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COMMISSION STAFF WORKING PAPER

IMPACT ASSESSMENT

Accompanying the document

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing a financing instrument for the promotion of democracy and human rights
worldwide

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1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Organisation and timing

The drafting of the Impact Assessment for the EU external action instruments for the period 2014-2020, including this document¹, has been coordinated by a **Task Force** composed by services in charge of EU external action and the Legal Service. The **drafting teams**, appointed on 7 June 2011, have duly taken into consideration the consultations, reviews and studies mentioned in Section 2 and have liaised with other Commission services to ensure consistency with other EU policies. The Task Force has met with the drafting team in charge of this Impact Assessment on 7 June, 30 June, 14 July and 2 and 4 August 2011 for organisational and quality-check purposes.

An **Impact Assessment Steering Group**, composed by the members of the Task Force and representatives of interested Directorates General and the Secretariat General, was launched on 22 June 2011. It has met twice, on 13 and 26 of July 2011. DG DEVCO, BUDG, SG, LS, EAC, FPI and EEAS were particularly involved.

This review of this Impact Assessment by the **Impact Assessment Board** is scheduled on 14 September 2011.

In line with article 27 of the Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002) and article 21 of the Implementing rules of the Financial Regulation (Commission Regulation (EC, Euratom) No 2342/2002), the present impact assessment is the ex-ante evaluation of the European Instrument for Democracy and Human Rights (EIDHR).

1.2. Consultation and expertise (public and internal)

The Commission held a public consultation on future funding for EU external action between 26 November 2010 and 31 January 2011. This process was based on an online questionnaire accompanied by a background paper 'What funding for EU external action after 2013?' prepared by Commission and EEAS services involved. The 220 contributions received to the public consultation reflect a broad and diverse spectrum representing the variety of structures, views and traditions characterising the external action community.

A majority of the respondents (around 70%) confirms that EU financial intervention provides a **substantial added value** in the main policy areas supported through EU financial instruments for external action². The criterion of EU added value is put forward by many respondents as the main driver for the future: the EU should exploit its comparative advantage

¹ The instruments are the following: Internal Agreement for the 11th European Development Fund, Development Cooperation Instrument, Instrument for Pre-Accession assistance, European Neighbourhood Instrument, Instrument for Stability, Instrument for Nuclear Safety Cooperation, European Instrument for Democracy and Human Rights, Partnership Instrument and the instruments for the EU-Greenland Partnership. The Macro-Financial Assistance instrument, the Common Foreign and Security Policy, the Humanitarian aid instrument and the Civil Protection mechanism are not part of this joint exercise.

² i.e. peace and security, poverty reduction, humanitarian aid, investing in stability and growth in enlargement and neighbourhood countries, tackling global challenges, promoting EU and international standards and values, and supporting growth and competitiveness abroad

linked to its global field presence, its wide-ranging expertise, its supranational nature, its role as facilitator of coordination, and to the economies of scale.

Nearly all respondents (92%) support a **more differentiated approach**, tailored to the situation of the beneficiary country, based on sound criteria and efficient data collection, to be used as a way to increase the impact of EU financial instruments.

Over two thirds of respondents believe that **EU interests are sufficiently taken into account in its external action**, and that the latter should be based to a larger extent on EU values and principles, and on development objectives of the partner countries. Inversely, a minority considers that EU external action should concentrate more on EU's own interests in the global economy, particularly towards emerging economies.

Regarding **simplification of instruments**, as concerns the balance between **geographic and thematic instruments**, opinions are mixed regarding a **review of EU thematic programmes** and a possible reduction in number; many fear that this could imply a decrease in the overall amount available for thematic action, and rather call for a simplification of the rules governing access and implementation of thematic funding. Several thematic issues are highlighted as important such as the reinforcement of the European Instrument for Democracy and Human Rights, climate financing or the current DCI thematic programmes. **Increased flexibility of the geographic limits of EU instruments** is supported by a significant majority of respondents as a way to respond to interregional challenges.

A majority of respondents agree that **joint programming and co-financing with Member States** can increase the impact and the coherence of EU external action, simplify the delivery of aid and reduce overall transaction costs.

Regarding **like-mindedness and conditionality**, there is wide support among respondents for exploring conditionality based on the beneficiary country's respect for human rights, minorities, good governance and diversity of cultural expressions (78%), or on the quality of its policies and of its ability and willingness to implement sound policies (63%). However, a majority of respondents is critical towards basing external cooperation on the EU's own interests.

A vast majority of respondents support a stronger focus on **monitoring and evaluations systems** in the future instruments and in projects/programmes implementation.

As concerns the means to enhance the **visibility of EU external funding**, a majority of stakeholders support increasing efforts for information and communication activities, in particular in beneficiary countries; however EU visibility appears to be better served by effective policies, strategies and presence in third countries, than by additional spending for communication. The ideas **of reinforcing EU's coordinating role** among other donors and of ensuring that implementing partners give more visibility to EU funding also obtain a strong support from stakeholders.

Various stakeholders consultations on the future pre-accession financial instrument beyond 2013 conducted in early 2011, in particular with Members of the European Parliament's DROI Committee, the five related key networks of NGOs (i.e. HRDN, EPLO, ENOP, ETUC and

CONCORD) **confirmed support for continuity with the current structure of instruments for EU external action**, but with simplified implementing rules, more flexibility and enhanced strategic orientation in the allocation of assistance and generalised multiannual programming.

Regarding EU external action on **human rights and democracy**, all respondents highlighted the need to further promote and support these objectives worldwide both by mainstreaming them within all EU policies and actions and by upholding them in a dedicated, separate but complementary, financial instrument. The European Instrument for Democracy and Human Rights is highly valued and all stakeholders asked the EU to enhance its potential, safeguard its added value and further develop its speed of delivery, in particular for the most difficult and urgent cases

1.3. Impact Assessment Board

The Impact Assessment Board (IAB) met on the 14 September 2011 and requested further clarifications, references and evidences supporting the various analysis and options put forward to the decision makers. These additions have been added to the Impact Assessment.

2. PROBLEM DEFINITION

“Humanity will not enjoy security without development, it will not enjoy development without security, and it will not enjoy either without respect for human rights”³.

2.1. The problem requiring action and the scope of the instrument regulation

Definition

Human rights are universal and indivisible. The European Union therefore actively promotes and defends them both within its borders and in its relations with third countries, living up to its commitments under the EU Fundamental Rights Charter and the Universal Declaration of Human Rights⁴. Article 21 of the Treaty on European Union⁵ explicitly states that “the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.”

Since the fall of the Berlin Wall, the comprehensive package of EU instruments dedicated to the implementation of the Union’ external action⁶ has always comprised a specific financing instrument to support the EU’s ambition and interest in advocating universal respect for and observance of human rights and fundamental freedoms worldwide.

³ UN report « in larger freedom », by UNSG K. Annan 21 March 2005

⁴ UN General Assembly Resolution 217 A (III) of 10 December 1948

⁵ Title V / Chapter 1 - General provisions on the Union’s external action.-

⁶ European Initiative for Democracy and Human Rights (1996-2000)(2000-2006), European Instrument for Democracy and Human Rights (2007-2013)

In following up its predecessor, the European Initiative for Democracy and Human Rights, launched in 2006, the European Instrument for Democracy and Human Rights (EIDHR) is a unique expression of this strong EU commitment to democracy and human rights reflecting its own core values and founding principles, as well as those underlying the international legal order.

The EIDHR inserts itself in, and operationally complements, the wide-ranging EU box of tools supporting and promoting democracy and human rights worldwide, including through diplomatic dialogues and consultations, multilateral action in the UN, the Council of Europe or OSCE, public statements and declarations, Council guidelines on human rights, restrictive and other legal measures, or human rights clauses in agreements with third countries.

Evolution of the context

While in recent years a number of countries have moved towards more open societies, fairer electoral processes and greater commitment to respect for human rights, multiple challenges remain. Many countries are still autocracies or de facto dictatorships where basic rights and freedoms are systematically violated and repressed. Elsewhere, despite electoral processes and some political competition, power holders revert to repression of dissent and opposition voices and legal and administrative restrictions are being incrementally used to reduce the space for democracy and civil society in a worrying manner. Furthermore, certain regimes violate the rights to freedom of expression by arbitrarily depriving or disrupting their citizen's access to IT means of communication for political purposes.

Challenges to freedom of expression and media pluralism are still very frequent and include: political interference, economic challenges including issues of ownership and competition, harassment, including violence against journalists, considering defamation as a criminal offence.

Moreover, the existence in many continents of long-standing internal or cross-border conflicts or of structurally failed states continues to generate serious human rights violations. Foremost, however, the need and interest to back up emerging democracies, in particular in the wake of the Arab Spring, makes comprehensive support to democracy and human rights an essential part of the EU's response to the international challenges in the period 2014-2020.

The European Consensus on Development⁷ also reaffirms that promotion of respect for human rights and fundamental freedoms is a common value in the EU vision of development. It stipulates that the promotion of democracy, human rights, good governance and respect for international law, with special attention given to transparency and anti-corruption, is a clear added value and a comparative advantage for the EU.

The recent review of the European Neighbourhood Policy underlines that a functioning democracy, respect for human rights and the rule of law are fundamental pillars of the EU partnership with its neighbours. It confirms the EU's commitment to provide greater support to partners engaged in building deep and sustainable democracy – the kind that lasts because partner governments are committed to holding regular democratic elections and to guarantee

⁷ Joint Declaration by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on the development policy of the European union entitled " The European Consensus" – Official Journal C 46 of 24.2.2006.

the freedoms of association, assembly and expression, including free media, and the rights to receive impartial justice from independent judges, security from democratically accountable police and armed forces, access to a competent and non-corrupt civil service — and other fundamental rights such as freedom of thought, conscience and religion or belief⁸.

Scope of the Instrument

Democracy and Human Rights are inextricably linked. The fundamental freedoms of expression and association are the preconditions for political pluralism and true democratic process, whereas democratic control and separation of powers are essential to sustain an independent judiciary and the rule of law, which in turn are required for effective protection of human rights⁹. Only in a democracy can individuals fully realize their human rights; only when human rights are respected can democracy flourish¹⁰.

It is therefore deemed essential that the future instrument keeps a large scope encompassing the existing wide array of activities of advocacy, core support and field operations supporting all fundamental rights inherent in democracy and other human rights. It is a guarantee for policy rationality, comprehensiveness of approach, coherence of operations and economies of scale.

The scope of the EIDHR covers five objectives since 2007:

- Enhancing respect for human rights and fundamental freedoms in countries where they are most at risk;
- Strengthening the role of civil society in promoting human rights and democratic reform, in supporting the peaceful conciliation of group interests and, in consolidating political participation and representation;
- Supporting actions on human rights and democracy issues in areas covered by EU Guidelines, including on human rights dialogues, on human rights defenders, on the death penalty, on torture, on children and armed conflict, on the rights of the child, on violence against women and girls and combating all forms of discrimination against them, on International Humanitarian Law and on possible future guidelines;
- Supporting and strengthening the international and regional framework for the protection and promotion of human rights, justice, the rule of law and the promotion of democracy;
- Building confidence in and enhancing the reliability and transparency of democratic electoral processes, in particular through election observation.

⁸ Communication “A New Response to a Changing Neighborhood” of 25/05/2011, COM(2011) 303

⁹ 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 - OJEU L 386/1- Whereas (8)

¹⁰ EU Agenda for Action on Democracy Support in EU External Relations, adopted as annex of the Council conclusions on Democracy Support in the EU’s External Relations, 17 November 2009

The response strategy¹¹ under the EIDHR builds on working predominantly with and through civil society organizations, aimed at defending the fundamental freedoms which form the basis for all democratic processes and helping civil society to become an effective force for political reform and defense of human rights. In this way, it complements the new generation of geographical programmes, which increasingly mainstream democracy and human rights, though focusing primarily on public institution-building.

A growing number of projects and requests for more

In total, between 2007 and 2011, more than 1600 EIDHR projects have been launched and are presently operating on the ground. The Instrument is encountering an ever growing interest and demand.

In 2010 only, 512 contracts opening projects in the field were signed. The country based support scheme has increased from €31 million in 2007 to €67 million in 2010 and from being used by 45 delegations in 2007 to 81 delegations in 2011. Since 2007, 162 calls for proposals have been launched and concluded. 3012 concept notes were analyzed, including 1279 for the sole objective of addressing the countries and situations most at risk.

Since 2007, 41 EU Election Observation Missions (EU EOM) were deployed in nearly all continents and more than fifty election related missions have taken place, including technical assessment missions. Indeed, the EU received more invitations to observe elections than it had the means to accept and carry out and therefore was unable to observe all elections that could have merited observation.

EIDHR Partners are 90 % Civil Society Organisations (CSOs) and 10% International Organisations. In 2009-2010 more than 900 CSOs were awarded projects for more than €240 million.

A sample of projects and results are described in annex of this Impact Assessment.

2.2. Review of evaluation reports

There was no evaluation of the Instrument as a whole. Nevertheless, several evaluations were conducted to assess the global and local impact of the EIDHR. They form a good basis for an aggregated evaluation of most the EIDHR's components. Evaluations took stock of core thematic activities of the EIDHR such as human right defenders¹², prevention of torture and support for torture rehabilitation centres¹³ or support to the International Criminal Court¹⁴, as well as EIDHR country based activities such as in Ukraine¹⁵, Angola¹⁶ or Sri Lanka¹⁷. Three additional important evaluations are ongoing related to the impacts of the EU's overall human rights policy, the EIDHR Country Based Support Scheme, and the operations related to countries and situations most at risk.

¹¹ Commission Communication of 25 January 2006

¹² Evaluation on Human Rights Defender HRD, May 2010 - available at www.eidhr.eu

¹³ Evaluation on anti-torture activities, June 2008 – available at www.eidhr.eu

¹⁴ Evaluation on the support to the ICC, December 2008 - available at www.eidhr.eu

¹⁵ Evaluation on EIDHR support in Ukraine, August 2006 – available at www.eidhr.eu

¹⁶ Evaluation of EIDHR support in Angola, March 2010 - available at www.eidhr.eu

¹⁷ Mid Term evaluation of EIDRH micro-programme in Sri Lanka

While largely positive, these evaluations have led to the identification of necessary improvements that are proposed below.

The mid-term review of the instrument was completed in 2010. It was a stocktaking exercise of delivery with more than 100 local and central calls for proposals 400 worldwide projects, representing more than 300 local civil society projects in 70 third countries, 40 projects in countries and regions where human rights and fundamental freedoms are most at risk, 13 projects on the fight against death penalty, 32 projects on the fight against torture, 11 large-scale projects with emergency support mechanisms to support human rights defenders, 5 projects regarding global civil society campaigns in support of the ICC, 20 targeted actions with key international strategic partners (e.g. Council of Europe or UN), support to the Master programme of the European Inter-University Centre for Human Rights and Democratisation (EIUC) and four regional Master programmes on human rights and democratisation in South East Europe, Latin America/Caribbean, Africa and Asia-Pacific.

The review led to the adoption of the second¹⁸ EIDHR strategy paper for 2011-2013¹⁹. Several lessons learnt have led to the identification of various improvements that are proposed below

It is suggested that the future EIDHR regulation entails a dedicated new Article committing to an evaluation report (by 2017) to assess the achievement of the objectives of the measures adopted on the basis of this Regulation, the efficiency of the use of resources and its European added value, in view of a decision on the renewal, modification or suspension of the measures.

2.3. Review of lessons learnt

Reviews and evaluations underlined several strengths

The EIDHR offers independence of action, allowing working *without the need for government consent*, which is a critical feature especially in the sensitive areas of democracy and human rights. Thus, the instrument supports democratic education e.g. at graduate level of future young Belarusian leaders abroad or tries to mitigate unfair criminalization of democratic activists imprisoned for being in the opposition. The defenders of the victims, such as lawyers, have in turn to be defended (through the Human Right Defender system) as they risk imprisonment for taking up the cases of pro-democracy activists or rights defenders.

The EIDHR *offers more flexibility and capacity to respond* to changing circumstances, contrasting with the long-term programming approach of the geographical programmes. Thus, in the context of the evolving Arab Spring, an immediate assistance was made available to the reform committee in Tunisia to design the roadmap for transition and help civil society contribute to the process. The EIDHR will also provide democracy training for political party activists, support free press and independent pluralistic media- both traditional and ICT-based, including censorship-free and uninterrupted electronic communications technologies- and support civic education on democracy in Tunisia. The EIDHR might also be available for strengthening the production capacities of media and training of the journalists. In view of the

¹⁸ First strategy covered 2007-2010

¹⁹ EIDHR Strategy paper 2011-2013, COM(2010)2432 of the 21.04.2010

upcoming elections, it is providing training to thousands of local observers and will fund the envisaged EU Election Observation Mission.

The EIDHR also *works in the most difficult environments* where basic rights and freedoms are most at risk. In order to protect the physical safety of activists and others whose lives may be seriously endangered, the details of such projects cannot be made public. The European Commission reports on these projects to authorized persons in the Council, the Parliament and the EEAS on a “need to know” basis and may only commend the courage of such dedicated activists.

These difficult cases represent about 20 % of EIDHR activities. Since 2007, the EIDHR supported more than 100 such projects (€60 million worth). In particular, supported by its network of Human Rights Defenders (HRD), the EIDHR backed 19 HRD projects (€13.5 million worth) in more than 45 countries.

In those contexts, the EIDHR *acts as a breath of fresh air* with most projects focusing on helping the survival of weakened or shattered civil society and media, thereby opening the door to dialogue and change. It offers the chance for democratic education of students and vulnerable groups, often based abroad. It helps the advocacy of civil society and diasporas abroad. Sometimes it simply tries to protect and, if needed, to bring victims of repression out of the country into safety.

The “Jasmine revolution” means that the EIDHR may now reveal its involvement in Tunisia in 2010 where, prior to transition, it supported activities of the Tunisian League of Human Rights (LTDH), the Association of Democratic Women (AFTD), Trade Unions (UGTT), Judges’ and Lawyers’ Associations and others, which at the time was not authorized in the country. Lack of publicity concerning its involvement at the time could have been interpreted as a lack of responsiveness; in fact, the EIDHR was very active.

Reviews and evaluations have also highlighted four blocks of questions

First, broadly defined objectives and strategies have caused a certain fragmentation of approaches and some lack of legibility of the Instrument, creating risks of duplication, difficulties in measuring the impact of the activities and a certain weakening of the complementarity.

Second, while in the most difficult countries the official project description has often been disguised in more traditional development activities terms to protect the project from a hostile environment, this has sometimes led to EIDHR resources being devoted to “soft” issues, such as health or sanitation, and not the most pressing priorities, thereby creating a risk of being used for non-priority activities in terms of the scope of the instrument. Therefore qualitative supports were established

Third, there is a clear need to *increase the flexibility* of the instrument. This is particularly true for the limited part of the instrument addressing the toughest situations in terms of human rights violations and urgency of cases, for which a system of open calls seems inadequate.

Fourth, the *budget of the EIDHR is too limited* given its vast geographical and thematic scope. The EIDHR is the smallest of the existing EU instruments and only represents 1% of the overall EU Official Development Assistance. The qualitatively acceptable, yet unsatisfied requests received represent 2-3 times more than the current funding capacities allow to cover,

proving a high relevant absorption potential. Similarly, more EU Election Observation Missions could be carried out if more funding were available.

2.4. The underlying drivers of the problem

It is essential that the EIDHR keeps its dual capacity (i) on the one hand, to support long term and in depth comprehensive efforts to promote democracy and human rights and (ii) on the other hand, to quickly respond to urgent cases of violations, often in very difficult environments

The European Commission's proposal for the Multiannual Financial Framework, tabled in June, foresees already to mitigate the issue of the currently tight resources for the EIDHR. It proposes a somewhat increased budget allowing to enhance the EU response and to bring it closer to the level of the requests. The potential absorption capacity and the level of good project submissions correspond approximately to 3 times the current available budget (€150 million a year). However, a budget increase to such a level (€450 million a year) is not deemed feasible in times of austerity. The current Commission proposal aims at reaching a reasonable benchmark of around €200 million a year for a total instrument budget of €1,400 million over the period 2014-2020 (2011 current prices). This corresponds to a realistic increase (20%). The EIDHR will have conducted an estimated total of 2500 projects between 2007-2013. Such an increase would allow for an estimated of 3000 additional key projects between 2014-2020.

First driver: lack of focus

Broadly defined EIDHR objectives and strategies have caused some degree of fragmentation of approaches and some lack of legibility of the Instrument creating risks of duplication, difficulties in measuring its impact and a certain weakening of the complementarity. Some delegations have also used the flexibility of the instrument to deliver developmental projects with only a partial human right component, though sometimes to “disguise” the project in countries with difficult political environments.

While the scope of activities covered by the EIDHR needs to stay large and open, the broad definition of objectives in the current EIDHR regulation allows for a dispersion of efforts and strategies. The effectiveness of the instrument has been negatively affected as a result of not being enough of an enabling tool focused around the main types of activities to be conducted and their enabling environment.

Second driver: red tape

While the results achieved and the important role played by the existing flexibilities is to be commended, one also needs to note that at times the EIDHR's reactivity has been either too slow or achieved at high transaction costs due to red tape. It is therefore important to further increase the flexibility of the instrument in order to enhance its reactivity for though and urgent situations. The length of calls for proposals, from the launch of the call, to the contractualisation of selected beneficiaries of grant, imposed by the steps foreseen in the Financial Regulation, is incompatible with fast delivery. It can indeed take up to 12 months.

While the majority of the activities should remain demand-driven to ensure their feasibility, to avoid “white elephants” and to ensure ownership by the actors, this approach can be sometimes impossible to implement in the most difficult situations. Indeed, as an example,

one cannot expect threatened and frightened civil society actors that live under immediate pressure to answer public and publicised calls for proposals, which might jeopardise their own safety. As an example, a public call for proposal aiming at the selection of projects to strengthen Human Rights in North Korea cannot take place without serious political risks and risks for the potential beneficiaries. Therefore, the issue of how to bring EIDHR action to bear effectively in the most difficult cases is certainly an area that would justify additional flexibility measures.

The implementation of some procedures, such as call for proposals, also represents transaction costs and administrative burden that should be limited when not necessary or counterproductive to the achievement of the objectives of the instruments.

2.5. Legal base for EU action

The legal bases for the instrument are Article 209.1 TFEU (ex 179 EC) and Article 212.2 (ex 181a EC).

In addition, the policy proposed is based on Article 21 of the Treaty on European Union which provides that “the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.”

2.6. EU added value

On the background of its own accomplishments in conflict solution, peace building and prosperity creation, the EU would seem to be in an excellent position to deliver on external action, on behalf of and with its Member States, generally enjoying high credibility in the countries where it works in. It is well placed to take on the role of a global leader on behalf of its citizens, in particular in its support and promotion of democracy and human rights. Yet, European added value cannot be reduced to a balance sheet: contributing to peace building worldwide, assisting the world's poorest people and supporting democratisation and human rights respect are indisputable demonstrations of how the EU adds value through its work every day. This is precisely where the priorities of the next financial instruments on EU external action will lie.

With 27 Member States acting within the framework of common policies and strategies, the EU has the critical weight to respond to global challenges, such as fostering the universality of human rights for all people. The EIDHR is actually the only sizable EU instrument to address specifically human rights, and most Member States only have limited funds, in comparison, supporting human rights and democracy related activities.

Due to its large scale the EU can deliver help in the world's most remote areas, where most Member States have little strategic interest, only limited presence and reduced capacity to act. Thanks to EU action in, for example, Fiji, Vanuatu or Timor Leste where recently new funding for stable democracy and sustainable development was provided, aid reaches the people that need it most, but who otherwise would remain without it.

At a time of budgetary restrictions, when several MS are compelled to exit entire sectors and countries, the EU continues to be able to play an active role in promoting peace, democracy, solidarity, stability, prosperity and poverty reduction in our immediate neighbourhood and worldwide. In this context, it makes more sense than ever from a purely economic perspective to invest money at EU level where a real difference can be made. In fact, acting through the EU can actually save money for MS. Certain aid effectiveness reforms, especially in terms of division of labour, could add up to potential savings of between 3 and 6 billion a year, according to a recent independent study (*The Benefits of a European Approach*, by HTSPE).

Working with the EU is also cheaper. Administrative costs – estimated at 5.4% on the basis of 2009 data - are lower than the average administrative costs of the principal donors for bilateral aid. The administrative rules that apply are intended to make sure that EU taxpayers' money is properly spent, using strict criteria, which can be monitored.

In addition, the European Commission is one of the most transparent aid bodies in the world. Such transparency is in itself an important tool to ensuring effective value for money. This has been recognised by the organisation "Publish what you Fund" which ranked the European Commission in 4th position (out of 30) in its first Aid transparency Assessment of donors in February this year. Further improvements are continuing to be made.

In a recent Green Paper consultation carried out to find out views from stakeholders on our development policy, all those who responded agreed on the positive role that the EU played in supporting good governance (including participation of civil society), security, human rights and gender equality.

As an example, for the Arab Spring, and in particular the Libyan crisis, the complementary activities of ECHO, IfS and EIDHR have formed the core of the exemplary civilian pillar of the EU response to humanitarian need (i.e. Echo), crisis (i.e. IfS) and support to democratic transition (i.e. EIDHR).

3. OBJECTIVES

3.1. General objectives of the instrument

The goal pursued by the EIDHR is to contribute to the development and consolidation of democracy and the rule of law and to promoting respect for fundamental freedoms and all human rights, within the overall framework of the EU's policy on development cooperation and economic, financial and technical cooperation with third countries, and consistent with the EU's foreign policy and external action as a whole. This objective is to be maintained.

3.2. Specific objectives of the revision

First, it is important to note upfront that this proposal for the revision of the EIDHR is based on the premise of *keeping the existing efficient principles* that are key to ensure the reality of the EIDHR mandate and its added value:

- To maintain a separate, stand-alone instrument that acts in complementarity with other instruments which mainstream human rights (i.e. focus on human rights defenders and most difficult environments)

- To work autonomously, without host country government consent (i.e. partial EU restricted)
- To maintain a worldwide coverage (i.e. also active in the US or Japan)
- To maintain existing procedural flexibilities (i.e. re-granting, informal partnerships, small grant)
- To keep a strong focus on local activities and CSOs

Indeed, complementarity is the basis for human rights mainstreaming and the EIDHR's leverage effect, working without host country consent is a guarantee to avoid censorship and undue interference in sensitive and difficult environments, worldwide coverage is a reflection of the universalism of human rights and the existing flexibilities are ensuring a minimum potential of reactivity. These principles have been recognised and commended by all stake holders in various consultations and therefore should not be subject to change

The specific objectives of the EIDHR's revision are twofold and pursue the aim to ***build a better enabling regulation***

On one hand, to *focus on enabling working axis* serving a scope of activities that stays broad and even enlarged in the currently too weak area of economic and social rights. The future EIDHR would aim at a more operational definition of the objectives of the regulation along four axes of work, representing focused process oriented categories of activities described hereafter in section 3.5 (i.e. geographical/thematic coverage

On the other hand, to *increase the flexibility of the instrument* by applying a full untying of EIDHR funding to restrictive rules of nationality and origin, a condition consistent with its worldwide mandate, and by applying, when appropriate, the procedures of the Instrument for Stability (i.e. direct grants based on concept notes) within a limited funding envelope under the instrument dedicated to the most difficult cases and to emergencies (+/- 20%).

3.3. Consistency with external action priorities

Advocacy and support of democracy and for the respect of human rights are enshrined as primary guiding principles of the EU's external action in Articles 2 V and 21 of the Treaty on European Union. They are also enshrined as a key overarching element in the European Consensus for Development, the new Neighbourhood Policy and in all EU partnerships, the DCI and the EDF. It is also a key criterion for the enlargement process

3.4. Consistency with other EU policies

As a consequence of this clear-cut Treaty mandate, promotion and support of democracy and human rights is to be integrated and mainstreamed in all EU policies

The EIDHR is part of the architecture of different external action financial instruments proposed jointly by the European Commission and the High Representative for CFSP. It complements long term instruments by focussing on CSO activities in the field of democracy and human rights, addressing the most difficult situations, financing EU Election Observation Missions and supporting local, regional and worldwide campaigns on key human rights issues. It is an essential part of the wider external action toolbox to promote and safeguard human rights respect. It also complements the toolbox of crisis management and prevention

alongside with humanitarian aid, CFSP operations and the Instrument for Stability by providing rapid support in cases of urgent human rights violations. It also acts as a link to relief, rehabilitation and development activities by offering the possibility for providing physical and mental rehabilitation and reinsertion to victims of abuses or assist human rights defenders in urgent protection need. As an example, in Libya, the EIDHR will help bring back to schools children that were sheltered by ECHO, offering a democratic curriculum and specific psychological rehabilitations. Later on, the ENPI, will follow and help with more in-depth reforms of the education system

It has been essential to ensure on the ground, in a pragmatic manner, the coordination with and a proper division of labour between the EIDHR and other interacting instruments, in particular in the needs assessments phase of cases. Indeed, the EIDHR complements humanitarian aid operations, as refugees and beneficiaries of humanitarian relief are often victims of human rights violations that need to be documented, registered and treated. Strong synergies and mutual reinforcement exist with the Instrument for Stability (e.g. in case of emergencies), Non State Actor line (e.g. support to CSOs), Investing in People Line (e.g. gender and disenfranchised groups) and in the future the new Neighbourhood Civil Society Facility. As an example, in Haiti, in respect of the 2010 general elections, while the IfS provided support to the organisation of elections and the NSA supported civil society capacity, the EIDHR provided EU observation missions, local domestic observation as well as protection against human rights Abuses.

3.5. Geographical/thematic coverage

The EIDHR should continue to have a worldwide geographical coverage, outside of the EU, and be able to act potentially in any region or country of the world. While the thematic coverage of the future EIDHR should remain wide, it would focus on four enabling axis

thematic campaigns, mixing advocacy and field operations for major issues (e.g. international justice) and addressing serious violations of rights (e.g. torture, death penalty, discrimination, etc..), as well as providing core support to key actors and related civic education;

targeted support to the development of thriving civil societies, empowering it in its quest for and defence of democracy and human rights and to their specific role as actors for positive change;

reinforced capacity for the EU to be able to react quickly to human rights urgencies and establishment of a comprehensive EU Human Rights Defender mechanism;

strengthened and better integrated approach to democratic cycles, through election observation and other types of support to democratic and electoral processes;

Further details, sub-objectives and targets (i.e. which funding envelope for which major issue) will be determined in the multi-annual strategies and/or annual action plans. They will also take account of the priority setting under the Human Rights Country Strategies currently under elaboration and validation.

The case of the EU Election Observation Missions (EU EOMs) is peculiar in terms of geographical coverage. Indeed, EU EOMs do not take place in the countries of the OSCE membership (including the EU's own Member States). This is a measure of division of labour and sound financial approach, as the OSCE is already organizing its own election observation

missions, with a methodology compatible with that for EU EOMs (the OSCE has endorsed the same Declaration of Principles for International Election Observation as the EU) and with the financial support of EU Member States. That is why it is not envisaged at this stage to change this peculiar geographical coverage of EU EOMs.

4. POLICY OPTIONS

While the comparative advantage of the EIDHR as such does not seem controversial at EU level, it is essential to base the future instrument on lessons learnt. This implies, on the one hand, to keep the proven added value and recognised working principles and specificities of the EIDHR. It also implies, on the other hand, to introduce amendments and changes to the delivery mechanisms of the instrument, in order to further improve its reactivity, flexibility and impact on the ground.

4.1. Option 0 – No regulation

One could envisage cancelling the EIDHR and decide either not to address democracy and human rights or to mainstream relevant activities within other instruments.

4.2. Option 1 - No change to the existing regulation

The EIDHR would remain the same in terms of its geographical and thematic scope, its objectives and its operational principles. The proposed increase of the budget allocation will allow to catch up with inflation since 2007 (14%) and to conduct more operations.

4.3. Option 2 - Building a better enabling regulation

While the option to table an entirely new instrument is not proposed, the second option put forward is to aim at an amended EIDHR regulation reflecting lessons learnt and the various changes proposed. This revision would target the establishment of a better enabling and more process oriented regulation, entailing 5 sub-options to be discussed.

Sub-option 1 – Focussing on enabling working tools axis

Built as a better enabling regulation, the question is whether the approach should be to keep the existing regulation and introduce change in strategies and practices or whether to revise the instrument and introduce changes to help focus it on its four different windows:

- thematic campaigns, mixing advocacy and field operations for major issues(e.g. international justice) and addressing serious violations of rights (e.g. torture, death penalty, discrimination, etc..), as well as providing core support to key actors and related civic education;
- targeted support to the development of thriving civil societies empowering it in its quest for and defence of democracy and human rights and to their specific role as actors for positive change;
- reinforced capacity for the EU to be able to react quickly to human rights urgencies and establishment of a comprehensive EU Human Rights Defender mechanism;

- strengthened and better integrated approach to democratic cycles, through election observation and other types of support to democratic and electoral processes;

Sub-option 2 – Maintaining the insertion of EU Elections Observation Missions (EOMs)

EU Election Observation Missions have always formed a relevant and important part of the EIDHR activities. The question has been raised about their potential insertion into the Instrument for Stability or in geographical instruments and relevant country financial envelopes.

Sub-option 3 – Maintaining the exclusion of political parties

The direct funding of political parties is prohibited in the current regulation. Regular requests by political parties and/or affiliated bodies to lift this prohibition have been received.

Sub-option 4 – Further untying

The instrument applies the common level of untying for EU instruments. The question has been raised whether it is coherent with the EIDHR worldwide mandate *Sub-option 5 - Add new flexibilities for most difficult countries/situations.*

The question has arisen whether a limited (in terms of amount) use of the direct award of grants as practiced by the IfS could be applied, if appropriate, to the most difficult countries/situations and cases of urgency.

5. ANALYSIS OF IMPACTS

5.1. Likely economic, social and environmental impacts of each of the options

The promotion of democracy and human rights has a direct economic, social and environmental impact, which is extremely difficult to quantify. Nevertheless, improvements of an individual's situation in terms of human rights and democratic participation certainly have a direct impact on his/her economic and social life, as well as on the likelihood of better environmental protection measures being taken.

Indeed, supporting activists or human rights defenders involved in the defence of economic, social or environmental rights has a strong impact locally and also generates political pressure on governments to observe the commitments made by a given country in these areas, therefore tending to improve the situation in this regard.

The various options have different qualitative impacts.

One can expect that many stakeholders would view option 0 (no regulation) as a renouncement by the EU of promoting its own core values and relevant international standards. It will certainly have a very negative impact in terms of the EU's image both at home and on the international scene.

While option 1 (no change) will allow for the existing economies of scale of a self-standing instrument, it will miss those resulting from the proposed rationalisation of the process and its improved rapidity through additional flexibility (option 2). Indeed, a faster and more reactive

mechanism can make a difference when saving the life of a victim is a question of days or even hours.

5.2. Include impacts on external action, in particular on Policy Coherence for Development

The integration of democracy and human rights activities within other instruments (option 0) will allow a direct integration with other policies. However, it will certainly reduce the profile of the EU's human rights and democracy support, as well as risk to create incoherencies of action between regions and thematic areas and lead to diverging or double standards.

A revision limited to an increased EIDHR budget (option 1) will allow to respond better to requests, in particular those emerging from EU delegations in the field that are well placed to assess the field reality and coherence on the ground. It will not allow benefiting from other possible improvements.

An improved EIDHR (option 2) will allow to better impact on the other policies. It will help further ensure the Policy Coherence for Development as there is no development without rights and no rights without development.

5.3. Impact in terms of management / implementation modalities

An increased EIDHR budget will impose additional managerial constraints if it is not accompanied by additional flexibility. A part of the financial envelope will have to be earmarked for support expenditure which should follow the percentage of the operational credit increase.

An improved EIDHR and/or faster and more flexible implementing modalities as proposed in 4.2 (option 2) will allow reducing transaction costs of implementation while increasing the impact and therefore the instrument's value for money. It will also allow for faster delivery in an area where often, timing is of the essence for a positive result.

6. COMPARING THE OPTIONS

6.1. Weighting of positive and negative impacts per option

6.1.1. *Option 0 (No regulation)*

Not having a specific regulation on democracy and human rights will imply either that the EU will not undertake the activities previously conducted within the scope of the instrument, or that these activities will have to be mainstreamed within other instruments.

Cancelling existing activities out of the EU portfolio will greatly endanger the EU's standing and leadership in the field of human rights and democracy and its capacity to underpin its policy dialogues with concrete operations. Moreover, it will result in thousands of persons across the world, either human rights activists or victims of abuses, being without means and protection while often in precarious situations or even sometimes in lethal danger.

The inclusion of democracy and human rights activities within other instruments (EFF, ENPI or DCI) could be seen as a positive sign of mainstreaming. Nevertheless, the suppression of a

self standing instrument will lead to the abolition of the specific, valuable working principles, such as the absence of consent of the host country or targeting civil society actors. Therefore this option will impede most activities and reduce the delivery to the easiest or show case activities. It will lower efficiency of operational delivery (e.g. reduced geographical scope, lower economies of scales, higher cost) and create certainly a strong loss of visibility and positive reputation (i.e. secondary rather than complementary).

6.1.2. Option 1 (No change)

The option of no change would result in activities remaining strictly in the framework of the existing EIDHR Regulation.

This option would ensure the continuity of the instrument, as well as an improved understanding (through an effect of repetition) of its activities. It would maintain the good principles of the existing EDIHR. It would also maintain the EU as one of the biggest donors in the field of human rights and democracy.

While this option would allow maintaining the performing existing instrument, it would not allow facing new challenges adequately, correcting lessons learnt and answering new demands.

6.1.3. Option 2 (Revised regulation)

Sub-option 1 - Focussing on enabling working tools axis

Built as a better enabling regulation, the revised instrument set up as a process oriented tool would focus on the four different windows set out under point 4.3.

The four categories discussed above correspond roughly to the type of activities that are delivered by the current EIDHR. However, adapting the delivery mechanisms will allow for improved efficiency and impact on the ground. Two major changes are needed. First the update of several articles to insert in the regulation various enhanced flexibilities developed in the new Financial Regulation, as well as several modalities allowing, in accordance with the EU commitment on aid effectiveness, to improve joint activities and programming with the Member States and other donors. Second, to adapt specific flexibilities for the most difficult cases as described in sub-option 5. Due to the highly sensitive nature of the issue (i.e. most difficult countries are high on the EU diplomatic agenda) this additional enabling flexibility is presented as an independent option.

Sub-option 2 – Maintaining the insertion of EU Elections Observation Missions (EOMs)

The coherence between EOMs, diplomatic agendas and long term engagement with partner countries might benefit from the insertion of EOMs in the concerned country's envelope within geographical instrument.

The insertion of EOMs within the Instrument for Stability could allow enhancing the deployment of EOM in post-conflict or quasi conflict situation and its link as a tool to address crisis agendas or negotiations for transition.

Nevertheless, EOMs are a flagship of the EU external action and their current methodology and the independence of the EIDHR as the financing basis guarantee in turn the EOM's

independence and their high degree of credibility. This makes them an important tool in building confidence in and enhancing the reliability and transparency of democratic electoral processes, detached from any political agenda (i.e. almost an evaluation of the electoral situation and related democratic processes).

It is proposed to maintain the existing insertion of the EOMs as an important pillar of the EIDHR. The question has been also been discussed in the IfS Impact Assessment and the potential options for its revision, with similar conclusions and reasoning.

Sub-option 3 - The exclusion of political parties

Political parties are essential actors of the democratic cycle and real actors of change and of a grass root democracy. The direct funding of political parties, despite their role as important actors of the civil society is currently prohibited by the existing instrument. Allowing them as potential beneficiaries of the EIDHR would include a key category of actor that is excluded and might meet the agreement of parts of the Members of the European Parliament. However, this exclusion was carefully thought through and agreed by the EU as a guarantee for the non-partisan approach pursued by the Union under the EIDHR. Until this approach is not changed, the insertion of political parties as direct beneficiaries would be in contradiction with this principle.

The recent announcement of the envisaged set up of a European Endowment for Democracy potentially focussing precisely on political parties, society and actors, detached from the non-partisan principle under which the EIDHR works, also calls for not duplicating in this direction.

It is recommended for this exclusion to be maintained. It is important to note that this does not exclude activities targeting political parties in a non-partisan manner (such as democracy related training), but direct party funding should be excluded. By contrast, the eligibility of independent political foundations would remain unaffected by this exclusion, in line with the current regulation.

Sub-option 4 – Further untying

The proposal for the Future Basic Acts aims at a further gradual untying of aid to the rules of origin and /or nationality corresponding to the EU political commitments made at this point in time. The worldwide nature of the EIDHR calls a full untying of aid, as was the case already for the preceding European Initiative on Democracy and Human Rights. It has imposed a constant use of the derogation measures allowed in the regulation to further untie the EIDHR resources. Cases are recurrent such as campaigns against death penalty in USA or Japan, use of Switzerland based international NGOs, or projects by diaspora groups that fled highly repressive countries to non EU countries.

Therefore, regular activities impose derogations to the existing rules on rule of origin and nationality. The adoption or not of the complete untying of the regulation does not have a direct impact on the derogation possibilities that exist and are regularly used. It would have an impact on the administrative cost of projects and allow reducing red tape, representing a direct gain of resources. While the previous European Initiative on Democracy and Human Rights was already fully untied, this would represent a precedent for the entire EU assistance.

In accordance with the aim of the two EU regulations on the untying of aid, it is recommended that the future EIDHR is fully untied and the eligibility of project exclusively based on the balance between their relevance, quality and price.

Sub-option 5 - Add new flexibilities for most difficult countries/situations.

The necessity to increase the flexibility of the instrument is important in order to gain additional reactivity in the toughest cases and in situations of urgency. Indeed, the possibility to award direct grants on the basis of needs assessment missions and practical concept notes as the basis for an informed decision, without using a formal tendering process or call for proposals for amounts up to 2 millions € (i.e. IfS procedures), would lead to a real capacity gain of fast reactivity in relevant cases of human rights urgencies. It would also allow mitigating the situation of the most difficult countries where open calls for proposals are incompatible with the repressive nature of the regime.

On the other hand, such a facility could undermine the demand driven nature and NGO owned aspect of the projects. It could also create tension on the non competitive nature of the award and favour certain types of NGOs.

It is therefore proposed that only a limited part of the EIDHR funds, dedicated to most difficult situations/countries and/or human rights defenders in urgent protection need, would benefit from the possibility to award direct grants in a non-publicised manner applying a similar methodology as that used for the Instrument for Stability. This would represent +/- 20% of the EIDHR activities.

6.2. Highlight trade-offs and synergies associated with the options

The zero option (no regulation) will integrate Human Rights activities within other instruments as a positive sign of mainstreaming. Nevertheless, the abolition of a self standing instrument will suppress specific working principles, such as the absence of host country consent, thereby impeding most activities and reducing the delivery to easiest or show case activities. It will lower efficiency of operational delivery (e.g. reduced geographical scope, lower economies of scales, higher cost) and create certainly a strong visibility issue (i.e. secondary rather than complementary).

The first option (no change) maintains the key elements of an EIDHR added value i.e. its working principles. It will allow benefiting from a rolling experience and helping outreach through a cumulative identification over the year. It will avoid cost of reform and focus on day to day improvements. On the other hand it will not allow addressing the identified drivers of problem in a structural manner.

The second option (enabling regulation), while keeping the existing added values, will allow for a faster reaction and reactivity, in particular to important crisis and cases of violations. It is nevertheless important that the Instrument remains involved in long term support and in depth activities that have grass root level impact and a lasting effect and does not focus exclusively on day to day crisis management. Increased coordination with humanitarian aid operations and the Instrument for Stability will have to be set up.

6.3. Preferred option

It is proposed to build on the solid foundations that have been developed and recognised and to maintain the core principles of the instrument while amending its priorities, simplifying procedures and delivery and further strengthening its efficiency and reactivity. The positive adoption of the second option is therefore proposed with the application of its 5 sub options.

7. MONITORING AND EVALUATION

7.1. Core indicators of progress towards objectives

The EIDHR is an enabling Regulation establishing the essential elements and the basis for the EU intervention. The exact actions are defined, first, through the Strategy Papers and subsequently through the annual action programmes detailing the activities to be carried out by the EU, including the objectives pursued by the actions in question and the expected results. Specific indicators are fixed at that moment, having in mind the particularities of the action in question.

The implementation of these actions complies with performance-based management. Performance based management serves several purposes:

- making the most of limited resources;
- improving decision making processes and decisions;
- achieving transparency and accountability.

However, the field of human rights and democracy is complex. What matters about performance in this field cannot be captured in one or even a dozen performance measures. Yet these are important tools designed to bolster improvements in planning, risk management and accountability. Good quality information enables people to participate in programmes, and equips managers to drive improvement.

The objective of identifying indicators for democracy and human rights projects is to improve the management of projects by measuring their impact and the extent to which the impact of specific projects can be linked to overall changes in the situation of Democracy and Human Rights in a country.

Indicators are an important tool for signposting objectives and measuring their attainment in all parts of project management. They describe the project's objectives in terms of quantity, quality, target group(s), time, and place. They are the operational description of the overall objectives of a project, its specific objective, and its results, activities and resources.

An indicator is a measure that helps 'answer the question of how much, or whether, progress is being made toward a certain objective'. It measures the performance of a specific program by comparing actual results with expected results. It does not answer the question of why progress is or is not being made. A good indicator should relate closely to a desirable change defined as an objective, of which it is a manifestation; be verifiable within acceptable costs; be linked to a timeframe, target group, and geographical or institutional.

Intended results

To support tangible results in the promotion and support of democracy and human rights worldwide.

Main expenditure related outputs

Timely launch of project, including fast reaction mechanism for urgent cases of violation and human rights defenders. Timely follow-up, addendum, payment and closing.

Indicators of results

The structure of the EIDHR into four axes of work, each with specific objectives, has been described above. Each project implementing these campaigns will fine-tune indicators such as the following:

- (1) Number of campaigns launched, including number of advocacies, number of international conventions ratification, number of specific field operations Number of citizens, professionals and students trained,
- (2) Number of key actors supported,
- (3) Number of civil society project conducted, at global and at local level,
- (4) Number of Human Rights Defender cases followed,
- (5) Number of projects in most difficult countries and situations,
- (6) Number of electoral process and democratic cycles supported, observed, and followed.

7.2. Outline for monitoring and evaluation arrangements

The European Commission's Monitoring and Evaluation systems are increasingly focussed on results. They involve internal staff as well as external expertise.

Task Managers in Delegations and Headquarters continuously monitor the implementation of projects and programmes in various ways, including wherever possible through field visits. Monitoring provides valuable information on progress; it helps managers to identify actual and potential bottlenecks, and to take corrective action.

External, independent experts are contracted to assess the performance of EU external actions through three different systems. These assessments contribute to accountability, and to the improvement of ongoing interventions; they also draw lessons from past experience to inform future policies and actions. The tools all use the internationally-recognised OECD-DAC evaluation criteria including (potential) impact.

Firstly, at the project level, the Headquarters-managed Results Oriented Monitoring (ROM) system provides a brief, focused snapshot of the quality of a sample of interventions. Using a highly structured, standardised methodology, independent ROM experts attribute grades which highlight the strengths and weaknesses of the project and give recommendations on how to improve effectiveness.

Project-level evaluations, which are managed by the EU Delegation in charge of the project, deliver a more detailed, in depth analysis and help project managers to improve ongoing interventions and prepare future ones. External, independent experts with thematic and geographic expertise are hired to conduct the analysis and gather feedback and evidence from all stakeholders, not least the final beneficiaries.

The Commission also conducts strategic evaluations of its policies, from programming and strategy to the implementation of interventions in a specific sector (such as health, education etc), in a country or region, or of a specific instrument. These evaluations are an important input to the formulation of policies and the design of instruments and projects. These evaluations are all published on the Commission's website and a summary of the findings is included in the Annual Report to the Council and the European Parliament.