provides a brief summary of the major commitment flows.

Table 50: EU ODA Commitments 1995-2009 (in million Euros and %)¹⁵⁰⁶

Sector	Amount in Euros	% of total ODA	% of sector ‘government and civil society – general’
ODA total/All aid sectors	123332.56	100%	-
Government and civil society – general	11960.99	9.7%	100%
Democracy Assistance	3550.86	2.9%	29.7%

As regards the amounts of democracy assistance provided beyond the EU’s specific democracy assistance programme, the EIDHR, Chapter 8 reveals that until about 1998 a large part indeed – one half to three fourths – of all democracy, human rights, and good governance assistance was provided under the EIDHR. Only from 1999, did this start to change. Since then the large majority of all assistance in these sectors derives from the mainstream and specific development programmes rather than the EIDHR. The exact share of EIDHR and mainstream democracy assistance funds differed though from sub-sector to sub-sector. For example, good governance projects were for about 100% funded under mainstream programmes and human rights projects were equally shared between mainstream programmes and EIDHR (50% each). As regards democracy assistance, legal and judicial development projects and projects for democratic participation and civil society were since 2000 about 80% to 90% funded under mainstream

¹⁵⁰⁶ Extracted from Tables 37 and 38 (Chapter 7).

programmes and only 10% to 20% under the EIDHR. Election assistance and observation were during the period 1995 and 2009 80% funded under mainstream programmes and 20% under the EIDHR. Due to the growing share of EU EOMs of the EIDHR, the latter has, however, increasingly become an important provider of election support. The financially very small categories of parliaments and political parties (which has only been reported on since 2009) and the media and free flow of information are to a much larger extent – between 50% and 100%, respectively – supported by the EIDHR programme.

Data as regards payments for ODA in the sector ‘government and civil society – general’ have grown from about 105.14 million Euros in 2002 to about 1133.9 million Euros in 2009. Payments for democracy assistance projects increased from about 42.78 million Euros in 2004 to about 383.64 million Euros in 2009. In both sectors payments started to strongly increase between 2004 and 2005. While it is difficult to overall relate commitment and expenditure data due to different time-spans required and used for individual programmes and projects, the data confirms a delay between commitments and payments of about five years.

The data for commitments and payments shows, that from the day of adoption of the 1991 November resolution, which called for the promotion of good governance, democracy, and human rights through mainstream assistance programmes, it took the EU about seven to eight years (until 1999) to increasingly commit mainstream development funds for that end under mainstream programmes, and a further six years (until 2005) for these commitments to result in increased payments for democracy, human rights, and good governance projects in target countries. It therefore basically took fourteen years for a policy declaration to show real effect. While some of the delay could not be prevented due to the time needed for programming and aid implementation, at least two other factors were responsible for the delay. On the one hand, there was an initial hesitation in the relevant Commission services to pursue the policy shift, in particular in authoritarian countries, which only had to be overcome. On the other hand, there was a lack of clarity regarding the relationship between the EIDHR and the mainstream programmes, and the question whether democracy and human rights assistance should not predominantly be implemented through the specific programme. Only COM(1995) 457 final explicitly stipulated that democracy support should be provided through both, mainstream programmes and the EIDHR.

The second set of questions discussed in Chapter 8 have related to the thematic distribution of funds in the sector ‘government and civil society – general’. The Chapter has first outlined that it was during the time of adoption of the programming documents, in particular of the AAPs, that the crucial decisions on the thematic distribution funds are taken. Table 42 has presented the thematic distribution of funds among the eleven sub-sectors of the field

‘government and civil society – general’. It has shown that the overwhelming share of funds has been committed for governance reform-related topics (nearly 60%), about 11% for human rights, and about 30% for democracy assistance programme and projects. As regards the five thematic sub-sectors of democracy assistance, most was committed for legal and judicial development (12%), slightly less for the field democratic participation and civil society (10%), about 7% for election assistance and observation, and very small shares of 1% for legislature and political parties as well as for media projects (see also Table 51).

Chapter 8 has also shown that individual regions have followed a different pattern than suggested in Table 51. While in most regions the largest part of funds has been spent for legal and judicial development, in several regions most was spent on democratic participation and civil society. In two regions, Sub-Saharan Africa and in South and Central Asia, remarkably high shares of the funds were spent for election assistance and observation (36% and 39% of all commitments in the sector democracy assistance, respectively). Due to very mixed results, hardly any clear pattern of a preference for certain themes in certain region has become visible. It seems though, as is frequently suggested in the literature on democracy assistance,¹⁵⁰⁷ that regions in which authoritarianism prevails are preferably targeted with rule of law assistance, while more politically focused assistance, in particular electoral assistance, is more limited.

Table 51: Distribution of ODA Commitments among Sub-Sectors of ‘Governance and Civil Society – General’ 1995-2009 (in million Euros and %)¹⁵⁰⁸

Sector	G&SC General	Public sector policy	Public finance management	Decentralisation	Anti-corruption	Legal/judicial development	Democratic participation/civil society
Total in Euros	11960.99	5957.44	860.13	111.28	3.34	1474.02	1141.23
% of sector	100%	50%	7%	1%	<1%	12%	10%
% of all ODA	9.7%	5% ⁰⁰	<1%	<1%	<1%	1%	1%

Sector	Elections	Legislatures/political parties	Media free flow of information	Human rights	Women
Total in Euros	879.72	13.42	42.47	1322.4	152.56
% of sector	7%	<1%	<1%	11%	1%
% of all ODA	<1%	<1%	<1%	1%	<1%

¹⁵⁰⁷ Carothers, ‘The “Sequencing” Fallacy’.

¹⁵⁰⁸ Extracted from Table 37 above.

As regards the approach to democracy assistance pursued through the mainstream programme, Chapter 8 has come to the result that also assistance through mainstream development programmes has features of both approaches, that is, the developmental and the political approach to democracy assistance. However, there is a clear preference for the developmental approach. On the one hand, this is indicated by the strong focus on good governance issues, which complement democracy assistance, as well as the fact that assistance is planned and programmed as part of a mid- and long-term EU development agenda in a particular country, that is, moreover, agreed with the target state. Secondly, also the projects and programmes on democracy assistance *per se* show features of the developmental method, as they predominantly consist of projects in the sectors rule of law, civil society development and participation in local development issues, with a strong focus on the local level. At the same time, the political approach, even if moderate, is visible in the case of projects that focus on the independence of the judiciary, on NGOs working on core political issues, like elections, and election support itself.

Finally, the thematic focus of assistance points to a very basic model of liberal democracy, consisting of Robert Dahl's seven minimum procedural conditions and the additional feature of the rule of law. The EU aims at creating a democratic system in which people's representatives are elected in regular, free and fair elections, in which parliaments carry out their law-making and controlling functions, in which associational autonomy allows for the establishment of political parties and civil society organizations, and in which a free media acts as information channel and watchdog over governmental activities. The system should be held together by the rule of law, consisting of a healthy legal system as well as an independent judiciary. There is no evidence that the EU goes any further in promoting a specific model of (liberal) democracy. It definitely envisages something more than elitist democracy, as the focus on elections is complemented with an even stronger focus on civil society and civic participation beyond the electoral process and therefore the selection of representatives. The EU invests considerable efforts in developing the capacity of civil society organizations and their participation in policy-making and implementation. However, these efforts do not go far enough in considering the creation of pluralist democracy, in which a much broader range of actors would need to be constantly involved in deliberation and decision-making. The importance accorded to the role of state institutions and elections also renders it impossible to speak of system of pluralist democracy. Similarly, despite the focus on civil society, on democratic participation, and decentralization, the EU does not create participatory democracy in third states, which would require initiatives for more widespread, active and direct participation of all citizens in a broader sphere than the political process, like also projects for democratizing educational establishments, firms, and civil society organizations themselves. Finally, there is the question as to the social dimension of EU

action. Social issues and socio-economic equality issues as well as social rights are frequently objectives of EU development programmes and projects, however, not expressively as part of its democracy agenda, but rather as part of its general development objectives. All in all, in implementing democracy promotion through its mainstream programmes, the EU works with a very basic model of liberal democracy, without promoting specific conceptions thereof.

Conclusion

“What is the EU’s strategy to promote democracy abroad through the use of democracy assistance and how has it evolved since its start?”. The major research question addressed in the present thesis is broad. It relates to the means and their use, in this case of different democracy assistance programmes and projects, in order to facilitate democratization processes in third states. It encompasses, among others, issues of the structure of EU aid programmes in the field of democracy assistance, the thematic focus of assistance, the geographical concentration, questions of implementation including the mode of project selection, and the role attributed to recipients of aid. More fundamental questions concerning the EU’s strategy relate to the underlying notion of democracy, the envisaged model of democratization, and the overall approach to democracy assistance. The research question has not only focused on the *status quo*, but also on the evolution of the strategy since its beginning in the mid-1980s and early-1990s.

The thesis has addressed the various outlined issues in six analytical chapters on EU democracy assistance. It has provided a comprehensive account of the tool of EU democracy assistance, both in terms of ‘theory’ and ‘practice’, terms that are used to refer to the policy objectives outlined in core policy-making documents and their implementation through programmes and projects. It is believed that only a look at both allows an all-encompassing overview of the policy instrument and expresses what the policy is.

This conclusion briefly recapitulates the main findings of each of the six chapters on EU democracy assistance, addressing the questions of its emergence and evolution, the legal dimension of EU competences to provide democracy assistance, the institutional and procedural dimension, and the specific features of the EIDHR and mainstream programmes. It should provide the reader with a concise overview of major issues concerning EU democracy assistance. Detailed findings have been provided in the conclusions to the individual chapters. After the brief outline of the major research results, the Conclusion addresses the three more fundamental issues mentioned above and relating to the model of democracy that apparently underlies EU democracy assistance and possibly democracy promotion more generally. It concludes with a brief enumeration of the major remaining problems in the field and points to one field concerning EU democracy assistance which should in the near future be analyzed in detail.

1. The Emergence and Evolution of EU Democracy Assistance

The EU's first democracy assistance programme started to operate in 1986, it was for that time endowed with a comparatively high budget and provided assistance to NGOs in Chile, a country that was then widely criticized and isolated due to General Pinochet's dictatorial rule and widespread human rights violations. It was in 1990 followed by a second programme concerning Chile and other Latin American states. Both programmes were created by the European Parliament, which had since the 1970s started to engage with human rights topics, internally and abroad, was obviously impressed by developments in the field of human rights and democracy promotion in the US, and used its newly gained budgetary powers to insert a line for the programmes into the annual EU budget. Lobbying by Chilean opposition politicians and other regime critics apparently also played a role for the initiation of the programme. The start of programmes in Latin America was also related to the ongoing democratization processes in that region. Overall, EU democracy assistance therefore began in the same geographical areas as that of the US.

The Council only followed suit in 1991, when it announced in its crucial 28 November 1991 resolution that the EC would support projects suggested by NGOs and governments aiming to foster the development of democracy. The suggestion was part of a broader announcement as to the 'real' start of an EU external human rights and democratization policy, which would be pursued with numerous instruments and that followed a weaker declaration on the role of human rights in EC external relations in 1986. Obviously, the development was a direct result of the spread of the third wave of democracy to Central and Eastern Europe and other parts of the world in the late 1980s, the concurrent end of the Cold War, and a shift in development policy that stressed the relevance of the factor of good governance for economic development. Overall, the EU as well as its Member States thus entered the international arena of democracy promotion and democracy assistance slightly later than other major western states, in particular the US.

Ever since the 1991 November resolution, democracy assistance has remained part of the EU's portfolio of tools of democracy promotion. Indeed, the EU's appreciation of the 'positive' character of democracy assistance, which works openly, pro-actively, and in partnership and cooperation with institutions and organizations of target states, has increasingly rendered it one of the preferred instruments. This preference has expressed itself in the geographical spread of assistance programmes: by the mid-1990s democracy assistance could be provided on the basis of all external development programmes, and by 1998 the EIDHR covered all major world regions.

Further, commitments for EU democracy assistance have overall been rising and, in particular in the case of the EIDHR, can be expected to rise during the next multiannual financial framework. Special democracy assistance facilities or facilities with strong democracy assistance elements have been founded over the last years. Finally, numerous policy documents, including more recent publications, confirm the EU's overall belief and interest in the tool.

The development of EU democracy assistance since 1991 did not follow a pre-conceived plan, but has moved on gradually and step-by-step. Key stages in the evolution were: (1) the parallel development of specific human rights and democracy assistance programmes (EIDHR forerunner programmes) and of democracy assistance components in mainstream development programmes without a clear idea about their specific features and the usefulness of the emerging structure during the 1990s, in particular the first half of the 1990s. The parallelism continues to be a key feature of EU democracy assistance; (2) the dispute on EU competence to fund democracy assistance projects through specific programmes (1997-1999) and its resolution in favour of a broad interpretation that allowed the adoption of the first set of EIDHR regulations in 1999; (3) the unification of the EU's specific democracy assistance programmes into a single EIDHR programme and the efforts of providing the EIDHR with a distinctive character (2000-2003); (4) the so-called 'mainstreaming' of democracy assistance, that is, the increasing focus on democracy assistance within mainstream development programmes, in particular as part of the increasingly popular good governance agenda (2003-2006, and beyond); (5) the establishment of the European *Instrument* for Democracy and Human Rights (EIDHR) as part of a fundamental overhaul of external assistance programmes. The adoption of the new regulation again led to a dispute among EU institutions, which was also this time solved in favour of a (slightly) stronger human rights and democratization policy (2006/7); (6) a series of small initiatives by the European Parliament in the field: the creation of the Democracy Caucus in the Parliament, the establishment of the European Partnership of Democracy (EPD), that despite its current independent character can be traced to an initiative of the Parliament, and the creation of the Office for Promotion of Parliamentary Democracy (OPPD) (2006-2008); (7) a fresh focus on EU Democracy Promotion initiated by various Council presidencies and the adoption of Council conclusions on 'Democracy Support in EU External Relations', which has focused particularly on questions of coherence in respect of the multiplicity of promotion tools (2009). The response to the Arab Spring has been the creation of a Civil Society Facility, initially focusing on the Mediterranean region, and a possible shift to a slightly more political approach to EU democracy assistance, which has however still to be seen. Finally, the European Endowment for Democracy (EED), although created outside the formal EU structure, constitutes the latest addition to European democracy assistance (2011).

Various factors account for the numerous step-by-step developments of EU democracy assistance. A key role has been played by the preferences and powers of various EU institutions, in particular, the European Parliament, the Council, and the Commission, but also the Court of Auditors and, albeit more indirectly, the ECJ. The three legislative institutions at times have had strong preferences for specific paths. For example, the parallel structure of the EIDHR and democracy assistance under mainstream programmes have resulted from the early initiative of the European Parliament and its prevailing persistence to keep the EIDHR. That institution has also, eventually successfully, pushed hard for an independent, separate EIDHR regulation in 2006. Current efforts to ensure a coherent use of policy instruments can be traced to the Council's initiative in 2009. The Commission initiated reforms on the basis of experiences in implementing EU assistance programmes, frequently also upon critical evaluations by independent consultants and/or reports by the Court of Auditors. At times, important external factors have led to policy-reforms or changes, like the Arab Spring, that have given birth to a series of new policy tools and new thematic foci areas. There is also evidence that the EU institutions have continued to observe US and UN policies and activities. Overall, the development of EU democracy assistance is the result of multiple preferences, factors and events.

2. Competence and Legal Basis for EU Democracy Assistance

As an organization of limited competences, the EU needed to be provided with relevant powers before it could act in the field of democracy assistance. Chapter 4 has complemented the general evolutionary account provided with an overview and analysis of the development of primary law from the early 1990s until the most recent changes introduced by the Treaty of Lisbon.

When discussions were carried out in 1990 and 1991 on the start of an EU external human rights policy, the drafters of the Treaty of Maastricht were quick to also insert a relevant reference into primary law. The newly drafted Treaty on European Union made the promotion of democracy an objective of CFSP and mentioned that EC development policy should 'contribute to the general objective of developing and consolidating democracy' (ex-Article 130u ECT; after Amsterdam Art. 177(2) ECT). The new provisions suffered, however, from several limitations that reflected the uneasiness with which competence in the field of human rights should be transferred to the EC and EU. As regards democracy assistance, the limitations related to the absence of a legal basis for assistance in third countries, for which recourse needed to be made to the ECT's subsidiary powers clause. This created the weird situation that different and until 1997

incompatible legislative procedures needed to be followed in the adoption of democracy assistance-related legislation as regards developing and other, third countries, which necessitated, amongst others, the adoption of two identical EIDHR regulations in 1999. Further, the ambiguous wording used in ex-Article 130u ECT contributed to a major dispute that erupted in the preparation of the EIDHR regulations and during which EC competences to run programmes like the EIDHR were seriously questioned. Overall, the dispute was solved in favour of a broad interpretation of EC competences in external human rights and democracy promotion, which also allowed the adoption of the mentioned EIDHR regulations. The two treaty revisions that followed Maastricht – Amsterdam and Nice – inserted two minor, but still important innovations into primary law. The Treaty of Amsterdam changed applicable legislative procedures that would later allow the adoption of a single EIDHR regulation and the Treaty of Nice introduced a separate provision into the ECT that would provide an explicit legal basis for the provision of democracy assistance in third countries (Article 181a ECT).

Overall, since 2001 primary law has therefore contained two explicit legal bases concerning democracy assistance in developing and third countries. They were interpreted broadly and allowed for an extensive thematic range of democracy assistance programmes and projects to be funded. A strange feature of the two legal bases was that the Parliament had more powers as regards developing countries than third countries. Competence in democracy promotion was shared with that of the Member States, which could act in a parallel way as long as EC and Member States coordinated their activities. Finally, Article 47 TEU strongly restricted the provision of democracy assistance under the TEU, only authorizing it when the act to be adopted mainly pursued non-EC objectives and democracy assistance was just an incidental aim.

The Treaty of Lisbon introduced important changes for EU democracy promotion, in particular the mentioning of democracy as a guiding principle and democracy promotion as an aim of all EU external action. Hitherto disputed issues, like whether human rights clauses could be included in pure trading agreements, were resolved. The new Treaty included some, although minor changes for democracy assistance, which could now be provided on the basis of Articles 209(1) and 212(2) TFEU, to be used for developing and other, third countries, respectively. The inclusion of two legal bases with an identical thematic but different geographical scope is a legacy of the pre-Lisbon legal framework and, as outlined in more detail in Chapter 4, a nearly accidental side-effect of choices made in Maastricht in 1992. A highly positive innovation was the harmonization of legislative procedures, which now gives each institution the same powers as regards developing and third countries. The field continues to be a field of shared competence. However, the new ‘collision rule’, now enshrined in Article 40 TEU, also allows for democracy

assistance to be provided under CFSP as long as the purpose of the action is the furtherance of CFSP goals.

As will be returned to further below, while envisaging an external policy of democracy promotion, primary law is silent on the strategy to be pursued, like the instruments to be used, thematic and geographical preferences of assistance, as well as on the concept of democracy underlying EU action. Several provisions of the TEU and TFEU can or do give input into the policy, like reference to international policy documents or the EUCFR. However, none really provides clear strategic or conceptual input. Overall, policy makers are left with a very large margin of discretion when implementing the policy.

Chapter 4 has identified the absence of a separate Title or Chapter on democracy promotion as a major shortcoming of the current (and previous) legal framework. Such a separate section would, amongst other things define democracy, outline principles, and in a non-exhaustive fashion enumerate its instruments. This appears relevant for questions of principle: an important, independent policy like EU democracy promotion should have a separate section in primary law. Furthermore, it would be a better guarantee for a strong external policy.

3. The Institutional and Procedural Dimension

Chapter 5 has shed light on the procedures to be followed in policy-making and implementation as regards EU democracy assistance, amongst others, to present the major stages in decision-making and the role of all involved actors, including EU institutions, civil society, and target states' governments. Overall, it has shown that both policy-making and policy-implementation involve numerous actors in different ways that to different degrees influence the decisions to be taken. Decisions on crucial features, like the thematic and geographical distribution of funds, are not taken in single documents, but are the result of numerous documents adopted at different points of time in the policy-cycle.

The analysis has shown that policy-making in the field of democracy assistance is dominated by the classical, albeit 'refined' Community method rather than any new form of governance. This implies that acts of secondary law play a crucial role in policy-making and stipulate basic principles and guidelines for the policy and for the process of implementation, even if they leave a large degree of discretion to the Commission in implementation. The most central acts of secondary law are the EIDHR and mainstream development regulations, as well as the EU budget and the Financial Regulation, which provides rules and guidelines for the implementation of the budget.

The EU institutions have adopted the relevant acts of secondary law on the basis of the powers attributed to them in the Treaties. A special procedure applies to the adoption of the EU budget. In other cases the Commission proposes the act and the Council and Parliament adopt it. Applicable legislative procedures to be used in the adoption of the EIDHR as well as of mainstream development programmes have changed frequently. In these reforms the European Parliament has increasingly received more powers, which it has also been willing to use to influence the substantive content of acts. The 2006 EIDHR regulation, for example, shows some clear traces of the preferences of the Parliament.

Next to secondary law, the three mentioned institutions have defined the use of democracy assistance in numerous different types of non-legally binding policy documents, like communications, reports, and resolutions. Indeed, before 1999, EIDHR policy-making was nearly exclusively – except for the remarks in the EU budget and the rules of the Financial Regulation – based on these policy documents. Individual institutions were differently active at different points of time to push for reforms or to introduce new initiatives.

The discussion of the stage of policy-implementation has shown that the EIDHR is exclusively implemented through the project approach, in the case of which the EU retains an important say as regards the formulation and implementation of projects. Democracy assistance as part of mainstream assistance programmes can also be implemented through the budget or sector approach, in the case of which the EU has much less control and the target state's government plays the key role in project formulation and implementation. Exact data on each approach is not available.

The first and highly crucial stage in the implementation of assistance projects in the framework of the project approach is the drafting of programming documents. Their purpose lies in the definition of concrete thematic and geographical priorities for EU democracy assistance during a particular period of time and the allocation of funds to each priority. Overall, they therefore to some extent determine the thematic and geographical allocation of funds, although not entirely. Before the early 2000s, programming was given little attention with respect to the EIDHR, which has led to criticism and has been identified as one reason for ineffective policies. In the early 2000s this was changed and a standard framework for the programming of thematic programmes was introduced. In the case of mainstream assistance programmes, for which programming documents were already adopted during the 1990s, the problems were rather the lack of reference to human rights and democracy-related questions. A common framework for their programming, introduced in 2000, necessitated the consideration of the political situation in target states and made the provision of democracy assistance more likely.

One particular feature of EIDHR programming documents, in particular of Strategy Papers (SPs), is their global perspective. They focus on the EIDHR as a globally focused programme, which should be implemented through international projects as well as, and predominantly, through projects in target countries. SPs identify uniform thematic priorities for all third states. EIDHR SPs intend to summarize over hundred individual strategies for individual countries in a single document. The EU decided to pursue such an approach in the late 1990s/early 2000s, in the wake of criticism for not being strategic and for not unifying the numerous EIDHR lines into a single programme.

Such a global perspective is problematic, as it does not guarantee a proper country-focused strategy of democracy assistance for each individual target state, taking local circumstances sufficiently into account. Such individual strategies would overall be preferable to the current arrangement, with an EIDHR SP focusing only on global projects and programmes. The current form of strategic papers and programming can nevertheless not be criticized for imposing an – in the Commission’s own words – ‘one size fits all’ approach or of imposing a particular model on each third state, irrespective of the target states’ situation. On the one hand, the global priorities that are provided in EIDHR SPs are at least in part identified with a bottom-up approach, through the involvement of Union Delegations in target states and the consultation of civil society in Europe and, albeit not in all cases, in third states. On the other hand, thematic priorities in EIDHR SPs are defined broadly and the locally implemented so-called Country Based Support Scheme (CBSS) can officially be adjusted to local circumstances by the Delegations. All in all, there is therefore room for targeted approaches, however, not during programming but rather during the subsequent stages of implementation.

Reference should at this point also be made to the recent announcement in 2011 by the Commission to draft individual human rights strategies for basically all third countries that would outline the EU’s approach in each state. It remains to be seen whether they will include a detailed programming exercise for democracy assistance in the particular state and to which extent they will affect EIDHR programming.

The Commission steers the process of drafting EIDHR programming documents and takes the final decision. It has, however, to involve numerous other actors, in particular European and also local civil society, but not, and that is defining feature of the EIDHR, target states’ governments. It seems that European NGOs mainly give input into procedural issues of implementation rather and less on thematic issues. The involvement of local civil society, which has to happen via the Union Delegations, is still insufficient. The Member States are involved through a management committee and, since 1 March 2011 an examination committee. The Parliament and, since the just mentioned date, also the Council have a right of scrutiny in order

to control if the Commission exceeds its 'implementing powers'. All in all, programming is therefore the result of inputs by numerous actors into a process guided and concluded by the Commission.

The programming process in the case of mainstream development programmes shares many features and problems of EIDHR programming, but also reveals particularities. The problem of lack of country-focused strategies discussed above does not apply, as the programming of mainstream development programmes results in individual or, at least, regional strategic documents. The major problem as regards these programmes has always been the lack of focus on democracy and human rights, due to the multiplicity of other objectives covered by the programme and the existence of the EIDHR, which was believed to primarily cover democracy assistance. The major difference between the EIDHR and the mainstream programmes as regards the programming process relates to the involvement of the authorities of the target state in the selection of priorities.

Chapter 5 has also briefly addressed the various stages of implementation following drafting of programming documents. Most importantly, it has revealed that the EIDHR is mainly implemented through calls for proposals, leaving the final recipients of grants the possibility of influencing the thematic distribution of funds. Mainstream programmes are implemented in more diverse ways, including calls for proposals, the formulation of projects by the Commission and authorities of the target state, or by the target state itself.

4. An Analysis of the EIDHR

Chapter 6 has analyzed the EU's specific democracy and human rights assistance programme, the EIDHR, both as regards policy making as well as and, in particular, as regards the implementation of the programme. While the main focus has been on democracy assistance, at times also human rights assistance was looked at, especially when no separation was possible. The EIDHR has always been the most visible democracy assistance programme in the EU, even if democracy assistance provided through mainstream programmes has from the late 1990s on outnumbered commitments under the EIDHR.

Chapter 6 has first presented data on the financial development of the EIDHR and its forerunner programmes, distinguishing between data on commitments and data on expenditure, both of which give important insights into EU engagement and together provide a complete picture thereof. In the long run, taking natural and non-natural delays into account, committed funds are, but for small parts, all being spent.

Unfortunately, separate data on EU commitments for the democracy-related and human rights-related parts of the EIDHR is not available and data on commitments can only be provided for the entire EIDHR. Table 10, included in Chapter 6, has demonstrated the gradual growth of EU commitments for human rights and democracy assistance from 1978 to 2011. In 1978 the EC budget first included a budget line of 200.000 ECU for a small human rights programme, in 1990 the commitments rose to about 22 million Euros and already included democracy assistance programmes, by the end of the century they stood at about 100 million Euros, and by 2011 the EU committed about 158 million Euros for the EIDHR forerunner programmes. The recently published proposal for the post-2013 EIDHR envisaged a further increase during the period 2014-2020, when on average about 225 million Euros will be available annually for the EIDHR. Annual commitments have so far usually grown each year, either because of the creation of new programmes or the increase of funds for already existing programmes. Remarkably, the policy shift in November 1991 led to an immediate strong increase in commitments for specific human rights and democracy assistance programmes. In comparison, commitments under mainstream programmes grew at a much slower rate, despite the Council's preference for democracy assistance as part of mainstream programmes. Reasons lie in the interest of the Parliament in the specific programmes as well as in the need to adjust mainstream development programmes to the new objective and to ensure the focus on democracy in their implementation. Overall, despite the growth of commitments for democracy and human rights assistance under the EIDHR the programme only accounts for a small share of all external assistance provided (about 1.5% between 2002 and 2007). In total, between 1978 and 2011 the EU committed about 2.1 million Euros under the EIDHR

EU expenditure data for the EIDHR and its various forerunner programmes shows a more volatile picture, due to lack of a regular pattern of implementation, like irregular calls for proposals. Detailed data is provided in Table 12, provided in Chapter 6. Between 1992 and 2006, the period for which detailed data is available, the EU spent about 1.2 million Euros for democracy and human rights assistance projects under the EIDHR. Expenditure data has also allowed for the determining of the approximate share of democracy and human rights assistance of the overall funds provided. During the period 1996 and 2000, in total about 166.6 million Euros were spent for democracy assistance worldwide under the EIDHR; during the period 2000 and 2006, about 286 million Euros were spent for democracy assistance. These amounts constituted about 45% and 39% of all EIDHR funds respectively. While democracy assistance therefore increased in absolute amounts from 2000 on, it decreased in terms of the share of overall EIDHR assistance.

One further interesting fact exposed by the statistical data on the EIDHR and the research carried out in Chapters 7 and 8 is that until 1999 more funds were committed for democracy and human rights assistance than under mainstream programmes and, moreover, until 2003 more funds were paid for democracy assistance under the EIDHR than under mainstream programmes. For an important stretch of time, the EIDHR therefore played a crucial role in the field, despite its comparatively small budget.

The second major focus in the analysis of the EIDHR has been on the thematic concentration of EIDHR assistance. It has provided insights into the concept of democracy, the model of democratization, and the approach to democracy assistance, which will be discussed in separate sections further below. A general overview of the thematic distribution and its evolution should be provided here.

Initially it should be mentioned that the thematic distribution of EIDHR funds is the result of the interaction of numerous actors at different stages. Although the EU, in particular the Commission, has overall control of the process resulting in the final distribution of funds, it is working within constraints, in particular because of the involvement of numerous non-EU actors in programming and, even more, the use of calls for proposals. The final recipients of aid can through their project proposals, even to a considerable degree, influence the thematic distribution of funds.

Some general observations on the distribution of EIDHR funds during the period 1996 and 2006, for which detailed data was available, should be made before providing more detailed data on democracy assistance. As has already been mentioned, an increasing share of the EIDHR was spent for human rights projects rather than for democracy assistance (including election observation). Secondly, the share of election observation of all EIDHR funds has increased during the period 1996 and 2006. This increase has mainly occurred at the expense of democracy assistance, the share of which has decreased. Finally, the conceptual overlap of human rights and democracy implies that numerous human rights projects also implicitly benefit democratization.

The actual distribution of EIDHR democracy assistance-related funds among different thematic sub-areas during the more recent period of analysis 2000-2006 was as follows: the largest share was spent for election observation, albeit in fact a tool different from democracy assistance but funded from the EIDHR, which received about 34% of all funds spent for EIDHR democracy assistance. This share constituted an enormous increase compared to the previous period, reflecting that EU EOMs only became a preferred policy tool in the late 1990s. Civil society development, in particular the strengthening of NGOs, and fostering civil participation received 29% of all democracy assistance funds and therefore only slightly less than election observation. It was the major field of EIDHR engagement during the 1996-2000 period

and overall, if leaving aside election observation, constituted the main area of concentration of the EIDHR. The field of rule of law development, including access to justice programmes, legal reform projects, and the independence of the judiciary, received about 16% of all EIDHR democracy assistance in 2000-2006. This was a smaller share than during the earlier period, a reduction that formed part of a conscious choice to shift rule of law projects to mainstream development programmes. Media and freedom of expression-focused projects, some of the most political elements of the EIDHR, received about 9% of all EIDHR democracy assistance. Election assistance only received about 4%, which is relatively little compared to the costs of EU EOMs and the announcement as early as in 2000 to ensure follow-ups for EU EOMs. Projects concerning so-called public institutions (like local councils and trade unions) received about 4% of the funds, transparency and anti-corruption projects made up about 4%, and parliaments received about 0.7% of all democracy assistance funds.

Questions as to the geographical distribution of funds have caused much concern in the Commission, particularly when it was decided that the EIDHR should be made more 'strategic' and therefore focus on fewer, targeted states. Overall, the Commission has over the last decade tried out various approaches, which were complex and in part not realizable. It has eventually returned to its original, simpler model, in the case of which it makes regional allocations for parts of the available funds, country-allocations for CBSSs, next to leaving some funds unallocated. All in all, over the period of analysis for which detailed data was available (1996-2006) the Commission pre-determined the allocation of about half of the available funds, while the distribution of the remaining funds was decided with the decision on a project.

Data on the regional distribution of funds for EIDHR assistance during 1996 and 2006 is different, depending on whether the number of countries per region is taken into account or not. If the number is taken into account, which should be done, the MEDA region was the major recipient, followed by South-Eastern Europe, Latin America, Central and Eastern Europe, and the NIS. Asian and ACP states received a very minor share. This distribution suggests that the EU overall invested more efforts into countries closer to home, which were for various reasons more important for the EU. Latin America constitutes the major exception. At the same time, the EU also tried to have a foot in all regions. If flows to regions are considered without taking the number of countries in regions into account, a different picture emerges, and the ACP region receives the largest share, followed by Latin America, the MEDA region, the NIS, the CEEC, Asia, and SEE.

The analysis of the distribution of funds among countries revealed a highly unbalanced picture. In most regions, except for the Mediterranean, the available EIDHR funds were distributed among very few countries. The imbalance is even more striking if looking at EIDHR

democracy assistance alone. It is difficult to establish a clear pattern as regards the distribution of funds among countries. Some of the data suggests that preference was given to politically more important states, either because of the geopolitical importance of states or particular problems in third states, like narcotics production or conflicts. The level of human rights protection and/or the level of democracy and trends in democratization did not play a role, as similar types of countries received different shares of assistance.

At last, detailed data on EIDHR projects has allowed an analysis of types of projects and partners in implementation. Between 2000 and 2006 about 55% of all projects were so-called macro projects with an average project size of 610.000 Euros, about 25% were micro-projects with an average size of about 65.000 Euros, while about 6% were targeted projects and 14% were EU EOMs. Minimum and maximum sizes for projects were adjusted several times, taking needs of NGOs as well as management capacities of the Commission into account. Two trends in projects types have been the strong increase in targeted projects in the mid- to late-1990s, when it was legally rendered an exceptional type in order to increase transparency in project selection as well as the quality of projects. Further, the EU has over the last decade increasingly built out the micro-project scheme and, its successor, the CBSS, indicating the need for country-focused programmes, implemented as closely as possible to the target state in question.

A standard critique of EU democracy assistance is that it mainly benefits western NGOs. Indeed, this study finds also that between 2000 and 2006 about 63% of all macro projects were implemented by western organizations. However, if taking the entire EIDHR into account, the majority of funds has been channeled through local organizations (43.5%) than other actors.

5. An Analysis of Mainstream Development Assistance Programmes

Chapters 7 and 8 have concentrated on the EU's mainstream development programmes and have aimed at outlining the provision of democracy assistance through these programmes, which is neglected in the literature generally speaking. That part of EU democracy assistance is also more difficult to trace due to the lack of detailed reporting in EU documents and the stronger involvement of third states that in part implement projects and sub-programmes and therefore report on it (or not) in national documents.

Chapter 7 has presented the numerous major external EU development programmes that have been implemented over the last two decades. It has shown that, following the announcement by the Council to provide democracy assistance through mainstream development programmes, already by the mid-1990s basically all external development regulations had been

amended to explicitly foresee the provision of some form of democracy assistance. In some cases, the EU hesitated to immediately insert strong and outspoken provisions, reflecting some uneasiness as regards the new objective, the critical views of target states, and the prevailing idea that the EIDHR should cover democracy assistance. In the course of the 1990s, however, the language on democracy promotion in external regulations became increasingly outspoken and committed. The numerous new regulations that became effective on 1 January 2007 continue this trend and democracy and democratization form important parts of mainstream development programmes.

Basically, all external assistance regulations follow the same structure in their provisions on democracy promotion and assistance. First, the preambles confirm the importance of democratization for successful socio-economic development. Secondly, one of the first Articles of each regulation stipulates democracy promotion to be an objective of the relevant development programme. The newer the regulation, the more outspoken the declaration is. Thirdly, most regulations envisage two to three forms of democracy promotion, including conditionality, incentive conditionality, as well as democracy assistance. Fourthly, most regulations enumerate fields of support for democracy assistance, like media or election assistance. The newer a regulation is, the more likely it does provide a more elaborate list. These lists are, however, always non-exhaustive and allow the EU to also provide support to non-mentioned sub-sectors of democracy assistance. The topics enumerated in the various regulations are highly similar to the EIDHR programme: election observation and assistance, media support, civil society support, institutional reform and support, rule of law reform, civilian control of security systems, legal reform. Additionally, the fields of good governance and human rights are mentioned. Fifthly, the regulations do not suggest a hierarchy among the mentioned sectors but leave the final pattern of distribution to the implementation stage. Moreover, no regulation reserves specific shares or amounts of available funds for democracy assistance.

EU relations with particular countries or regions are also regulated or addressed in other documents than assistance regulations, like in bi- or multilateral agreements, Common Strategies, or communications. These can and do also address the policy of democracy promotion and envisage fields of support for democracy assistance. Usually these documents do not go beyond the above provided list of sub-fields and also only provide non-exhaustive enumerations.

All in all, the various assistance regulations therefore enable the EU to provide democracy assistance in particular third states or regions and provide some indication as the sub-fields of assistance that should be targeted. They leave, however, much freedom in devising particular strategies of support in the implementation stage.

Chapter 8 has looked in more detail at the implementation of EU democracy assistance under the mainstream development programmes. Statistical data on this issue has not easily been available, but has had to be constructed with data from the OECD database on ODA flows to which the Commission has reported annually since 1995. The OECD does not collect data on democracy assistance, but on eleven sub-sectors of the so-called sector ‘government and civil society – general’. Following the thematic scope of the EIDHR, five sectors of these eleven sub-sectors have been chosen to pertain to the field of democracy assistance (legal and judicial development, democratic participation and civil society, elections, legislatures and political parties, media and free flow of information). Two further features of OECD have additionally to be kept in mind. They include data on the EIDHR, which has to be reduced in order to establish commitments and expenditure on the mainstream development data. Further, they do not report on some of the countries included in this study, like Russia, but do include data on some countries excluded from the scope of the study, like the Western Balkans.

EU commitments in the entire sector ‘government and civil society – general’, which next to the above mentioned fields of democracy assistance also include commitments for, amongst others, public sector policy and administrative development, public financial development, and human rights, strongly increased between 1995 and 2009. In 1995 the EU committed about 77 million Euros for projects in the sector, a figure that might be slightly higher due to initial weaknesses in reporting by donors; in 2006 commitments were with 1819.83 million Euros extraordinarily high; in 2009 the figure was about 1819.83 million Euros. In terms of percentages of overall ODA, commitments for the sector increased from only 1.3% in 1995 to an extraordinary 20% in 2004, while declining thereafter to about 9% in 2009. The further development remains to be seen. The increase in absolute amounts and percentages of all ODA occurred in most regions, but the EU committed more funds and higher shares in countries in Europe and North Africa than elsewhere. This confirms, as established in the discussion of the EIDHR, that the EU puts more effort into supporting countries closer to its borders. Overall, despite the strong increase the EU has usually committed less for the field of ‘government and civil society – general’ than other major donors, in particular Australia, Canada, and the US. Neither secondary law nor the programming documents for mainstream assistance regulations establish a specific share of the budget of a specific programme for the sector. The numbers and percentages provided therefore are the result of the individual preferences and decisions of all involved actors in the programming and implementation of individual assistance programmes. It is therefore also difficult to make predictions for the future development of the shares.

Although some analysts equate democracy assistance with the just discussed sector ‘government and civil society – general’, this thesis suggests that democracy only makes up one

part of this sector. Data for democracy assistance has been constructed from sub-fields of the sector, choosing those thematic sub-sectors that the EU considers to be democracy assistance in policy documents and in its specific democracy assistance programme, the EIDHR. The data suggests that EU democracy assistance – comprising assistance under the EIDHR and mainstream programmes – has increased from about 31 million Euros in 1996 to about 525 million Euros in 2008. In 2009 it decreased to about 352 million Euros. In terms of the share of democracy assistance of all ODA, the percentage of democracy assistance of all ODA grew from a very low share (around 1%) in the mid-1990s to over 4% in the mid- to late-2000s. Overall over the period 1995 to 2009 the EU committed about 3350 million Euros for democracy assistance in third (ODA recipient) countries.

A look at individual regions during the period of 1996 to 2009 shows that, despite the overall growth, in most regions the development of commitments for democracy assistance was a rather volatile one, with much variation in commitments from year to year. Despite the – quite considerable – overall increase, there was no sign of a constant, annual, and growing or at least stable commitment of funds for democracy assistance programmes or projects. Overall, this is the result of the lack of reserving a constant share for democracy assistance in secondary law or in policy documents on programming. As just mentioned, the committed amounts are the result of preferences by the numerous actors involved in programming and implementation, on the basis of the provisions of secondary law and the framework for programming that envisage democracy assistance but do not reserve specific shares or amounts for it.

Just as in the case of the EIDHR, the geographical distribution of funds has shown that the EU has invested more efforts into building democracy through democracy assistance in regions closer to its borders, in particular in Europe (like Eastern Europe and – although outside the focus of this thesis – the Western Balkans) and in Africa North of the Sahara. Additionally, Sub-Saharan Africa also appears a major recipient of democracy assistance, reserving relatively high and stable shares for democracy assistance. Levels of democracy do not seem to have played a role for the provision of democracy assistance.

Overall, compared to other major international donors the EU does not appear as a leading actor in the field of democracy assistance. For example, the US overall devotes higher amounts to democracy assistance as well as considerably higher shares of all ODA and shares of the sector ‘government and civil society – general’ to democracy assistance than the EU.

While OECD data exposes overall EU commitments for democracy assistance, Chapter 8 mainly intends to show how much democracy assistance the EU provides under its mainstream development programmes. Taking data on the EIDHR into account, Chapter 8 has shown that until about 1998 EU commitments under mainstream development programmes were very

minor: only about one fourth to one half of annual EU democracy assistance were then provided under the EU's mainstream programme. Only from 1999 did this change and mainstream development programmes started to account for an increasingly large share of all EU democracy assistance and to overshadow the EIDHR. For example, between 2004 and 2009 annual commitments for democracy assistance under mainstream programmes were between 300 and about 470 million Euros, while commitments for democracy assistance under the EIDHR were usually only between 50 and 57 million Euros. Overall, with annual variations, the EIDHR usually only accounts for about 10% to 15% of all democracy assistance provided, including the financing of EU EOMs under the mainstream programmes. While the EIDHR is the first mentioned and most widely known EU democracy assistance programme, the data just provided indicates the importance of the mainstream programmes for EU democracy assistance.

A look at individual categories of democracy assistance shows that commitments under mainstream programmes outnumber EIDHR commitments in the majority of sub-fields of democracy assistance, but not all. This is little surprise, given the conscious decision in the early 2000s to shift institutionally-focused assistance to mainstream programmes and away from the EIDHR, since 2000 about 90% of project funds for the development of the legal and judicial sphere have come from mainstream development programmes. Election support measures (including election monitoring and assistance) were in the early 2000s to a large part financed through mainstream programmes (for about 80%). With the increasing number of EU EOMs, the EIDHR has become a more important source for election support measures and in 2009 over 40% of election support measures were supported by the EIDHR, a large part of which were however used for EOMs. Interestingly civil society and civic participation measures have also for a large part – roughly 80% - been funded from mainstream programmes rather than the EIDHR, despite the fact that the EIDHR is the EU's most specific and devoted civil society instrument. The EIDHR is highly important though for difficult partnerships, in the case of which civil society cannot be built through mainstream programmes. Finally, some fields, like projects on the media and free flow of information, have nearly exclusively been funded under the EIDHR rather than through mainstream programmes.

Chapter 8 has also provided data on EU expenditure for democracy assistance. Payments in the field of democracy assistance (and other sub-fields of the category 'government and civil society – general') only started to strongly increase from about 2004/2005 on. Overall from the crucial 1991 November Council resolution, in which the Council established that the EU would provide democracy assistance through mainstream development programmes, it took the EU seven to eight years to make increasing commitments under mainstream programmes and even fourteen years to actually pay for projects, except for small amounts. This means an extremely

long delay of about fourteen years from the policy idea to its effective implementation. The delay can in part be explained by the average delay of about five years from budgetary commitments to actual payments, the hesitation by Commission staff to perform the shift to political aid, in particular in authoritarian states, and the unclear relationship between mainstream programmes and the EIDHR, in particular, the persistent belief – despite clear policy declarations – that democracy assistance should mainly (or even only) be provided by the EIDHR.

The analysis has also exposed the thematic distribution of funds among the various sub-sectors of ‘government and civil society – general’. The provided data includes data on the EIDHR, which cannot be separated due to the lack of detailed data on EIDHR commitments. Crucial decisions on the thematic distribution are taken during the programming phase, in particular the AAPs. Unsurprisingly, the sector public policy and administrative development, which for example includes projects on economic policy advice, received about half of all funds and therefore the largest share of the entire sector. An interesting insight, in view of the frequent argument made on the distribution of funds between democracy and human rights assistance, has also been that overall, including all external assistance programmes, the EU invests considerably more efforts into democracy assistance: only about 11% of all funds in the sector ‘government and civil society – general’ have been commitments for human rights projects, while about 30% have been commitments for democracy assistance. This also shows that, while democracy assistance is provided by the EIDHR and, to a large extent, mainstream development programmes, the EIDHR plays a much more important role for the sector of human rights.

As regards the five OECD sub-sectors of democracy promotion, the distribution of commitments was as follows: about 12 % of the funds of the sector ‘government and civil society – general’ was committed for legal and judicial development projects, about 10% for democratic participation and civil society projects, about 7% for election support, and rather small shares of less than 1% for the categories legislatures and political parties and media projects. As mentioned, detailed commitment data on the EIDHR is not available and it is therefore difficult to present information on the thematic preferences of mainstream programmes as opposed to the EIDHR. It appears though that the mainstream programmes put a stronger emphasis on the sector of rule of law development, but also commit considerable amounts for civil society development and civil participation. Further, while the EIDHR basically exclusively accounts for EU EOMs, election assistance is for the most part provided through mainstream programmes. Media projects have so far largely been neglected.

OECD data has also allowed an analysis of the regional distribution of funds in different sub-sectors of democracy assistance. It has shown considerable variation in the focus in individual world regions, with few regions entirely following the average pattern. Variations have

also rendered it difficult to withdraw a general pattern. It appears though that regions where authoritarianism has prevailed, like in North Africa, Far East Asia and South and Central Asia, the EU has preferred providing rule of law assistance and in several thereof generally refraining from more political aid, like electoral assistance.

6. The EU's Motivations to Provide Democracy Assistance

There are plenty of references to the reasons for EU democracy (and human rights) promotion, including democracy assistance. These are, however, usually rather general and simplified statements and fail to present their exact effect on democracy and democratization. This makes it also difficult to say whether instrumental or value-driven motivations prevail. Moreover, the various motivations are spread out over numerous documents and nowhere mentioned comprehensively.

The most often mentioned reason for EU democracy promotion is its assumed positive effect on socio-economic development. The EU believes that successful democratization is a condition for developing a country socio-economically and therefore for the success of its development policies. It does not, however, explain the exact relationship in more detail. Secondly, EU documents frequently mention that democratic states are more peaceful and politically stable and that a higher number of democracies means a higher level of local, regional, and global security. Thirdly, on one occasion the European Commission explicitly spoke of “moral imperatives” to promote democracy abroad. Frequent references to the ‘universality’ of human rights and therefore to the idea that each human person should be endowed with the same rights irrespective of her or his country of origin, allude to similar value-driven underlying motivations. Fourthly, in one of the Commission’s early documents on EU democracy promotion, which was clearly influenced by the ongoing events in Central and Eastern Europe in the late 1980s and early 1990s, that institution referred to European public opinion as one reason for the provision of democracy support. Fifthly, the EU was clearly also pushed into its role as international promoter of democracy by other Western actors, which started to pursue equal policies in the 1980s and 1990s. In this sense the policy constitutes a tool for establishing the EU’s international presence and of promoting its image in third states. Finally, individual EU institutions had their own motivations for beginning and pursuing an EU policy of democracy promotion. In particular the European Parliament used the theme to promote its role and visibility within the EU and abroad.

The various reasons constitute value-driven or instrumental motivations or present mixtures of both. It is difficult to judge which of the two is prevailing, in particular also because of the lack of more elaborate discussions of the issue in EU documents. Overall, just as other international promoters of democracy, in particular states or international organizations, EU action is driven by a combination of self-interests and normative motivations.

7. The Model of Democracy

Does the EU attempt to build a specific form of democracy in third states and, if yes, which one? This first major basic or overarching question this thesis has tried to answer concerns the model of democracy that underlies EU action. The thesis has first analyzed EU policy documents in order to see whether the EU or individual EU institutions have addressed the question explicitly and, in the affirmative, which definition they have suggested. Secondly, the thesis has looked at the EU's specific democracy assistance programme and its mainstream development programmes in order to determine whether specific models emerge in the course of the implementation of EU democracy assistance.

The question of the underlying model of democracy and its explicit definition has always been one of the most contentious ones in the discussion of EU democracy assistance. The topic has been raised several times in the EU framework, with some voices calling for the explicit provision of a definition of democracy and others preferring to remain vague or silent on the issue. The main reason for the disputed nature of the topic lies in the fear of critique for imposing some alien model of democracy on third states, in particular some 'European model', which does not match local circumstances and situations and, moreover, could be considered some form of neo-colonialism. The EU has also declared the non-imposition of alien models as one of the principles of EU democracy assistance. Consequently, the EU would only facilitate the development of locally rooted processes of change leading to the development of a locally chosen model of democracy.

The three main EU institutions involved in EU democracy assistance have relatively constantly held diverging views on the topic. The Parliament has been the staunchest defender of adopting an explicit definition of democracy for EU democracy promotion policies. It has not, however, drafted and suggested a definition by itself. Most recently, in 2009, in the context of intensive discussions on developing an 'EU consensus on democracy support', it suggested linking EU policy to the conception of democracy suggested by the UN General Assembly, which would (also) make it less prone to critique of imposition and Eurocentrism. The Council,

which is the institution that would need to publicly adopt the EU's definition of democracy, has not followed-up on the issue. Overall, it has been the most critical institution concerning the topic and has exercised strong restraint on making policy declarations on the issue. The Commission has pursued the most pragmatic path. It has on various occasions tried to explicitly define democracy, like in COM(2011) 303 final and COM(2011) 886 final, or has developed the individual elements of democracy during the implementation of specific democracy assistance and governance programmes. It has, however, not stressed that it was suggesting *the* EU's definition of democracy and has not made suggestions to the Council for adoption of its proposed definition.

The official position of the Council is currently that the EU is not promoting a specific model of democracy and that it therefore refrains from providing a definition. Rather, according to the Council, the EU is promoting a range of universally accepted common principles of democracy. Unfortunately, the Council does not comprehensively enumerate these principles. It only refers to various features, which all democracies supposedly share, including elections, accountable rulers, parliaments, political parties, an independent media, civil society, and respect for a broad range of human rights. The Commission's documents mention the same elements, in addition to the rule of law, the separation of powers, political and civil rights like the freedom of association, assembly, and expression, transparent and non-corrupt administrations, and at times, decentralization.

The analysis of the EU's major democracy assistance programmes confirms its engagement in the enumerated areas. Additionally, the EIDHR and mainstream development programmes suggest providing assistance in the following fields, which partly overlap with the above-mentioned areas: institutional reform and support (for legislative and executive bodies), legal reform, and civilian control of the security system. The implementation of the specific democracy assistance and general development programmes reveals EU engagement in the same fields, of course to different degrees in different geographical areas and countries and at different points in time.

Despite the Council's suggestion that the EU is not promoting a specific model of democracy, there is strong evidence that the EU is working within a specific model: a basic model of liberal democracy that shows all the essential features identified by Robert Dahl as well as, going beyond the basic elements, the rule of law. The EU is doing more than promoting basic principles: it promotes specific procedures, actors, and institutions that do realize principles but are much more concrete than principles, which are by definition more basic and abstract ideas. Overall, both policy document and an analysis of the implementation of programmes shows that the EU promotes a basic model of liberal democracy in its external democracy assistance policy.

There is no evidence that beyond this basic model the EU promotes a more specific model of (liberal) democracy, like the ones presented in Chapter 1. The increasing share of funds of the EIDHR used for EU EOMs as well as increasing amounts committed for democracy assistance under mainstream programmes from the early 2000s on could point to an elitist model of democracy. The EU has, however, on various occasions explicitly distanced itself from such limited form of democracy and has introduced upper limits to the funds that can be reserved for EU EOMs. Additionally, the election-focused support has always been balanced by an at least equally strong focus on civil society development, which is incompatible with an elitist form of democracy. Civil society development has always been a central focus of EU democracy assistance and has overall received one of the largest shares of all thematic sectors; however, policy documents and the form of civil society assistance provided suggests that the EU facilitates the development of civil society to perform its role in liberal democracy – as providers of policy-inputs and as watchdogs – rather than to create a form of pluralist democracy. The support provided to governmental and parliamentary institutions also speaks against the pluralist model. Both the focus on elections and representative democracy and the focus on state institutions exclude the participatory model of democracy. At last – although a broader range of conceptions of democracy exist in the literature and could taken into consideration at this point – there is also no real evidence that the EU promotes social democracy. The EU promotes social development through its mainstream development programmes, constantly stresses the indivisibility of human rights and therefore the importance of social rights, and has stressed the need of a just distribution of development gains in developing countries. It has not, however, explicitly linked its democracy agenda with social features that would allow a clear identification of social democracy.

While the EU is working within the liberal model of democracy and envisages support in a pre-defined range of thematic areas of support, the concrete model of democracy to be supported in a particular third state is to a considerably degree influenced and/or decided by target states' governments and recipient civil society groups and not imposed by the EU. The reason for this lies in the EU's programming and project implementation methods that envisage agreement with target states' governments or, albeit still with some difficulties, the involvement of local and EU-based civil society in EIDHR programming and the use of call for proposals in the implementation of the EIDHR and, to some degree, also mainstream programmes. Overall, as long as assistance remains within the liberal model of democracy, individual target states and/or their civil societies can for this reason suggest or push for a the support of a specific model of democracy that goes beyond the basic liberal model suggested in EU policy documents and programmes. All in all, the EU does not envisage or push for such specific models to be

supported, but allows such specific support and focus upon the wishes and initiatives of recipient states and societies as well as European civil society, as long as support remains with the basic liberal model.

8. The EU's Approach to Democratization

Of the two basic approaches to democratization – the structural and the transition approach – EU democracy assistance very clearly pertains to the transition approach. There is no indication that the EU still believes that socio-economic development, the most important factor in the developmental approach, is a precondition of democratization and/or that socio-economic development would necessarily lead to political reform and to democracy. The EU to a strong degree engages in socio-economic development, however, not to promote democracy, but just to achieve the objective of socio-economic development itself. Recently, in the framework of the upheavals in the Southern Mediterranean there have been calls for a better linkage between efforts to promote socio-economic development and democratization. It recognizes that democratization can benefit from higher grades and levels of socio-economic development, but does not render socio-economic development a condition and therefore does not change the basic approach to democracy assistance. Overall, the EU therefore assists in the development of democracy through assistance to actors, institutions, and processes in order to facilitate political liberalization, transition, and the consolidation of democracy rather than promoting democracy through socio-economic development.

Within the transition approach it is difficult to establish a clear preference of the EU for a particular approach to democratization. Although individual EU institutions have discussed questions relating to EU democracy assistance that indirectly inform parts of its approach to democratization, they have not explicitly expressed a clear preference for a specific approach, like for a top-down approach in which reformers or soft-liners of the ruling regime are supported or a bottom-up approach in which civil society is developed and encouraged to push for reform. All in all, the broad spectrum of thematic areas supported and the existence of different types of democracy assistance programmes with different programming and project selection modes in principle allows pursuing different approaches, depending on the EU's choice as regards a particular country as well as the specificities of the political situation in the target state and the preferences and possibilities of its actors.

Despite this broad spectrum of possible approaches the EU has so far overall preferred a gradual, bottom-up approach to democratization. Ideally it would like to see informed citizens and strong civil society organizations push their governments to gradually introduce democratic

reforms, supported by reformed public institutions staffed with pro-democracy-minded officials and a reformed, independent judiciary that would in crucial moments take the side of pro-democracy forces. This preferred approach finds expression in both the thematic focus of EU aid and its predominant programming method. Thematically, there is a strong focus on projects in the sector of democratic participation and civil society development, with the majority of projects aiming at informing citizens of their (human) rights and supporting civil society organizations in carrying out their typical role in democratic systems of government, which also raises these organizations' expectations. Additionally the EU strongly focuses on the fields of legal and judicial development as well as supporting areas pertaining to the field of good governance, which would eventually facilitate political reform processes and support civil society demands. Furthermore, the largest part of EU democracy assistance is programmed in cooperation with the target state's government, which points to a gradual process of reform in agreement with the mentioned governments. The EU has the possibility of exceptionally providing assistance at very short notice upon the demand posed by special circumstance, but this is, as mentioned, the exception rather than the rule.

A top-down approach would require a stronger focus on the reformist political elite of a third state, either on soft-liners of the ruling regime or political opposition figures and parties. EU democracy has so far largely avoided such engagement, although it could in principle be carried out through an EIDHR project under the leadership of a European political foundation. Further, the revolutionary approach cannot be excluded either. EU support to civil society may lead to revolutionary actions that aim at overthrowing a leading un-democratic regime. There is no indication though that the EU intentionally aims at training NGOs and other groups to carry out such activities.

9. The EU's Approach to Democracy Assistance

EU policy makers have over the course of the last two decades at various times discussed topics that relate to the EU's approach to democracy assistance, like on its thematic focus or time-perspective. Only more recently have they, however, began to explicitly speak of 'approaches' and to more consciously reflect on the EU's approach and its possible reform. The issue is one of the very few cases in which EU institutions have shown a strong interest in the academic discussion of a democracy assistance-related topic and taken over terminology developed in that framework, whilst giving the concepts of 'developmental' and 'political' approach a slightly different meaning than has been done by Thomas Carothers.

Overall, just as with the model of democracy and the EU's approach to democratization, it is difficult to extract the EU's preferred approach to democracy assistance from EU policy documents, programmes, and implemented projects. The main reasons are the lack of explicit statements on the topic until recently and the lack of detailed information on individual substantive areas of EU support. Nevertheless, the available documents and data show that both approaches exist in EU democracy assistance, both in the EIDHR and its mainstream development programmes. Overall, in both cases the EU gives preference to the developmental approach over the political approach to democracy assistance. In the case of the EIDHR there are stronger traces of the political approach than within mainstream assistance programmes, albeit of a moderate version thereof that, in particular, lacks a strong focus on political parties. In the case of mainstream assistance programmes there is a clear preference for the developmental approach, although the political approach is not entirely excluded either.

As mentioned in the discussion of the EU's approach to democratization, the preferred approaches mainly derive from the substantive distribution of funds and from programming and aid implementation methods. EU democracy assistance is distributed over a thematically broad range of areas including such pertaining to the state apparatus as well as the independent third sphere of civil society. Assistance is given to state institutions at local, regional, and national level; there is a strong focus on rule of law reform with a particular emphasis on the judiciary and access to justice issues; democracy assistance has been strongly linked to human rights assistance and good governance reform. Civil society assistance facilitates the development of a broad range of civil society organizations, including many moderate organizations whose primary objective is not the immediate change of the political regime. Assistance is to a large extent programmed in cooperation with the target state's government and is, in basic features, planned for time spans of up to seven years ahead. All these features are indications of the EU's preferred developmental approach to democracy assistance.

Elements of the political approach are the provision of assistance to regime-critical civil society organizations, human rights defenders, the media, and projects concerning the independence of the judiciary. Although some of these sectors are mainly targeted by the EIDHR, they do also receive support under the mainstream programmes. Several procedural features of the EIDHR further support the existence of the political approach. EIDHR assistance, although known to target state's governments, is programmed without the involvement of these governments and therefore in principle able to support more regime-critical projects than mainstream programmes. Since 2006, political foundations, which are amongst others strongly involved in political party development, are explicitly mentioned as eligible recipients of EIDHR funds. Since 1999 a certain, albeit small, share of EIDHR funds is not

programmed in advance but kept in reserve for unforeseen events. This allows the EU to quickly act in unexpected but crucial times, including the case of regime changes.

Finally, more recently EU institutions explicitly discussed the limited use of the political approach in EU democracy assistance and deliberated about its development, in particular through a stronger focus on political party development and more possibilities to support civil society organizations and civic movements engaged in democratization processes. While political party development has largely been delegated to the European Endowment for Democracy (EED) that is currently being created outside the formal EU framework, the Commission is creating a specific civil society facility to provide increasing support to actors of the third sector.

10. Key Remaining Issues

This thesis has revealed several issues that appear problematic in policy-making and the implementation of EU democracy assistance. Some have already been mentioned in this concluding part of the thesis. The most salient issues should briefly be listed here.

The first issue relates to the issue of explicit statements on the model or models of democracy supported by the EU. The Council currently prefers the view that the EU is not facilitating the establishment of a particular type of democracy, but just some universally accepted principles, without, however, mentioning these. Various EU documents and its programmes suggest, on the contrary, that the EU is promoting some basic model of liberal democracy and, depending on the input of recipient states' governments and civil society, more specific versions thereof. It is suggested here that the Council should be more outspoken on this issue and explicitly stipulate what the EU is indeed doing – promoting some form of liberal democracy in the broad sense – and offering assistance for specific models that form part of the basic liberal model. At the very least, the Council needs to list the various basic principles of democracy it suggests to promote.

Secondly, despite considerable experience of with democracy assistance programmes, there is need for a stronger conceptual engagement with the numerous thematic areas of EU democracy support. The EU, in particular the Commission, has so far failed to commission experts – academics, consultants, research institutes – to develop papers or handbooks on all core thematic areas of EU democracy assistance. Such papers would engage in detail in a conceptual discussion of the particular field in question, address issues that could arise in different cultural contexts, like on possible different conceptions of civil society in Muslim states, advise on viable strategies of support and should comprehensive inform EU policy-makers and

those involved in the implementation of assistance programmes about the particular area in question. Such documents exist for election-related reform and, more recently, for parliamentary support. A comprehensive handbook on governance reform includes short sections on various topics, is, however, little visible. Topics like civil society, civil-military relations, the media, and political parties have so far insufficiently been addressed.

Thirdly, ever since the mid-1990s the Commission has mentioned the need for proper knowledge of the situation in third states for EU policy-making and aid implementation. The information base has improved with the opening of an increasing number of Commission – now EU – Delegations in third states and the increasing deployment of human rights experts in these Delegations. Specific tools to collect detailed information as to the level of democracy – on the basis of data for various pre-defined sub-systems of democracy – have been developed for various regions, in particular the ACP countries and the ENP region, but not for all. Calls for a standardized format for the collection of information – similar to procedures in the US – were rejected in the early 2000s. It is suggested here that such a standardized format for detailed information on the democratic situation in all third states – possibly including the human rights dimension – should also be used in the EU. It could be developed on the basis of existing tools, like the existing governance profiles. Such standardized democracy and human rights data sheets would provide the EU with a better basis for policy-making towards those states for which such tools do not yet exist, would ensure enhanced objectivity as all states would be assessed on the basis of the same structure, and would render the overall EU framework less complex and simpler.

Fourthly, the decision of the EU to draft individual human rights strategies for all third states that are targeted by EU human rights promotion policies has to be welcomed. It will have to be seen to which extent these strategies will also in detail cover issues of democratization. It is suggested here that the EU needs an individual democratization strategy for each third state in which it promotes democracy. This strategy, which should be based on the above suggested standardized information sheets, should be comprehensive in the tools it covers and also relate to the EIDHR and mainstream programmes. Depending on the level of democracy in the particular third state in question, especially whether a country has already undergone a transition to democracy and is in the process of consolidation, or whether it is still ruled by an authoritarian government, the government of the third state can be involved in the deliberations of the strategy. Similarly, local civil society organizations as well as European civil society organizations working in the field should be involved in deliberations as far as these organizations exist and can be addressed. Overall, the final decision on the strategy should, however, be taken by the EU.

Fifthly, as suggested by numerous other actors and some of the EU institutions themselves, there is need for the EU to more strongly pursue a political approach to democracy assistance. Political parties are crucial actors in existing (liberal) democracies and functioning models in which political parties are replaced by different bodies have not yet been used in practice. The EU has so far largely avoided engaging in political party support, for the fear of being accused of political intervention. The US and political foundations have not. If handled carefully and if support is distributed among numerous parties – on the condition that they respect democratic rules of the game – such support can be provided without having to fear political critique. Additionally, analysis of EU programmes has shown a limited engagement in media development, which is an area that necessarily has to be given a stronger focus.

Sixthly, the EU has made commitments to more strongly involve European and local civil society in aid programming, both, for the EIDHR and mainstream programmes. In practice, it does not yet live up to this expressed commitment. There is need that the Delegations search for more civil society contacts in the particular countries for which they are responsible. They need to be staffed and provided with funds accordingly. European civil society is also deploring the lack of sufficient impact in EU democracy assistance programming, and more timely meetings and a better flow of information should be ensured.

Seventhly, the global approach to EIDHR programming with the attempt to establish globally valid priorities that should then be implemented in all states but can also be adapted if they do not fit local situations should be given up. Rather, EIDHR programming documents – strategy papers – should consist of two separate sections. On the one hand, a globally-focused section should establish a set of global priorities that will be targeted in all states and through global calls for proposals. On the other hand, the EU should programme EIDHR assistance for each target state individually, that is, CBSSs should be programmed for each state without the need for common global priorities. Individual CBSS programming documents can then be included in the EIDHR strategy paper and form its – of course comprehensive – second part. Importantly, CBSS programming documents have to be based on EU democracy strategies for the particular state in question.

Finally, on the major current and future issues is the question of the coherent application of all existing EU democracy promotion tools, both supranational ones as well as CFSP tools. This in particular also encompasses the coherent use of democracy assistance funds under the mainstream development programmes and the EIDHR. The EU has for many years been aware of this problem and its difficulty and has introduced measures to ensure coherent use, like the need to take EIDHR programming into account when programming the respective mainstream assistance programme. Similarly, it has recognized the need to complement EU EOMs with

election support measures. A major tool to increase coherence would be the above mentioned democracy strategies for individual states, which would be guiding documents for the programming of individual democracy assistance programmes and would address questions of the coherent use of instruments before the actual programming processes of the EIDHR and mainstream programmes.

Appendix

Table A: EU Commitments for the EIDHR its Forerunner Programmes¹⁵⁰⁹
(Source: EU budgets 1978-2011¹⁵¹⁰)

Year	Budget-Titles or Chapters	Short name of Programme or Budget Line	Commitments (in million Euros)	Commitments in reserves (million Euros)
1978	293	NGOs humanitarian and human rights promotion	0.2	
1979	293	NGOs humanitarian and human rights promotion	0.2	
1980	293	NGOs humanitarian and human rights promotion	0.2	
1981	293	NGOs humanitarian and human rights promotion	0.2	
1982	293	NGOs humanitarian and human rights promotion	0.2	
1983	293	NGOs humanitarian and human rights promotion	0.2	
1984	293	NGOs humanitarian and human rights promotion	0.35	
1985	293	NGOs humanitarian and human rights promotion	0.35	
1986	293	NGOs humanitarian and human rights promotion	0.35	
	992	NGOs in Chile	2	
			2.35	
1987	303	NGOs humanitarian and human rights promotion.	0.37	
	992	NGOs in Chile	2	
			2.37	
1988	303	NGOs humanitarian and human rights promotion	0.90	
	992	NGOs in Chile	3	
			3.9	
1989	303	NGOs humanitarian and human rights promotion	1.3	
	992	NGOs in Chile	5	
			6.3	
1990	303	NGOs humanitarian and human rights promotion	1.8	
	992	NGOs in Chile	10	
	3021	Democracy in Chile and Central America	10	
			21.8	
1991	A-3030	NGOs humanitarian and human rights promotion	1.8	
	B7-5073	NGOs in Chile	5	
	B7-5078	Democracy in Chile and Central America	10	
	B7-5076	NGOs protecting human rights	0.2	
			17	
1992	A-3030	NGOs humanitarian and human rights promotion	2.8	
	B7-5073	NGOs in Chile	4.5	
	B7-5078	Democracy in Chile and Central America	10	
	B7-5053	Human rights and democracy in developing countries	10	
	B7-6000	Phare Democracy	5	
			32.3	
1993	A-3030	NGOs humanitarian and human rights promotion	3.5	
	B7-5073	NGOs in Chile	4.85	
	B7-5078	Democracy in Chile and Central America	15	
	B7-5053	Human rights and democracy in developing countries	16	
	B7-6000	Phare Democracy	5	

¹⁵⁰⁹ Because administrative expenditure is not been mentioned in the table, the sum of the commitments of individual items in one budget year does at times not correspond to the mentioned total.

¹⁵¹⁰ The mentioned budgets 1978 to 2006 have been published in the following OJs: Budget 1978: OJ 1978 L36; Budget 1980: OJ 1980 L242; Budget 1981: OJ 1980 L378; Budget 1982: OJ 1982 L31; Budget 1984: OJ 1984 L12; Budget 1985: OJ 1985 L206; Budget 1986: OJ 1985 L358; Budget 1987: OJ 1987 L86; Budget 1988: OJ 1988 L226; Budget 1989: OJ 1989 L26; Budget 1990: OJ 1990 L24; Budget 1991: OJ 1991 L30; Budget 1992: OJ 1992 L26; Budget 1993: OJ 1993 L31; Budget 1994: OJ 1994 L34; Budget 1995: OJ 1994 L369; Budget 1996: OJ 1996 L22; Budget 1997: OJ 1997 L44; Budget 1998: OJ 1998 L44; Budget 1999: OJ 1999 L 39; Budget 2000: OJ 2000 L 40; Budget 2001: OJ 2001 L 56; Budget 2002: OJ 2002 L 29; Budget 2003: OJ 2003 L 54. Since 2007 EU budgets are published at <http://eur-lex.europa.eu/budget/www/index-en.htm> (last accessed on 1.7.2012).

	B7-5079	NGOs working for human rights in Turkey	0.5	
				44.4
1994	Chapter B7-52 ¹⁵¹¹			
	B7-5200	Phare Democracy	5	
	B7-5201	Support peace process and develop democracy in former Yugoslavia	-	4
	B7-521	Tacis Democracy	5	
	B7-522	Support for human rights and democracy in developing countries	14	
	B7-523	Support to democratization in Latin America (LA)	13	
	B7-5240	NGOs pursuing human rights objectives	5	
	B7-5241	NGOs working for human rights in Turkey	0.5	
	B7-525	European Forum for migrants	0.6	
	B7-527	Rehabilitation centres for torture victims and NGOS helping victims of human rights abuses	2	
				45.1
1995	Chapter B7-52			
	B7-5200	Phare Democracy	11	
	B7-5201	Support peace process and develop democracy in former Yugoslavia	5	
	B7-521	Tacis Democracy	10	
	B7-522	Support for human rights and democracy in developing countries	14	
	B7-523	Support to democratization in LA	14	
	B7-524	Subsidies for NGOs pursuing human rights objectives	6	
	B7-526	Support for freedom of expression/press	-	
				60
1996	Title B7-7 ¹⁵¹²			
	B7-703	Support to democratization in LA	14	
	B7-702	Support for human rights and democracy in developing countries	19	
	B7-7000	Phare Democracy	11	
	B7-7001	Support peace process and develop democracy in former Yugoslavia (YU)	5	
	B7-7002	Enforcement of Sanctions in YU	8.75	
	B7-704	NGOs human rights activities	7	
	B7-701	Tacis Democracy	11	
	B7-705	Meda for democracy	9	
	B7-706	Press freedom	-	
1997	B7-7			84.75
	B7-7000	Phare Democracy	10	
	B7-7001	Support peace process and develop democracy in former YU	5	
	B7-701	Tacis Democracy	10	
	B7-702	Support for human rights and democracy in developing countries	17	
	B7-703	Support to democratization in LA	12.6	
	B7-704	NGOs human rights activities	7	
	B7-705	Meda for democracy	8	
	B7-707	Torture victims	6	
	B7-708	Int. criminal tribunals and ICI	3	
	B7-709	Transition and Supervision of Elections	-	

¹⁵¹¹ Chapter B7-52 is part of Chapter B7-50 concerning 'Other Cooperation Measures'.

¹⁵¹² Technically Title B7-7 is a Title of Subsection B7 (External Relations), which is part of Part B (Expenditure) of Volume 4 (Section 3) of the EU budget relating to the Commission. Title B7-7 contains several Chapters on various elements of the EDIHR.

			78.6	
1998				
	B7-700	Phare Democracy including SEE	15	
	B7-701	Tacis Democracy	10	
	B7-7020	Support for human rights and democracy in developing countries	17	
	B7-7021	HR and D in southern African countries	5	
	B7-703	Support to democratization in LA	12.6	
	B7-7040	NGOs human rights activities	14.7	
	B7-705	Meda for democracy	10	
	B7-707	Torture victims		
	B7-708	Int. criminal tribunals and ICI	3	
	B7-707	Human Rights and Democracy in Asian countries	5	
	B7-709	Transition and Supervision of Elections	2	
	B7-710	Special programme for democracy and good governance in Nigeria	3	
			97.3	
1999				
	B7-700	Phare Democracy including SEE	15	
	B7-701	Tacis Democracy	10	
	B7-7020	Support for human rights and democracy in developing countries. in particular ACP	17	
	B7-7021	HR and D in southern African countries	4	
	B7-7022	Special programme for democracy and good governance in Nigeria	4	
	B7-703	Support to democratization in LA	12.6	
	B7-7040	NGOs human rights activities	15	
	B7-705	Meda for democracy	10	
	B7-707	Torture victims		
	B7-708	Int. criminal tribunals and ICI	3.3	
	B7-707	Human Rights and Democracy in Asian countries	5	
	B7-709	Support for. and supervision of. electoral processes	2	
			97.9	
2000	Title B7-7			
	B7-700	Democracy in CEEC and former Yugoslavia	11.8	
	B7-701	Democracy in NIS and Mongolia	7	
	B7-7020	Human rights and democracy in developing countries	14.6	
	B7-7021	Human rights in Southern African countries	4	
	B7-703	Democratization in Latin America	14.6	
	B7-704	Organizations pursuing human rights objectives	14	
	B7-705	Meda for democracy	9	
	B7-706	International criminal tribunals and International Criminal Court (ICC)	2.9	
	B7-707	Human rights and democracy in Asian countries	7	
	B7-709	Democratic transition and electoral supervision	4.6	
		Various headings concerning administrative expenditures for individual programmes		
			94.8	
2001	Title B7-7			
	B7-701	Promotion and defence of human rights and fundamental freedoms	35	
	B7-702	Support for democratization process and strengthening rule of law	35	
	B7-703	Conflict prevention and restoring civil peace	19	
	B7-704	International criminal tribunals and International Criminal Court (ICC)	3	
	B7-705	Democratic transition and electoral supervision	5	

		Additional headings on administrative expenditure		
				102
2002	Title B7-7			
	B7-701	Democracy and the rule of law – respect for human rights and fundamental freedoms	95.4	
	B7-702	International criminal tribunals and International Criminal Court (ICC)	5	
		Additional administrative expenditure		104
2003	Title B7-70			
		Democracy and the rule of law – respect for human rights and fundamental freedoms	94	
		International criminal tribunals and International Criminal Court (ICC)	7	
		Additional administrative expenditure		106
2004	Chapter 19 04 ¹⁵¹³			
	19 04 01	European Inter-university Centre	-	1.7
	19 04 02	Support for victims of human rights abuses	7	
	19 04 03	Democracy and the rule of law – respect for human rights and fundamental freedoms	110.5	
	19 04 04	International criminal tribunals and International Criminal Court (ICC)	7	
	19 04 05	Pilot project to establish a conflict prevention network	4	
				125.6
2005	Chapter 19 04			
	19 04 01	European Inter-university Centre	1.7	
	19 04 02	Support for victims of human rights abuses	-	7 (Chapter 31 02)
	19 04 03	Democracy and the rule of law – respect for human rights and fundamental freedoms	-	104.2 (Chapter 31 02)
	19 04 04	International criminal tribunals and International Criminal Court (ICC)	-	7 (Chapter 31 02)
	19 04 05	Pilot project to establish a conflict prevention network	-	
				1.77 118.6 (Chapter 31 02)
2006	Chapter 19 04			
	19 04 01	European Inter-university Centre	1.8	
	19 04 02	Support for victims of human rights abuses	7	
	19 04 03	Democracy and the rule of law – respect for human rights and fundamental freedoms	105.4	
	19 04 04	International criminal tribunals and International Criminal Court (ICC)	7	
	19 04 05	Pilot project to establish a conflict prevention network	1.5	
				122.7
2007	Chapter 19 04			
	19 04 01	European Inter-university Centre	-	
	19 04 02	Democracy and human rights		
	19 04 02 01	Democracy and human rights in ENPI countries	-	
	19 04 02 02	Democracy and human rights in DCI countries	-	
	19 04 02 03	Democracy and human rights in IPA countries	-	
	19 04 02 04	Democracy and human rights in countries covered by the Stability Instrument	-	
	19 04 03	EU electoral and observation missions	-	
	19 04 03 01	Electoral and observation mission in ENPI countries	-	
	19 04 03 01	Electoral and observation mission in DCI countries	-	
	19 04 04	Preparation to establish a conflict prevention network	1.5	

¹⁵¹³ Starting with the 2004 budget, the EU budget was given a new type of numbering. Technically Chapter 19 04 is part of Title 19 (External Relations), which is part of Volume 4 (Section 3) of the budget relating to the Commission. Chapter 19 04 contains several Article items on various elements of the EIDHR.

	19 04 06	European Instrument for Democracy and Human Rights		129.97 (Chapter 40 02)
				1.5 129.97 (Chapter 40 02)
2008	Chapter 19 04			
	19 04 01	European Instrument for Democracy and Human Rights	106.1	
	19 04 02	Pilot project – European emergency judicial assistance	-	
	19 04 03	Electoral observation	31	
	19 04 04	Preparation to establish a conflict prevention network	-	
				137.1
2009	Chapter 19 04			
	19 04 01	European Instrument for Democracy and Human Rights	116.29	
	19 04 02	Pilot project – European emergency judicial assistance	-	
	19 04 03	Electoral observation	32.07	
	19 04 04	Preparation to establish a conflict prevention network	-	
				148.35
2010	19 04 01	European Instrument for Democracy and Human Rights	116.5	
	19 04 02	Pilot project – European emergency judicial assistance	-	
	19 04 03	Electoral observation	37.7	
	19 04 04	Preparation to establish a conflict prevention network	-	
				154.2
2011	Chapter 19 04			
	19 04 01	European Instrument for Democracy and Human Rights	118.31	
	19 04 03	Electoral observation	38	
	19 04 04	Preparation to establish a conflict prevention network	-	
	19 04 06	Pilot project Civil Society Forum EU-Russia	0.4	
	19 04 07	Pilot project Funding for victims of torture	1	
				157.7

Table B: Micro Project Facility Allocations per Region and Country 1999-2006 (in 100.000 Euros)¹⁵¹⁴

	Region/Country	1999	2000	2001	2002	2003	2004	2005	2006	Total
	CEE and SEE									
1	Albania	165	524	400	0	0	0	525	402	2016
2	BiH	230	619	1000	500	500	435	855	615	4754
3	Bulgaria	325	444	0	0	0	0	0	0	769
4	Croatia	210	969	1000	0	0	0	0	0	2179
5	Czech Rep.	280	300	0	0	0	0	0	0	580
6	Estonia	110	100	0	0	0	0	0	0	210
7	FYROM	100	519	500	0	0	0	0	250	1369
8	Hungary	370	319	0	0	0	0	0	0	689
9	Latvia	120	100	0	0	0	0	0	0	220
10	Lithuania	120	100	0	0	0	0	0	0	220
11	Poland	470	0	0	0	0	0	0	0	470
12	Romania	460	309	0	0	0	0	0	0	769
13	Slovakia	190	200	0	0	0	0	0	0	390
14	Slovenia	70	100	0	0	0	0	0	0	170
15	Serbia & Montenegro	280	115	0	500	500	435	745	535	3110
16	Turkey	0	0	600	600	600	520	515	385	3220
	Regional Total									21135
	Western NIS/Caucasus									
17	Armenia	125	0	500	0	0	0	800	765	2190
18	Azerbaijan	0	0	0	0	0	0	0	0	0
19	Belarus	250	0	0	0	0	0	420	400	1070
20	Georgia	125	0	500	500	500	435	1025	950	4035
21	Moldova	0	0	0	0	0	0	0	0	0
22	Russia	750	1000	1000	1000	1000	870	1555	1415	8590
23	Ukraine	250	0	0	600	600	520	1025	950	3945
	Regional Total									19830
	Central Asia									
24	Kazakhstan	250	300	800	0	0	0	1135	1030	3515
25	Kyrgyzstan	0	100	400	0	0	0	570	550	1620
26	Tajikistan	0	0	300	0	0	0	570	550	1420
	Regional Total									<i>6555</i>
	Asia									
27	Afghanistan	0	0	0	0	0	0	570	550	1120
28	Bangladesh	0	0	0	0	0	0	525	403	928
29	Cambodia	0	0	0	0	500	435	680	480	2095
30	China	0	840	0	0	500	435	800	0	2575
31	Indonesia	0	0	0	800	800	690	760	533	3583
32	Laos	0	0	0	0	0	0	490	375	865
33	Nepal	0	0	200	0	400	345	490	375	1810
34	Pakistan	0	0	500	500	500	435	745	535	3215
35	Philippines	0	0	0	0	0	0	0	0	0
36	Sri Lanka	0	0	0	0	0	0	490	375	865
37	Vietnam	0	0	0	0	0	0	385	275	660
	Regional Total 99-06									17716

¹⁵¹⁴ Sources: SEC(2001) 891, at 4. Micro-Projects Facility; EIDHR Programming 2005-2006, Annex I; EIDHR Annual Work Programme 2005, Annex 2; EIDHR Annual Work Programme 2006, Annex 2.

	Mediterranean/Middle East									
38	Algeria	0	0	0	400	500	435	800	765	2900
39	Egypt	0	0	0	0	0	1000	800	765	2565
40	Israel	0	0	450	0	500	435	855	615	2855
41	Jordan	0	0	0	0	0	680	800	765	2245
42	Lebanon	0	0	0	0	0	500	300	280	1080
43	Morocco	0	0	0	0	0	1000	1025	950	2975
44	Syria	0	0	0	0	0	500	340	250	1090
45	Tunisia	0	0	0	250	0	215	300	275	1040
46	Yemen	0	0	0	0	0	0	0	0	0
47	West Bank/Gaza	0	0	500	0	500	435	1275	1180	3890
	Regional Total									20640
	Central and Latin America									
48	Argentina	0	0	0	0	0	0	0	0	0
49	Bolivia	0	0	0	0	0	0	680	480	1160
50	Brazil	0	0	0	0	0	0	680	480	1160
51	Chile	0	0	0	0	0	0	0	0	0
52	Colombia	0	0	500	500	500	435	855	615	3405
53	Costa Rica	0	0	0	0	0	0	0	0	0
54	Ecuador	0	0	0	0	0	0	465	300	765
55	El Salvador	0	0	0	0	0	0	0	0	0
56	Guatemala	0	0	0	300	300	260	525	403	1788
57	Honduras	0	0	0	0	0	0	0	0	0
58	Mexico	0	0	600	500	500	435	525	403	2963
59	Nicaragua	0	0	0	0	0	0	0	0	0
60	Panama	0	0	0	0	0	0	0	0	0
61	Paraguay	0	0	0	0	0	0	0	0	0
62	Peru	0	0	0	0	0	0	575	380	955
63	Uruguay	0	0	0	0	0	0	0	0	0
64	Venezuela	0	0	0	0	0	0	615	425	1040
	Regional Total									13236
	ACP states									
65	Angola	0	0	0	0	500	435	645	668	2248
66	Burundi	0	0	0	0	250	215	490	375	1330
67	Cuba	0	0	0	0	0	0	235	150	385
68	DRC	0	0	0	0	400	345	645	668	2058
69	Eritrea	0	0	0	0	150	210	150	105	615
70	Ethiopia	0	0	0	400	400	345	800	765	2710
71	Fiji	0	0	0	0	0	260	0	0	260
72	Haiti	0	0	0	0	400	345	650	453	1848
73	Ivory Coast	0	0	400	400	400	345	745	802	3092
74	Mozambique	0	0	0	0	400	345	460	515	1720
75	Nigeria	0	0	0	0	600	520	915	980	3015
76	Rwanda	0	0	0	0	500	435	615	635	2185
77	Sierra Leone	0	0	0	0	250	215	0	0	465
78	Sudan	0	0	0	0	500	435	1075	940	2950
79	Uganda	0	0	0	0	0	0	185	153	338
80	Zimbabwe	0	0	0	0	650	345	800	765	2560
	Regional Total									27779
	Global Total									126891

Table C: Major Recipients of EIDHR Funds in the NIS, the Mediterranean&Middle East, Asia, and Latin America (in absolute numbers and per capita, 2000-2006)¹⁵¹⁵

	Country	EIDHR in million Euro	FH PR/CL	OECD ODA/DAC		Country	EIDHR per capita in Euro	FH PR/CL	OECD ODA/DAC
1	Colombia	26.901	4↓/4↓	LMIC	1	Georgia	2.81	3.5↓/4	LMIC
2	Russia	13.38	5↑/5	UMIC	2	Gaza/West Bank	2.4	6/6↓	LMIC
3	Georgia	13.227	3.5↓/4	LMIC	3	Israel	1.36	-	-
4	Iraq	11.006	7/6↑	LMIC	4	Guatemala	0.86	4/4	LMIC
5	Guatemala	10.612	4/4	LMIC	5	Lebanon	0.81	6↓/5↓	UMIC
6	Israel	9.096	-	-	6	Ecuador	0.68	3/3	LMIC
7	Gaza/West Bank	8.655	6/6↓	LMIC	7	Chile	0.68	1.5↓/1	UMIC
8	China	8.105	7/6	LMIC	8	Cambodia	0.64	6/5	LDC
9	Cambodia	8.035	6/5	LDC	9	Armenia	0.62	4.5↓/4	LMIC
10	Egypt	7.144	6/5	LMIC	10	Colombia	0.61	4↓/4↓	LMIC
11	Ukraine	7.007	4↓/3.5↓	LMIC	11	Iraq	0.45	7/6↑	LMIC
12	Indonesia	5.841	3↓/4↓	LMIC	12	Jordan	0.4	5/5	LMIC
13	Nepal	5.828	4↑/4↑	LDC	13	Tunisia	0.38	6/5	LMIC
14	Mexico	5.662	2/2	UMIC	14	El Salvador	0.35	2/3	LMIC
15	Algeria	5.538	6/5	LMIC	15	Bolivia	0.34	2↑/3	UMIC
16	Pakistan	5.148	6/5	LIC	16	Kyrgyzstan	0.303	6↓/5↓	LIC
17	Peru	4.964	2/3	LMIC	17	Kazakhstan	0.28	6/5	LMIC
18	Ecuador	4.469	3/3	LMIC	18	Nepal	0.23	4↑/4↑	LDC
19	Iran	4.265	6/6	LMIC	19	Nicaragua	0.23	3/3	LIC
20	Kazakhstan	4.125	6/5	LMIC	20	Moldova	0.2	2.5↑/4	LIC
21	Brazil	3.908	2/3↓	LMIC	21	Peru	0.18	2/3	LMIC
22	India	3.883	2/3	LIC	22	Algeria	0.17	6/5	LMIC
23	Tunisia	3.766	6/5	LMIC	23	Tajikistan	0.16	6/5.5↓	LMIC
24	Morocco	3.559	5/4.5↓	LMIC	24	Ukraine	0.15	4↓/3.5↓	LMIC
25	Lebanon	3.399	6↓/5↓	UMIC	25	Morocco	0.12	5/4.5↓	UMIC
26	Bolivia	2.96	2↑/3	UMIC	26	Honduras	0.1	3/3	LMIC
27	Bangladesh	2.497	3.5↑/4	LDC	27	Egypt	0.099	6/5	LMIC
28	El Salvador	2.29	2/3	LMIC	28	Russia	0.092	5↑/5	UMIC
29	Jordan	2.245	5/5	LMIC	29	Azerbaijan	0.08	6/5	LMIC
30	Armenia	1.987	4.5↓/4	LMIC	30	Laos	0.07	7/6	LDC
31	Philippines	1.679	2↑/3	LMIC	31	Iran	0.064	6/6	LMIC
32	Chile	1.63	1.5↓/1	UMIC	32	Venezuela	0.06	3/4	UMIC
33	Venezuela	1.549	3/4	UMIC	33	Syria	0.055	7/7	LMIC
34	Kyrgyzstan	1.515	6↓/5↓	LIC	34	Mexico	0.054	2/2	UMIC
35	Burma	1.441	7/7	LDC	35	Malaysia	0.037	5↓/4.5↓	UMIC
36	Nicaragua	1.246	3/3	LIC	36	Costa Rica	0.036	1/2↑	UMIC
37	Tajikistan	1.083	6/5.5↓	LIC	37	Pakistan	0.034	6/5	LIC
38	Argentina	0.989	2/3↑	UMIC	38	Burma	0.029	7/7	LDC
39	Vietnam	0.984	7/6↓	LIC	39	Argentina	0.027	2/3↑	UMIC
40	Syria	0.956	7/7	LMIC	40	Indonesia	0.026	3↓/4↓	LMIC
41	Malaysia	0.931	5↓/4.5↓	UMIC	41	Sri Lanka	0.024	3/3.5↓	LMIC
42	Moldova	0.845	2.5↑/4	LIC	42	Brazil	0.022	2/3↓	LMIC
43	Honduras	0.7	3/3	LMIC	43	Philippines	0.02	2↑/3	LMIC

¹⁵¹⁵ Source: EIDHR Project compendium 2000-2006 by location. FH refers to Freedom House; PR refers to Political Liberties and CL to Civil Liberties. See: <http://www.freedomhouse.org/report/freedom-world-2010/methodology> (last accessed on 3.8.2012).

44	Azerbaijan	0.66	6/5	LMIC	44	Yemen	0.02	5.5↓/6	LDC
45	Sri Lanka	0.455	3/3.5↓	LMIC	45	Bangladesh	0.017	3.5↑/4	LDC
46	Yemen	0.396	5.5↓/6	LDC	46	Vietnam	0.012	7/6↓	LIC
47	Laos	0.394	7/6	LDC	47	Afghanistan	0.01	6↓/6↓	LDC
48	Afghanistan	0.295	6↓/6↓	LDC	48	China	0.0063	7/6	LMIC
49	Costa Rica	0.15	1/2↑	UMIC	49	India	0.00236	2/3	LIC
50	Uzbekistan	0	7/6↓	LIC	50	Uzbekistan	0	7/6↓	LIC
51	Turkmenistan	0	7/7	LMIC	51	Turkmenistan	0	7/7	LMIC
52	Belarus	0	6.5↑/6	LMIC	52	Belarus	0	6.5↑/6	LMIC
53	Maldives	0	6/5	LDC	53	Maldives	0	6/5	LDC
54	North Korea	0	7/7	LIC	54	North Korea	0	7/7	LIC
55	Mongolia	0	2/2↓	LIC	55	Mongolia	0	2/2↓	LIC
56	Bhutan	0	6↓/5↓	LDC	56	Bhutan	0	6↓/5↓	LDC
57	Singapore	0	5/4↓	HIC	57	Singapore	0	5/4↓	HIC
58	Brunei	0	6↓/5	HIC	58	Brunei	0	6↓/5	HIC
59	Thailand	0	2↓/3	LMIC	59	Thailand	0	2↓/3	LMIC
60	Oman	0	6/5	UMIC	60	Oman	0	6/5	UMIC
61	Saudi Arabia	0	7/7	UMIC/ HIC	61	Saudi Arabia	0	7/7	UMIC/ HIC
62	Panama	0	1/2	UMIC	62	Panama	0	1/2	UMIC
63	Paraguay	0	3.5↓/3	LMIC	63	Paraguay	0	3.5↓/3	LMIC
64	Uruguay	0	1/1	UMIC	64	Uruguay	0	1/1	UMIC
65	Cuba	0	7/7	LMIC	65	Cuba	0	7/7	LMIC

Table D: Major Recipients of EIDHR Funds for Democracy Assistance in the NIS, MEDA&Middle East, Asia, and Latin America 2000-2006 (in absolute amounts and per capita, 2000-2006)¹⁵¹⁶

	Country	DA in million Euro	FH PR/CL	DAC/ ODA		Country	DA per capita in Euro	FH PR/CL	DAC/ ODA
1	Iraq	9	7/6↑	LMIC	1	Georgia	1.65	3.5↓/4	LMIC
2	Georgia	7.762	3.5↓/4	LMIC	2	Gaza/West Bank	0.68	6/6↓	LMIC
3	Egypt	7.144	6/5	LMIC	3	Iraq	0.37	7/6↑	LMIC
4	Russia	3.912	5↑/5	UMIC	4	El Salvador	0.35	2/3	LMIC
5	Peru	3.15	2/3	LMIC	5	Armenia	0.34	4.5↓/4	LMIC
6	Colombia	3.034	4↓/4↓	LMIC	6	Guatemala	0.24	4/4	LMIC
7	Guatemala	2.992	4/4	LMIC	7	Kazakhstan	0.18	6/5	LMIC
8	Kazakhstan	2.703	6/5	LMIC	8	Kyrgyzstan	0.18	6↓/5↓	LIC
9	Gaza/West Bank	2.464	6/6↓	LMIC	9	Ecuador	0.14	3/3	LMIC
10	Algeria	2.325	6/5	LMIC	10	Peru	0.12	2/3	LMIC
11	El Salvador	2.29	2/3	LMIC	11	Bolivia	0.12	2↑/3	LMIC
12	Ukraine	2.003	4↓/3.5↓	LMIC	12	Jordan	0.115	5/5	LMIC
13	Indonesia	1.861	3↓/4↓	LMIC	13	Tunisia	0.106	6/5	LMIC
14	Ecuador	1.726	3/3	LMIC	14	Honduras	0.1	3/3	LMIC
15	Pakistan	1.338	6/5	LIC	15	Egypt	0.099	6/5	LMIC
16	Morocco	1.149	5/4.5↓	LMIC	16	Cambodia	0.078	6/5	LDC
17	Armenia	1.08	4.5↓/4	LMIC	17	Algeria	0.073	6/5	LMIC
18	Tunisia	1.049	6/5	LMIC	18	Colombia	0.069	4↓/4↓	LMIC
19	Bolivia	1	2↑/3	LMIC	19	Tajikistan	0.06	6/5.5↓	LIC
20	Cambodia	0.979	6/5	LDC	20	Moldova	0.06	2.5↑/4	LIC
21	Burma	0.92	7/7	LDC	21	Ukraine	0.042	4↓/3.5↓	LMIC
22	Kyrgyzstan	0.913	6↓/5↓	LIC	22	Azerbaijan	0.04	6/5	LMIC
23	Nepal	0.854	4↑/4↑	LDC	23	Morocco	0.038	5/4.5↓	LMIC
24	Mexico	0.72	2/2	UMIC	24	Costa Rica	0.036	1/2↑	UMIC
25	Honduras	0.7	3/3	LMIC	25	Syria	0.035	7/7	LMIC
26	Jordan	0.632	5/5	LMIC	26	Nepal	0.034	4↑/4↑	LDC
27	Syria	0.621	7/7	LMIC	27	Russia	0.027	5↑/5	UMIC
28	Venezuela	0.6	3/4	UMIC	28	Venezuela	0.02	3/4	UMIC
29	China	0.515	7/6	LMIC	29	Chile	0.02	1.5↓/1	UMIC
30	Tajikistan	0.428	6/5.5↓	LIC	30	Burma	0.019	7/7	LDC
31	Argentina	0.38	2/3↑	UMIC	31	Lebanon	0.012	5/4.5↓	UMIC
32	Azerbaijan	0.36	6/5	LMIC	32	Argentina	0.01	2/3↑	UMIC
33	Chile	0.296	1.5↓/1	UMIC	33	Pakistan	0.009	6/5	LIC
34	Moldova	0.261	2.5↑/4	LIC	34	Indonesia	0.008	3↓/4↓	LMIC
35	Vietnam	0.233	7/6↓	LIC	35	Laos	0.0072	7/6	LDC
36	Bangladesh	0.176	3.5↑/4	LDC	36	Mexico	0.007	2/2	UMIC
37	Costa Rica	0.15	1/2↑	UMIC	37	Sri Lanka	0.0037	3/3.5↓	LMIC
38	Afghanistan	0.099	6↓/6↓	LDC	38	Afghanistan	0.0034	6↓/6↓	LDC
39	Sri Lanka	0.071	3/3.5↓	LMIC	39	Vietnam	0.0029	7/6↓	LIC
40	Lebanon	0.051	5/4.5↓	UMIC	40	Bangladesh	0.0012	3.5↑/4	LDC
41	Laos	0.04	7/6	LDC	41	China	0.0004	7/6	LMIC
42	Cuba	0	7/7	LMIC	42	Cuba	0	7/7	LMIC
43	Nicaragua	0	3/3	LIC	43	Nicaragua	0	3/3	LIC
44	Paraguay	0	3.5↓/3	LMIC	44	Paraguay	0	3.5↓/3	LMIC
45	Brazil	0	2/3↓	LMIC	45	Brazil	0	2/3↓	LMIC

¹⁵¹⁶ Source: EIDHR Project compendium 2000-2006 by location.

46	Uruguay	0	1/1	UMIC	46	Uruguay	0	1/1	UMIC
47	Panama	0	1/2	UMIC	47	Panama	0	1/2	UMIC
48	Belarus	0	6.5↑/6	LMIC	48	Belarus	0	6.5↑/6	LMIC
49	Uzbekistan	0	7/6↓	LIC	49	Uzbekistan	0	7/6↓	LIC
50	Turkmenistan	0	7/7	LMIC	50	Turkmenistan	0	7/7	LMIC
51	Bhutan	0	6↓/5↓	LDC	51	Bhutan	0	6↓/5↓	LDC
52	Maldives	0	6/5	LDC	52	Maldives	0	6/5	LDC
53	North Korea	0	7/7	LIC	53	North Korea	0	7/7	LIC
54	Singapore	0	5/4↓	HIC	54	Singapore	0	5/4↓	HIC
55	Brunei	0	6↓/5	HIC	55	Brunei	0	6↓/5	HIC
56	Malaysia	0	5↓/4.5↓	UMIC	56	Malaysia	0	5↓/4.5↓	UMIC
57	India	0	2/3	LIC	57	India	0	2/3	LIC
58	Mongolia	0	2/2↓	LIC	58	Mongolia	0	2/2↓	LIC
59	Philippines	0	2↑/3	LMIC	59	Philippines	0	2↑/3	LMIC
60	Thailand	0	2↓/3	LMIC	60	Thailand	0	2↓/3	LMIC
61	Iran	0	6/6	LMIC	61	Iran	0	6/6	LMIC
62	Oman	0	6/5	UMIC	62	Oman	0	6/5	UMIC
63	Saudi Arabia	0	7/7	UMIC/ HIC	63	Saudi Arabia	0	7/7	UMIC/ HIC
64	Yemen	0	5.5↓/6	LDC	64	Yemen	0	5.5↓/6	LDC
65	Israel	0	-	-	65	Israel	0	-	-

Bibliography

Books, Articles, Book Chapters & Working Papers

- Abele C. and Offe C., 'DPP Dilemmas in CEE: Donor Strategies, Recipient Responses, and Feasibility Issues in Designing Democratic Institutions Elsewhere', (Draft, February 2002).
- Adnett N. and Hardy S., *The European Social Model: Modernisation or Evolution?* (2005).
- Alexander G., 'Institutionalized Uncertainty, the Rule of Law, and the Sources of Democratic Stability' 35 *Comparative Political Studies* 10 (2002) 1145-1170.
- Alston P. and Weiler J. H. H., 'An 'Ever Closer Union' in Need of a Human Rights Policy: The EU and Human Rights, in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999) 3-66.
- Alston, P. and J. Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (2000).
- Al-Sayyid M. K., 'A Clash of Values: U.S. Civil Society Aid and Islam in Egypt', in M. Ottaway and T. Carothers (eds), *Funding Virtue: Civil Society Aid and Democracy Promotion* (2000), at 49-73.
- Angell A., 'International Support for the Chilean Opposition 1973-1989: Political Parties and the Role of Exiles', in L. Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas* (1996) 175-200.
- Apter D. E., 'Social Democracy', in W. Outhwaite: *The Blackwell Dictionary of Modern Social Thought* (2nd ed., 2003) 599.
- Arblaster A., *Democracy* (3rd ed., 2002).
- Arnall A., 'Left to its Own Devices? Opinion 2/94 and the Protection of Fundamental Rights in the European Union', in A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000) 61-78.
- Arts K., *Integrating Human Rights into Development Cooperation: The Case of the Lomé Convention* (1998).
- Azpuru D., Finkel S. E., Pérez-Liñán A. and Seligson M. A., 'Trends in Democracy Assistance: What has the United States been Doing?', 19 *Journal of Democracy* 2 (April 2008) 150-159.
- Baldwin P., 'Welfare, Promotion of', in S. M. Lipset (ed), *The Encyclopaedia of Democracy* (1995) 1372.
- Balfour R., 'Principles of Democracy and Human Rights', in S. Lucarelli and I. Manners (eds.), *Values and Principles in European Union Foreign Policy* (2006) 114-129.
- Bartels L., *Human Rights Conditionality in the EU's International Agreements* (2005).
- Bartels L., 'Trade and Development Policy of the European Union', in M. Cremona *Developments in EU External Relations Law* (2008) 128-171.
- Bartelt S., 'The legislative architecture of EU external assistance and development cooperation', in S. Bartelt S. and P. Dann (eds.), *Entwicklungszusammenarbeit im Recht der Europäischen Union – The Law of EU Development Cooperation* (Europarecht - Beiheft 2, 2008), 10-35.
- Barrios C., *The Community of Democracies: Should Europe Engage?*, FRIDE Comment (January 2008).
- Barry N., 'Liberalism', in P. B. Clarke and J. Foweraker (eds), *Encyclopedia of Democratic Thought* (2001) 414-19.
- Beetham D., *Democracy and Human Rights* (1999).
- Beetham D., 'The Contradictions of Democratization by Force: The Case of Iraq', 16 *Democratization* 3 (June 2009) 443-454.
- Beiner R., 'Social Democracy', in S. M. Lipset (ed), *The Encyclopaedia of Democracy* (1995) 1139.
- Beissinger M. R., 'Structure and Example in Modular Political Phenomena: The Diffusion of Bulldozer/Rose/Orange/Tulip Revolutions', 5 *Perspectives on Politics* 2 (June 2007) 259-276.
- Berdiyev B., 'The EU and former Soviet Central Asia: A Legal Analysis of the Partnership and Cooperation Agreements', 22 *Yearbook of European Law* (2003) 463-481.
- Berg-Schlosser D., 'Long Waves and Conjunctures of Democratization', in C. W. Haerpfer, P. Bernhagen, R. F. Inglehart and C. Welzel (eds), *Democratization* (2009), 41-54.
- Bermeo N., 'Rethinking Regime Change, Review Article', 22 *Comparative Politics* 3 (April 1990) 359-377.
- Bicchi F., 'Democracy Assistance in the Mediterranean: An Overview', 14 *Mediterranean Politics* 1 (2009) 61-78.
- Bicchi F., 'Dilemmas of Implementation: EU Democracy Assistance in the Mediterranean', 17 *Democratization* 5 (2010) 976-996.

- Blockmans S., 'EU–Russia Relations Through the Prism of the European Neighbourhood and Partnership Instrument', 13 *European Foreign Affairs Review* (2008) 167-187.
- Bloed A., 'Monitoring the CSCE Human Dimension: In Search of its Effectiveness', in A. Bloed, L. Leicht, M. Nowak and A. Rosas (eds), *Monitoring Human Rights in Europe: Comparing International Procedures and Mechanisms* (1993) 45-92.
- Bloed A., 'Monitoring the Human Dimension of the OSCE', in G. Alfredsson, J. Grimheden, B. G. Ramcharan and A. de Zayas (eds), *International Human Rights Monitoring Mechanisms* (2001) 633-44.
- Bogdanova E., *A New Beginning? Democracy Support in EU External Relations Under the Lisbon Treaty*, PASOS Policy Brief No. 1 (2010).
- Bollen K., 'Political Democracy: Conceptual and Measurements Traps', in A. Inkeles (ed), *On Measuring Democracy: Its Consequences and Concomitants* (1993) 3-20.
- Boogards M., 'How to classify Hybrid Regimes? Defective Democracy and Electoral Authoritarianism' 16 *Democratization* 2 (April 2009) 399-423.
- Boonstra J., *OSCE Democracy Promotion: Grinding to a Halt?*, FRIDE Working Paper No. 44 (October 2007).
- Bouloukos A. and Dakin B., 'Towards a Universal Declaration of the Rule of Law: Implications for Criminal Justice and Sustainable Development', 42 *Comparative Sociology* 1/2 (2001) 145-162.
- Bova R., 'Political Dynamics of the Post-Communist Transition: A Comparative Perspective', 44 *World Politics* 1 (October 1991) 113-138.
- Börzel T. A. and Risse T., 'Venus Approaching Mars? The European Union's Approaches to Democracy Promotion in Comparative Perspective', in A. Magan and M. McFaul (eds.), *Promoting Democracy and the Rule of Law: American and European Perspectives* (2009) 34-60.
- Brandtner B. and Rosas A., 'Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice', 9 *European Journal of International Law* (1998) 468-490.
- Bratton M. and van de Walle N., 'Neopatrimonial Regimes and Political Transition in Africa', 46 *World Politics* 4 (July 1994) 453-489.
- Briggs A., 'Welfare, social', in W. Outhwaite: *The Blackwell Dictionary of Modern Social Thought* (2nd ed., 2003) 733.
- Brillat R., 'Assessing the Strengths and Weaknesses of the European Social Charter's Supervisory System', in G. de Búrca and B. de Witte, with the assistance of L. Ogertschnig (eds), *Social Rights in Europe* (2005) 31-43.
- Brouwer I., 'Weak Democracy and Civil Society Promotion: The Cases of Egypt and Palestine', in M. Ottaway and T. Carothers, *Funding Virtue: Civil Society Aid and Democracy Promotion* (2000) 21-48.
- Brown M. E., Lynn-Jones S. M. and Miller S. E. (eds.), *Debating the Democratic Peace* (1996).
- Bruszt L., 'Dancing on the Mine-Field', in Kennedy M. D. and Porter B. (eds), *Negotiating Radical Change: Understanding and Extending the Lessons of the Polish Round Table Talks* (2000) 111-120.
- Bulterman M., 'European Union Membership and Political Conditionality', in M. Bulterman, A. Hendriks and J. Smith (eds), *To Beah in Our Minds: Essays on Human Rights from the Heart of the Netherlands* (1998) 128.
- Bunce V. and Wolchik S., 'Getting Real About "Real Causes"', 20 *Journal of Democracy* 1 (January 2009) 69-73.
- Bunce V. and Wolchik S., 'A Regional Tradition: The Diffusion of Democratic Change under Communism and Postcommunism', in Bunce V., McFaul M., and Stoner-Weiss K. (eds), *Democracy and Authoritarianism in the Postcommunist World* (2010) 30-57.
- Burbach R., *The Pinochet Affair: State Terrorism and Global Justice* (2003).
- Burchill R., 'Review Article: The Developing International Law of Democracy', 64 *MLRev* 1 (2001) 123-134.
- Burnell P. (ed.), *Democracy Assistance: International Co-operation for Democratization* (2000).
- Burnell P., 'Democracy Assistance: The State of the Discourse', in Burnell P. (ed.), *Democracy Assistance: International Cooperation for Democratization* (2000) 3-33.
- Burnell P., 'Democracy Assistance: Origins and Organizations', in Burnell, P., *Democracy Assistance: International Co-operation for Democratization* (2000) 34-64.
- Burnell P., 'Chapter 1: Methods and Experiences of Evaluating Democracy Support: A Moving Frontier', in International IDEA and SIDA: *Evaluating Democracy Support: Methods and Experiences* (2007) 15-44.

- Burnell P. and Calvert P., 'Promoting Democracy Abroad', 12 *Democratization* 4 (2005) 433-438.
- Byers M. and Chesterman S., "'You, the People?': Pro-democratic Intervention in International Law", in G. H. Fox and B. R. Roth (eds), *Democratic Governance in International Law* (2000) 259-292.
- Carapico S., 'Foreign Aid for Promoting Democracy in the Arab World', 56 *The Middle East Journal* 3 (2002) 379-395.
- Carothers T., 'The NED at 10', *Foreign Policy* 95 (Summer 1994) 123-138.
- Carothers T., *Assessing Democracy Assistance: The Case of Romania* (1996).
- Carothers T., 'The Rule of Law Revival', 77 *Foreign Affairs* 2 (1998) 95-106.
- Carothers T., *Aiding Democracy Abroad: The Learning Curve* (1999).
- Carothers T., 'Democracy Promotion under Clinton', in T. Carothers (ed.), *Critical Mission: Essays on Democracy Promotion* (2004) 23-38.
- Carothers T., 'The Clinton Record on Democracy Promotion', in T. Carothers, *Critical Mission: Essays on Democracy Promotion* (2004) 39-52.
- Carothers T., 'Promoting Democracy and Fighting Terror', in T. Carothers, *Critical Mission: Essays on Democracy Promotion* (2004) 63-74.
- Carothers T., 'Democracy Promotion: Explaining the Bush Administration's Position' in T. Carothers, *Critical Mission: Essays on Democracy Promotion* (2004) 75-79.
- Carothers T., 'Choosing a Strategy', in T. Carothers and M. Ottaway (eds), *Uncharted Journey: Promoting Democracy in the Middle East* (2005) 193-208.
- Carothers T., 'The Rule of Law Revival', in T. Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006) 3-13.
- Carothers T., 'The "Sequencing" Fallacy', 18 *Journal of Democracy* 1 (January 2007) 12-27.
- Carothers T., *U.S. Democracy Promotion During and After Bush* (2007).
- Carothers T., 'Democracy Assistance: Political vs. Developmental?', 20 *Journal of Democracy* 1 (January 2009) 5-19.
- Carothers T., *Democracy Promotion under Obama: Finding a Way Forward*, Carnegie Endowment for International Peace Policy Brief No. 77 (February 2009).
- Carothers T., 'The Continuing Backlash against Democracy Promotion', in P. Burnell and R. Youngs, *New Challenges to Democratization* (2010) 59-71.
- Challand B., *Benevolent Actors? International Donors and Civil Society Support for Palestinian NGOs*, Paper presented at the Sixth Mediterranean Social and Political Research Meeting, Montecatini Terme, 16-20 March 2005.
- Chalmers D. and Tomkins A., *European Union Public Law* (2007).
- Chalmers D., Davies G. and Monti M., *European Union Law* (2nd ed., 2010).
- Chalmers D., Hadjiemmanuil C., Monti G. and Tomkins A., *European Union Law: Text and Materials* (2006).
- Cheema B. S. and Rondinelli D. A., 'From Government Decentralization to Decentralized Governance', in G. S. Cheema and D. A. Rondinelli (eds), *Decentralizing Governance, Emerging Concepts and Practices* (2007) 1-20.
- Chrysochoou D., 'Europe's Contested Democracy', in M. Cini and N. Pérez-Solórzano Borragán (eds), *European Union Politics* (3rd ed., 2010) 377-389.
- Church C. and Phinnemore D., 'From the Constitutional Treaty to the Treaty of Lisbon', in M. Cini and N. Pérez-Solórzano Borragán (eds.), *European Union Politics* (3rd ed., 2010), at 48-67.
- Clapham A., 'Where is the EU's Human Rights Common Foreign Policy, and How is it Manifested in Multilateral Fora?', in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999) 627-83.
- Cohen J. L. and Arato A., *Civil Society and Political Theory* (1997).
- Collier R. B., 'Democratic Transition', in P. B. Clarke and J. Foweraker (eds), *Encyclopedia of Democratic Thought* (2001), at 213-17.
- Collier D. and Levitsky S., 'Democracy with Adjectives: Conceptual Innovation in Comparative Research', 49 *World Politics* 3 (1997) 430-451.
- Council for a Community of Democracies, *The Diplomat's Handbook for Democracy Development Support* (2008).
- Craig P. and de Búrca G., *EU Law: Text, Cases and Materials* (3rd ed., 2003).
- Craig P. and de Búrca G., *EU Law: Text, Cases, and Materials* (4th ed., 2008).
- Craig P., *The Lisbon Treaty: Law Politics and Treaty Reform* (2010).
- Crawford G., *Foreign Aid and Political Reform: A Comparative Analysis of Democracy Assistance and Political*

- Conditionality* (2001).
- Crawford G., 'European Union Development Co-operation and the Promotion of Democracy', in P. Burnell (ed.), *Democracy Assistance: International Co-operation for Democratization* (2000) 90-127.
- Crawford G., 'Promoting Democracy From Without – Learning from Within (Part II)', 10 *Democratization* 2 (Summer 2003) 1-20.
- Crawford G., 'EU Human Rights and Democracy Promotion in Central Asia: From Lofty Principles to Lowly Self-Interests', 9 *Perspectives on European Politics and Society* 2 (2008) 172-191.
- Crawford J., *Democracy in International Law* (1994).
- Cremona M., 'External Relations and External Competence: The Emergence of an Integrated Policy', in P. Craig and G. de Búrca (eds), *The Evolution of EU Law* (1999) 137-175.
- Cremona M., *The European Neighbourhood Policy: Legal and Institutional Issues*, CDDRL Working Papers No 25 (2004).
- Cremona M., *External Relations of the EU and the Member States: Competence, Mixed Agreements, International Responsibility, and Effect of International Law*, EUI Working Paper LAW No. 2006/22.
- Cremona M., *A Constitutional Basis for Effective External Action? An Assessment of the Provisions on EU External Action in the Constitutional Treaty*, EUI Working Paper Law No. 2006/30 (2006).
- Cremona M., 'The European Neighbourhood Policy: More than a Partnership?', in M. Cremona (ed.), *Developments in EU External Relations Law* (2008) 244-299.
- Cunningham F., *Theories of Democracy: A Critical Introduction* (2002).
- Dahl R., *Democracy and its Critics* (1989).
- Dashwood A., 'The Limits of the European Community Powers', *European Law Review* 21 (1996) 113-128.
- Dashwood A., 'The Attribution of External Relations Competence', in A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000), at 115-138.
- Dashwood A. A., 'Issues of Decision-making in the European Union after Nice', in A. M. Arnall and D. Wincott (eds), *Accountability and Legitimacy in the European Union after Nice* (2002) 13-40.
- Dashwood A., 'Article 47 TEU and the Relationship between First and Second Pillar Competences', in A. Dashwood, *Law and Practice of EC External Relations* (2008) 70-103.
- de Búrca, G., 'Beyond the Charter: How Enlargement has Enlarged the Human Rights Policy of the EU', 27 *Fordham International Law Journal* 2 (2004) 679-714.
- de Búrca, G., 'The Evolution of EU Human Rights Law', in P. Craig and G. de Búrca (eds), *The Evolution of EU Law* (2nd ed., 2011), 465-497.
- de Witte B., 'The Past and Future Role of the European Court of Justice in the Protection of Human Rights', in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999) 859-97.
- de Witte B., 'The Constitutional Law of External Relations', in I. Pernice and M. Poiares Maduro (eds), *A Constitution for the European Union: First Comments on the 2003 Draft of the European Convention* (2004) 95-106.
- de Witte B., 'Legal Instruments and Law-Making in the Lisbon Treaty', in S. Griller and J. Ziller (eds), *The Lisbon Treaty: EU Constitutionalism without a Constitutional Treaty?* (2008) 79-108.
- del Sarto R., Schumacher T., Lannon E. and Driss A., *Benchmarking Democratic Development in the Euro-Mediterranean Area: Conceptualizing Ends, Means, and Strategies*, EuroMeSco Report (October 2006).
- Democracy Reporting International, *Discussing International Standards for Democratic Governance: A Preliminary Research Report*, Discussion Paper No. 2 (September 2007).
- Diamond L., 'Economic Development and Democracy Reconsidered', 35 *American Behavioral Scientist* 4/5 (March/June 1992) 455-499.
- Diamond L., *Promoting Democracy in the 1990s: Actors and Instruments, Issues and Imperatives: A Report to the Carnegie Commission on Preventing Deadly Conflict* (December 1995).
- Diamond L., 'Is the Third Wave Over?', 7 *Journal of Democracy* 3 (July 1996) 20-37.
- Diamond, L., *Developing Democracy: Toward Consolidation* (1999).
- Diamond L. and Lipset S. M., 'Legitimacy', in S. M. Lipset (ed), *Political Philosophy: Theories, Thinkers, Concepts* (2001) 427-433.
- Diamond L. and Plattner M. F., Introduction, in L. Diamond and M. F. Plattner (eds.): *The Global Divergence of Democracy* (2001) ix-xxxii.
- Diez T. and Wiener A., 'Introducing the Mosaic of Integration Theory', in A. Wiener and T. Diez (eds),

- European Integration Theory* (2nd ed., 2009) 1-22.
- Dogan M., 'Conceptions of Legitimacy', in M. Hawkesworth and M. Kogan (eds), *Encyclopedia of Government and Politics* (2004) 116-126.
- Doornbos M., "Good Governance": The Rise and Decline of a Policy Metaphor?', 37 *Journal of Development Studies* 6 (2001) 93-108.
- Doyle M. W., 'Kant, Liberal Legacies and Foreign Affairs', in M. E. Brown, S. M. Lynn-Jones and S. E. Miller (eds), *Debating the Democratic Peace* (1996) 3-57.
- Dunne M., 'Integrating Democracy into the U.S. Policy Agenda', in T. Carothers and M. Ottaway (eds), *Uncharted Journey: Promoting Democracy in the Middle East* (2005) 209-228.
- Drake P., *International Factors in Democratization*, Juan March Institute Working Paper No. 61 (November 1994).
- Eeckhout P., *External Relations of the European Union: Legal and Constitutional Foundations* (2004).
- Elgie R. and Zielonka J., 'Constitutions and Constitution-Building: A Comparative Perspective', in J. Zielonka (ed), *Democratic Consolidation in Eastern Europe: Volume 1: Institutional Engineering* (2001) 1-33.
- E.U. Network of Independent Experts on Fundamental Rights, *Thematic Comment No. 2: Fundamental Rights in the External Activities of the European Union in the Fields of Justice and Asylum and Immigration in 2003* (4 February 2004).
- European Partnership for Democracy (EPD), *Report from Roundtable on European Consensus on Democracy* (8.12.2008).
- European Partnership for Democracy (EPD), *Report from the Conference "Building Consensus about EU Policies on Democracy Support"*, March 9 and 10 2009, Prague, Czech Republic (2009).
- European University Institute, *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000. Agenda of the Comité des Sages and Final Project Report. A Project of the European University Institute funded by the European Commission marking the fiftieth anniversary of the Universal Declaration of Human Rights* (1998).
- Fabre C., *Social Rights under the Constitution* (2000).
- Fallon R. H. Jr., 'Rule of Law' as a Concept in Constitutional Discourse', 97 *Columbia Law Review* 1 (1997) 1-56.
- Feldbrugge F., 'The Rule of Law in the European CIS States', 26 *Review of Central and East European Law* 3 (2000) 213-230.
- Fierro, E., *The EU's Approach to Human Rights Conditionality in Practice* (2003).
- Fine R., 'Civil Society Theory, Enlightenment and Critique', in R. Fine and S. Rai (eds), 'Civil Society: Democratic Perspectives', 4 *Democratization* 1 (Special Issue, Spring 1997) 7-28.
- Fioramonti L., *European Union Democracy Aid: Supporting Civil Society in Post-Apartheid South Africa* (2010).
- Fletcher G. P., *Basic Concepts of Legal Thought* (1996).
- Fox G. H., 'The Right to Political Participation in International Law', 17 *Yale Journal of International Law* 2 (1992) 539-607.
- Fox G. H. and Roth B. R., *Democratic Governance and International Law* (2000).
- Franck, T. M., 'The Emerging Right to Democratic Governance', 86 *American Journal of International Law* 1 (January 1992) 46-91.
- Freedom House, *Freedom in the World 2010: The Annual Survey of Political Rights and Civil Liberties* (2010).
- French D., von Meijenfeldt R. and Youngs R., *A European Foundation for Democracy through Partnership: A Proposal for a New Initiative in EU Democracy Assistance World-wide* (December 2006).
- Freyburg T., Lavanex S., Schimmelfennig F., Skripka T., and Wetzel A., 'EU Promotion of Democratic Governance in the Neighbourhood', 16 *Journal of European Public Policy* 6 (2009) 916-934.
- FRIDE, *Democracy Assistance Fact Sheet: The National Endowment for Democracy (NED)* (2010).
- FRIDE, *Democracy Assistance: The Facts: Friedrich Ebert Stiftung (FES)* (2010).
- FRIDE, *Democracy Assistance: The Facts: Konrad Adenauer Foundation (KAS)* (2010).
- Friedheim D., 'Bringing Society Back into Democratic Transition Theory after 1989: Pact-Making and Regime Collapse', 7 *East European Politics and Societies* 3 (Fall 1993) 482-512.
- Fukuyama F. and McFaul M., 'Should Democracy be Promoted or Demoted?', 31 *Washington Quarterly* 1 (2007) 23-45.
- Gallagher K., 'Sanction's Effects on Human Rights Violations', 8 *Monitor: Journal of International Studies* 1 (2001).
- Gamper A., *Staat und Verfassung: Einführung in die Allgemeine Staatslehre* (2nd ed., 2010).
- Gatto A., 'Corporate Social Responsibility in the External Relations of the EU', in P. Eeckhout and

- T. Tridimas (eds), *24 Yearbook of European Law 2005* (2006) 423-62.
- Geddes B., 'What do we know about Democratization after Twenty Years?', *2 Annual Review of Political Science* (1999) 115-144.
- Gellner E., *Conditions of Liberty: Civil Society and its Rivals* (1994).
- Gerrits A., 'Is there a Distinct European Democratic Model to Promote?', in M. van Doorn and R. von Meijenfeldt (eds.), *Democracy: Europe's Core Value?* (2007) 51-66.
- Gershman C. and Allen M., 'New Threats to Freedom: The Assault on Democracy Assistance', *17 Journal of Democracy* (2006) 36-51.
- Giddens A., *The Third Way: The Renewal of Social Democracy* (1998).
- Gill G., *Democracy and Post-communism: Political Change in the Post-communist World* (2002).
- Gillespie R. and Youngs R., 'Themes in European Democracy Promotion', in R. Gillespie and R. Youngs (eds), *The European Union and Democracy Promotion: The Case of North Africa* (2000) 1-16.
- Goddeeris I., *Solidarity with Solidarity: Western European Trade Unions and the Polish Crisis, 1980-1982* (2010).
- Gori G., 'Domestic Enforcement of the ESC: The Way Forward', in G. de Búrca and B. de Witte, with the assistance of Larissa Ogertschnig (eds), *Social Rights in Europe* (2005) 69-88.
- Grabbe H., 'How does Europeanization affect CEE Governance? Conditionality, Diffusion and Diversity', *8 Journal of European Public Policy* 6 (2001) 1013-1031.
- Gunther R., 'Southern Europe', in C. W. Haerpfer, P. Bernhagen, R. F. Inglehart and C. Welzel (eds), *Democratization* (2009) 268-289.
- Gurevitch M. and Blumler J., 'Political Communication Systems and Democratic Values', in Lichtenberg J. (ed), *Democracy and the Mass Media* (1990) 269-289.
- Haerpfer C. W., Bernhagen P., Inglehart R. F. and Welzel C., 'Introduction', in C. W. Haerpfer, P. Bernhagen, R. F. Inglehart and C. Welzel (eds), *Democratization* (2009) 1-7.
- Haggard S. and Kaufman R. R., 'The Political Economy of Democratic Transitions', *29 Comparative Politics* 3 (April 1997) 263-283.
- Hamid S. and Brooke St., 'Promoting Democracy to Stop Terror, Revisited: The Real Perils of an Undemocratic Middle East', *Policy Review* 159 (February 2010).
- Hall J. A., 'In Search of Civil Society', in John A. Hall (ed.), *Civil Society, Theory, History, Comparison* (1995) 1-31.
- Hearn J. and Robinson M., 'Civil Society and Democracy Assistance in Africa', in P. Burnell (ed.), *Democracy Assistance: International Cooperation for Democratization* (2000) 241-262.
- Hearn J., 'Aiding Democracy? Donors and Civil Society in South Africa', *21 Third World Quarterly* 5 (2000) 815-830.
- Held D., *Models of Democracy* (1996).
- Helgesen J., 'Between Helsinki – and Beyond? Human Rights in the CSCE (Conference on Security and Co-operation in Europe) Process', in A. Rosas and J. Helgesen, with the collaboration of D. Gomien (eds), *Human Rights in a Changing East-West Perspective* (1990) 241-263.
- Heliskoski J., 'Small Arms and Light Weapons in the Union's Pillar Structure: An Analysis of Article 47 of the EU Treaty', *33 European Law Review* 6 (2008) 898-912.
- Helly D., 'EUJUST THEMIS in Georgia: An ambitious Bet on Rule of Law', in A. Nowak (ed.), *Civilian Crisis Management: The EU Way*, Chaillot Paper 90 (2006).
- Hendrickson D. C., 'The Democratist Crusade: Intervention, Economic Sanctions, and Engagement', *XI World Policy Journal* 4 (Winter 1994/5) 18-30.
- Herman R. G. and Piccone T. J. (eds), *Defending Democracy: A Global Survey of Foreign Policy Trends 1992-2002* (2002).
- Herrero S., *A Decade of Democracy Promotion through the European Initiative for Democracy and Human Rights*, EDP Working Papers Series on Democracy Support No. 1/2009 (2009).
- Hill M. and Hupe P., *Implementing Public Policy* (2002).
- Hillion C. and Wessel R. A., 'Competence Distribution in EU External Relations after ECOWAS: Clarification or Continued Fuzziness?', *46 Common Market Law Review* (2009) 551-586.
- Hilpold P., 'EU Development Cooperation at a Crossroads: The Cotonou Agreement of 23 June 2000 and the Principle of Good Governance', *7 European Foreign Affairs Review* 1 (2002) 53-72.
- Hix S., *The Political System of the European Union* (2nd ed., 2005).
- Holden B., *Understanding Liberal Democracy* (1988).
- Holden P., 'The European Community's MEDA Aid Programme: A Strategic Instrument of Civilian Power?', *8 EFARev.* 3 (2003) 347-363.

- Holmes L., *Post-Communism: An Introduction* (1997).
- Hsiao H.-H. M. and Koo H., 'The Middle Classes and Democratization', in L. Diamond, M. Plattner, Y. Chu, and H. Tien (eds), *Consolidating the Third Wave Democracies: Themes and Perspectives* (1997) 312-334.
- Huber D., 'Democracy Assistance in the Middle East and North Africa: A Comparison of US and EU Policies', 13 *Mediterranean Politics* 1 (2008) at 43-62.
- Hufbauer G. C., Schott J. J. and Elliott K. A., *Economic Sanctions Reconsidered* (2nd ed., 1990).
- Huntington S., *The Third Wave: Democratization in the Late 20th Century* (1991).
- Huntington S., 'Democracy's Third Wave', in L. Diamond and M. F. Plattner (eds), *The Global Resurgence of Democracy* (2nd ed., 1996) 3-25.
- Hutchful E., 'The Civil Society Debate in Africa', 51 *International Journal* 1, (Winter 1995-96) 54-77.
- Iliopoulos-Strangas J. (ed), *La protection des droits fondamentaux dans les Etats membres de l'Union européenne* (2000).
- Isaaks R., *The EU's Rule of Law Initiative in Central Asia*, EUCAM Policy Brief 9 (August 2009).
- International IDEA, *Code of Conduct for the Ethical and Professional Observation of Elections* (1997).
- International IDEA and SIDA: *Evaluating Democracy Support: Methods and Experiences* (2007).
- International IDEA, *Democracy and Development: Global Consultations on the EU's Role in Democracy Building* (2009).
- Institute for International Cooperation – Japan International Cooperation Agency, *Roads to Democracy and Governance* (2003).
- Jakubowicz K., 'Media and Democracy', in Council of Europe (ed.), *Media and Democracy* (1998) 9-33.
- Jonavicius L., *The Democracy Promotion Policies of Central and Eastern European States*, FRIDE Working Paper No. 55 (March 2008).
- Joyner C. C., 'The United Nations and Democracy', 5 *Global Governance* 3 (1999) 333-357.
- Jünemann A. and Knodt M. (eds), *Externe Demokratieförderung durch die Europäische Union/European External Democracy Promotion* (2007).
- Jünemann A. and Knodt M., 'Introduction: Theorizing EU External Democracy Promotion', in A. Jünemann and M. Knodt (eds), *Externe Demokratieförderung durch die Europäische Union/European External Democracy Promotion* (2007) 9-29.
- Kaddous K., 'Role and Position of the High Representative of the Union for Foreign Affairs and Security Policy under the Lisbon Treaty', in S. Griller and J. Ziller (eds), *The Lisbon Treaty: EU Constitutionalism without a Constitutional Treaty?* (2008) 205-221.
- Kaldor M. and Vejvoda I., 'Democratization in Central and Eastern European Countries', 73 *International Affairs* 1 (1997) 59-82.
- Kamminga M. T., 'Holding Multinational Corporations Accountable for Human Rights Abuses: A Challenge for the EC', in P. Alston, with M. Bustelo M. and J. Heenan (eds), *The EU and Human Rights* (1999) 553-69.
- Karl T. L., 'Dilemmas of Democratization in Latin America', 23 *Comparative Politics* 1 (October 1990) 1-22.
- Karl T. L. and Schmitter P. C., 'Modes of Transition in Southern and Eastern Europe and South and Central America', 128 *International Social Science Journal* (1991) 269-284.
- Katrougalos G. S., 'The Implementation of Social Rights in Europe', 2 *Columbia Journal of European Law* (1996) 277-312.
- Keane J., *Civil Society: Old Images, New Visions* (1998).
- King, T., 'Human Rights in European Foreign Policy: Success or Failure for Post-modern Diplomacy?', 10 *European Journal of International Law* 2 (1999) 313-337.
- Kleinfeld R., 'Competing Definitions of the Rule of Law', in T. Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006) 31-74.
- Knack S., 'Does Foreign Aid Promote Democracy?', 48 *International Studies Quarterly* (2004) 251-66.
- Knodt M. und Urdze S., 'Die Europäische Union als Exporteur von Demokratie und Rechtsstaatlichkeit', in P. C. Müller-Graff (ed.), *Die Rolle der erweiterten Europäischen Union als Akteur in der Welt* (2006) 385-403.
- Kochenov D., *EU Enlargement and the Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law* (2008).
- Kochenov D., *The Eastern Partnership, The Union For the Mediterranean and the Remaining Need to Do Something with the ENP*, CRCEES Working Paper WP 2009/01 (2009).
- Kotzian P., Knodt M. and Urdze S., 'Instruments of the EU's External Democracy Promotion', 49

- Journal of Common Market Studies* 5 (2011) 995-1018.
- Koutrakos P., 'Editorial: Development and Foreign Policy: Where to Draw the Line between the Pillars', 33 *European Law Review* 3 (2008) 298-90.
- Kubicek P. J. (ed.), *The European Union and Democratization* (2003).
- Kucharczyk J. and Lovitt J. (eds), *Democracy's New Champions: European Democracy Assistance after EU Enlargement* (2008).
- Kumar K., 'Civil Society: An Inquiry into the Usefulness of a Historical Term', 44 *British Journal of Sociology* 3 (1993) 375-395.
- Kurki M., 'Democracy and Conceptual Contestability: Reconsidering Conceptions of Democracy in Democracy Promotion', 12 *International Studies Review* 3 (2011) 362-386.
- Kurowska X., 'Beyond the Balkans but Still in Civilian Uniform: EUJUST THEMIS to Georgia', 4 *CFSP Forum* 3 (2006).
- Laffan B. and Lindner J., 'The Budget. Who Gets What, When, and How?', in H. Wallace, M. A. Pollack and A. R. Young (eds), *Policy-Making in the European Union* (6th ed., 2010) 207-228.
- Landman T., 'Economic Requirements of Democracy, in P. B. Clarke and J. Foweraker (eds), *Encyclopedia of Democratic Thought* (2001) 235-9.
- Lannon E., (ed./éd.), *The European Neighbourhood Policy's Challenges/La Défis de la Politique Européenne de Voisinage* (2012).
- Lawson S., 'Conceptual Issues in the Comparative Study of Regime Change and Democratization', 25 *Comparative Politics* 2 (1993) 183-205.
- Leibfried S. and Obinger H., 'Welfare State Futures. An Introduction', in S. Leibfried (ed.), *Welfare State Futures* (2001) 1-14.
- Leino P., 'The Journey Towards all that is Good and Beautiful: Human Rights and 'Common Values' as Guiding Principles of EU Foreign Relations Law', in M. Cremona and B. de Witte (eds), *EU Foreign Relations Law: Constitutional Fundamental* (2008) 259-290.
- Levitsky S. and Way L. A., 'Linkage versus Leverage: Rethinking the International Dimension of Regime Change', 38 *Comparative Politics* 4 (2006) 379-400.
- Lewis J., 'The Council of the European Union', in M. Cini and N. Pérez-Solórzano Borragán (eds), *European Union Politics* (3rd ed., 2010) 41-61.
- Light M., 'Exporting Democracy', in K. E. Smith and M. Light (eds), *Ethics and Foreign Policy* (2001) 75-92.
- Lindberg S., 'A Theory of Elections as a Mode of Transition', in S. I. Lindberg (ed.), *Democratization by Elections: A New Mode of Transition?* (2009) 314-41.
- Lindberg S. I. (ed.), *Democratization by Elections: A New Mode of Transition?* (2009).
- Linz J. J., 'Transitions to Democracy', *The Washington Quarterly* (Summer 1990) 143-164.
- Linz J. J. and Stepan A., *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (1996).
- Linz J. J. and Stepan A., 'Democracy and its Arenas', in J. J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (1996) 3-15.
- Linz J. J. and Stepan A., 'Actors and Contexts', in J. J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (1996) 66-85.
- Linz J. J. and Stepan A., 'The Paradigmatic Case of *Reforma Pactada – Ruptura Pactada*: Spain', in J. J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (1996) 87-115.
- Lipset, S. M., 'Some Social Requisites of Democracy: Economic Development and Political Legitimacy', 53 *American Political Science Review* 1 (March 1959) 69-105.
- Lipset S. M., 'The Social Requisites of Democracy Revisited', 59 *American Sociological Review* (February 1994) 1-22.
- Lipset S. M., 'The Indispensability of Political Parties', 11 *Journal of Democracy* 1 (2000) 48-55.
- Lipset S. M., Seong K. - R. and Torres J. C., 'A Comparative Analysis of the Social Requisites of Democracy', 45 *International Social Science Journal* (May 1993) 155-175.
- Londregan J. B. and Poole K. T., 'Does High Income Promote Democracy?', 49 *World Politics* (October 1996) 1-30.
- Lowe D., 'Idea to Reality: NED at 25', at <http://www.ned.org/about/history> (last accessed on 28.3.2011).
- MacLeod I., Hendry I. D. and Hyett S., *The External Relations of the European Communities* (1996).
- Mackie J., Frederiksen J. and Rossini C., *Improving ACP-EU Cooperation: Is 'Budgetising' the EDF the*

- Answer?*, ECDPM Discussion Paper 51 (January 2004).
- Magan A. and McFaul M. A., 'Introduction: American and European Strategies to Promote Democracy – Shared Values, Common Challenges, Divergent Tools?', in Magan A. and McFaul M. A. (eds), *Promoting Democracy and the Rule of Law: American and European Strategies* (2009) 1-33.
- Mair, S., 'Germany's Stiftungen and Democracy Assistance: Comparative Advantages, New Challenges', in Burnell, P. (ed.), *Democracy Assistance. International Co-operation for Democratization* (2000) 128-149.
- Manners I., 'The Normative Ethics of the European Union', 84 *International Affairs* 1 (2008) 45-60.
- Mansfield E. D. and J. Snyder, 'Democratization and the Danger of War', 20 *International Security* 1 (Summer 1995) 5-38.
- Marantis, D. J., 'Human Rights, Democracy, and Development: The European Community Model', 7 *Harvard Human Rights Journal* (Spring 1994) 1-32.
- Maresceau M. and Lannon E. (eds), *The EU's Enlargement and Mediterranean Strategies: A Comparative Analysis* (2001).
- Marks S., *The Riddle of all Constitutions: International Law, Democracy and the Critique of Ideology* (2000).
- Marlière P., 'Introduction: European Social Democracy *in Situ*', in R. Ladrech and P. Marlière (eds), *Social Democratic Parties in the European Union: History, Organization, Policies* (1999) 1-15.
- Mathieson D. and Youngs R., *Democracy Promotion and the European Left: Ambivalence Confused?*, FRIDE Working Paper No. 29 (December 2006).
- McFaul M., 'The Fourth Wave of Democracy and Dictatorship: Noncooperative Transitions in the Postcommunist World', 54 *World Politics* 2 (January 2002) 212-244.
- McGowan F., 'Social Democracy and the European Union: Who is Changing Whom?', in L. Martell (ed.), *Social Democracy: Global and National Perspectives* (2001) 74-105.
- Menéndez A. J., 'Chartering Europe: Legal Status and Policy Implications of the Charter of Fundamental Rights of the European Union', 40 *Journal of Common Market Studies* 3 (2002), at 471-490.
- Merlingen M. and Ostrauskaite R., 'ESDP Police Missions: Meaning, Context and Operational Challenges', 10 *European Law Review* (2005) 215-35.
- Moller N., 'The World Bank, Human Rights, Democracy, and Development', 15 *Netherlands Quarterly of Human Rights* 1 (1997) 21-45.
- Moore B. Jr., *The Social Origins of Dictatorship and Democracy* (1966).
- Mughan A. and Gunther R., 'The Media and Democratic and Nondemocratic Regimes: A Multilevel Perspective', in Gunther R. and Mughan A. (eds), *Democracy and the Media: A Comparative Perspective* (2000) 1-27.
- Munck G. L. and Skalnik Leff C., 'Modes of Transition and Democratization: South America and Eastern Europe in Comparative Perspective', 29 *Comparative Politics* 3 (April 1997) 343-362.
- National Democratic Institute (NID), *Lessons Learned and Challenges Facing International Election Monitoring* (April 1999).
- National Endowment for Democracy (NED), *The Backlash Against Democracy Assistance: A Report prepared by the National Endowment for Democracy for Senator Richard G. Lugar, Chairman Committee on Foreign Relations, United States Senate* (June 8, 2006).
- Netherlands Institute for Multiparty Democracy (NIMD), *No lasting Peace and Prosperity without Democracy & Human Rights: Harnessing Debates on the EU's future Financial Instruments* (Report commissioned by the European Parliament; Carried out under the auspices of the Netherlands Institute for Multiparty Democracy, July 2005).
- Neumayer E., 'Is Good Governance Rewarded? A Cross-national Analysis of Debt Forgiveness', 30 *World Development* 6 (2002) 913-930.
- Newman E. and Rich R. (eds), *The UN Role in Promoting Democracy: Between Ideals and Reality* (2004).
- Niedobitek M., 'Die Europäische Union and Rußland: Zum Stand der Beziehungen', 2 *Europarecht* (1997) 107-131.
- Nowak A., 'Civilian Crisis Management within ESDP', in A. Nowak (ed.), *Civilian Crisis Management: The EU Way*, Chaillot Paper 90 (2006).
- Nowak M., 'ARTICLE 25 Political Rights', in M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (1993) 435-57.
- Nowak M., 'Human Rights 'Conditionality' in Relation to Entry to, and Full Participation in, the EU', in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999) 687-98.

- O'Donnell G., *Democracy, Law and Comparative Politics*, IDS Working Paper No. 118 (2000).
- O'Donnell G., and Schmitter P. C., *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (1986).
- O'Donnell G., Schmitter P. C. and Whitehead L. (eds), *Transitions from Authoritarian Rule: Comparative Perspectives* (1986).
- Office for Promotion of Parliamentary Democracy (OPPD), *Strengthening Parliaments Worldwide: The European Parliament and the Promotion of Democracy* (2009).
- Office for Promotion of Parliamentary Democracy (OPPD), *Democracy Revisited: Which Notion of Democracy for the EU's External Relations?* (2009).
- Office for the Promotion of Parliamentary Democracy (OPPD), *Getting Acquainted: Setting the Stage for Democracy Assistance. Democracy Support in EU External Relations* (2010).
- O'Keefe D., 'Exclusive, Concurrent and Shared Competence', in A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000) 179-99.
- Olsen G. R., 'Promotion of Democracy as a Foreign Policy Instrument of "Europe": Limits to International Idealism', 7 *Democratization* 2 (2000) 142-167.
- Open Society Institute (OSI), *How Could a European Endowment for Democracy Add Value?*, Discussion Paper 1 (September 2011).
- Owen M., 'How Liberalism Produces Democratic Peace', in M. E. Brown, S. M. Lynn-Jones and S. E. Miller (eds), *Debating the Democratic Peace* (1996) 116-155.
- Padgett S. and Paterson W.E., *A History of Social Democracy in Postwar Europe* (1991).
- Panebianco S., 'Promoting Human Rights and Democracy in European Union Relations with Russia and China', in S. Lucarelli and I. Manners (eds.), *Values and Principles in European Union Foreign Policy* (2006), 130-146.
- Paterson W. E. and Thomas A. H., 'Introduction', in W. E. Paterson and A. H. Thomas (eds), *The Future of Social Democracy: Problems and Prospects of Social Democratic Parties in Western Europe* (1986) 1-18.
- Peers S., 'Case C-268/94, *Portugal v. Council*, (development policy) [1996] ECR I-6177 (Full Court)', 35 *Common Market Law Review* (1998) 539-55.
- Peers S., 'Fragmentation or Evasion in the Community's Development Policy? The Impact of *Portugal v. Council*', in A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000) 100-113.
- Peers S., 'EC Frameworks of International Relations: Co-operation, Partnership and Association', in A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000) 160-178.
- Petite M., *Current Legal Issues in the External Relations of the European Union*, EUI Working Paper LAW No. 2006/38 (2006).
- Phillips A., 'Exporting Democracy: German Political Foundations in Central-East Europe', 6 *Democratization* 2 (1999) 70-98.
- Pierson C., *Hard Choices: Social Democracy in the 21st Century* (2001).
- Pieters K., 'The Mediterranean Countries (Morocco, Algeria, Tunisia, Libya, Egypt, Jordan, Syria and Lebanon)', in S. Blockmans and A. Łazowski (eds), *The European Union and its Neighbours* (2006) 391-432.
- Piontek E., 'Chapter 16 Belarus', in S. Blockmans and A. Łazowski (eds), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration* (2006) 531-47.
- Pinto-Duschinsky, M., 'Foreign Political Aid: The German Party Foundations and their US Counterparts', 67 *International Affairs* 1 (1991) 33-63.
- Pippan C., *Die Förderung der Menschenrechte und der Demokratie als Aufgabe der Entwicklungszusammenarbeit der Europäischen Gemeinschaft* (2002).
- Pippan C., 'The Rocky Road to Europe: The EU's Stabilization and Association Process for the Western Balkans and the Principle of Conditionality', 9 *European Foreign Affairs Review* 2 (Summer 2004) 219-245.
- Piron L.-H., 'Time to Learn, Time to Act in Africa', in T. Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (2006) 275-300.
- Pollack M. A., 'Theorizing EU Policy-Making', in H. Wallace, M. A. Pollack and A. R. Young (eds), *Policy-Making in the European Union* (2010) 15-44.
- Potter D., Goldblatt D., Kiloh M. and Lewis P. (eds), *Democratization* (1997).
- Potter D., 'Chapter 1: Explaining Democratization', in D. Potter, D. Goldblatt, M. Kiloh, P. Lewis

- (eds), *Democratization* (1997) 1-39.
- Pratchett L. and Lowndes V., *Developing Democracy in Europe: An Analytical Summary of the Council of Europe's Acquis* (2004).
- Pridham, G. (ed.), *Encouraging Democracy: The International Context of Regime Transition in Southern Europe* (1991).
- Pridham G., 'International Influences and Democratic Transition: Problems of Theory and Practice in Linkage Politics', in G. Pridham (ed.), *Encouraging Democracy: The International Context of Regime Transition in Southern Europe* (1991) 1-30.
- Pridham G., 'The Politics of the European Community, Transnational Networks and Democratic Transition in Southern Europe', in G. Pridham (ed.), *Encouraging Democracy: The International Context of Regime Transition in Southern Europe* (1991) 212-245.
- Pridham G., *The Dynamics of Democratization: A Comparative Approach* (2000).
- Pridham G., Herring E., and Sanford G. (eds), *Building Democracy? The International Dimension of Democratization in Eastern Europe* (rev. ed., 1997).
- Przeworski A., *Democracy and the Market* (1991).
- Przeworski, A., Alvarez, M. M., Cheibub, J. A. and Limongi Neto, A. P., 'What makes Democracy Endure?', 7 *Journal of Democracy* 1 (January 1996) 39-55.
- Przeworski A., Alvarez M., Cheibub J. A. and Limongi F., 'What Makes Democracy Endure?', in L. Diamond, M. F. Plattner, Y. Chu and H. Tien (eds), *Consolidating the Third Wave Democracies: Themes and Perspectives* (1997) 295-311.
- Przeworski A. and Limongi F., *Modernization: Theories and Facts* (1997).
- Putnam R. D., 'Bowling Alone: America's Declining Social Capital', in L. Diamond and M. F. Plattner (eds), *The Global Resurgence of Democracy* (2nd ed., 1996) 290-305.
- Quigley K. F. F., *For Democracy's Sake: Foundations and Democracy Assistance in Central Europe* (1997).
- Quill L., 'Republicanism', P. B. Clarke and J. Foweraker (eds), *Encyclopedia of Democratic Thought* (2001) 612-16.
- Rack R. and S. Lausegger, 'The Role of the European Parliament: Past and Future', in P. Alston, with M. Bustelo and J. Heenan (eds.), *The EU and Human Rights* (1999) 801-37.
- Rakner L. and van de Walle N., 'Opposition Weakness in Africa', 20 *Journal of Democracy* 3 (July 2009) 108-121.
- Randall V., 'Modernisation', in P. B. Clarke and J. Foweraker (eds), *Encyclopedia of Democratic Thought* (2001) 441-5.
- Rasler K. and Thompson W. R., *Puzzles of the Democratic Peace: Theory, Geopolitics, and the Transformation of World Politics* (2005).
- Reisman W. M., 'Sovereignty and Human Rights in Contemporary International Law', in Fox G. H. and Roth B. R. (eds), *Democratic Governance in International Law* (2000) 239-258.
- Reisman W. M. and Stevick D. L., 'The Applicability of International Law Standards to United Nations Economic Sanctions Programmes', 9 *European Journal of International Law* 1 (1998) 86-141.
- Rennger N. J., 'Towards a Culture of Democracy? Democratic Theory and Democratization in Eastern and Central Europe', in Pridham G., Herring E. and Sanford G. (eds), *Building Democracy? The International Dimension of Democratization in Eastern Europe* (rev. ed., 1997) 56-80.
- Riedel E. and Will M., 'Human Rights Clauses in External Agreements of the EC', in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999) 723-54.
- Řiháčková V., *Walking the Tightrope of Democracy Ais: The Long and Winding Road towards 'Flexible', Well-targeted EU Funding for Democracy and Human Rights*, PASOS Policy Brief No. 3 (2010).
- Risse-Kappen T., 'Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis meet the European Union', 34 *Journal of Common Market Studies* 1 (1996) 53-80.
- Robinson W. I., *Promoting Polyarchy: Globalization, United States Intervention and Hegemony* (1996).
- Rosenberg, T., 'Revolution U: What Egypt learned from the students who overthrew Milosevic', *Foreign Policy* (16.2.2011).
- Russett B., 'The Fact of Democratic Peace', in M. E. Brown, S. M. Lynn-Jones and S. E. Miller (eds), *Debating the Democratic Peace* (1996) 58-81.
- Rustow D., 'Transitions to Democracy: Toward a Dynamic Model', 3 *Comparative Politics* 2 (1970) 337-363.
- Santiso C., 'Sisyphus in the Castle: Improving European Union Strategies for Democracy Promotion And Governance Conditionality', 15 *The European Journal of Development Research* 1 (2003) 1-28.

- Schedler A., 'What is Democratic Consolidation?', in L. Diamond and M. F. Plattner, *The Global Divergence of Democracies* (2001) 149-165.
- Scheppele K., 'Democracy by Judiciary (or Why Courts can Sometimes be More Democratic than Parliaments)', Paper presented at the Conference 'Rethinking the Rule of Law in Post-communist Europe: Past Legacies, Institutional Innovations, and Constitutional Discourses, European University Institute (February 2002).
- Schimmelfennig F., Engert S. and Knobel H., 'Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey', 41 *Journal of Common Market Studies* 3 (2003) 495-518.
- Schimmelfennig F., Engert S. and Knobel H., 'The Impact of EU Political Conditionality', in F. Schimmelfennig and U. Sedelmeier (eds.), *The Europeanization of Central and Eastern Europe* (2005) 29-51.
- Smith, T., *America's Mission: The United States and the Worldwide Struggle for Democracy in the Twentieth Century* (1994).
- Schmidt M. G., *Demokratietheorien: Eine Einführung* (2010).
- Schmidtke O. (ed), *The Third Way Transformation of Social Democracy* (2002).
- Schmitter, P. C. and Karl T. L., 'What Democracy is...and is not', 2 *Journal of Democracy* 3 (Summer 1991) 75-88.
- Schmitter P. C., 'The International Context for Contemporary Democratization', 2 *Stanford Journal of International Affairs* 1 (Fall/Winter 1993) 1-34.
- Schmitter P. C., 'The Consolidation of Political Democracies: Processes, Rhythms, Sequences and Types', in G. Pridham (ed), *Transitions to Democracy: Comparative Perspectives from Southern Europe, Latin America and Eastern Europe* (1995) 535-570.
- Schmitter P. C., 'The Influence of the International Context upon the Choice of National Institutions and Policies in Neo/Democracies', in L. Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas* (1996) 26-54.
- Schmitter P. C., 'More Liberal, Preliberal or Postliberal', in L. Diamond and M. F. Plattner (eds), *The Global Resurgence of Democracy* (2nd ed., 1996) 328-335.
- Schmitter P. C., *Intermediaries in the Consolidation of Neo-Democracies: The Role of Parties, Associations and Movements*, Institut de Ciències Polítiques i Socials, Working Paper No. 130 (1997).
- Schmitter P. C., 'Civil Society East and West', in L. Diamond, M. F. Plattner, Y. Chu and H. Tien (eds), *Consolidating the Third Wave Democracies: Themes and Perspectives* (1997) 239-262.
- Schmitter, P. C. and Brouwer, I., *Conceptualizing, Researching and Evaluating Democracy Promotion and Protection*, EUI Working Paper SPS No. 99/9 (1999).
- Scott J. M. and Steele C. A., 'Assisting Democrats or Resisting Dictators? The Nature and Impact of Democracy Support by the United States National Endowment for Democracy, 1990-99', 12 *Democratization* 4 (2005) 439-60.
- Sen A., 'Democracy as Universal Value', 10 *Journal of Democracy* 3 (July 1999) 3-17.
- Sikink, K., 'The Effectiveness of US Human Rights Policy 1973-80', in Whitehead L., *The International Dimensions of Democratization: Europe and the Americas* (1996) 93-124.
- Silitski V., 'What Are We Trying to Explain?', 20 *Journal of Democracy* 1 (January 2009) 86-89.
- Simma, B., Aschenbrenner, J. B., and Schulte, C., 'Human Rights Considerations in the Development Co-operation Activities of the EC', in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999) 571-626.
- Smith K., 'The Use of Political Conditionality in the EU' Relations with Third Countries: How Effective?', 3 *European Foreign Affairs Review* (1998) 253-274.
- Smith, K. E., *The Making of EU Foreign Policy: The Case of Eastern Europe* (1999).
- Smith K. E. and Light M., 'Introduction', in K. E. Smith and M. Light (eds), *Ethics and Foreign Policy* (2001) 1-14.
- Smith K. E., 'The EU, Human Rights and Relations with Third Countries: 'Foreign Policy' with an Ethical Dimension?', in K. E. Smith and M. Light (eds), *Ethics and Foreign Policy* (2001) 185-203.
- Smith, K., 'The European Parliament and Human Rights: Norm Entrepreneur or ineffective talking shop?', Dossier El Parlamento Europeo en la Política Exterior No. 11/2004.
- Sobhan R., 'Aid as Catalyst: Comments and Debate (II): Aid Effectiveness and Policy Ownership', 33 *Development and Change* 3 (2002) 539-548.
- Sørensen G., *Democracy and Democratization: Process and Prospects in a Changing World* (2nd ed., 1998).
- Stammers N., 'Social Democracy and Global Governance', in L. Martell (ed), *Social Democracy: Global*

- and *National Perspectives* (2001) 27-48.
- Steiner H. J., 'Political Participation as Human Right', 1 *Harvard Human Rights Yearbook* (1988) 77-134.
- Steiner H. J. and Alston P., *International Human Rights in Context: Law, Politics, Morals* (1996).
- Steiner H. J. and Alston P., *International Human Rights in Context: Law, Politics, Morals*. (2000).
- Swedish International Development Cooperation Agency (SIDA), *Handbook for European Union Election Observation Missions* (no date provided, but probably of 2002).
- Taiwo O., 'The Rule of Law: The New Leviathan?', XII *Canadian Journal of Law and Jurisprudence* 1 (1999) 151-168.
- Tatham A. F., *Enlargement of the European Union* (2009).
- Teorell J., *Determinants of Democratization: Explaining Regime Change in the World, 1972-2006* (2010).
- The World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth* (1989).
- The World Bank, *Governance and Development* (1992).
- The World Bank, *Governance: The World Bank's Experience* (1994).
- Tucker J. A., 'Enough! Electoral Fraud, Collective Action Problems, and Post-Communist Colored Revolutions', 5 *Perspectives on Politics* 3 (September 2007) 535-551.
- Tully J., 'The Unfreedom of the Moderns in Comparison to Their Ideals of Constitutional Democracy', 65 *The Modern Law Review* 2 (2002) 202-228.
- Urdze S., *Die Externe Demokratieförderung der EU in den Zentralasiatischen Staaten* (2010).
- USAID, *Final Report. Effects of U.S. Foreign Assistance on Democracy Building: Results of a Cross-National Quantitative Study* by E.Finkel, A.Pérez-Liñán and M. A. Seligson (2006).
- Vachudova M. A., *Europe Undivided: Democracy, Leverage, and Integration since 1989* (2005).
- van Doorn M. and von Meijenfheldt, R., *Democracy: Europe's Core Value? On the European Profile in World-wide Democracy Assistance* (2007).
- Vanhanen T., *Prospects for Democracy: A Study of 172 Countries* (1997).
- von Meijenfheldt, R., *A European Foundation for Democracy: What is needed*, FRIDE Policy Brief No. 93 (September 2011).
- Voorhoof D., 'Guaranteeing the Freedom and Independence of the Media', in Council of Europe (ed.), *Media and Democracy* (1998) 35-59.
- Waldron J., 'Is the Rule of Law an Essentially Contested Concept (in Florida)?', 21 *Law and Philosophy* 2 (2002) 137-164.
- Wallace H., Pollack M. A. and Young A. R. (eds), *Policy-Making in the European Union* (2010).
- Wallace H., 'An Institutional Anatomy and Five Policy Modes', in H. Wallace, M. A. Pollack and A. R. Young (eds), *Policy-Making in the European Union* (2010) 69-104.
- Ward A., 'Community Development Aid and Evolution of the Inter-institutional Law of the European Union', in A. Dashwood and C. Hillion (eds), *The General Law of E.C. External Relations* (2000), at 42-7.
- Warkotsch A., 'Non-compliance and Instrumental Variation in EU Democracy Promotion', 15 *Journal of European Public Policy* 2 (2008) 227-245.
- Warleigh-Lack A. and Drachenberg R., 'Policy-Making in the European Union', in M. Cini and N. Pérez-Solórzano Borrágán (eds.), *European Union Politics* (3rd ed., 2010) 209-24.
- Way L., 'The Real Causes of the Color Revolutions', 19 *Journal of Democracy* 3 (July 2008) 55-69.
- Weiler J. H. H. and Fries S., 'A Human Rights Policy for the European Community and Union: The Question of Competences', in P. Alston, with M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (1999) 147-165.
- Wetzel A. and Orbie J. (eds.), 'The Substance of European Union Democracy Promotion', Special Issue, 16 *European Foreign Affairs Review* 5 (2011) 565-734.
- Wetzel A. and Orbie J., 'Promoting Embedded Democracy? Researching the Substance of EU Democracy Promotion', 16 *European Foreign Affairs Review* 5 (2011) 565-588.
- Wetzel A. and Orbie J., 'With Map and Compass on Narrow Paths and through Shallow Waters: Discovering the Substance of EU Democracy Promotion', 16 *European Foreign Affairs Review* (2011) 705-725.
- White G., 'Civil Society, Democratization and Development (I): Clearing the Analytical Ground', 1 *Democratization* 3 (1994) 375-390.
- White N. D., 'The United Nations and Democracy Assistance: Developing Practice within a Constitutional Framework', in P. Burnell (ed.), *Democracy Assistance: International Cooperation for Democratization* (2000) 67-89.
- Whitehead L., 'Democracy by Convergence and Southern Europe: A Comparative Politics

- Perspective', in G. Pridham (ed.), *Encouraging Democracy: The International Context of Regime Transition in Southern Europe* (1991) 45-61.
- Whitehead L., *The International Dimensions of Democratization: Europe and the Americas* (1996).
- Whitehead L., 'Three International Dimensions of Democratisation', in L. Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas* (1996) 3-25.
- Whitehead, L., 'The Imposition of Democracy in the Caribbean', in L. Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas* (1996) 59-92.
- Whitehead L., 'Democracy by Convergence: Southern Europe', in L. Whitehead (ed.), *The International Dimensions of Democratization: Europe and the Americas* (1996) 261-284.
- Williams A., *EU Human Rights Policies: A Study in Irony* (2004).
- Wippman D., 'Pro-democratic Intervention by Invitation', in Fox G. H. and Roth B. R. (eds), *Democratic Governance in International Law* (2000) 293-327.
- Wouters J., 'The EU Charter of Fundamental Rights. Some Reflections on its External Dimension', 1 *Maastricht Journal of European and Comparative Law* (2001) 3-10.
- Wouters J., Coppens D., De Meester B., 'The European Union's External Relations after the Lisbon Treaty', in S. Griller and J. Ziller, *The Lisbon Treaty. EU Constitutionalism without a Constitutional Treaty?* (2008) 144-203.
- Vos E., *50 years of European Integration, 45 years of Comitology*, Maastricht Working Papers Faculty of Law No. 3 (2009).
- Yilmaz H., 'The International Context', in C. W. Haerpfer, P. Bernhagen, R. F. Inglehart and C. Welzel (eds), *Democratization* (2009) 92-106.
- Yilmaz H., 'External-Internal Linkages in Democratization: Developing and Open Model of Democratic Change', 9 *Democratization* 2 (Summer 2002) 67-84.
- Young A. R., 'The European Policy Process in Comparative Perspective', in H. Wallace, M. A. Pollack and A. R. Young (eds), *Policy-Making in the European Union* (6th ed., 2010), at 45-68.
- Youngs R., *Democracy Promotion: The Case of European Union Strategy*, CEPS Working Document No. 167 (October 2001).
- Youngs R., 'The European Union and Democracy Promotion in the Mediterranean: A New or Disingenuous Strategy?', 9 *Democratization* 1 (2002) 40-62.
- Youngs R., *International Democracy and the West: The Role of Governments, Civil Society, and Multinational Business* (2004).
- Youngs R. (ed.), *Survey of European Democracy Promotion Policies 2000-2006* (2006).
- Youngs R., 'Democracy as Product versus Democracy as Process', in M. van Doorn and R. von Meijenfeldt (eds), *Democracy: Europe's Core Value?* (2007) 67-72.
- Youngs R., 'Trends in Democracy Assistance: What has Europe been Doing?', 19 *Journal of Democracy* 2 (April 2008) 161-169.
- Youngs R., 'Democracy Promotion as External Governance?', 16 *Journal of European Public Policy* 6 (2009) 895-915.
- Youngs R., *How to Revitalize Democracy Assistance: Recipients' Views*, FRIDE Working Paper No. 100 (June, 2010).
- Youngs R. (ed.), *The European Union and Democracy Promotion: A Critical Global Assessment* (2010).
- Zimmermann A., 'Kommentar zu Artikel 177 EG-Vertrag', H. von der Groeben and J. Schwarze (eds), *Kommentar zum Vertrag über die Europäische Union und zur Gründung der Europäischen Gemeinschaft* (6th ed., 2003) 1493-4.

Newspaper Articles (including on-line publications) and Speeches

- Ronald Reagan's Speech before the British Parliament on 6.8.1982.
- Bransten J., 'Ukraine: Part Homegrown Uprising, Part Imported Production?', RFE/RL, 24.12.2004.
- Finkel D., 'U.S. Ideals Meet Reality in Yemen', 'A Struggle for Peace in a Place Where Fighting Never Ends', and 'In the End, a Painful Choice', Washington Post, 18., 19., and 20.12.2005.
- David Miliband, Aung San Suu Kyi Lecture at Oxford University of UK Foreign Secretary David Miliband on 'The Democratic Imperative', 13.2.2008.
- Grand St. R., 'Starting in Egypt: The Fourth Wave of Democracy?', The Brookings Institution, 10.2.2011.

'Sarkozy's Lybia stance wins widespread backing', Financial Times, 20.3.2011.
'Jasmine Stirrings in China: No Awakening, but Crush it Anyway', The Economist, 3.3.2011.
Popescu N., 'More for more in the Neighbourhood', EU Observer Blogs, 4.4.2011,
<http://blogs.euobserver.com/popescu/>.
'Tunisia's Transition to Democracy: The Jasmine Revolution?', The Economist On-line Multimedia,
8.4.2011.
'Exclusive: We fight on until Gaddafi goes', The Times, 15.4.2011.

Documents of the European Union, International Organizations, and States

EUROPEAN UNION

Council

Annual Reports

Council of the European Union, Annual Report on Human Rights 2000.
Council of the European Union, Annual Report on Human Rights 2004.

Common Positions

Council of the European Union, Common position adopted by the Council on 23 October 2006 with a view to the adoption of the Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation, Statement of the Council's reasons, 23 October 2006, DEVGGEN 205.

Conclusions

Council conclusions on election assistance and observation, Doc. 9990/01, 26.6.2001, 31.5.2001.
Council, Draft Council conclusions on the European Union's role in promoting human rights and democratisation in third countries, 9547/01, 19.6.2001.
Council, Draft Council conclusions on the implementation of the follow-up to the 25 June 2001 Council conclusions on human rights and democratisation in third countries, Doc. 14671/02, 26.11.2002.
Council, Conclusions of the Council and the Representatives of the Governments of the Member States meeting within the Council, Governance on the European Consensus for the Development – Towards a harmonised approach within the European Union, 14024/06, 16.10.2006.
Council conclusions on support to democratic governance – towards an enhanced EU framework, 9908/09, 18.5.2009.
Council conclusions on Democracy Support in the EU's External Relations, 2974th External Relations Council meeting, 17.11.2009.
Council Conclusions on Democracy Support in the EU's External Relations – 2010 Progress Report and List of Proposed Countries, 3058th Foreign Affairs Council meeting, 13.12.2010.
Council of the European Union, Council conclusions on the European Endowment for Democracy, 3130th Foreign Affairs Council meeting, 1.12.2011.
Council of the European Union, Note from the Presidency to the Delegations on the Declaration of the Establishment of a European Endowment for Democracy, No.18764/11, 20.12.2011.

Decisions

- Council Decision 93/604/CFSP of 9 November 1993 Concerning the Joint Action decided on by the Council on the Basis of Art. J.3 of the Treaty on European Union concerning the Dispatch of a Team of Observers for the Parliamentary Elections in the Russian Federation, OJ 1993 L286/3.
- Council Decision 93/687/CFSP of 6 December 1993 on a joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning support for the transition towards a democratic and multi-racial South Africa, OJ 1993 L316/45.
- Council Decision 96/706/EC of 6 December 1996 concerning the adoption of the guidelines for the indicative programmes concerning financial and technical measures to accompany the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (MEDA), OJ 1996 L325/20.
- Council Decision 98/1/EC of 18 December 1997 on a Tacis Civil Society Development Programme for Belarus for 1997, OJ 1998 L1/6.
- Council Decision 9262/98 Guidelines – EU Policy on electoral observation, published in Annex III of COM(2000) 191 final.
- Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, 1999/468/EC, OJ 1999 L184/23.
- Council Decision 2788/99 on EU Guidelines on Common Criteria for the Selection of Electoral Observers.
- Council Decision 2010/330/CFSP of 14 June 2010 on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX-IRAQ, OJ 2010 L149/12.
- Council Decision 2010/322/CFSP of 8 June 2010 amending and extending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, OJ 2010 L145/13.
- Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, OJ 2010 L201/30.

External and Internal Agreements

- Third ACP-EEC Convention signed at Lomé on 8 December 1984, OJ 1986 L86/3.
- Fourth ACP-EEC Convention signed at Lomé on 15 December 1989, OJ 1991 L229/1.
- Cooperation Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on partnership and development, OJ 1995 L85/33.
- Agreement amending the Fourth ACP-EC Convention of Lomé signed in Mauritius on 4 November 1995, OJ 1998 L156/3.
- Cooperation Agreement between the European Community and the Socialist Republic of Vietnam, OJ 1996 L136/29.
- Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestinian Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, OJ 1997 L187/3.
- Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, OJ 1999 L239/1.
- Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, OJ 1999 L311/3.
- Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States of the other Part, OJ 2000 L276/45.
- Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, OJ 2000 L317/3.
- Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, OJ 2002 L129/3.

Political dialogue and Cooperation Agreement between the European Community and its Member States, of the one part, and the Andean Community and its Member Countries (Bolivia, Colombia, Ecuador, Peru and Venezuela), of the other part (signed on 15.12.2003).

Political Dialogue and Cooperation Agreement between the European Community and its Member States, of the one part, and the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, of the other part (signed on 15.12.2003).

Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on the financing of Community aid under the multiannual financial framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies, OJ L 2006 247/32.

Guidelines

European Union Guidelines on Human Rights Dialogues, 13 December 2001.
EU guidelines on human rights dialogues with third countries – Update, 19 January 2009.

Joint Actions

Joint Action 2004/523/CFSP of 28 June 2004 on the European Union Rule of Law Mission in Georgia, EUJUST THEMIS, OJ 2004, L228/21.

Joint Action 2004/789/CFSP of 22 November 2004 on the extension of the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL PROXIMA), OJ 2004 L348/40.

Joint Action 2005/190/CFSP of 7 March 2005 on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX, OJ 2005 L62/37.

Joint Action 2005/355/CFSP of 2 May 2005 on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of Congo (DRC), OJ 2005 L112/20.

Joint Action 2005/643/CFSP of 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission – AMM), OJ 2005 L234/13.

Joint Action 2006/121/CFSP of 20 February 2006 appointing the European Union Special Representative for the South Caucasus, OJ 2006 L49/14.

Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, OJ 2008 L42/92.

Joint Action 2003/681/CFSP of 29 September 2003 on the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL 'Proxima'), OJ 2003 L249/66.

Regulations

Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, OJ 1977 L356/1.

Council Regulation (EEC) No 2210/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, OJ 1978 L263/1.

Council Regulation (EEC) No 442/81 of 17 February 1981 on financial and technical aid to non-associated developing countries, OJ 1981 L48/8.

Council Regulation (EEC) No 3177/82 of 22 November 1982 on the conclusion of a Protocol of financial and technical cooperation between the European Economic Community and the People's Democratic Republic of Algeria.

Council Regulation (EEC) No 3331/82 of 3 December 1982 on food-aid policy and food-aid management and amending Regulation (EEC) No 2750/75, OJ 1982 L352/1.

Council Regulation (EEC) No 1993/83 of 11 July 1983 implementing a special programme to combat hunger in the world, OJ 1983 L196/6.

Council Regulation No 3973/86 concerning the application of the Protocols on financial and technical cooperation concluded between the Community and Algeria, Morocco, Tunisia, Egypt, Lebanon, Jordan, Syria, Malta and Cyprus, OJ 1986 L370/5.

Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic, OJ 1989 L375/11.

Council Regulation (Euratom, ECSC, EC) No 610/90 of 13 March 1990 amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, OJ 1990 L70/1.

Council Regulation (EEC, Euratom) No 2157/91 of 15 July 1991 concerning the provision of technical assistance to economic reform and recovery in the Union of Soviet Socialist Republics, OJ 1991 L201/2.

Council Regulation (EEC) No 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America, OJ 1992 L52/1.

Council Regulation (EEC) No 1762/92 of 29 June 1992 on the implementation of the Protocols on financial and technical cooperation concluded by the Community with Mediterranean non-member countries, OJ 1992 L181/1.

Council Regulation (EEC) No 1763/92 of 29 June 1992 concerning financial cooperation in respect of all Mediterranean non-member countries, OJ 1992 L181/5.

Council Regulation (Euratom, EEC) No 2053/93 of 19 July 1993 concerning the provision of technical assistance to economic reform and recovery in the independent States of the former Soviet Union and Mongolia, OJ 1993 L187/1.

Council Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories, OJ 1994 L182/4.

Council Regulation (EC) No 1735/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories and amending Regulation (EEC) No 1763/92 concerning financial cooperation in respect of all Mediterranean non-Member countries, OJ 1995 L182/6.

Council Regulation (Euratom, EC) No 1279/96 of 25 June 1996 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia, OJ 1996 L 165/1.

Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership, OJ 1996 L189/1.

Council Regulation (EC) No 1628/96 of 25 July 1996 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia, OJ 1996 L 204/1.

Council Regulation (EC) No 2258/96 of 22 November 1996 on rehabilitation and reconstruction operations in developing countries, OJ 1996 L306/1.

Council Regulation (EC) No 2259/96 of 22 November 1996 on development co-operation with South Africa, OJ 1996 L 306/5.

Council Regulation (EC) No 780/98 of 7 April 1998 amending Regulation (EC) No 1488/96 as regards the procedure for adopting the appropriate measures where an essential element for the continuation of support measures for a Mediterranean Partner is lacking, OJ 1998 L113/3.

Council Regulation (EC) No 1658/98 of 17 July 1998 on co-financing operations with European non-governmental development organizations (NGOs) in fields of interest to the developing countries, OJ 1998 L213/1.

Council Regulation (EC) No 1659/98 of 17 July 1998 on decentralized cooperation, OJ 1998 L213/6.

Council Regulation (EC) No 2824/98 of 21 December 1998 amending Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories, OJ 1998 L351/13.

Council Regulation (EC) No 2840/98 of 21 December 1998 amending Regulation (EC) No 1734/94 on financial and technical cooperation with the Occupied Territories, OJ 1998 L354/14.

Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development co-operation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, OJ 1999 L120/1.

Council Regulation (EC) No 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation,

which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries, OJ 1999 L120/8.

Council Regulation (EC, Euratom) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia, OJ 2000 L12/1.

Council Regulation (EC) No 2698/2000 of 27 November 2000 amending Regulation (EC) No 1488/96 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership, OJ 2000 L311/1.

Council Regulation (EC, Euratom) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner states in Eastern Europe and Central Asia, OJ 2000 L12/1.

Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC, OJ 2000 L306/1.

Council Regulation (EC) No 2698/2000 of 27 November 2000 amending Regulation (EC) No 1488/96 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership, OJ 2000 L311/1.

Council Regulation (EC) No 381/2001 of 26 February 2001 creating a rapid-reaction mechanism, OJ 2001 L57/5.

Council Regulation (EC) No 382/2001 of 26 February 2001 concerning the implementation of projects promoting cooperation and commercial relations between the European Union and the industrialised countries of North America, the Far East and Australasia and repealing Regulation (EC) No 1035/1999, OJ 2001 L57/10.

Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ 2002 L248/1.

Council Regulation (EC) No 2242/2004 of 22 December 2004 amending Regulation (EC) No 976/1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries, OJ 2004 L390/21.

Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-accession Assistance (IPA), OJ 2006 L 210/82.

Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), OJ 2006 L210/82.

Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ 2006 L390/1.

Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories, OJ 2006 L405/41.

Council Regulation (Euratom) No 300/2007 of 19 February 2007 establishing an Instrument for Nuclear Safety Cooperation, OJ 2007 L81/1.

Council Regulation (EC) No. 215/2008 of 18 February 2008 on the financial regulation applicable to the 10th European Development Fund, OJ 2008 L78/1.

Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007, OJ 2008 L732/1.

Miscellaneous

The Council Legal Service, Opinion of the Legal Service, Subject: Commission proposal for a Council Regulation (EC) on the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms, Doc. 11402/97, 16.10.1997.
Council, 'Civilian Headline Goal 2008', 7 December 2004, Doc. 15863/04.
Council, Statement of the Council's Reasons, Subject: Common position adopted by the Council on 23 October 2006 with a view to the adoption of the Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation (119444/06 ADD1), 23.10.2006.
Council, Working paper on Democracy support in EU external relations - towards a more coherent European approach (30 June 2009), 14310/09, 19.11.2009.

Court of Auditors

Reports

Court of Auditors, Special Report No 4/96 on the accounts of the European Electoral unit set up by the Joint Common Foreign and Security Policy Action concerning the observation of the Palestinian elections.
Court of Auditors, Special Report No 7/98 in respect of the European Community Development Aid Programme regarding South Africa (1986-1996) accompanied by the replies of the Commission.
Court of Auditors, Special Report No 12/2000 on the management by the Commission of European Union support for the development of human rights and democracy in third countries, together with the Commission's replies.
Court of Auditors, Special Report No. 19/2000 on the management by the Commission of the programme of assistance to the Palestinian society, together with the Commission's replies, OJ 2001 C 32/1.
Court of Auditors, Special Report No 21/2000 on the management of the Commission's external aid programmes (in particular on country programming, project preparation and the role of Delegations).
Court of Auditors, Special Report No 10/2004 concerning the Devolution of EC external aid management to the Commission Delegations.
Court of Auditors, Special Report No 4/2005 concerning the Commission's management of economic cooperation in Asia, together with the Commission's replies.
Court of Auditors, Special Report No 1/2011, Has the Devolution of the Commission's Management of External Assistance from its Headquarters to its Delegations led to improved Aid Delivery?
Court of Auditors, Special Report No 5/2006 concerning the MEDA programme, together with the Commission's replies.

Court of Justice

Cases and Opinions

Case 22/70 *Commission v. Council* (AETR case) [1971] ECR 263.
Case 138/79 *Roquette Frères v. Council* [1980] ECR 3333.
Case 139/79 *Maizena v. Council* [1980] ECR 3393.
Case 45/86 *Commission v. Council* [1987] ECR 1493.
Case C-300/89 *Commission v. Council* (*Waste from the Titanium Dioxide Industry*) [1991] ECR I-2867.
Joined Cases C-181/91 and C-248/91 *European Parliament v. Council and Commission* (*Bangladesh case*) [1993] ECR 3685.
Case C-316/91 *European Parliament v Council* (*EDF or Lomé IV case*) [1994] ECR 625.
Opinion 2/94, *Accession to the ECHR* [1996] ECR I-1759.

Case C-268/94, *Portugal v. Council* [1996] ECR I-6177.
Case C-106/96 *United Kingdom v. Commission* [1998] ECR I-2729.
Case C-170/96 *Commission v. Council (Airport Transit Visa)* [1998] ECR I-2763.
Case C-338/01 *Commission v. Council (Recovery of Indirect Taxes)* [2004] ECR I-4829.
Case C-176/03 *Commission v. Council (Environmental Crimes)* [2005] ECR I-7879.
Case C-91/05 *Commission v. Council (ECOWAS or Small Arms Light Weapons)*, OJ 2008 C 171/2.
Case C-440/05 *Commission v. Council (Ship-Source Pollution)* [2007] ECR I-9097.
Case C-403/05 *Parliament v. Commission (Philippine Border Mission case)*, OJ 2007 C 315/8.

European Commission

Call for Proposals

European Commission, European Initiative for Democracy and Human Rights. Guidelines for Applicants 1999, Budget Chapter B7-70, Budget lines B7-700, 701, 7020, 7021, 7022, 704, 706, 707 and 709.

European Commission, European Initiative for Democracy and Human Rights. Call for Proposals 2001 (projects other than centres for the rehabilitation of victims of torture). Guidelines for Applicants, Budget Chapter B7-70, 20.12.2000.

Call for Proposals, SCRE/111700/C/G, European Initiative for Democracy and Human Rights issued by the European Commission (2001).

European Commission, The European Initiative for Democracy and Human Rights, Support for Democratization, Good Governance and the Rule of Law, Guidelines for Applicants to Call for Proposal 2002, Budget Line B7-701.

European Commission, The European Initiative for Democracy and Human Rights, Support for Democratization, Good Governance and the Rule of Law, Guidelines for Grant Applicants responding to the restricted Call for Proposal for 2004, Budget line 19.04.03.

European Commission, Delegation of the European Commission to Russia, TACIS Institution Building Partnership Programme (IBPP) Support to Civil Society and Local Initiatives, Guidelines for grant applicants responding to the restricted call for proposals for Russia, Funded from 2005 Action Programme, Budget line BGUE-B2006, 2006.

Commission Communications and Working Papers

Commission, Relations between the European Communities and the non-governmental organizations (NGOs) specializing in development cooperation, COM(75) 504 final, 6.10.1975.

Communication from the Commission, Guidelines for cooperation with developing countries in Latin America and Asia, COM(90) 176 final, 11.6.1990.

Commission Communication to the Council and Parliament on human rights, democracy and development cooperation, SEC(91) 61 final, 25.3.1991.

Communication from the Commission, Towards a new Asia Strategy, COM(1994) 314 final, 13.7.1994.

Commission Communication on the inclusion of respect for democratic principles and human rights in agreements between the community and third states, COM(95) 216 final, 23.5.1995.

Communication from the Commission to the Council and the European Parliament, The European Union and the external dimension of human rights policy: From Rome to Maastricht and beyond, COM(1995) 567 final, 22.11.1995.

Commission, Proposal for a Council Regulation (EC) on the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms, COM(97) 357 final, 24.7.1997.

Commission Communication to the Council and the Parliament, Democratization, the rule of law, respect for human rights and good governance: the challenges of the partnership between the European Union and the ACP states, COM(98) 146 final, 12.3.1998.

Commission, Amended Proposal for a Council Regulation (EC) laying down the requirements for the implementation of development cooperation operations which contribute to the general

objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, COM(99) 13 final, 30.3.1999.

Communication to [hic] the Commission on the reform of the management of external assistance, 16.5.2000 Rev 8.

Communication from the Commission on EU election assistance and observation, COM(2000) 191 final, 11.4.2000.

Commission, Reforming the Commission – A White Paper, Part I and Part II – Action Plan, COM(2000) 200 final.

Communication from the Commission to the Council and the European Parliament, The European Community's development policy, COM(2000) 212 final, Brussels, 24.4.2000.

Commission, Commission Staff Working Paper, Community Co-operation: Framework for Country Strategy Papers, SEC(2000) 1049.

Communication from the Commission, Europe and Asia: A Strategic Framework for Enhanced Partnerships, COM(2001) 469 final, 4.9.2001.

Communication from the Commission to the Council and the European Parliament, The European Union's role in promoting human rights and democratization in third countries, COM(2001) 252 final, 8.5.2001.

Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, Participation of Non-State Actors in EC Development Policy, COM(2002) 598 final.

Communication from the Commission, Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission, COM(2002) 704 final, 11.12.2002.

Communication from the Commission to the Council and the European Parliament, Wider Europe – Neighbourhood: A framework for relations with our Eastern and Southern neighbours, COM(2003) 104 final, 11.3.2003.

Communication from the Commission to the Council and the European Parliament, 'Reinvigorating EU Actions on Human Rights and Democratization with Mediterranean Partners', COM(2003) 294 final, 21.5.2003.

Communication from the Commission, Paving the way for a New Neighbourhood Instrument, COM(2003) 393 final, 1.7.2003.

Communication from the Commission, A new partnership with South East Asia, COM(2003) 399/4, 9.7.2003.

Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, Governance and development, COM(2003) 615 final, 20.10.2003.

Commission Staff Working Paper, Implementation of the Communication on election assistance and observation, SEC(2003) 1472, 19.12.2003.

Communication from the Commission to the Council and the European Parliament, Building our common Future Policy challenges and Budgetary means of the Enlarged Union 2007-2013 COM(2004) 101 final/2, Brussels, 26.2.2004.

Communication from the Commission, European Neighbourhood Policy STRATEGY PAPER, COM(2004) 373 final, 12.5.2004.

Communication from the Commission to the Council and the European Parliament, Financial Perspectives 2007-2013, COM(2004) 487 final, 14.7.2004.

Proposal for a Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation and economic cooperation, COM(2004) 629 final, 29.9.2004.

Proposal for a Regulation of the Council establishing an Instrument for Stability (presented by the Commission), COM(2004) 630 final, 29.9.2004.

Communication from the Commission to the Council and the European Parliament, Tenth Anniversary of the Euro-Mediterranean Partnership: A work programme to meet the challenges of the next five years, COM(2005) 139 final, 12.4.2005.

Communication from the Commission to the Council and the European Parliament, External actions through thematic programmes under the future financial perspectives 2007-2013, COM(2005) 324 final, 3.8.2005.

Communication from the Commission to the Council and the European Parliament, A stronger

- partnership between the European Union and Latin America, COM(2005) 636 final, 8.12.2005.
- Communication from the Commission to the Council and the European Parliament, Thematic Programme for the promotion of democracy and human rights worldwide under the future Financial Perspectives (2007-2013), COM(2006) 23 final, 21.5.2006.
- Communication from the Commission to the Council and the European Parliament, Increasing the impact of EU aid: A common framework for drafting Country Strategy Papers and joint multiannual programming, COM(2006) 88 final, 2.3.2006.
- Communication from the Commission to the Council and the European Parliament, Proposal for a Regulation of the European Parliament and of the Council on establishing a financing instrument for the promotion of democracy and human rights worldwide (European Instrument for Democracy and Human Rights), COM(2006) 354 final, 26.6.2006.
- Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee and the Committee of the Regions, Governance in the European Consensus on development: Towards a harmonized approach within the European Union, COM(2006) 421 final, 30.8.2006.
- Communication from the Commission to the Council and the European Parliament, Financial Perspectives 2007-2013, COM(2004) 487 final, 14.7.2004.
- Communication from the Commission to the European Parliament pursuant to the second subparagraph of Article 251(2) of the EC Treaty concerning the common position of the Council on the adoption of a Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation, COM(2006) 628 final, 24.10.2006.
- Communication from the Commission to the Council and the European Parliament, On strengthening the European Neighbourhood Policy, COM(2006) 726, 4.12.2006.
- Report from the Commission on the working of Committees during 2007, COM(2008) 3844 final, 15.12.2008.
- Commission Staff Working Paper, Supporting democratic governance through the governance Initiative: A Review and the way forward, SEC(2009) 58 final, 19.1.2009.
- Report from the Commission on the working of Committees during 2008, COM(2009) 335 final, 3.7.2009.
- Commission, Joint Paper of the Commission and the Council General Secretariat on Democracy Building in EU External Relations, SEC(2009) 1095 final, 27.7.2009.
- Report from the Commission on the working of Committees during 2009, COM(2010) 354 final, 2.7.2010.
- Communication from the Commission to the European Parliament and the Council, The European Union and Latin America: Global players in partnership, COM(2009) 495 final, 30.9.2009.
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The future approach to EU budget support to third countries, COM(2011) 638 final, 13.10.2011.
- Commission and High Representative for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions, A Partnership for Democracy and Shared Prosperity for the Southern Mediterranean, COM(2011) 200 final, 8.3.2011.
- Commission, Proposal for a Regulation of the European Parliament and of the Council, Establishing a financing instrument for the promotion of democracy and human rights worldwide, COM(2011) 844 final, 7.12.2011.
- Report from the Commission on the working of Committees during 2010, COM(2011) 879 final, 12.12.2011.

Communications of the Commission and the High Representative of the European Union for Foreign Affairs and Security Policy

European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Partnership for Democracy and Shared Prosperity with the Southern

- Mediterranean, COM(2011) 200 final, 8.3.2011.
- European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A new response to a changing neighbourhood, COM(2011) 303, 25.5.2011.
- European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Staff Working Paper: Follow-Up to the Joint Communication on a Partnership for Democracy and Shared Prosperity with the Southern Mediterranean, SEC(2011) 638, 25.5.2011.
- European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council, Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach, COM(2011) 886 final, 12.12.2011.

Consultation Documents and Reports on Consultation Meetings

- Consultation Paper Thematic Programme for the promotion of democracy and human rights worldwide, DG RELEX/B/5.12.07.
- European Commission, Europeaid, Summary of the civil society consultations on AAP 2009.
- Consultation Document The new Thematic Programme for Democracy and Human Rights.
- European Commission, Europeaid, Consultation meeting with civil society organizations EIDHR 2011 Annual Action Programme.
- European Commission, DG Development, Non-State Actors (NSA) and Local Authorities (LA) Consultation in the Elaboration of the 10th EDF Country Strategy Papers in ACP Countries.

Evaluations contracted out by the Commission

- Evaluation of the Phare and Tacis Democracy Programme (July 1997).
- Final Report, Implementation of the MEDA Democracy Programme 1996-1998 (April 1999).
- City Programme in the New Independent States and Mongolia, Evaluation Report, (July 1998).
- Evaluation of E.U. Development Aid to ALA States, Phase III-Synthesis Report (15 March 1999).
- Mid Term Evaluation of Tacis LIEN Programme (2000).
- External Evaluation of Community Aid concerning positive actions in the field of human rights and democracy in the ACP countries 1995-1999 (28 August 2000).
- Joint Programmes between the EC and the Council of Europe for strengthening federal structures and local government, introducing human rights protection mechanisms, and supporting reforms of the law and legal system in the Russian Federation and Ukraine (September 2000).
- Evaluation of co-financing operations with European non-governmental development organizations (NGOs) Budget line B7-6000 (December 2000).
- Synthesis Report on EC activities in the field of human rights, democracy and good governance (10 August 2001).
- Evaluation of Council Regulation 99/2000 (Tacis) and its Implementation, Synthesis Report, Volume 1, (January 2006).
- Evaluation EIDHR. Programa Andino de Derechos Humanos y Democracia' (January 2006).
- Thematic Evaluation of the EC Support to Good Governance (June 2006).
- Evaluation of the EIDHR Programme [in Russia]' (June 2008).
- Mid-Term Evaluation of EIDHR micro-projects programme in Sri Lanka (December 2008).
- Thematic Evaluation of the European Commission Support to respect of Human Rights and Fundamental Freedoms (2011).

Programming Documents for the EIDHR and other Programmes

- European Commission, Commission Staff Working Paper, Programming Human Rights and Democracy – Exercise 2001, Chapter B7-7 of the Budget. Priorities and Guidelines for the Implementation of the 2001 European Initiative for Democracy and Human Rights (EIDHR). Calls for Proposals, Targeted Projects, Micro Projects, SEC(2001) 891, 6.6.2001.

European Initiative for Democracy and Human Rights Programming Document 2002-2004.
European Commission, European Initiative for Democracy and Human Rights (EIDHR),
Programming for 2005 and 2006.
European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2007-2010.
Thematic programme 'Non-state actors and local authorities in development', Strategy Paper 2007-
2010.

Regulations

Commission Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the
implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial
Regulation applicable to the general budget of the European Communities, OJ 2002 L357/1.
Commission Regulation (EC) No 960/2009 of 14 October 2009 amending Regulation (EC)
No1905/2006 of the European Parliament and of the Council establishing a financing
instrument for development cooperation, OJ 2009 L270/8.

Reports on Development Cooperation (all reports available at:
http://ec.europa.eu/europeaid/multimedia/publications/index_en.htm)

European Commission: Annual Report 2001 on the EC development policy and the implementation
of the external assistance (2002).
European Commission: Annual Report 2003 on the European Community's development policy and
implementation of external assistance in 2002 (2003).
European Commission: Annual Report 2004 on the Community's development policy and external
assistance (2004).

Reports on EC/EU Development Policy and the Implementation of External Assistance and on the Implementation of Specific Programmes

European Commission, Tacis 1997 Civil Society Development Programme Results from
Implementation: Belarus, November 2002.
European Commission, Annual Report 2000 on the EC Development Policy and External
Assistance.
European Commission, Annual Report 2001 on the European Community's development policy and
the implementation of external assistance (2002).
European Commission, Annual Report 2003 on the European Community's development policy and
the implementation of external assistance in 2002.
European Commission, Annual Report 2004 on the European Community's development policy and
external assistance (2005).
Commission Staff Working Document, Annual Report 2005 on the implementation of the European
Community's development policy and implementation of external assistance in 2004,
SEC(2005) 892, 15.7.2005.
Annual Report 2006 on the implementation of the European Community's development policy and
implementation of external assistance in 2005 (2006).
Annual Report 2007 on the implementation of the European Community's development policy and
implementation of external assistance in 2006 (2007).
Commission Staff Working Document: Annual Report 2008 on the European Community's
Development and External Assistance Policies and their Implementation in 2007, SEC (2008)
2062, 23.6.2008.
Report from the Commission to the Council and European Parliament: Annual Report 2009 on the
European Community's Development and External Assistance Policies and their
Implementation in 2008, SEC(2009) 831 final, 30.6.2009.
European Commission, Annual Report 2009 on the European Community's development and
external assistance policies and their implementation in 2008.
European Commission, Annual Report 2010 on the European Union's development and external
assistance policies and their implementation in 2009.

Reports on the Implementation of the EIDHR and its forerunner programmes

(Unless otherwise indicated, EIDHR reports can be accessed at http://ec.europa.eu/europeaid/what/human-rights/projects_en.htm (last accessed on 5.6.2012).

- Commission des Communautés Européenne, Rapport sur l'utilisation des ressources financière pour la défense des droits de l'homme et la promotion de la démocratisation (pour les années 1992-1993), le 26/11/1993.
- Report from the Commission to the Council and the European Parliament on the implementation in 1993 of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, adopted on 28 November 1991, COM(94) 42 final, 23.3.1994.
- Commission of the European Communities, Report on the implementation of measures intended to promote observance of human rights and democratic principles (for 1994), COM(95) 191 final, 12.7.1995.
- Commission of the European Communities, Report from the Commission on the implementation of measures intended to promote observance of human rights and democratic principles (for 1995), COM(96) 672 final, 17.1.1997.
- Commission of the European Communities, Report on the implementation of measures intended to promote observance of human rights and democratic principles in external relations for 1996-1999, COM(2000) 726 final, Brussels, 14.11.2000.
- European Commission, Commission Staff Working Document, Report on the implementation of the European Initiative for Democracy and Human Rights in 2000, SEC(2001) 801, 22 May 2001.
- European Commission, Excel-Eidhr-contracts-signed-2003-2006.
- European Commission, Statistics of activities 2000-2006.
- European Commission, EuropeAid: EIDHR European Initiative for Democracy & Human Rights 2000-2006, Ambitious in scope... ..Global in reach: More than € 731 Million in EIDHR Funding Supporting more than 2400 Projects in more than 140 Countries (or EIDHR Project compendium 2000-2006 by theme).
- Compendium by location EIDHR activities 2000-2006.
- European Commission, The European Instrument for Democracy and Human Rights (EIDHR) Compendium January 2007-April 2009: Promoting Democracy & Human Rights Worldwide.

Various Documents relating to the Implementation of External Assistance

- European Commission, Vade-mecum on Grant Management (1998).
- European Commission, Vade-mecum for Grant management (2000).
- European Commission External Relations Directorate-General, Guide to Tacis small project programmes and other support structures: What they are, and how to benefit from them (2000).
- Europeaid, Handbook on Promoting Good Governance in EC Development and Co-operation (no date provided, but apparently of 2003).
- Common Framework and Procedure for the Programming of Thematic and Horizontal Budget Lines (2003).
- Common Framework and Procedure for the Programming of Thematic and Horizontal Budget Lines 2007-2013, DEV/10/2004-EN.
- European Commission, Aid Delivery Methods, Volume 1 Project Cycle Management Guidelines, March 2004.
- EuropeAid, 'EU Visibility Guidelines for External Action' (September, 2005).
- European Commission, EuropeAid, *Methodological Guide on Electoral Assistance*, 2006.
- Common Framework and Procedure for the Programming of Thematic and Horizontal Budget Lines (2006).
- EuropeAid, Guidelines on the Programming, Design & Management of General Budget Support, Tools and Methods Series, Guidelines No. 1, January 2007.
- European Commission, Support to Sector Programmes covering the three financial modalities: Sector Budget Support, Pool Funding and EC project procedures, Short Version, July 2007.
- European Commission, *Handbook for European Union Election Observation* (2008).

Europeaid, International IDEA, 'Engaging and Supporting Parliaments Worldwide. Strategies and Methodologies for EC Action in Support to Parliaments, Tools and Methods Series' Reference Document No. 8 (October 2010).

Principles for the Implementation of a Governance Facility under ENPI (no date provided).

European Commission: Governance Profile, Explanatory Note (no date provided).

Miscellaneous

European Commission, The European Community and Human Rights (1993).

Commission, Rules of Procedure of the Commission, OJ 2000 L308/26.

2nd Joint Progress Report: Negotiations on the EU-Ukraine Association Agreement (no date provided).

European Council

Copenhagen European Council, Declaration on Democracy, 8 April 1978, Bull. EC 3-1978, at 5-6.

Dublin European Council, Presidency Conclusions, 25 and 26 June 1990.

Luxembourg European Council, Declaration on Human Rights, June 1991.

European Council, Common Strategy of the European Union of 4 June 1999 on Russia (1999/414/CFSP), OJ 1999

L157/1.

European Council, Common Strategy of 11 December 1999 on Ukraine (1999/877/CFSP), OJ 1999

L 331/1.

Common Strategy of the European Council of 19 June 2000 on the Mediterranean Region

(2000/458/CFSP), OJ 2000 L183/5.

Santa Maria da Feira European Council, Presidency Conclusions, 19 and 20 June 2000, Appendix 3, Study on Concrete Targets on Civilian Aspects of Crisis Management.

European Parliament

Reports by Committees

Committee on Foreign Affairs, Security and Defence Policy, Report on setting up a single coordinating structure within the Commission responsible for human rights and democratization, European Parliament, Rapporteur M. Lenz, A4-0393/97, 4.12.1997.

Committee on Development and Cooperation, Report on the draft Council draft Council Regulation (EC) laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms (COM(97)0357 - 9581/98 - C4-0507/98 - 97/0101(SYN)), Rapporteur J. M. Torrès Couto, PE 228.200/fin, A4-0466/98.

Committee on Development and Cooperation, Recommendation for Second Reading on the common position established by the Council with a view to the adoption of a Council Regulation laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms (5240/1/99 - C4-0036/99 - 97/0191(SYN)), 18.3.1999.

Committee on Development and Cooperation, Report on the proposal for a European Parliament and Council regulation concerning Community cooperation with Asian and Latin American countries and amending Council Regulation (EC) No 2258/96 (COM(2002) 340 - C5-0368/2002 - 2002/0139(COD)) of 8 October 2003.

Committee on Development, on the Proposal for a regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation and economic cooperation (COM(2004) 629 - C6-0128/2004 - 2004/0220(COD)), PE 353.674v02/00, A6-0060/2005, Rapporteur: Gay Mitchell.

- Committee on Development, Second Report on the proposal for a regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation and economic cooperation (COM(2004)629), A6-0109/2006final.
- Committee on Development, Draft Recommendation for Second Reading on the Council common position for adopting a regulation of the European parliament and of the Council establishing a financing instrument for development cooperation (11944/2/2006-C6-0357/2006-2004/0220(COD)), Rapporteur: Gay Mitchell.
- Temporary committee on policy challenges and budgetary means of the enlarged Union 2007-2013, Report on Policy Challenges and Budgetary means of the enlarged Union (2004/2209(INI)), A6-0153/2005, Rapporteur R. Böge, 19.5.2005.
- Committee on Foreign Affairs, Report on the proposal for a regulation of the European Parliament and of the Council on establishing a financing instrument for the promotion of democracy and human rights worldwide (European Instrument for Democracy and Human Rights) (COM(2006) 354 – C6-0206/2006 – 2006/0116(COD)); Rapporteurs: H. Flautre and E. McMillan-Scott.
- Committee on Foreign Affairs Report on the proposal for a regulation of the European Parliament and of the Council establishing an Instrument for Stability (COM(2004)0630 – C6-0251/2004 – 2004/0223(COD)), PE 362.697v04-00, A6-0157/2006 of 2.5.2006.
- Committee on International Trade, Draft Report on the draft Council regulation establishing a financing instrument for cooperation with industrialized and other high-income countries and territories (11877/2006 – C6-0265/2006 – 206/0807(CNS)), Rapporteur: David Martin, 29.9.2006.
- European Parliament, Committee on Development, Draft Recommendation for Second Reading on the Council common position for adopting a regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation (11944/2/2006-C6-0357/2006-2004/0220(COD)), PROVISIONAL 2004/0220(COD), 26.10.2006.
- Subcommittee on Human Rights, Notice to Members (1/2009), Summary of activities Summary of activities of the Subcommittee on Human Rights during the sixth parliamentary term(2004-2009), PE423.9PE423.953v02-00, 15.5.2009; See e.g. European Parliament, Committee on Foreign Affairs, Report on the Annual Report on Human Rights in the World 2009 and the European Union's policy on the matter2010/2202(INI), A7-0339/2010, 23.11.2010
- Committee on Foreign Affairs, Report on EU External Policies in Favour of Democratization, 2011/2032 (INI), Rapporteur V. de Keyser (A7-0231/2011).

Resolutions

- European Parliament, Resolution on human rights, democracy and development, OJ 1991 C326/259.
- European Parliament, Resolution on a European Democracy Initiative, OJ 1992 C150/281.
- European Parliament, Resolution of 14 May 1992 on the role of NGOs in development cooperation, OJ 1992 C150/271.
- European Parliament, Resolution on relations between the European Community and the independent states of the former Soviet Union (excluding the Baltic States), OJ 1993 C255/187.
- European Parliament Resolution on the Commission Communication on EU Election Assistance and Observation (COM(2000) 191 - C5-0259/2000-2000/2137(COS)).
- European Parliament, Resolution on the Communication from the Commission to the Council and the European Parliament on the European Union's role in promoting human rights and democratisation in third countries (COM(2001) 252 - C5-0653/2001 - 2001/2276(COS)).
- European Parliament, Report on the European Union's role in promoting human rights and democratization in third countries, 21.3.2002, A5-0084/2002.
- European Parliament legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing a financing instrument for development and economic cooperation (COM(2004)0629 – C6-0128/2004 – 2004/0220(COD)), of 18 May 2006.
- European Parliament legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing an Instrument for Stability (COM(2004)0630 –

- C6-251/2004 – 2004/0223(COD)) of 6.7.2006.
- European Parliament resolution on Policy Challenges and Budgetary Means of the enlarged Union 2007-2013 (2004/2209(INI)) P6_TA(2005)0224.
- European Parliament resolution on the draft Commission decisions establishing Country Strategy Papers and Indicative Programmes for Malaysia, Brazil and Pakistan, P6_TA(2007)0045, B6-0067/2007.
- European Parliament resolution of 22 October 2009 on democracy building in the EU's external relations, P7_TA(2009)0056.
- European Parliament, Report on the Annual Report on Human Rights in the World 2009 and the European Union's Policy on the Matter (2010/2202(INI)) PE 448.819v02-00, A7-0339/2010.
- European Parliament resolution of 7 July 2011 on EU external policies in favour of democratization (2011/2032(INI)), P7_TA-PROV(2011)0334.

Joint Acts by several EU Institutions and/or EU Institutions and the Member States

Declarations, Resolutions, and Statements

- Document on The European Identity published by the Nine Foreign Ministers (Copenhagen, 14 December 1973), Bull. EC 12-1973, 118-122.
- Joint Declaration by the European Parliament, the Council and the Commission (Luxembourg, 5 April 1977), OJ 1977 C103/1.
- Statement on Human Rights of July 1986, Bull. EC 7/8-1986, para. 2.4.4.
- Declaration against Racism and Xenophobia of 1986, OJ 1986 C158/1.
- Joint Declaration on the Establishment of Official Relations between the EC and the Council of Mutual Economic Assistance (CMEA), Bull. EC 6-1988, 2.2.42 and 1.5.1.-4.
- Declaration of the EC and the Rio Group of Countries of 20 December 1990.
- Resolution of the Council and the Member States meeting in the Council on human rights, democracy and development, Bull. EC 11-1991, 122.
- Declaration by the European Parliament, the Council and the Commission of 6 March 1995 on the incorporation of financial provisions into legislative acts, OJ 1996 C102/4.
- Declaration by the European Parliament, the Council and the Commission of 6 March 1995 on the incorporation of financial provisions into legislative acts, OJ 1996 C102/4.
- Barcelona Declaration adopted at the Euro-Mediterranean Conference 27th-28th November 1995.
- Statement by the Council and the Commission: The European Community's Development Policy, 2304th Council Meeting, Doc. 12929/00, 10.11.2000.
- European Parliament, Council, Commission, Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus', OJ 2006 C46/1.
- Nuremberg Declaration on an EU-ASEAN Enhanced Partnership (2007).
- Joint Swedish/Czech Issues Paper, Democracy Building in EU's External Relations, Informal Meeting of EU Development Ministers, Prague, 29 January 2009.
- Ministry of Foreign Affairs of the Czech Republic, Conference "Building Consensus about EU Policies on Democracy Support", 27.2.2009.

European Parliament and Council Regulations

- Regulation (EC) No 1726/2000 of the European Parliament and of the Council of 29 June 2000 on development cooperation with South Africa, OJ 2000 L198/1.
- Regulation (EC) No 2494/2000 of the European Parliament and of the Council of 7 November 2000 on measures to promote the conservation and sustainable management of tropical forests and other forests in developing countries, OJ 2000 L288/6.
- Regulation (EC) No 2130/2001 of the European Parliament and of the Council of 29 October 2001 on operations to aid uprooted people in Asian and Latin American developing countries, OJ 2001 L237/3.

Regulation (EC) No 2240/2004 of the European Parliament and of the Council of 15 December 2004 amending Council Regulation (EC) No 975/1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, OJ 2004 L390/3.

Regulation (EC) No 491/2004 of the European Parliament and of the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS), OJ 2004 L80/1.

Regulation (EC) No 625/2004 of the European Parliament and of the Council of 31 March 2004 extending and amending Regulation (EC) No 1659/98 on decentralized cooperation, OJ 2004 L99/1.

Regulation (EC) No 806/2004 of the European Parliament and of the Council of 21 April 2004 on promoting gender equality in development cooperation, OJ 2004 L143/40.

Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance, OJ L 2005 L344/1.

Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, OJ 2006 L310/1.

Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability, OJ 2006 L327/1.

Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing Instrument for Development Cooperation, OJ 2006 L378/41.

Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, OJ 2006 L386/1.

Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation, OJ 2006 L348/41.

Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, OJ 2006 L310/1.

Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability, OJ 2006 L327/1.

Regulation No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, OJ 2006 L386/1.

Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ 2011 L55/13.

Regulation No 1340/2011 of the European Parliament and the Council of 13 December 2011 amending Regulation No 1889/2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, OJ 2011 L347/32.

Interinstitutional Agreements

Interinstitutional Agreement of 25 October 1993 on the procedures for implementing the principle of subsidiarity, OJ 1993 C329/135.

Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure, OJ 1999 C172/1.

Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management', OJ 2006 C139/1.

Protocols and Declarations

Declaration on Articles 109, 130r and 130y of the Treaty establishing the European Community (Declaration 10), annexed to the TEU (1992).

Protocol on the Application of the Principles of Subsidiarity and Proportionality, annexed to the

Treaty of Amsterdam.
Protocol on the Role of National Parliaments in the European Union (Protocol No 1), annexed to the TEU and TFEU.
Protocol on the Applications of the Principles of Subsidiarity and Proportionality (Protocol No 2), annexed to the TEU and TFEU.

Miscellaneous

Report of the Permanent Representative's Committee to the Development Council of 18 November 1992, 12 November 1992, No. 10044/92.
Democracy Building in EU's External Relations, Joint Swedish/Czech Issues Paper, Informal Meeting of EU Development Ministers (Prague, 29.1.2009).

COUNCIL OF EUROPE

Committee of Ministers of the Council of Europe, Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe to member states on common rules against corruption in the funding of political parties and electoral campaigns.
Committee of Ministers, Freedom of Association: Thematic Report presented by the Secretary General and Decisions on Follow-up Actions taken by the Committee of Ministers, CM/Monitor(2005)1, Volume II.
European Charter of Local Self-Government (1985).
European Commission for Democracy Through Law (Venice Commission), Opinion the Prohibition of Financial Contributions to Political Parties from Foreign Sources, Opinion No. 366/2006, CDL-AD(2006)014, 31 March 2006.
European Commission for Democracy Through Law (Venice Commission), Guidelines for Financing of Political Parties, CDL-PP(2000)6.

OECD

Paris Declaration on Aid Effectiveness (2005).
Accra Agenda for Action (2008).

OSCE

ODIHR, *Human Dimension Commitments: A Reference Guide* (2001).
OSCE/ODIHR, *Election Observation Handbook* (2005).

UNITED NATIONS

United Nations General Assembly

U.N. Human Rights Committee, General Comment 25: 'The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)', 12 July 1996.
U.N. General Assembly, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, (Resolution 2625, A/5217) 24 October 1970.
U.N. General Assembly, 'Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization' (A/RES/54/173), 17 December 1999.
U.N. General Assembly, 'Promoting and Consolidating Democracy' (A/RES/55/96), 4 December 2000.
U.N. General Assembly, 'Strengthening the Role of the United Nations in Enhancing the

- Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization' (A/RES/56/159), 19 December 2001.
- U.N. General Assembly, 'Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization' (A/RES/58/180), 22 December 2003.
- U.N. General Assembly, 'Enhancing the Role of Regional, Subregional and other Organizations and Arrangements in Promoting and Consolidating Democracy' (A/RES/59/201), 20 December 2004.
- U.N. General Assembly, 'Enhancing the Role of Regional, Subregional and other Organisations and Arrangements in Promoting and Consolidating Democracy' (A/RES/59/201), 23 March 2005.
- U.N. General Assembly, 'Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization' (A/RES/60/162), 16 December 2005.

International Court of Justice

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), I.C.J. Reports 1986, at 392-443.

Websites consulted (with dates of last access)

- Community of Democracies: <http://www.community-democracies.org/> (5.4.2011).
- Currency conversions: <http://www.oanda.com/lang/de/currency/average> (27.12.2011).
- Democracy Coalition Project: http://www.demcoalition.org/2005_html/home.html (5.4.2011).
- EU Sanctions: http://ec.europa.eu/external_relations/cfsp/sanctions/index_en.htm (18.3.2011).
- European Network of Political Foundations:
<http://www.european-network-of-political-foundations.eu/cms/index.php> (28.3.2011).
- European Partnership for Democracy (EPD): <http://www.epd.eu/>.
- European Union @ United Nations: <http://www.europa-eu-un.org/> (1.2.2012).
- European Union, European External Action Service: http://eeas.europa.eu/oct/index_en.htm (19.1.2011).
- European Union, Commission, DG Budget: http://ec.europa.eu/budget/index_en.cfm (20.5.2011).
- European Union, Council of the European Union: <http://www.consilium.europa.eu/>
- European Union, EuropeAid/Development Cooperation – EuropeAid:
<http://ec.europa.eu/europeaid> (21.7.2011).
- European Union, European Parliament, Legislative Observatory:
<http://www.europarl.europa.eu/oeil/home/home.do> (1.2.2012).
- Freedom House: <http://www.freedomhouse.org/>
- FRIDE: http://www.fride.org/homepage_english (1.7.2012).
- FRIDE, Project 'Assessing Democracy Assistance' by World Movement of Democracy:
<http://www.fride.org/project/19/assessing-democracy-assistance> (5.5.2011).
- International IDEA: <http://www.idea.int/> (1.7.2012).
- OECD Query Wizard for International Development Statistics: <http://stats.oecd.org/qwids/> (3.5.2011).
- OECD, Glossary of the OECD: <http://stats.oecd.org/qwids/glossary.html> (3.5.2011).
- OECD, History of DAC lists of ODA recipient countries:
http://www.oecd.org/document/55/0,3746,en_2649_34447_35832055_1_1_1_1,00.html (28.12.2011).
- Office for Promotion of Parliamentary Democracy (OPPD):
<http://www.europarl.europa.eu/aboutparliament/en/0094641612/Office-for-Promotion-of-Parliamentary-Democracy.html> (1.7.2012).
- Ukrainian – European Policy and Legal Advice Centre at <http://ueplac.kiev.ua/en/> (1.2.2012).
- Georgian – European Policy and Legal Advice Centre at <http://www.geplac.com/> (1.2.2012).
- United Nations Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/> (28.3.2011).

UN Sanctions Committees: <http://www.un.org/sc/committees/index.shtml> (18.3.2011).
UNDP: <http://www.undp.org/content/undp/en/home.html> (1.2.2012).
UN Democracy Caucus: <http://www.democracycaucus.net/html/home.html> (5.4.2011).
UN Democracy Fund: <http://www.un.org/democracyfund/> (5.4.2011).
USAID: <http://www.usaid.gov> (4.5.2011).
US State Department: <http://www.state.gov/g/drl/democ/> (1.2.2012).