GOOD GOVERNANCE IN THE EUROPEAN UNION

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1. Introduction

With the end of the Cold War, good governance has been mainstreamed into the development strategies of international organizations, such as the UN or the World Bank, but also of individual Western states, such as the United States or the Federal Republic of Germany (Weiss 2000; Adam and König 2001; Hill 2006). The European Union (EU) is no exception. In fact, the EU has been among the first of any Western state or international organization to write good governance, together with human rights, democracy, and the rule of war, into its agreements with external partners. By now, it has developed into an integral part of the EU's foreign policy and it is backed up by considerable financial and personal resources.

This paper seeks to analyze the good governance approach in the EU's external relations. In order to systematically map the concepts, methods, and instruments used, the first part develops an analytical framework that distinguishes approaches to the promotion of good governance along two dimensions: 1) The objectives pursued by the EU's external policy (increasing input vs. output legitimacy) defined by the particular understanding of good governance as a more administrative or rather political concept, and 2) the channels used by the EU to promote good governance (intergovernmental vs. transnational track) depending on whether the EU targets state or non-state actors. The combination of the two dimensions results in four ideal type approaches that allow to systematically map similarities and differences between and within the attempts of external actors to promote good governance. Finally, three different types of instruments are identified which can be used to increase legitimate and democratic governance in third countries. Conditionality and political dialogue seek to alter the target actors' preferences over strategies and outcomes, respectively, in favour of introducing domestic reforms. Assistance, by contrast, aims at strengthening their capacity to undertake necessary changes.

The second part of the paper applies this analytical framework to systematically map the approach(es) of external actors to promote good governance in third countries. While the main focus lies with the different areas of the EU's external relations, we will start our empirical analysis with a brief discussion of the World Bank, the OECD, and the UNDP, which all three have been major shapers of the international debate on good governance. We will then give a brief overview of how the concept of good gov-

ernance emerged in the EU essentially "spilling-over" from the international level into development policy. Finally, we will systematically analyze how the EU mainstreamed good governance into the different fields of its external relations. Does the EU pursue a one-size-fits-all approach or does it differentiate between different types of countries and relations?

Our analysis shows that the EU uses the same set of foreign policy instruments to promote good governance across its external relations: political dialogue, (positive) conditionality and assistance. Moreover, EU policies focus on strengthening state institutions to increase output legitimacy and predominantly rely on intergovernmental channels. Despite these overall similarities, we find that the EU's specific approach still varies according to the field of external policy, particularly regarding the role of non-state actors in increasing output and input legitimacy, respectively. In development cooperation, the involvement of non-state actors serves the purpose of increasing output rather than input legitimacy. In the EU's neighbourhood policy, non-state actors are less important. They feature more prominently in case of the Mediterranean countries, where their involvement is clearly output oriented. In the EU's relations with its Eastern neighbours, input legitimacy gains some importance, particularly when countries have a long-term membership perspective. Input legitimacy figures most prominently in the EU's accession or enlargement policy. But with the exception of the European Initiative of Democracy and Human Rights, the EU seeks to increase input legitimacy through the reform of state institutions rather than by directly empowering non-state actors.

2.   Good Governance – Towards an Analytical Framework

2.1   Unpacking Good Governance

While good governance has gained prominence in the literature, there is little agreement on the essence of the concept. The definitions, which scholars use, depend for the most part on their respective research agenda or on the understanding of the actor under scrutiny. Moreover, particularly in development studies, good governance tends to be equated with governance (Hill 2006; Murphy 2002; Beck and Conzelmann 2004; Pettai and Illing 2004), often without providing a clear definition of either concept.

In order to structure the existing literature on good governance, we have developed an analytical framework that adopts a broad understanding of governance as institutionalized modes of coordination through which collectively binding decisions are adopted and implemented (Mayntz and Scharpf 1995; Scharpf 1997). This definition does not confine governance to the non-hierarchical coordination of public and private actors (Rhodes 1997) but also encompasses hierarchical steering through public actors only as well as private self-regulation.[1] Furthermore, governance entails an albeit minimal normative dimension since it refers to institutionalized modes of coordination that intentionally aim at the provision of (basic) collective goods rather than serving individual self-interests (Ladwig et al. 2007).

Good governance, by contrast, has deeper normative implications. Despite the different concepts and understandings we find in the literature, good governance has served as a yardstick for sound development policies (Conzelmann 2003) that is oriented towards core features of the governance structures and processes in OECD countries (Hydenet al. 2004). These include, for example, effectiveness, efficiency, transparency, accountability, predictability, sound financial management, fighting corruption, as well as the respect for human rights, democracy and the rule of law. However, which of these elements are linked with good governance varies significantly. As a first analytical cut, a distinction can be made between the administrative core of good governance and a closely associated political area (Fuster 1998; Conzelmann 2004). Principles, such as accountability, efficiency, transparency or the rule of law, belong to the first category, while the latter category is filled with respect for human rights, participation and democratization. Some authors further restrict their focus on the administrative core to the proper functioning of the state administration and the regulative framework (Dolzer 2004; Faust 2001). Others include central elements of democracy, because a democratic environment is seen as a key background variable for good governance (König 2001; Neumayer 2003; Santiso 2001; Dolzer 2004). Obviously, the literature offers different conceptualizations of good governance, in which the political content of good governance varies and is controversially discussed.

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[1] The DFG Collaborative Research Center 700 is of course primarily interested in the latter forms of governance, as we look in our areas of limited statehood for potential alternatives to state regulation (Risse and Lehmkuhl 2006).

If it is the deeper normative or political content that distinguishes good governance from governance (cf. Schmelzle 2008), in the end, good governance is legitimate governance and has a clearly prescriptive connotation. But the concept of legitimacy also serves an analytical purpose of systematically ordering the various definitions and understandings of good governance. The distinction between input and output legitimacy (Scharpf 1999) corresponds to the discussion of a narrower, administrative, and a wider, more political concept. Output legitimacy refers to the extent to which the effects of political decisions are perceived to be in the interest of the people. In this view, good governance is about solving societal problems in an effective and efficient manner. Input legitimacy, by contrast, requires that political decisions correspond to the preferences of affected people. Good governance must ensure that the preferences of the people are translated into political decisions.

The literature clearly reveals a certain bias towards the output-perspective. Most studies implicitly or explicitly conceive of the core of good governance as transparency, predictability, sound financial management or fighting corruption – principles that aim at making policies more efficiently and effectively (Hill 2006; Conzelmann 2003; Fuster 1998). Only the more controversial principles, such as the respect for human rights, participation or democracy, are directly linked with the input dimension (Tolentino 1995). The rule of law stands somewhat in between, as it essentially can serve as a safeguard of institutions in both dimensions (Magen and Morlino 2008; König 2001).

A second bias within the literature on good governance concerns the role of the state. The emergence of good governance in the development debate at the end of the 1980s basically marks nothing less than a shift in paradigm from 'getting the market right' to 'getting the institutions right' (Fuster 1998; see also Menzel 1995: 43ff.).[2] The idea behind is that the creation of a regulative environment is a decisive precondition for achieving sustainable development. It further aims at the effective and purposeful management of primarily economic resources. Moreover, when it comes to delivering and safeguarding the rules of the game and managing public resources, the literature implicitly or explicitly refers to the existence of a more or less well functioning state (cf.

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[2] Furthermore, this paradigm change strengthens the political content of development policy to a significant degree und even touches upon questions of sovereignty. Whereas development assistance during the Cold War was largely restricted to adjust policies, the good governance agenda is about restructuring the polity and politics. Thus, it is not too surprising that good governance promotion is at times (mis-)understood as a neo-colonial policy (cf. Hydenet al. 2004; Weiss 2000; Dolzer 2004).

Hill 2006; Theobald 2001). Consequently, the state and its administrative capacities play a crucial role in the good governance debate (cf. Pierre 1999; Dolzer 2004; Murphy 2002). Improving governance in the development context, therefore, means building and strengthening state institutions and capacities.

Both the bias towards output legitimacy and state-(institution) building has serious implications for the ways in which external actors seek to promote good governance in third countries.

2.2   Improving Governance through Foreign Policy

Improving governance has become a major foreign policy goal of most international organizations and Western states. In promoting good governance, external actors can draw on different approaches (Schimmelfennig 2007; Diez, Stetter and Albert 2006). They can either choose the way of traditional diplomacy or 'intergovernmental interaction'. Or they can seek to trigger and influence domestic reform processes 'through transnational processes via societal actors in the target state' (Schimmelfennig 2007: 6). Using the intergovernmental channel, external actors either seek to alter the preferences of target governments over strategies by manipulating their cost benefit calculation. Or they aim to change preferences of outcomes of governments by socializing them into new norms through processes of social learning and persuasion. The transnational approach rather targets domestic non-state actors in order to empower them vis-à-vis their governments in pushing for political reforms (Schimmelfennig 2007: 7).

Both channels allows for a direct and an indirect impact on the target country. Schimmelfennig refers to an indirect impact, when domestic reform processes are primarily driven by domestic rather than external actors. In case of a direct impact, political change in the target country is an immediate result of the external intervention that aimed at either altering incentives for state and non-state actors or persuading them to accept new norms (Schimmelfennig 2007).

Due to our governance definition, we restrict our focus on intentional actions of external actors. We assume that an external actor, such as the EU, can choose between the intergovernmental channel (targeting state actors) and the transnational channels (tar-

geting non-state actors) in its attempt to improve the governance structures and processes in third countries.

Combining the two alternative channels of direct external influence (intergovernmental/transnational) with the distinction between input and output legitimacy, we arrive at a two-by-two matrix that allows us to differentiate between four ideal-type approaches of good governance promotion.

The first approach, *intergovernmental and output-oriented*, focuses on the administrative core of good governance and essentially means improving governance through strengthening the government and its administration. It seeks to promote *effective government*. The second approach, *transnational and output-oriented*, either aims at including non-state actors in implementation processes in order to produce better policies by pooling resources and increasing acceptance (Mayntz 1997). Or it tackles the building and strengthening of non-state organizations that help better implement policies. We call this approach promoting *effective governance*, since it involves non-state actors. The third approach, *intergovernmental and input-oriented*, targets the state to have it establish and safeguard a public sphere in which interests can be articulated and aggregated. It is about creating *democratic government*. The fourth and last approach, transnational and input-oriented, wants to empower non-state actors in the making of public policies in order to improve the democratic quality of decision-making processes. We call this approach *democratic governance*.

Fig. 1: Four approaches of external good governance promotion

	Output	Input
Intergovernmental	effective government	democratic government
Transnational	effective governance	democratic governance

Next to the approach, a final distinction can be made referring to the instruments external actors employ to make their targets (state or non-state actors) comply with their major goals (increasing input or output legitimacy).

Since the promotion of good governance originated in development cooperation, technical and financial *assistance* used to be the most prominent instrument. It seeks to build material or immaterial capacities in order to improve governance. However, it soon became clear that bad governance was not only a problem of weak capacities. Developing and transition countries did not only lack crucial resources to make good policies. Their political leaders were often not willing to introduce domestic reforms deemed necessary to achieve good governance. With the mainstreaming of good governance into the foreign policy of international organizations and Western states, compliance with external requirements increasingly became an issue. The so called 'management school' indeed emphasizes lacking capacities as the main problem of compliance, which can be addressed by transferring financial and technical resources (Chayes and Chayes 1993; Chayes, Chayes and Mitchell 1998). Enforcement theories, by contrast, contend that states predominantly lack the will to comply with external requirements since they imply high costs, both economic and political. External actors can either induce recalcitrant states into compliance by offering negative (sanctions) and positive (rewards) incentives (Downs 1998; Fearon 1998). Or they can seek to change their preferences through socialization processes based on persuasion and social learning (Checkel 2001; Risse, Ropp and Sikkink 1999).

Thus, external actors can draw on three types of instruments to promote good governance in third countries. These instruments differ mainly with regard to the steering mechanisms by which good governance is being diffused. First, *political dialogues* use persuasion and learning strategies. Second, *conditionality* tries to manipulate cost-benefit calculations through creating positive and negative incentives. Finally, *assistance* is geared toward capacity-building for institutionalizing good governance.

Fig. 2: The EU tool box for external action

Instrument	Influence Mechanism
Political Dialogue	social learning and persuasion
Conditionality	manipulation of cost-benefit calculations
Assistance	capacity and institution building

In the next chapter, we use our set of categories for an empirical analysis of the different foreign policies of the EU. We pay particular attention to the approaches and instruments chosen by the EU. But before we start with our analysis, we will give a brief overview of how the concept of good governance emerged in the EU essentially "spilling-over" from the international level, where the concept was first promoted by the World Bank Group, the OECD, and the UNDP, albeit in very different ways.

3. The Emergence of Good Governance in the EU: From the Outside-In

3.1 Setting the Scene: from Structural Adjustment to Good Governance

Good governance first emerged as an issue in development policy at the end of the 1980s and the beginning of the 1990s. The international debate on good governance was predominantly shaped by international organizations, such as the World Bank, the Organization of Economic Cooperation and Development (OECD) and the United Nations Development Programme (UNDP), which have been major players in international development cooperation.

After the end of the Cold War, the support for "bad governance" in autocratic states could no longer be justified by containing the rise of communism. Moreover, it became clear that the structural adjustment programmes of the International Monetary Fund and the World Bank had done little to promote socio-economic development (Beck and Conzelmann 2004; Murphy 2002; Wittkowsky 1999). The so called 'Washington Consensus', which put free market in the centre of development strategies and favoured a 'minimum state' (Williamson 1990), was increasingly called into question. The minimum state was not able to deliver the necessary institutional framework for functioning markets. Moreover, it produced negative outcomes, particularly in Sub-Saharan Africa, where particularly the poorest of the poor were or remained deprived of basic public services. In 1989, the World Bank presented a study on 'Sub Saharan Africa – From Crisis to Sustainable Growth' (World Bank 1989). Based on a comprehensive analysis of the causes of the African development crises and the inefficiency of development aid, the report recommended major adjustments with regard to future development programmes. As central reasons for the overall weak performance of more than three

decades of development cooperation, serious governance problems were identified, such as the 'deteriorating quality of government, epitomized by bureaucratic obstruction, pervasive rent-seeking, weak judicial systems and arbitrary decision-making'(World Bank 1989: 3). Furthermore, 'weak public sector management' led to 'loss-making public enterprises, poor investment choices, costly and unreliable infrastructure, price distortions and hence ineffective resource allocation' (World Bank 1989: 3). The poor performance on these indicators resulted in a 'governance crisis', i.e. a profound failure in 'the exercise of political power to manage a nation's affairs' (World Bank 1989: 60). In order to overcome such failures, the World Bank concluded that future development assistance should inter alia focus on 'capacity building […] through institutional reforms at every level of government and by measures to foster private sector and nongovernmental organisations' (World Bank 1989: 15).

The World Bank issued two other reports in 1992 and 1994, respectively, which further elaborated the concept of (good) governance and its operationalization in the World Bank's development cooperation. The definition of governance was more refined as 'the manner in which power is exercised in the management of a country's economic and social resources for development' (World Bank 1992: 3). Good governance, which had not been directly referred to in the 1989 report, was now understood as 'sound development management' (World Bank 1992). As core priorities for improving governance, the 1992 report subsequently identified capacity-building in the public sector, a strengthening of accountability in particular with regard to financial management, improving the legal environment for development, and enhancing transparency. The 1994 report further developed the good governance agenda of the World Bank, but also reflected on the limitations of its own approach. The report identifies three aspects of governance as crucial:

> '(i) the form of political regime; (ii) the process by which authority is exercised in the management of a country's economic and social resources for development; and (iii) the capacity of governments to design, formulate, and implement policies and discharge functions' (World Bank 1994: xiv)

In particular interventions with regard to the first aspect, which pertains to the political dimension of governance, are not covered by the World Bank's mandate. While acknowledging the relevance of the 'political dimension', the report therefore concluded that 'the main thrust of the Bank's governance work has been public sector management, but being mainly technical in character, it addresses the processes and machin-

ery of public sector performance, not necessarily its causes' (World Bank 1992: 58). Yet, the report recommended at least to foster more local ownership and decentralization as well as the encouraging of civil society institutions and participatory approaches. While the World Bank has subsequently broadened its good governance concept (Hyden, Court and Mease 2004: 15), it has still followed a narrower conception of good governance that, in accordance with its mandate, seeks to promote *effective government*.

Next to the World Bank, the OECD has made important contributions to the emerging international debate on good governance. In 1991, a working group on 'Participatory Development and Good Governance' was established (Conzelmann 2004), which published a paper with the same title years later (OECD 1995). The report contained work-in-progress guidelines for the adjustment of development policy. The OECD adopted a similar understanding of governance as the World Bank: Governance was understood as 'the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development' (OECD 1995: 14). Furthermore, the OECD followed the 'governance trinity' proposed by the World Bank in its 1994 report. Accordingly, the OECD referred to good governance as the rule of law, efficient public sector management, controlling corruption and reducing excessive military expenditures. Although the OECD paper was generally in line with the World Bank concept, there were some important differences, in particular with regard to the political dimension. While the World Bank had acknowledged that the occurrence of bad governance may have other than purely administrative causes, the OECD went a step further and paid much more attention to the linkages between good governance and political principles, such as participation, human rights and democratisation. Moreover, the democratic elements of good governance were not only perceived as a prerequisite for development, but also as 'values in their own right' (OECD 1995: 6). Accordingly, good governance in the understanding of the OECD has meant promoting *effective government* without neglecting the significance of *effective* and even *democratic governance*. Thus, the concept of the OECD is significantly broader and covers features of at least three of our categories.

The UNDP, finally, put forward a series of conceptual papers on governance and good governance in 1997 and 1998. Its definition also took into account the World Bank's concept from 1992. Accordingly, 'governance can be seen as the exercise of eco-

nomic, political and administrative authority to manage a country's affairs at all levels' (UNDP 1997: 2). However, the second part of the definition explicitly included the political dimension by explicating that governance 'comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their political rights, meet their obligations and mediate their differences' (UNDP 1997). Thus, the UNDP approach did not adopt the conceptual separation of good governance from democratic elements as the OECD still did. Rather, UNDP has operationalized good governance as an umbrella concept. This broad notion of governance has been related to perceived 'weaknesses and strengths' (UNDP 1997: 11) of the state and non-state actors, such as civil society organisations and the private sector. It has been a 'major objective' (UNDP 1997) of UNDP to promote the interaction among these actors in order to reach sustainable human development. Correspondingly, the UNDP policy paper of 1997 identified five areas of intervention along which governance could be improved:

1) legislature, judiciary, and electoral bodies;
2) public and private sector management;
3) decentralisation and local governance;
4) civil society organisation, and
5) governance in special circumstances[3] (UNDP 1997).

The Human Development Report of 2002 introduced a major change in the UNDP terminology. In its preface, the UNDP administrator Mark Malloch Brown regretted that the good governance debate still focused 'almost exclusively on economic processes and administrative efficiency.' As a result, the UNDP report launched the term democratic governance in order to draw even more attention to the political dimension of good governance. Thus, UNDP is the international organization whose good governance approach comes closest to what we refer to as *democratic governance*.

As we have seen, in the 1990s, good governance emerged as a major issue in development policy. While international organizations, such as the World Bank, the OECD, and UNDP, have played a major role in setting the scene, they have arrived at different understandings of what the promotion of good governance entails. Some have therefore argued that good governance has developed inot nothing more than a 'buzzword' (Pettai and Illing 2004: 348). However, the systematic unpacking of good governance

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[3] Special circumstances either refer to crisis countries or countries in transition.

reveals that external actors do indeed attribute substantial meaning to the concept. They simply differ in the objectives and target actors, which are prioritized to improve governance.

In the next section, we will explore which notion of good governance the EU has adopted in its external relations with third countries.

3.2 Good Governance in the Development Policy – the Gateway into the EU

Since good governance originated in international development cooperation, it is not surprising that the concept entered the EU through this gateway and quickly diffused into other policy areas. The EU is either member or observer in international development organizations and fora, such as the UN; World Bank or OECD. Thus it was the Directorate General Development of the European Commission, which took the lead in the conceptualization of the EU's good governance agenda and its mainstreaming into all areas of its external relations.

Until the end of the 1980s, EU development policy used to be about granting preferential trade agreements and financial aid to the former colonies of member states. It centred on the Lomé Agreements, the first of which was signed in 1975 between the EU and the African, Caribbean, and Pacific Group (ACP countries). The Lomé system provided the ACP countries with preferential access to the Common Market since they could export almost all their products custom free without reciprocating by opening their markets to EU imports (General System of Preferences). Thus, the EU's development cooperation dealt mainly with economic issues and gave little concern to good governance, democracy, human rights, and the rule of law. This changed with the end of the Cold War.

In 1991, the European Council in Luxembourg (European Council 1991) and the Council of Development Ministers[4] adopted each a declaration responding to the interna-

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[4]   Resolution of the European Council, November 28, 1991, OJ EEC 11-1991: 122ff.

tional debate on good governance. Both drew a link between development and principles of good governance, pointing to the significance of democracy, human rights, the rule of law, transparent and accountable governance, and the fight against corruption as preconditions for development (cf. Conzelmann 2004).

While the Lomé IV Convention concluded in 1989 did not even mention political principles, such as human rights, democracy and the rule of law, the revised version of 1995 (Lomé IVbis) declared them essential elements of the agreement (Art. 5). Good governance, by contrast, was not included into the list of essential elements, due to the resistance of the ACP countries to make cooperation conditional upon compliance with a rather diffuse concept (Beck and Conzelmann 2004). Art. 5 only mentioned good governance as a 'particular aim of cooperation operations'. But Lomé IVbis implemented the two-track approach to development cooperation, which the European Council had laid out in its Resolution on Human Rights, Democracy, and Development. The proactive promotion of these principles through financial assistance (indicative programmes) and open and constructive dialogue (political dialogue; Art. 30.3) was complemented by reactive sanctions in case of their violation. Art. 366 set up a special procedure to suspend the cooperation with any state violating these principles. Since good governance did not qualify as an essential element of the agreement, negative conditionality did not apply.

The separation of good governance from political principles, such as human rights, democracy and the rule of law, reflected ´the EU's initially narrow understanding of good governance' (cf. Beck and Conzelmann 2004). Good governance in the ACP-partnership, 'takes specific account of the role of the authorities in managing resources, promoting a favourable climate for economic and social initiatives and deciding how to allocate resources' (European Commission 1998: 8). Thus, the Commission perceived good governance as a principle that was to strengthen output-legitimacy. Similar to the World Bank, 'public participation in the decision-making processes concerning the management and allocation of resources' (European Commission 1998) was primarily seen as a precondition for development, rather than a value of its own. Furthermore, by emphasizing the role of public authorities in providing the regulative framework for social and economic activities, the EU's approach has appeared to be rather state-centric.

The EU's narrow understanding of good governance is also reflected in the Cotonou Agreement, which replaced the Lomé Convention in 2000 and will provide the basis for the EU-ACP partnership till 2020. Article 9 restates the separation of human rights, democracy and the rule of law from good governance:

> '[I]n the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is 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'.

This passage, however, also displays the difficulties of the EU in conceptualizing good governance. On the one hand, good governance still seems to be restricted to the proper functioning of the state administration and kept separately from the essential elements of democracy, human rights and the rule of law. This reflects a clear orientation towards output legitimacy. On the other hand, it is hardly possible to promote effective government in an institutional environment that does not guarantee democracy, human rights and the rule of law.

These ambiguities notwithstanding, the Cotonou Agreement has further elevated good governance in the EU-ACP relations. While the suspension clause (Art. 96) is still confined to essential elements, Article 9 makes serious cases of bribery subject to this procedure. Thus, 'the main obstacle to good governance' (European Commission 1998: 8) has been made subject to negative conditionality. Furthermore, positive conditionality has been included with regard to the provision of assistance. Art 3 in Annex IV of the agreement states that 'resource allocation shall be based [...] on performance' that inter alia includes 'progress in implementing institutional reforms' (Annex IV, Art. 3). Alongside with conditionality, political dialogue is strengthened and rendered a major instrument for the promotion of good governance. One particular goal of the political dialogue in the ACP-EU relations is to regularly carry out assessments with regard to human rights, democratic principles, the rule of law and good governance (Art. 8). In this respect, political dialogue is also linked to conditionality. Both instruments are complemented by the provision of development assistance through the European Development Fund. Among many other sectors and cross cutting issues, assistance ex-

plicitly aims at: 'promoting institutional reforms and development, strengthening the institutions necessary for the consolidation of democracy, good governance and for efficient and competitive market economies; and building capacity for development and partnership'(Art. 20(d)). The Cotonou Agreement, thus, spells out the promotion of good governance in a broader sense. While still referring to the pivotal role of state actors for the development process and focusing on output legitimacy (Art. 4), the Cotonou Agreement concludes that 'apart from the central government […] the partnership shall be open to different kind of other actors' (Art. 2). More specifically, non-state actors shall, firstly, participate to a certain degree in the political dialogue (Art. 8; Art. 15; Art. 17) and are, secondly, targets for assistance (Art. 9). It is, however, difficult to estimate to what extent these prescriptions for a complementary transnational channel have translated into practice.

In sum, the Cotonou Agreement opens the EU's good governance for a stronger involvement and targeting of non-state actors. It is the first time that the EU makes non-state actors and their participation a formal objective of its development cooperation. This is in line with a general acknowledgement by the European Commission that non-state actors can play a key role in the EU's development policy, which goes beyond improving effective implementation (output legitimacy). Their participation is vital for "strengthening the democratic fabric of society (European Commission 2000: 28). Their involvement leads to 'greater equity' and 'inclusion of the poor in the benefits of economic growth' (European Commission 2000). Moreover, it gives the population a voice in development decisions so that they are 'owned' by the country and respond to the people's needs (European Commission 2000: 5; cf. European Commission 2002).

In subsequent years, the European Commission further broadened its understanding of good governance. In 2003 and 2006, the European Commission issued two major communications on good governance and development that aimed at developing a common understanding of good governance and its promotion in all foreign policy frameworks of the EU (European Commission 2006; European Commission 2003). In both cases, the DG Development took the leading role. The 2003 communication still stuck with a notion of governance that emphasized the state's role and output legitimacy: 'Governance concerns the state's ability to serve the citizen' (European Commission 2003: 3). It still conceptually differentiated governance (not good governance!) from other issues, such as human rights and democracy. The link between these prin-

ciples and good governance, however, became more and more blurred. This was most obvious in the passage, in which the Commission drew the distinction between governance and good governance:

> 'As the concepts of human rights, democratisation and democracy, the rule of law, civil society, decentralised power sharing, and sound public administration gain importance and relevance as a society develops into a more sophisticated political system, governance evolves into good governance.' (European Commission 2003: 4)

The 2006 communication referred to this passage, but did not attempt at reformulating the definition by explicitly strengthening the transnational dimension. Furthermore, following UNDP, it introduced the term 'democratic governance' to acknowledge the interdependence of the input and output dimensions of good governance (European Commission 2006).[5] This can be illustrated best with regard to the fight against corruption, which has been an important part of the 'good governance' agenda. According to the Commission, anti-corruption policy must not be limited to state actors and institutions, but 'means strengthening the role of civil society and the media, protection for multiparty democracy and electoral competition, a transparent system for financing political parties and support for parliamentary oversight and for other public and judicial institutions' (European Commission 2006: 6), in essence of democratic control. However, the obvious broadening of the good governance agenda does not imply that the EU's focus fundamentally shifted from output to input legitimacy. Rather, when the Commission refers to improving governance even in a broader sense, it is still instrumentally understood as a precondition for the "proper delivery of public services and sustained economic growth" (European Commission 2006: 5), in essence development.

The somewhat broader understanding of good governance is also reflected in the suggestions for the application of instruments. In general, political dialogue has been referred to as the primary instrument for the promotion of good governance (European Commission 2006: 17). By comparison, negative conditionality has lost importance, because the Commission does not perceive it to be effective (European Commission 2006). Instead, it favours a 'partnership approach' and 'ownership'. Part of this ap-

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[5]   In the 2006 Communication, the European Commission referred 30 times to 'democratic governance', while 'good governance' is only mentioned 15 times. By contrast, in 2003 the term 'democratic governance' had only been used three times, twice with regard to the international debate.

proach is the promotion of a greater involvement of non state-actors. Thus, the Commission apparently intends to further strengthen the transnational channel that has already been introduced in the Cotonou Agreement. Whether this more participatory approach is also reflected in the programming of development assistance is another question. Moreover, the Communication only prescribes the stepping-up of support for institution-building measures in ACP countries, in particular in order to help building capacities for future budget support (absorption capacity). Thus, in development assistance, the bias towards state actors and institutions has prevailed.

To conclude, while the EU has endorsed the promotion of a democratic environment as an explicit goal, the main targets of its efforts remain governments. What we observe in the EU's development policy is an albeit timid move from effective government towards effective and to a certain extent democratic governance through the explicit inclusion of civil society actors. This shift is inline with the general 'governance turn' of the EU in 2000. With the White Paper on European Governance (European Commission 2001), the EU has officially acknowledged the role of non-state actors for the effectiveness and legitimacy of EU policy-making, both within the Union and towards the outside (European Commission 2001: 5).

3.3   A Brief Detour: The White Paper on European Governance

In early 2000, the Commission identified the reform of *European governance* as one of its four strategic objectives. Seeking to address the growing demand for more democracy, transparency, and subsidiarity, the Commission published a White Paper in July 2001 (Curtin and Dekker 2005; Joerges 2002). It made use of the global debate on good governance to discuss opportunities for internal reform that would bring the Union closer to its citizens, render it more effective, and consolidate the democratic legitimacy of its institutions (Scharpf 1999). According to the Commission, the concept of *European governance* shall encompass five principles of good governance – i.e. openness, participation, accountability, effectiveness and coherence – in a comprehensive framework for consistent policies associating civil society organisations and European institutions (European Commission 2001: 10). Furthermore, the Commission intends to improve the quality of European legislation by rendering it clearer, simpler and more effective. In using the good governance discourse to address the internal needs of the

EU, the White Paper shall also make a contribution to the debate on how to improve the quality of international organizations.

The good governance approach to the internal functioning of the EU is much more input-oriented than in its external relations. The White Paper primarily focuses on strengthening democratic legitimacy, emphasizing the participatory dimension. It calls for the greater involvement of two constituencies: regional and local actors, on the one hand, and civil society organizations, on the other. Acknowledging the important role civil society plays 'in giving voice to the concerns of citizens and delivering services that meet people's needs' (European Commission 2001: 14), the EU internal policy mainly refers to transnational cooperation strategies trying to involve civil society organizations at all levels of the policy process. One of the concluding proposals of the White Paper aims at institutionalising the EU's relationship with civil society by introducing a code of conduct that shall identify responsibilities and improve accountability of all partners (European Commission 2001: 33). The emphasis lies on EU-level civil society organizations, who shall be involved in EU policy-making through more structured processes of consultation. Civil and social dialogue shall provide the two major forms of structured consultation (cf. Armstrong 2002). This attitude equals the approach of *democratic governance* empowering civil society institutions by the 'transnationalization' of the policy process in the EU, which is reinforced by some provision of the Lisbon Treaty on participatory democracy (Art. I-47; cf. European Council 2007: 17).

A detailed analysis of the reform agenda under the auspices of the *European governance* concept would go beyond the scope of this paper. Yet, the cursory overview shows that the EU's internal strategy regarding democratic governance differs substantially from the approach of effective and democratic government, which still prevails in its external dimension as we found it in the EU's development policy and as we will trace it in the remainder of this paper that focuses on the EU's enlargement and neighbourhood policy.

3.4   EU Enlargement Policy: Promoting Good Governance by Default

Over the past 15 years, EU enlargement policy has developed into the most comprehensive foreign policy framework for encouraging domestic reform processes in non-member states. At the heart of the recent Eastern enlargement process has been the task of successfully transforming former communist countries with centrally planned economies into fully fledged Western style democracies and consolidated market economies (Grabbe 2006). Somewhat surprisingly, the good governance debate seems to have only marginally influenced this process. With very few exceptions, good governance has neither been made an issue in decisions of the Council, nor in strategic documents or monitoring reports of the European Commission. Yet, the EU's enlargement policies have implicitly endorsed the promotion of good governance principles and elements both in a narrow as well as in a wider sense.

Immediately after the breakdown of communism, the European Council in Strasbourg 1989 offered the countries in Central Eastern and Eastern Europe (CEE) trade and cooperation agreements, an intensified political dialogue and financial support in order to overcome the divisions of Europe. Initially discussing and introducing various elements of a close association, the EU soon could no longer ignore the strong desire of former communist countries to 'return to Europe' by joining the EU (Schimmelfennig 2003; Lippert 2004). The 1993, the Copenhagen European Council formally accepted the possibility of membership of all associated CEE countries – provided that they achieved (1) a functioning market economy; (2) stable institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities, and market economy, and (3) the ability of implementing the *acquis communautaire* (Copenhagen criteria). Bilateral association agreements (Europe Agreements), signed between 1991 and 1996, became the framework for the applicant countries' integration into the EU. They envisioned the promotion of trade and the gradual establishment of a free trade area, as well as the support of economic reforms through the institutionalization of political dialogue and the provision of financial and technical assistance. Europe Agreements signed in 1993 and after also defined the respect for democratic principles and human rights as essential elements. Violations of these principles allowed for the taking of appropriate measures. Thus, enlargement has entailed both positive and negative conditionality. While compliance with the Copenhagen criteria is rewarded by membership and the provision of financial and technical support (positive condition-

ality), the EU can also punish the lack of progress by withdrawing benefits, such as preferential access to the Single Market (negative conditionality). Yet, conditionality has hardly ever been invoked in Eastern enlargement (but see the postponement of Bulgaria's and Rumania's accession and the current negotiations with Turkey). Pre-accession support was first of all meant to help candidate countries comply with the Copenhagen criteria. Financial and technical assistance was provided through the PHARE programme, mainly for the purposes of economic reform and capacity building in the public sector. PHARE did not only encompass direct financial support in the form of grants and loans but also twinning of officials and short-term deployment of experts. Conditionality and assistance have been flanked by political dialogue to deal with problems of non-compliance. A high-level Association Council is in charge of supervising the implementation of the agreements. It also allows for the exchange of views on all topics of common interest. Comparable to EU development policy, political dialogue has been crucial to clarify the conditions for (opening negotiations for) membership. It has further included regular meetings on the parliamentary level and between senior officials to promote processes of socialization (cf. Schimmelfennig and Sedelmeier 2005).

While not making any explicit reference to good governance, the Copenhagen criteria contained all essential elements of a broad concept. While respect for human rights and democratic principles are supposed to directly increase input legitimacy, the implementation of the *acquis inter alia* requires applicant countries to improve both efficiency and effectiveness of their national administrations, thus leading to more output legitimacy. Guaranteeing the rule of law can influence both input- and output legitimacy.

With 10 CEE countries lined-up for accession, the EU started to put more emphasis on the administrative core of good governance. In 1994, the European Council of Essen outlined a pre-accession strategy for the adoption of the *acquis* and a regular monitoring of successes and failures in each country (European Council 1994). One year later, the European Council of Madrid demanded to speed up administrative reforms (European Council 1995), which came close to introducing a new criterion for accession (Lippert 2004) and thus pointing to the very core of good governance. From 1998 onwards, the European Commission issued yearly comprehensive monitoring reports on each country that both assessed progress with regard to the political and economic

criteria as well as to the adoption of the *acquis*. At the same time, political dialogue further intensified with the introduction of so called accession partnerships that ought to identify short and medium term reform priorities. While democratic institutions never became a serious issue during the accession negotiations[6], the EU was increasingly concerned by the slow progress regarding judicial reforms, the fight against corruption and administrative capacity building (see for example European Commission 2001; European Commission 2002). The European Commission and the Council paid greatest attention to the effective implementation of the *acquis* beyond the mere transposition into national law. With the democratization processes consolidating, the promotion of good governance in the CEE applicant countries was narrowed down to increasing the effectiveness and efficiency of policy making (output legitimacy). Romania and Bulgaria are cases in point. The accession of the two countries was postponed by two years due to insufficient progress in administrative capacity-building and the fight against corruption (Gabanyi 2005; Gabanyi 2006).

In sum, the EU enlargement policy increasingly focused on improving the output legitimacy dimension of good governance by encouraging administrative reforms through (mostly positive) conditionality and assistance. In order to qualify for accession, countries have to comply with the political dimension of good governance. Since accession negotiations were only opened when democratic consolidation was well under way in the CEE countries, the EU naturally concentrated on their capacity to effectively implement and apply the *acquis communautaire*. The European Commission strongly encouraged accession countries to involve non-state actors in the adoption of and adaptation ot the more than 10.000 EU laws to ensure both greater effectiveness and legitimacy of the accession process. Yet, the one-sided nature of the accession process, the enormous implementation load, the time pressure, and the strong emphasis on conditionality rendered accession into a predominantly technical and administrative process of rule-transfer (Schimmelfennig and Sedelmeier 2004; Lippert 2004; Goetz 2005). With the accession negotiations firmly set on an intergovernmental track, neither the Commission nor the governments of the accession countries have made any effort to systematically involve non-state actors in the adoption of *acquis* (cf. Börzel 2007). While EU enlargement certainly as a whole entails the export of democratic govern-

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[6]   Increasing authoritarian rule under the Mečiar government, however, delayed opening of the accession negotiations with Slovakia.

ance, the approach chosen by the EU focused on the promotion of effective govern-ment. This has become even more visible in the EU's attempt to stabilize the Western Balkans.

3.5   Good Governance in the Stabilization and Association Process

In light of the success of Eastern enlargement, the EU has heavily drawn on the les-sons learned in its attempt to stabilize yet another region that has been vital to its geo-political interests: the Western Balkans. To address the conflict situation at the begin-ning of the 1990s, the EU initially had focused on humanitarian and emergency assis-tance through its Humanitarian Aid Office (ECHO). After the Kosovo conflict had bro-ken out in 1998, the EU changed its approach toward the Western Balkans. It had be-come clear by then that development cooperation would not be sufficient to stabilize the region so close to the EU's borders. The Stability Pact for South-Eastern Europe of 1999 promised candidate status to Croatia, Macedonia, Albania, the Federal Republic of Yugoslavia (FRY), and Bosnia-Herzegovina as soon as they would meet the Copen-hagen criteria.[7] Next to conditionality, the Pact introduced a political dialogue organized in three 'working tables' on democratization and human rights, economic reconstruction and development, and security and justice and home affairs. The Commission decided to periodically assess whether the candidates complied with democracy, human rights, and the rule of law. Its assessment, annually published in regular reports, would deter-mine whether the EU was going to sign a cooperation agreement providing additional incentives for political and economic reform, such as trade concessions and additional financial aid from PHARE. In 2000, the EU introduced CARDS (Community Assistance for Reconstruction, Development, and Stabilization) as a proper instrument of financial assistance for the Western Balkans. The cooperation framework also provided for technical assistance by extending 'twinning'[8] and TAIEX (Technical Assistance Infor-mation Exchange Office). Next to funding immediate projects of political and economic reconstruction, the Commission intended to grant selective incentives, such as

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[7]   Cf. Conclusion of the General Affairs and External Relations Council (GAERC) of 21/22 June 1999 http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/gena/09008.EN9.htm (last access 01.01.2008).

[8]   Initially developed in the enlargement context, the EU twinning programme has been exported to the CARDS recipient countries in 2004. Twinning projects are designed to promote the secondment of civil servants from one or more EU member states to work as advisers to beneficiary institutions of the recipient country in order to exchange good practices and to transfer technical expertise.

autonomous trade preferences (ATP[9]) as a reward for specific reforms (Grabbe 2006; Vachudova 2003; Meurs and Yannis 2002).

In 2000, the European Council of Feira officially declared the countries of the Western Balkans potential candidates for the membership of the EU if they fulfilled the Copenhagen criteria. The Stabilization and Accession Process (SAP) launched in 1999 was to provide a bilateral contractual framework to bring the Western Balkans into the enlargement process. If the candidates had made sufficient progress in terms of political and economic reform and administrative capacity-building,[10] they could open negotiations with the EU for a Stability and Association Agreement (SAA) as the first formal step towards accession and subsequently enter the so called European Integration Partnerships, which were explicitly modelled on the Accession Partnerships in the Eastern enlargement process setting short and medium-term priorities for approximation (see below).

The EU pre-accession strategy for the Western Balkans has been closely following the CEE trajectory combining financial incentives with trade preferences in the shadow of (positive) membership conditionality and linking it to financial and technical assistance (cf. Kelley 2006; Magen 2006). Similar to enlargement, the EU Western Balkan policy inter alia aims at 'the creation of an institutional and legislative framework to underpin democracy, the rule of law and human and minority rights, reconciliation and the consolidation of civil society, the independence of the media and the strengthening of legality and of measures to combat organised crime' (Council of the European Union [CARDS] 2000: Art. 2b, OJ L 306/2)[11]. Yet, in order to stabilize a region ridden by ethnic violence and lingering conflicts, the objective of promoting effective government has become even higher a priority than in the CEE countries, where transition has been relatively smooth and resulted in overall stable institutions. Consequently, many of the

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[9] Applied to the whole of the Western Balkans, the ATPs allow duty- and quota-free access to the EU market for products originating from the region. In 2005, the preferences were renewed until the end of 2010. For more details cf. Council Regulation (EC) No 2007/2000 at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_240/l_24020000923en00010009.pdf and No 1946/2005 at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_312/l_31220051129en00010002.pdf (last access 09.01.2008).

[10] The political and economic conditions had been established by the GAERC Conclusions of April 1997. SAA exist with Albania, Croatia and Macedonia. Due to the political situation, negotiations with Bosnia and Herzegovina and with Serbia currently are suspended.

[11] Council of the European Union: Council Regulation (EC) No 2006/2000: http://ec.europa.eu/enlargement/pdf/financial_assistance/cards/general/2666_00_en.pdf (last access 09.01.2008). [Hereafter: CARDS 2000].

CARDS Multi-annual Indicative Programmes of 2000-2004 focus on institution-building programmes. Due to the importance of these sectors for any further assessment of the country's accession prospects, they mainly aim at the reform of public administration and civil service as well as the management of public finances. Overall, the EU Western Balkan policy focuses on assistance to formulate and enforce central government reforms necessary to implement the obligations of the Stabilisation and Association Process. Accordingly, the reform agenda centres around the institution- and capacity-building of a fully functioning state capable of formulating and enforcing sound policies and of fighting against organized crime and corruption (cf. for example SAA Croatia: preamble, OJ L 26/3).[12]

The output legitimacy orientation of the EU West Balkan policy has been reinforced by the so called European (Integration) Partnerships introduced in 2003.[13] The SAP remains the cornerstone of the EU policy towards the countries of the Western Balkans. Through the European Partnerships, the EU seeks to enhance its support for institution building, improve political co-operation and provide the possibility for the countries of the Western Balkans to participate in Community programmes (cf. European Commission 2003).

In developing its relations with the Western Balkans, the EU has subsequently upgraded good governance in its reform approach. For instance, all CARDS Multi-annual Indicative Programmes for the period of 2005-2006 spell out a separate chapter on 'Good Governance and Institution Building' (cf. for example CARDS MIP Albania: 9)[14]. This chapter links good governance to three main areas: justice and home affairs, public administration and judiciary. The fight against organized crime and corruption features prominently in all three areas. It shall strengthen the rule of law, create confidence in state institutions, foster a business-friendly climate, generate private investment, and eventually, bring the countries of the Western Balkans closer to EU membership (ibid.).

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[12] Council of the European Union: Council and Commission Decision (2005/40/EC, Euratom): http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_026/l_02620050128en00030220.pdf (last access 09.01.2008). [Hereafter: SAA Croatia]

[13] Cf. Council of the European Union: Council Regulation (EC) No 533/2004: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_086/l_08620040324en00010002.pdf (last access 09.01.2008).

[14] CARDS Assistance to Albania: Multi-annual Indicative Programme 2005-2006: http://ec.europa.eu/enlargement/pdf/financial_assistance/cards/albania_mip_en_16_11_2004_en.pdf (last access 09.01.2008). [Hereafter: CARDS MIP Albania].

The EU's focus on the performance of public institutions and issues related to the access to justice and the control of central government institutions is corroborated by the newly established Instrument for Pre-Accession Assistance (IPA). The Pre-Accession Assistance replaces the various pre-accession financial instruments PHARE, ISPA, SAPARD, CARDS and the pre-accession instrument for Turkey. The IPA programme consists of five components, including transition assistance and institution building, cross-border cooperation, and regional, human resources and rural development (Cf. IPA 2006: Art. 3, OJ L 210/85)[15]. Although the Regulation itself does not mention good governance directly, the IPA Multi-annual Indicative Programming Documents (MIPD) for the period of 2007-2009 include explicit references. For instance, the programme for Montenegro states:

> '[The] Strengthening of the administrative capacity and good governance will receive specific attention through monitoring, evaluation and control mechanisms, through awareness building campaigns involving wider public, as a way to fight corruption and enhance civic responsibility' (IPA MIPD Montenegro: 10)[16].

Moreover, all IPA MIPD for the period of 2007-2009 consider the promotion of 'good governance with particular assistance to fighting corruption' as a major cross-cutting issue of the future cooperation partnerships (cf. for example IPA MIPD Albania: 10)[17]. With regard to the reform priorities, the document declares:

> 'In accordance with Article 6 (3) of Regulation (EC) No 1085/2006 assistance for countries listed in Annex II to that Regulation shall be based on the European Partnerships and cover the priorities and overall strategy resulting from a regular analysis of the situation in the country and on which preparation for further integration into the European Union must concentrate' (IPA MIPD Albania: 1).

In sum, the EU's West Balkan approach to good governance prioritizes the output legitimacy dimension and mainly targets central government. Yet, it has also developed a transnational channel to pursue reform objectives on input legitimacy. The cooperation

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[15] Council of the European Union: Council Regulation (EC) No 1085/2006: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_210/l_21020060731en00820093.pdf (last access 09.01.2008). [Hereafter: IPA 2006]

[16] European Commission: Commission Decision C(2007)2269: http://ec.europa.eu/enlargement/pdf/mipd_montenegro_2007_2009_en.pdf (last access 09.01.2008); [hereafter: IPA MIPD Montenegro].

[17] European Commission: Commission Decision C(2007)2245: http://ec.europa.eu/enlargement/pdf/mipd_albania_2007_2009_en.pdf (accessed 01.01.2008); [hereafter: IPA MIPD Albania].

within the SAP framework is made conditional on the 'respect for the principles of democracy and the rule of law and for human and minority rights and fundamental freedoms' which constitute an essential element of the CARDS Regulation (CARDS 2000: Art. 5, OJ L 306/4) as well as of the SAA (cf. for example SAA Croatia: Art. 2, OJ L 26/4 and Art. Joint declaration concerning Art. 120, OJ L 26/119). The assistance provided by CARDS is already made conditional upon the recipient country's compliance with democratic principles, the rule of law, human and minority right, fundamental freedoms and the principles of international law. CARDS makes civil society organisations explicitly eligible for Community assistance (CARDS 2000: Art. 2b, OJ L 306/3). Moreover, in highly fragmented societies, such as Bosnia and Herzegovina (BiH), particular attention is paid to the involvement of civil society organizations in the democratic stabilization and social and economic development of the country (cf. IPA MIPD BiH)[18]. Yet, defining the functions and competences of non-state actors within the cooperation framework of the Stabilization and Accession Process does not necessarily institutionalize the demand for the involvement of civil society. To what extent the EU actually invokes the transnational channel to promote good governance is an empirical question that lies beyond the scope of this paper. Overall, the EU West Balkan policy reflects an approach that still resembles effective government, which also characterizes the relations with its Southern and Eastern neighbours.[19]

3.6 Good Governance in the European Neighbourhood

The European Neighbourhood Policy (ENP) has been conceptualized by the Commission in response to the geographical and political changes that took place in the course of the EU enlargement process. Due to the growing need for a comprehensive policy framework vis-à-vis the old and new neighbouring countries, the 'new Neighbourhood policy' is located at the interface of several former 'regional policies', such as the European Mediterranean Policy (EMP) for Northern Africa (Maghreb) and the Near East (Mashreq) and the (old) Neighbourhood policy for the Newly Independent States in the Western parts of the former Soviet Union (WNIS) and in the Southern Caucasus. Ac-

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[18] European Commission: Commission Decision C(2007)2255; [hereafter: IPA MIPD BiH].
[19] The MIPD 2007-2009 for Serbia has recently introduced the term ‚democratic governance', cf. Commission Decision C(2007)2497, 17:
http://ec.europa.eu/enlargement/pdf/mipd_serbia_2007_2009_en.pdf (last access 09.01.08).

cordingly, the ENP is an attempt to integrate the geographical entities bordering the EU into a single policy framework, the 'European Neighbourhood'. In order to turn the 'near abroad' into an area of security, stability and prosperity, the EU has heavily drawn on the methods and instruments that had proven so successful in promoting 'good governance' in the CEE countries. Similar to the Western Balkan policy, the ENP is an attempt to use 'institutional learning and strategic adoption from enlargement policies to expand [its] foreign policy domain' (Kelley 2006: 48).

The ENP was launched in 2003 to provide the EU's Eastern neighbours with an alternative to membership. Yet, it had been preceded by the European Mediterranean Policy (EMP), which the EU had developed in the 1990s to re-launch the cooperation with its Southern neighbours and place it within a multilateral framework. The countries of the former Soviet Union and the Southern Mediterranean are considered to be the two main strategic neighbouring regions of the enlarged European Union. However, regarding the goals, interests and strategies of the different EU institutions as well as the member states, the emergence of the European Union's so called Southern dimension as a strategic region has always been competing with its Eastern counterpart (Barbé and Izquierdo 1997).

3.6.1   The Southern dimension

The EU decided to upgrade its relations with the Mediterranean after the end of the Cold War and with the rise of new security challenges in the Southern Mediterranean and the Middle East (cf. Bicchi 2006; Gomez 2003). The 'Barcolona process', launched by the Barcelona declaration in November 1995, also sought to 'mitigate the cleavage between the Mediterranean lobby, led by Spain and France, and the eastern lobby, led by Germany' (Barbé and Izquierdo 1997: 7). Stressing the 'strategic importance of the Mediterranean', the document established the political framework for 'a comprehensive partnership among the participants of the Euro-Mediterranean Partnership through strengthened political dialogue on a regular basis, the development of economic and cultural cooperation and greater emphasis on the social, cultural and human dimension

[…]' (Barcelona declaration 1995: 2).[20] The Barcelona declaration defines three priority areas of the EMP:

a) The political and security partnership establishing a common area of peace, stability and security,

b) the economic and financial partnership providing the framework for economic and financial cooperation and aimed at the establishment of a Euro-Mediterranean free-trade area[21], and

c) the partnership in social, cultural and human affairs with the aim the developing human resources and promoting exchange between cultures and civil societies.

The implementation of the corresponding 'work programme', as itemized in the Annex of the declaration, shall be monitored during the meetings of the Ministers of Foreign Affairs and reviewed on the basis of reports prepared by the European Commission on the part of the Euro-Mediterranean Conference (Barcelona declaration 1995: 9f.). The 'Euro-Mediterranean Committee for the Barcelona Process' is in charge of the general institutional coordination assisted by ad hoc thematic committees at the level of ministers, senior officials and experts and additionally supplemented by exchanges of experience and information with representatives of the civil society (Barcelona declaration 1995: 7f.). The counterparts to this multilateral cooperation framework are the bilateral Euro-Mediterranean Association Agreements (EMAA) signed between the EU and the different Mediterranean partner countries.[22]

The Association Agreement forms the main contractual institution governing the relation between the European Community and the countries of the Mediterranean. In apprehension of the three priority areas stipulated in the Barcelona declaration, all bilateral agreements contain clauses regarding the following aims: a) The provision of an appropriate framework for political dialogue, b) the creation of a Euro-Mediterranean Free Trade area, c) the support to the intra-regional integration by 'promoting trade and cooperation within the [Mediterranean] group', and d) the enhancement of a closer partnership to 'promote economic, social, cultural and financial cooperation' (cf. EMAA

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[20] The Barcelona declaration was adopted at the Euro-Mediterranean Conference on 27-28 November 1995, for the full text cf. http://trade.ec.europa.eu/doclib/docs/2005/july/tradoc_124236.pdf (last access 09.01.08); [hereafter Barcelona Declaration 1995].

[21] The establishment of a free trade area constitutes an essential element of the EMP!

[22] The first EMAA were signed with Israel, Tunisia (1995), Morocco (1996), Jordan and the Palestinian Authority (1997). A second wave followed with Egypt (2001), Algeria and the Lebanon (2002). Negotiations with Syria have been concluded in October 2004, but the agreement has not been signed yet.

Morocco: Art. 1)[23]. None of the agreements includes a direct reference to the concept of 'good governance'. Moreover, most of them do not explicitly mention governance related issues either, such as the reinforcement of the rule of law and the administration of justice, the public sector management[24] or the fight against corruption. The objectives of the agenda largely refer to cooperation in the fields of trade and economy that is accompanied by a dialogue on political, economic, social, and cultural matters. More or less two thirds of the agreements cover issues of trade liberalisation in goods, services and capital aiming at the approximation of the Mediterranean countries to the Community law (*acquis communautaire*).

Only the EMAA with Algeria[25] and the Lebanon[26] include good governance related issues in their legal text. Both agreements mention the fight against corruption as a part of the cooperation partnership (cf. EMAA Algeria: Art. 57 and EMAA Lebanon: Art. 61). Interestingly, the EMAA with Lebanon lists the article under its Title V *Economic and Sector Cooperation*, whereas, in the case of the EMAA Algeria, the article belongs to the Title VIII *Cooperation in the Field of Justice and Home Affairs* (JHA). Furthermore, in contrast to the Lebanon, where it appears only once, the agreement with Algeria itemizes the topic of corruption in a second article. The section on the *Fight against corruption* states:

> 'The Parties agree to cooperate, on the basis of the relevant international legal instruments, on action to combat corruption in international business transactions: -by taking effective practical measures against all forms of corruption, bribery and illicit activities of every sort in international business transactions practised by individuals or corporate bodies; [and] -by providing mutual assistance in criminal investigations into acts of corruption.' (EMAA Algeria: Art. 91)

Both agreements target public institutions that are responsible 'for fighting and preventing crime' (EMAA Algeria: Art. 86) and for the 'formulation of measures for crime prevention' (EMAA Lebanon: Art. 61). The technical and administrative assistance pro-

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23   Cf. Euro-Mediterranean Agreement with Morocco: http://europa.eu/eur-lex/pri/en/oj/dat/2000/l_070/l_07020000318en00020190.pdf (last access 09.01.08); [hereafter EMAA Morocco].
24   Meaning public administration reform, management of public finances and civil service reform.
25   The full text of Euro-Mediterranean Agreement with Algeria available at http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=821 (last access 09.01.08); [hereafter: EMAA Algeria].
26   The full text of Euro-Mediterranean Agreement with Lebanon is available at http://ec.europa.eu/external_relations/euromed/med_ass_agreemnts.htm (last access 09.01.08); [hereafter: EMAA Lebanon].

vided by the EC shall improve the effectiveness of the public authorities and bodies, mainly through institution-building measures, such as the training of officials and magistrates responsible for tackling corruption (EMAA Algeria: Art. 91). The same applies to the reinforcement of the rule of law. As exemplified by the EMAA Algeria, the EU heavily relies on the intergovernmental track to strengthen the institutional capacity of public administrations, law enforcement agencies, and the ‚machinery of justice' in general (EMAA Algeria: Art. 82 & 85a).

All EMAA include a clause defining democratic principles and human rights as an 'essential element' of the agreement whose respect is the condition for the cooperation with the EU.[27] Unlike in development policy, the EMAA do not include an explicit suspension clause. Yet, the taking of 'appropriate measures', may range from the 'alteration of the contents of cooperation programmes or the channels used' up to the 'suspension of cooperation' (cf. European Commission 1995: Annex II).[28] The EU has hardly ever invoked negative conditionality in its relations with the Mediterranean countries. Instead, it has heavily relied on reinforcement by reward (positive conditionality), assistance, and political dialogue. The Association Councils[29] at ministerial level, which are responsible for the settlement of all major issues that arise within the framework of the agreement deal with all disputes relating to the application or interpretation of the agreement. They can delegate the task to an Association Committee on the senior officials' level with certain competences. The Committee, consisting of representatives of the Council of the EU and the Commission as well as of the government of the partner country, then may take decisions regarding the management of the agreement and the Rules of Procedure binding for both sides. Political dialogue on special thematic issues mainly takes place within the ad hoc meetings of thematic sub-committees.[30] Working groups may complement the work of the Council, the Committee and the Sub-Committees as regards the content. The political dialogue at the various levels builds

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[27] The minutes of the 1847th GAERC state: ‚The Council subsequently approved a suspension mechanism which should be included in Community agreements with third countries to enable the Community to react immediately in the event of violation of essential aspects of those agreements, particular human rights.' Cf. Council press release 7481/95, Brussels 29 May 1995.

[28] In ‚cases of special urgency' the agreement can be suspended immediately. In the PCAs with Russia and the NIS the wording is even stronger. A joint declaration provides that either party can, in a special emergency, take appropriate counter-measures without having to consult within the Association Council. Cf. also the section on the Eastern dimension.

[29] In case of Palestine it is the Joint Committee.

[30] The EMAA framework provides for a range of thematic sub-committees such as trade and economy; human rights, democracy and good governance (!); justice and home affairs; etc. Issues of their setting-up and their precise thematic orientation are to be decided by the Association Council.

on the rationale of mutual conciliation through bargaining and social learning. It is not only designed to resolve conflicts or disputes among the partners, but shall also decide on the precise content of reform measures, manage their implementation and formulate the Rules of the Procedure. In doing so, both sides are forced to identify a common ground regarding their preferences if they do not want to risk the suspension of the cooperation in general. The inherent mechanism of 'joint decision' and 'conciliation' over contents and procedures already reflects the emerging philosophy of 'conditionality through partnership' that is part and parcel of the new ENP.

Finally, the MEDA assistance programme mainly provides financial and technical assistance.[31] Launched in 1996 (MEDA I)[32] and amended in 2000 (MEDA II)[33], the programme targets all three sectors of the EMP formulated in the Barcelona declaration (MEDA 1996: Art. 2) and specified in the Annex II *Objectives and Rules for the Implementation of Article 2*:

1) the support for economic transition and the establishment of a Euro-Mediterranean free-trade area focussing on the development of the private sector and the business climate, the enhancement of trade relations and industrial cooperation between all partners, and the upgrading of the economic regulatory framework (possibly to include the financial and taxation systems);

2) the support for a better socioeconomic balance by reducing poverty through the improvement of living conditions, enhanced social services and the development of human resources, promoting cultural and environmental cooperation and upgrading economic infrastructures in relevant sectors; and most importantly

3) the promotion of good governance by supporting key institutions and key protagonists in civil society and by assisting in the capacity building of public administrations to develop and enforce policies (MEDA 1996: Annex II).

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[31] While the MEDA assistance programme serves as an instrument of capacity-building, the provision of technical and financial assistance is made subject to conditionality on the basis of an essential elements clause in Article 3 of both the two Council Regulations. In contrast to the EMAA, the essential elements itemized in this article also include the rule of law and fundamental freedoms..

[32] Council of the European Commission: Council Regulation (EC) No 1488/96 of 23 July 1996: http://www.euromed-seminars.org.mt/archive/ministerial/MedaIIconsolidated.pdf (last access 09.01.08); [hereafter MEDA 1996].

[33] Council of the European Union: Council Regulation (EC) No 2698/2000 of 27 November 2000: http://ec.europa.eu/external_relations/euromed/cr2698_00_en.pdf (last access 09.01.08); [hereafter MEDA 2000].

The amendment of the Regulation in 2000 adds the governance related issue of reinforcement of the rule of law and administrative capacity to the thematic priorities. Accordingly, it provides for the 'development of cooperation in the areas relating to the rule of law, such as [...] the strengthening of institutions which guarantee the independence and effectiveness of the judicial system' (MEDA 2000: Annex II). The thematic priorities and targets clearly demonstrate a two-track approach of the EU. In contrast to the EMAA, the MEDA programme envisions intergovernmental cooperation with public authorities, administrations and bodies as well as transnational cooperation with organizations and individuals of civil society. Nonetheless, in the MEDA context, civil society is rather broadly defined, including traditional local authorities, rural and village groups, and interest groups (trade unions and business organisations). Both state and non-state actors are subject to institution- and capacity-building measures. In studying the aims and objectives explicated in the Regulation, it becomes clear that the strengthening of civil society is first of all a matter of increasing effectiveness rather than of democratic participation. On the one hand, the involvement of the civil society in the formulation and implementation of the EU prerequisites shall promote the acceptance thereof on the part of those mainly affected by it. On the other hand, the expertise of civil society representatives and institutions may compensate the lacking capacities of public authorities and administrative bodies. Thus, the MEDA assistance programme is largely oriented towards increasing output legitimacy. Moreover, it mainly uses the intergovernmental channel in seeking to induce domestic reforms aimed at enhancing the effectiveness of state institutions. While the MEDA programme in principle provides for a complementary transnational channel, the involvement of non-state actors aims at increasing output effectiveness rather than input legitimacy. For instance, 'decentralised cooperation', which refers to the cooperation with non-governmental actors as beneficiaries of Community aid, should be taken recourse to 'where this may prove effective' (cf. MEDA 1996 and MEDA 2000: Annex II, VI).[34]

The EU's approach of promoting effective government in the Mediterranean also characterizes the relations with its Eastern neighbours.

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[34] The decentralized cooperation also applies for the assistance within the EIDHR framework as the projects have to be coordinated by the local EC Delegations (see below).

3.6.2   The Eastern dimension

In 1991, the breakdown of the Soviet Union led to the foundation of Newly Independent States (NIS). In order to assist the NIS[35] in coping with the enormous political, economic and social challenges they faced, the EU launched an ad hoc programme in the same year – the Technical Assistance for the Commonwealth of Independent States (TACIS)[36]. TACIS provided bilateral grants for financing technical assistance as well as regional and cross-border measures in the areas of environment protection, fight against organized crime and infrastructure.[37] A third line of funding within the broader TACIS assistance framework was introduced by small-scale projects available on request such as Bistro, IBPP and TEMPUS.[38]

Between 1994 and 1996, the EU sought to institutionalize its relations with most of the TACIS countries by signing bilateral Partnership and Cooperation Agreements (PCA).[39] These agreements further developed the TACIS instrument for assistance into an instrument of 'cooperation partnership'. The PCA mainly target the economic transition process of the NIS partner countries and seek to support their endeavours to roll back the legacy of the Soviet state model through enhanced privatization and liberalization (cf. for example the preamble of PCA with Armenia and Title VI (Art. 44) on Economic Cooperation). Similar to the EMAA, the liberalization of trade, the development of the private sector and the business climate, cooperation in the sectors of transport, energy, and environment as well as cooperation on financial, economic and cultural issues form the core areas of the partnership relation. But unlike the EMAA, the PCA are more

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[35]   These include Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Russia. Mongolia joined the TACIS programme from 1993-2003.

[36]   After amendments in 1993 and 1996, the new Regulation Concerning the Provision of Assistance to the Partner States in Eastern Europe and Central Asia is issued in 1999; Council Regulation (EC, Euratom) No. 99/2000: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_012/l_01220000118en00010009.pdf (last access 09.01.08); [hereafter: TACIS 1999].

[37]   Some cross-border projects are partly financed by the INTERREG (Community programmes designed for the promotion of the cooperation of the regions inside the EU) and PHARE programme lines.

[38]   Further EU programmes addressing the NIS are loans of the European Investment Bank (EIB), humanitarian assistance by the European Community Humanitarian Aid department (ECHO) the Food Security Programme and direct financial and technical assistance to Non-Governmental Organisations (NGOs) within the scope of the European Initiative for Democracy and Human Rights (EIDHR).

[39]   The PCAs were enforced in 1999 and replaced the Trade and Cooperation Agreement (TCA) with the USSR signed in 1989. The PCA with Belarus and Turkmenistan were also signed in 1995 und 1998, but have not been enacted yet. In 2004 the PCA with Tajikistan was the last agreement to be signed with a NIS partner; it came into force in May 2005.

specific with regard to the objectives and measures prescribed by the EU.[40] For instance, they explicitly itemize 'legislative cooperation' and the 'cooperation on matters relating to democracy and human rights'. In this context, the governance related issue of the rule of law is considered a matter of democracy and human rights. The 1999 amendment to the TACIS regulation further develops the objectives stipulated in the PCA. In general, the Regulation states that the assistance programme is designed to 'promote the transition to a market economy and to reinforce democracy and the rule of law in the partner States' (cf. TACIS 1999: Art. 1).[41] The TACIS regulation sets out six crosscutting areas of cooperation, three of which are at most eligible for the multi-annual programming cycle, whereas the support for nuclear safety can be provided on the side (cf. TACIS 1999: Art. 2). The six areas are:

1) institutional, legal and administrative reforms,
2) support to the private sector and economic development,
3) support in addressing the social consequences of the transition,
4) the development of infrastructure networks,
5) the promotion of environmental protection and management of natural resources,
6) the development of the rural economy, and, in addition, the support for nuclear safety where applicable (cf. TACIS 1999: Annex II).

Neither the PCA nor the TACIS programme do directly refer to good governance. Yet, within the first area of cooperation aiming at institutional, legal and administrative reforms, the TACIS agenda formulates a whole string of reform objectives related to issues of good governance, such as the development of the rule of law, support for effective policy making, reform of public administration and support for executive and legislative bodies at the national, regional and local level, and – in contrast to the PCAs – the support for the civil society (cf. TACIS 1999: Annex II 7).

However, the principle connection of the EU's support to the civil society with the priority of institutional, legal and administrative (sic!) reforms clearly shows that the involvement of civil society is envisioned mainly to make public policy-making more ef-

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[40] Cf. chapters iii-vi of the Partnership and Cooperation Agreements.
[41] The term *rule of law* is mentioned in the TACIS regulation of 1999 only.

fective rather than more democratic.[42] The first area of cooperation – institutional, legal and administrative reforms – clearly entails an intergovernmental approach targeting institution- and capacity-building of public institutions. Strengthening the capacity to formulate and enforce effective policies within the framework of a sound legal and regulatory framework plays a pivotal role in the EU's efforts to promote good governance in its Eastern neighbourhood. The respect for the rule of law, in particular through the institutional strengthening of the judicial system, is considered as an essential precondition for the guarantee of the *reliability of expectation* and *legal certainty* vis-à-vis the actions of public authorities. Thus, the promotion of the rule of law first and foremost aims at facilitating a legal and regulatory framework that shall ensure the legal binding and predictability of state actions regarding the free market economy and private actors. Consequently, the corresponding reform measures consist of the establishment of accessible and independent courts, effective bankruptcy laws, sound competition regimes, comprehensive tax and financial systems, and the implementation of strong anti corruption policies all aimed at restricting arbitrary state action (cf. TACIS National Indicative Programmes 2000-2006).

In sum, the EU approach to good governance as explicated in the Cooperation Agreements and the TACIS regulations, clearly demonstrates an output oriented approach emphasizing the building of public institutions and strengthening their capacity.

In order to induce the NIS countries into compliance with its requirements, the EU shows the same preference for 'soft' instruments as in its relations with the CEE, Western Balkan and Mediterranean countries. EU assistance to the NIS is made conditional on the respect for democracy, principles of international law and human rights as stipulated in the 'essential elements' clause of the agreement (cf. TACIS 1999: Art. 16; cf. also PCA Azerbaijan: Art. 2[43]). A complementary article specifies procedures to deal with violations of the essential elements allowing taking appropriate measures.[44] The cooperation framework also provides for a political dialogue. Parallel to the Association Agreements with the Western Balkans and the Southern Mediterraneans, the Coopera-

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[42] A comprehensive bottom-up approach was introduced in 1999 within the framework of EIDHR that focused on assistance for civil society institutions in particular; cf. EC Regulation on EIDHR 976/1999 (see below III.7).

[43] Cf. PCA Azerbaijan: http://ec.europa.eu/external_relations/ceeca/pca/pca_azerbaijan.pdf (last access 09.01.08).

[44] The TACIS Regulation combines the two articles. What kind of measures and to what degree is not substantiated in the Agreement or the Regulation.

tion Councils at ministerial level supervise the implementation of the objectives and reforms set out in the PCAs. They also provide the framework for consultation mechanisms on major issues arising within the cooperation partnership. Their work is assisted and complemented by a Cooperation Committee at the level of senior officials and by ad hoc thematic sub-committees and working groups.

In March 2003, the European Commission issued a Communication on 'Wider Europe', which was to launch the EU's official European Neighbourhood Policy (ENP). The idea was to set in place a comprehensive framework for a privileged relationship with all the countries bordering the EU including Russia, the Western NIS and the Southern Mediterranean (European Commission 2003: 3).[45] In order to turn its near abroad into an area of security, stability, and prosperity, the EU has sought to apply the methods and instruments that have proven so successful in promoting economic and political liberalization in the CEE countries – with one major exception. While ENP offers economic integration and deeper political cooperation, it withholds the 'golden carrot of membership' (Magen 2006). The Communication categorically excludes membership for the 'non-European' partner countries, i.e. the Mediterraneans. 'European countries' among the ENP partners, by contrast, 'who have clearly expressed their wish to join the EU', may obtain an accession perspective in the long run (European Commission 2003: 5).[46]

Similar to its previously bilateral relations with the NIS countries, the 'Wider Europe' focuses on the promotion of output related issues of good governance, such as the rule of law (European Commission 2003: 3). Partner countries are requested to demonstrate their willingness for reforms by showing a ‚strong commitment' for the capacity building of their political institutions, administrations and judiciaries (European Commission 2003: 16). Most of all, the strengthening of regulatory authorities and independent judiciaries as well as the fight against corruption shall ensure a stable framework for domestic and foreign investment. The improvement of the investment climate may in the long run lead to 'improved governance' (European Commission 2003: 13).

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[45] The Western Newly Independent States (WNIS) are Ukraine, Moldova and Belarus. The countries of the Southern Mediterranean consist of Egypt, Algeria, Israel, Jordan, Lebanon, Libya and Morocco.
[46] As a result, ENP countries can be divided into two groups: *European Neighbours* and (non-European) *Neighbours of the EU*, cf. box 'Neighbourhood and EU membership', European Commission 2003: 5.

In May 2004, the European Commission published the *ENP Strategy Paper*, which represents the core document of the Neighbourhood concept, (European Commission 2004; cf. Wissels 2006). While declaring the ENP to be distinct 'from the possibilities available to European countries under Article 49[47] of the Treaty on the European Union' (European Commission 2004: 3), the communication recommended the inclusion of Armenia, Azerbaijan and Georgia within the scope of the ENP (European Commission 2004: 7). In line with the European Security Strategy (ESS), the South Caucasus was identified as one of the regions, in which the EU should take a 'stronger and more active interest' (European Council 2003: 9). The relations with Belarus, by contrast, remained restricted to the cooperation with civil society due to the continuing violations of human rights and democratic standards (European Council 2003: 11f.), This is one of the very few instances, in which the EU has consistently invoked (negative) conditionality.

In contrast to the Communication on *Wider Europe*, the *Strategy Paper expressis verbis* refers to good governance as a principle of the cooperation partnership.[48] Although no clear definition of the concept is provided, the reform objectives set out in the paper endorse several constitutive elements of the wider good governance concept. Compared to 'Wider Europe', the requirement of legal and regulatory approximation to the EU *acquis communautaire* is less specified. Instead, the political dimension of good governance is explicated in relation with the economic performance.[49] The Strategy Paper puts stronger emphasis on the civil society dimension as well. Exchange, education, training and twinning programmes between local and regional administrations as well as civil society organisations are to enhance the promotion of good governance and the respect for human rights (European Commission 2004: 23). The increasing importance of good governance within the ENP framework is further highlighted by the explicit reference to the European Security Strategy stating that 'the EU task is to make a particular contribution to stability and good governance in [the] immediate neighbour-

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[47] The article states: ‚Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union'. Cf. http://eur-lex.europa.eu/en/treaties/dat/12002M/htm/C_2002325EN.000501.html, last access January 3, 2008.

[48] Cf. chapter on the different good governance concepts.

[49] ‘The privileged relationship with neighbours will build on mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development' (cf. European Commission 2004: 3).

hood [and] to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean [...]' (European Council 2003).

Yet, as in the previous communication of 2003, the predominant ENP reform target is still to promote the effective functioning of public institutions taking into account high standards of administrative efficiency and independent judiciaries as well as contributing to an enhanced business and investment climate. The paper stresses the fact that the cooperation partnerships clearly define gradual reform steps dependent on the particular situation of the partner country in order to take into consideration their 'needs and capacities, as well as perceived interests in the context of the ENP' (European Commission 2004: 3).

In December 2006, the European Commission issued a third document on the *Strengthening of the ENP* (European Commission 2006), which strongly connects good governance with the fight against corruption. According to the Commission, poverty, unemployment, mixed economic performance, corruption and weak governance are the main causes for the considerable development restraints in the ENP partner countries. The communication states 'that the EU has a vital interest in seeing greater economic development and stability and better governance in its neighbourhood' (European Commission 2006: 7). This emphasis on output legitimacy notwithstanding, the Communication introduces a further shift towards the political dimension of good governance.[50] It explicitly demands the 'appropriate participation by civil society representatives as stakeholders in the reform process, whether in the preparation of legislation, the monitoring of its implementation or in developing national or regional initiatives related to the ENP.' (European Commission 2006: 8).

All in all, the policy framework of the ENP continues to combine assistance, positive conditionality and political dialogue in order to promote EU good governance objectives. This approach mainly relies on the conditional offer of benefits and preferential relations within a differentiated framework (European Commission 2004: 8). The concept of differentiation sets positive incentives that reward progress made by the partner countries in political and economic reform. In return for the meeting of mutually agreed political, economic and institutional reform targets, the EU promises closer political and

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[50]   The allusion to the human dimension of the OSCE is noteworthy; cf. Börzel 2007.

economic relations (European Commission 2004: 11).[51] The introduction of the *regatta principle* intends to avoid stagnation on the lowest common denominator by inducing competition among the partner countries. At the same time, the joint setting of clearly defined objectives and benchmarks shall enhance the ownership and commitment of the partner country. Finally, shared responsibility of the reform agenda and continuous monitoring of progress and the discussion of problems in political dialogue are designed to guarantee predictability on both sides.[52] Political dialogue is viewed as the cardinal instrument of the ENP cooperation. The Partnership and Cooperation Councils facilitate the exchange on issues of security policy, conflict prevention and crisis management (European Commission 2004: 14). The issues of the political dialogue discussed within the sub committees are determined by the ENP Action Plans (AP) in cooperation with the partner government.[53] The combination of ownership and joint responsibility, with political dialogue and the setting of incentives creates a 'conditionality through partnership'[54] through which the Commission hopes to achieve more sustainable and effective reforms than through conventional forms of punitive conditionality.

In 2006, the EU introduced the European Neighbourhood and Partnership Instrument (ENPI).[55] ENPI forms part of a variety of new policy-driven instruments of EC external actions. It shall combine objectives, targets, and instruments of the cooperation partnership in a comprehensive set of operational rules and procedures. In line with the experiences made in the TACIS framework, the programming cycle of the ENPI includes Country Strategy Papers covering a period of seven years, Multi-annual Indicative Programmes and annual Action Programmes. In contrast to the previous assistance programmes, the increased importance of the good governance concept is em-

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[51] These are technical and financial assistance, a stake in the EU Internal Market, participation in selective EU activities and programmes, and the prospect of closer economic and political integration with the EU (Neighbourhood Agreements), cf. European Commission 2004: 3.

[52] Regarding the Eastern dimension of the ENP, conditionality in terms of (punitive) sanctions has only been applied in the case of Belarus so far. Due to the replacement of the democratically elected parliament with a national assembly nominated by the President Lukashenko in 1994 and continuing violations of civil liberties and human rights, the General Affairs and External Relations Council (GAERC) reacted in 1997 with the suspension of the partnership by freezing the enforcement of the PCA with Belarus. Thus, the scope of EU assistance is restricted to projects and measure within the framework of TACIS regional projects and EIDHR avoiding and sometimes even bypassing official governmental contacts.

[53] According to an official of the EU Commission sub-committees for human rights have not been established in the Southern Caucasus.

[54] For further explanation of the 'conditionality of partnership' (cf. Schmitz 2006).

[55] Council Regulation (EC) No 1638/2006 of 24 October 2006.

phasized throughout the Regulation. Thus, already in the introductory part the document states:

> 'The privileged relationship between the European Union and its neighbours should build on commitments to common values, including democracy, the rule of law, good governance and respect for human rights, and to the principles of market economy, open, rule-based and fair trade, sustainable development and poverty reduction' (Council of the European Union 2006: Introduction §4).

The strong commitment to good governance is repeated in the Article regarding coherence, compatibility and coordination where it states:

> 'Programmes and projects financed under this Regulation [...] shall comply with the agreements concluded by the Community and its Member States with the partner countries and respect commitments under multilateral agreements and international conventions to which they are parties, including commitments on human rights, democracy and good governance' (Council of the European Union 2006: Art 5).

Under the document title *objectives and principles*, the Regulation further explains the scope of the Community assistance and the areas eligible for cooperation. With regard to the scope, it articulates a strong interest of the partnership in encouraging efforts aimed at promoting good governance and equitable social development (Council of the European Union 2006: Art. 2). The ENPI defines good governance explicitly as one of the priority reform areas of cooperation linking it to the concept of the rule of law. The examination of the reform targets and the corresponding section on good governance clearly shows the connotation of the EU good governance concept with the effectiveness of public institutions and bodies, in particular the public administration and the judiciary. The strong output orientation is corroborated by the inherent narrowing down of the paragraphs notion of good governance, linking it to the fight against corruption and fraud (Council of the European Union 2006: Art. 2, §2d). The output orientation is linked to an intergovernmental approach, mainly addressing state institutions and bodies responsible for the formulation and implementation as reform targets (Council of the European Union 2006: Art. 2, §2c). As in the previous assistance programme, the EC strategy of institution- and capacity-building provided by grant financed technical assistance and direct budget support is evident. The EU assistance is to a great extent negotiated between the Commission and the partner government as main beneficiary. But in principle, ENPI Regulation makes economic and social partners, and civil society

eligible for Community assistance indicating a stronger tendency towards transnational cooperation.

Our analysis shows that the initial conceptualization of good governance in the ENP is similar to the institutional-administrative understanding of the World Bank in the 1990s.[56] The promotion of good governance in this (narrow) sense was output oriented and mainly relied on intergovernmental cooperation to promote the effectiveness of political processes and institutions. Support for the building and strengthening of effective executive authorities and efficient public administration as well as the implementation of strong anti-corruption policies – in particular in the area of public finance accounting and auditing, the tax system, company law, public procurement and financial services – shall support the economic transition and institutional transformation of the partner countries. Yet, the EU's approach to promoting good governance in its *near abroad* has started to move towards more input related reform objectives. Initially, the EU had sought to support the NIP countries in transforming their centrally planned economic orders into functioning free market economies based on secure property rights, competition rules and bankruptcy regulations. With the further evolution of the ENP, the EU started to pursue a strategy of *institutional restructuring* focused on the creation of state institutions bound by the rule of law. Next to the strengthening of state capacities, the ENP prescribes institutional safeguards in order to constrain the government authority and prevent it from acting arbitrarily. The establishment of an effective legal and administrative framework shall ensure the predictability and accountability of political actors. While these goals remain output oriented, their realization requires a minimum of democracy. Free and fair elections, the separation of power on the horizontal and vertical level as well as the limiting and control of power through a functioning judiciary shall hinder particularistic actors to arbitrarily circumvent or change the *rules of the game* at the expense of other actors or of society . At the same time, the EU has recognized that the involvement of civil society in political processes directing the transition to the market economy is vital to achieve sustainable reform outcomes. As a result, transnational channels for inducing domestic reforms have become more important. Interestingly, the role of civil society is more pronounced in the Southern ENP where it is directly linked to good governance. While the EU seems to move

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[56] Cf. World Bank 1994. For the institutional notion of governance in the context of rule-bound political authority and the quality of the bureaucracy (cf. Levy 2002).

towards more effective governance, diversions from effective government are more visible in its relations with the Mediterranean neighbours. The difference may reflect a *development turn* in the EU relations with its neighbouring regions, which is more pronounced in the South.

3.7   EIDHR – The Exception to the Rule

Beside the various financial instruments developed for its 'geographical partnerships', the EU has made use of an additional instrument for assistance that is specifically designed for the promotion of good governance in a wider sense. The European Initiative for Human Rights and Democracy (EIDHR)[57] was established in 1994 as a special financial tool to promote democracy and human rights. In 1999, the EU passed two Regulations[58] as an attempt to establish a coherent framework for the EU's global efforts in 'developing and consolidating democracy and the rule of law and so that of respecting human rights and fundamental freedoms in third countries'. One Regulation covered operations within the framework of EU development cooperation. The other Regulation replaced democracy assistance of existing regional programmes, such as PHARE Democracy, TACIS Democracy, and MEDA Democracy (Art. 2). In 2006, EIDHR was renamed into European Instrument for Democracy and Human Rights.[59]

Like regional democracy assistance programmes, such as PHARE Democracy, MEDA Democracy, or TACIS Democracy, EIDHR has specifically focused on democracy and human rights. But it also includes administrative accountability and the fight against corruption as major objectives (Cremona 2004). For the programming period 2002-2004, in which the Commission tightened the thematic focus of EIDHR and concentrated the funds on 32 so called focus' countries[60] from all geographical partnerships, four areas of intervention were defined: (1) the strengthening of democratisation, good governance and the rule of law, promoting the abolition of death penalty (2), combating torture and supporting the International Criminal Court (3), and fighting racism, xeno-

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[57]   Since 2006 it is referred to as the European Instrument for Human Rights and Democracy.
[58]   Council Regulations 975/1999 and 976/1999 adopted on April 29, 1999, preamble, OJ 120/8 of May 8, 1999.
[59]   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 L 386, 29.12.2006, p. 1–11.
[60]   In the Eastern neighbourhood of the EU, Georgia and Ukraine have been chosen.

phobia and discrimination (4).[61] The first bundle of issues, which are most related to the promotion of good governance, accounted for about 67% of the total financial resources.[62] Between 2004 and 2006 the thematic focus areas were replaced by so called 'campaigns' that by large covered similar issues as the focus areas did. With regard to good governance, however, the particular emphasis on 'strengthening the legal system and institutions' or 'governance' virtually vanished. Instead, even more attention has been attached to supporting an institutional and legal environment that is necessary for the development of pluralism and a flourishing civil society.

Thus, EIDHR clearly endorses a broad concept of good governance, which complements the rather restricted focus in the geographical partnership programmes and co-operation instruments to a significant degree. Unlike MEDA Democracy, PHARE Democracy or TACIC Democracy, EIDHR firmly embeds the administrative core of good governance in a political dimension that forms the funding priorities. The major difference lies in the exclusive reliance of EIDHR on transnational channels to promote its objectives. Projects funded by EIDHR can be implemented with partners other than national governments (non-governmental and international organizations) and, most importantly, without the consent of the governments. Thus, EIDHR allows to circumvent the governments of the recipient countries and can be used even if other programs have been suspended, e.g. in cases of violations of human rights.

In sum, the EIDHR is unique in the EU since, unlike other programmes and financial instruments, it explicitly seeks to promote legitimate governance. Not surprisingly, it has been the European Parliament which pushed for the establishment of EIDHR and also successfully opposed the plans of the Commission to abolish EIDHR in 2007 (cf. Börzel and Risse 2007).[63] It remains to be seen to what extent the integration of good governance and democracy promotion will result in the emergence of a new approach of promoting *effective* and in particular *democratic governance*.

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[61] European Commission 2001.
[62] European Commission 2004.
[63] The debate about the future of EIDHR has triggered demands for an EU agency for providing democracy assistance. Thus, the European Parliament and political foundations have advanced a proposal for a "European Foundation for Democracy" (cf. Raik 2006).

4.   Conclusion

This paper aimed at shedding light on the EU's attempts to promote good governance in its relations with third countries. In particular, we have been interested in the ways, in which the EU has incorporated good governance into its various foreign policy frameworks and which approaches and instruments the EU has chosen to promote good governance. In the first part of the paper, we developed an analytical framework to systematically map the different concepts, the channels of influence and the instruments used by external actors in the promotion of good governance. The second part of the paper traced the emergence of good governance at the international level and the ways it was incorporated and mainstreamed into the various fields of the EU's external relations.

Overall, we have found different good governance concepts that vary across the different geographical partnerships as well as over time. The analysis showed that the Commission's DG Development has taken the lead in mainstreaming good governance into the other areas of the EU's external relations. The international debate on development cooperation has been the gateway through which the concept of good governance has been introduced to the EU. We also found out that the channels of influence used by European development policy differ from the other geographical relationships with regard to one important aspect: it is more open to non-state actors. In line with the international discourse on good governance in development cooperation, the involvement of non-state actors is regarded as crucial to achieve reform objectives. Hence, the EU development policy complements the intergovernmental channel for promoting good governance with a transnational dimension, both with regard to political dialogue and technical assistance. This is particularly the case in developing countries where the state is weak or largely absent. In the process of 'good governance mainstreaming' in the EU, this understanding of good governance as effective governance needs to be reconciled with the narrower focus on effective government with its emphasis on state institutions, which has prevailed in other fields of the EU's external relations.

While the channels of influence may vary, the EU's primary reform objectives remain the same aiming at ensuring the functioning of public, if not state institutions. Thus, the main component within the EU's reform agenda – the output legitimacy in terms of effective and efficient public institutions – prevails in all external policies. Unlike the

UNDP, the EU is still reluctant to adopt an all-encompassing democratic governance approach. However, there are signs that this may be changing. As discussed in the section on the EU's development policy, the Commission is tacitly leaving the restricted good governance understanding behind and has started to adopt a broader 'democratic governance' concept. In our terms, EU development policy now at least covers both effective government and effective governance. It remains to be seen whether this substantially broadened understanding will again spill over into the EU's other external relations frameworks.

The ENP is a case in point for the prevailing effective government approach. Despite a gradual opening-up of good governance towards input legitimacy in the course of the ENP conceptualization, the strengthening of public institutions and their 'absorption capacity' remains the centrepiece of the reform agenda. Our analysis showed that good governance in the ENP followed the institutional-administrative understanding of the World Bank in the 1990s. The promotion of good governance in this (narrow) sense was output oriented and mainly relied on intergovernmental cooperation to promote the effectiveness of political processes and institutions representing the approach to effective government. Interestingly, the role of civil society is more pronounced in the Southern dimension of the ENP where it is explicitly linked to good governance. Thus, the EU good governance configuration within the Southern dimension seems to entail a stronger approach toward *effective governance* than in the Eastern dimension where the focus is more clearly on the notion of *effective government*. This may be explained by the greater proximity between the EU's Mediterranean policy and development policy, not only because of the level of social-economic development, but also because Mediterranean countries explicitly lack a membership perspective (see below). Yet, as a whole the EU's approach to promoting good governance in its *near abroad* has started to move towards more input related reform objectives. As a result, transnational channels for inducing domestic reforms have become more important in the course of the ENP development.

Since good governance started its career in development policy, it has only recently manifested itself in the other areas of the EU's external relations. Interestingly, the less EU foreign policies are related to development policy, the less explicit are the reference to good governance. This has been most obvious in the Eastern enlargement process, where good governance is hardly ever mentioned. However, this does not mean that

good governance is irrelevant to accession countries. Quite on the contrary, the proximity to the EU (membership) strongly correlates with implicit good governance requirements in terms of a relatively high degree of democratization and regime stability. As a result, democratic aspects become more specific in the relations with the potential and accession candidates. This is corroborated by the fact that the input dimension has been largely made subject to the general political conditionality and political dialogue in the accession negotiations. Still, the reform objectives specified in the Accession Partnerships mainly seek to enhance the efficiency and effectiveness of policy making and state institutions by providing technical and financial assistance almost exclusively through the intergovernmental channel.

The shift towards a *democratic government* approach once the countries have received a membership perspective becomes clearly visible in the EU's changing approach towards the Western Balkans. Similar to the NIS, the EU had initially supported the countries of the Western Balkans in transforming their centrally planned economic orders into functioning free market economies based on secure property rights, competition rules and bankruptcy regulations (effective government). With the granting of membership status, the EU started to pursue a strategy of institutional restructuring focused on the creation of state institutions bound by the rule of law. Next to the strengthening of state capacities, the EU prescribes institutional safeguards in order to constrain the government authority and prevent it from acting arbitrarily. The establishment of an effective legal and administrative framework shall ensure the predictability and accountability of political actors. It is also to prevent particularistic actors from arbitrarily circumventing or changing the *rules of the game* at the expense of other actors or of society as such. This calls for the existence of democratic state institutions. While the EU seeks to strengthen input legitimacy through stronger participation of non-state actors, the reform priorities mainly emphasize democratic government as such, i.e. the institutions of the rule of law and the separation of powers.

The EU uses the same set of foreign policy instruments to promote good governance across its external relations: political dialogue, (positive) conditionality and assistance. Moreover, it predominantly relies on intergovernmental channels. It may have been this state bias in the EU's external policy frameworks that caused the European Parliament to insist on an additional financial instrument that incorporates a more *democratic governance* approach. Covering virtually all countries of the geographical partnerships,

EIDHR is the only instrument that almost exclusively focuses on increasing input as well as output legitimacy through transnational channels. The growing demand for the inclusion of civil society actors on the side of the EU, thus, has lead to the informal exchange of views with non-state actors. Additionally, the EU increasingly requires target governments to create opportunities for non-state actor participation in policy-making and implementation processes. Hence, the EIDHR is to be understood as a crosscutting cooperation instrument, complementing the EU external relation instruments of political dialogue, conditionality and assistance.

To sum up, while the EU has developed a general tool box to promote good governance it mostly employs to address governmental actors, its approach varies depending on the field of external policy.

a) The classical *development policy* covering the relationship with countries in which the strategic interests of the EU are less pronounced and where the interest mainly consists in stability and economic exchange in a broader sense. These are the ACP countries. In this context, the EU pursues an *effective governance* approach.

b) The EU *neighbourhood policy* covering the relationship with countries in the 'near abroad' of the EU. Trying to incorporate this group into an institutionalized cooperation regarding security, energy and economic issues, the EU intends to develop a framework for a distinct strategy reflecting the interests of the Communities. This group consists of the Western NIS, the Southern Caucasus and the Mediterranean countries. In this context, the EU mainly pursues the *effective government* approach with a very limited inclusion of the *democratic government* (for the Western NIS which have a long-term membership perspective) and *effective governance* (for the Mediterranean countries, which have no membership perspective whatsoever) approach.

c) The EU *enlargement or accession policy* covering the relations with countries that have a clear membership perspective. The closer a candidate country moves towards accession, the more the EU shifts from the *effective government* to the *democratic government* approach.

The following figure summarizes our findings regarding the EU promotion of good governance within its different areas of external relations:

Fig. 3   Governance configurations within EU internal and external policies
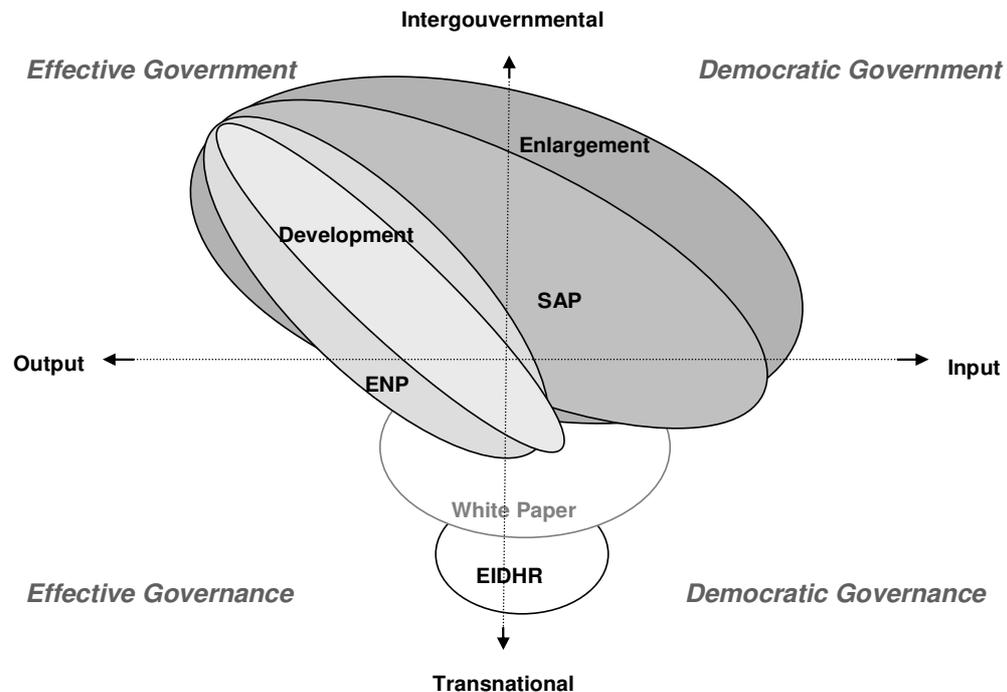
As already demonstrated, the EU heavily relies on the intergovernmental channel to promote good governance in all three policies. Only EIDHR, and to some extent the White Paper, provide for a transnational channel to foster the effectiveness of the EU Reform agenda. It seems that the transnational channel is of particular importance:

a) in the EU Development Policy, where there is a lack of reliable state partners;

b) in the EU Enlargement or Accession Policy, where societies are highly fragmented and divided; and

c) in the EU Neighbourhood Policy where civil society needs to be empowered to help implement reforms aimed at strengthening the effectiveness of public institutions.

Yet, in all three cases, the EU employs the strengthening of civil society actors as a means rather than considering it as a goal in itself. This functional approach still prevails in all areas of the EU's external relations.

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