European Commission

Thematic Evaluation of EU Support for Rule of Law in Neighbourhood Countries and Candidates and Potential Candidates of Enlargement (2010-2017)

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Thematic Evaluation of EU Support for Rule of Law in Neighbourhood Countries and Candidates and Potential Candidates of Enlargement

(2010-2017)

This evaluation was commissioned by the Thematic expertise, Monitoring and Evaluation Unit
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particip

Thematic Evaluation of EU Support for Rule of Law in Neighbourhood Countries and Candidates and Potential Candidates of Enlargement (2010-2017)

Final Report

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List of acronyms

AA	Association Agreement
ACN	Anti-Corruption Network
ADR	Alternative Dispute Resolution
CEPEJ	European Commission for the efficiency of justice
CIB	Comprehensive Institution Building
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRIS	Common External Relations Information System
CSF	Civil Society Facility
CSO	Civil Society Organisations
CSP	Country Strategy Paper
DCFTA	Deep and Comprehensive Free Trade Area
DG	Directorate-General
DG DEVCO	Directorate-General for International Cooperation and Development
DG HOME	Directorate-General for Migration and Home Affairs
DG JUST	Directorate-General for Justice and Consumers
DG NEAR	Directorate-General Neighbourhood and Enlargement Negotiations
EAMR	External Assistance Management Report
EC	European Commission
ECA	European Court of Auditors
ECJ	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEAS	European External Action Service
EFI	External Financing Instrument
EIDHR	European Instrument for Democracy and Human Rights
EMJ	EuroMed Justice
ENI	European Neighbourhood Instrument
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EOM	Election Observation Mission
EQ	Evaluation Question
EU	European Union
EUD	EU Delegation
EUGS	EU Global Strategy
EU MS	EU Member States
EUNAM	EU Needs Assessment Mission
EUR	Euro
GAP	Gender Action Plan
GBV	Gender-based violence
GDP	Gross domestic product
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GRECO	Group of States Against Corruption

HCJ	High Court of Justice
HF	Horizontal Facility
HJC	High Judicial Council
HQ	Headquarters
HRD	Human Rights Defender
HRW	Human Rights Watch
ICMIS	Integrated Case Management Information System
ICT	Information and communication technology
IfS	Instrument for Stability
ILO	International Labour Organisation
IO	International organisation
IPA	Instrument for Pre-accession Assistance
IRZ	German Foundation for International Legal Cooperation/ Deutsche Stiftung für internationale rechtliche Zusammenarbeit
ISG	Inter-service steering group
ISIE	Independent High Authority for Elections
ISP	Indicative Strategy Paper
IT	Information Technology
JC	Judgement Criteria
JHA	Justice and home affairs
JSR	Justice Sector Reform
JUFREX	Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
MENA	Middle East and North Africa
MFF	Multi-annual financial framework
MIPD	Multi-Annual Indicative Planning Documents
MTR	Mid-term review
NCU	National coordination unit
J-NET	Network for justice reform
NGOs	Non-governmental organisation
NHRI	National human rights institution
NIP	National indicative programme
NIPAC	National IPA coordinators
NSA-LA	Non-State Actors and Local Authorities
NSDI	National Strategy for Development and Integration
ODIHR	Office for Democratic Institutions and Human Rights of the OSCE
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPC	Open Public Consultation
OSCE	Organization for Security and Co-operation in Europe
PCF	Programmatic Cooperation Framework
PGG	Partnership for Good Governance
PMF	Public Financial Management
RIP	Regional Indicative Programme
ROM	Results-oriented monitoring

RSP	Regional Strategy Paper
SAA	Stabilisation and Association Agreement
SBS	Sector Budget Support
SCM	Superior Council of Magistracy
SIDA	Swedish International Development Co-operation Agency
SIGMA	Support for Improvement in Governance and Management
SMART	Specific Measurable Achievable Reasonable Time Bound
SSF	Single Support Framework
SSR	Security Sector Reform
TA	Technical Assistance
TEU	Treaty of the European Union
TI	Transparency International
TACIS	Technical Assistance to the Commonwealth of Independent States
TAIEX	Technical Assistance and Information Exchange Instrument
TAPA	Tri-Annual Plan of Action
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime
UNOPS	United Nations Office for Project Services
US	United States
USAID	United States Agency for International Development
WB	World Bank
WGI	Worldwide Governance Indicators
WJP	World Justice Project

Executive Summary

Evaluation objectives

The purpose of this evaluation is to provide an independent, evidence-based assessment of the scope and performance of implemented and on-going EU support for Rule of Law (RoL). It focuses on interventions funded by the Instrument for Pre-Accession Assistance (IPA I and II), the European Neighbourhood and Partnership Instrument (ENPI) and its successor the European Neighbourhood Instrument (ENI) for the period 2007 to 2017.

Context

The concept of RoL corresponds to a set of norms, policies, and practices based on the principle that the law is supreme, and that therefore Government and the people should act according to the law. It has become a dominant organisational model to regulate the exercise of public powers. RoL is fulfilled by ensuring that: i) constitutional or fundamental laws have supremacy over all other laws; ii) law has priority over the power of individuals, including leaders and officials; and iii) access to justice before an independent, efficient and professional judiciary is provided. Although RoL principles have been developed in EU Member States, a uniform definition at the EU level has not yet been developed. However, the case law of the Court of Justice of the European Union and of the European Court of Human Rights, and policy documents of the Council of Europe (CoE) have progressively complemented these general principles, and defined and expanded RoL as a common and fundamental value of the EU.

The historical and political context of countries has determined to a significant extent issues relating to RoL at local, country and regional levels. The RoL context of IPA beneficiaries for the period under consideration was strongly marked by: instability, and ethnic, regional, cultural and political conflicts with deep historical roots; steps towards EU accession; the effects of the global economic crisis; and highly varying levels of political stability. The context of ENI countries for the same period was marked by: the Arab spring; conflicts and the rise of extremism in the Mediterranean; and varying levels of stability and other democratic challenges in the Eastern Neighbourhood.

EU commitments to IPA and ENI

The overall EU financial commitments to RoL to IPA beneficiaries amounted to over EUR 560 million (excluding regional programmes) for the period under consideration. The commitments to ENI amounted to over EUR 700 million (excluding regional programmes); of this EUR 228 million was committed to ENI East countries and EUR 475 million to ENI South countries. The four largest IPA recipients were Turkey (EUR 155 million), Albania (EUR 107 million), Kosovo* (EUR 106 million) and Bosnia and Herzegovina (EUR 76 million). The largest ENI recipients were mostly in the ENI South: Tunisia (EUR 111 million), Jordan (EUR 91 million), Georgia (EUR 88 million) and Morocco (EUR 85 million).

Methodology

The design chosen for the evaluation was that of a multiple case study, applying a mixed-methods approach. Data collection activities were carried out mainly during the desk and field phases. These activities included data extraction from the Commission's external relations database 'CRIS', document collection and review, case studies, email queries, phone and face-to-face interviews, and an online Open Public Consultation (OPC).

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

This evaluation responded to eight Evaluation Questions (EQs), which focused on two areas of EU support to RoL:

- Strategic framework, design and implementation; and
- Effects of EU support.

The combination of data collection methods and techniques varied according to the different EQs and their Judgement Criteria, but multiple sources were systematically used to triangulate the information collected.

The main challenges encountered were clarifying the thematic scope of the evaluation in its early stages; accessing programme documentation; ensuring access to interlocutors during the field phase, due to the European summer break; and managing expectations of interlocutors contributing to the case studies, given that the evaluation's purpose was not to provide an assessment of country- or programme-level interventions.

Data collected during this evaluation

Twelve case study notes were produced in the course of this evaluation. The case study notes examined Albania, Montenegro, Serbia, and Turkey (representing IPA beneficiaries); Armenia, Georgia, Jordan, Moldova, Tunisia and Ukraine (representing the ENI region); and the Council of Europe's Horizontal Facility (IPA-related) and EuroMed Justice (ENI-related) as regional cases. An average of 11 individual RoL-related interventions per case study were analysed in more detail.

More than 200 interviews were conducted. Some interviewees were spoken to on more than one occasion in order to receive their input at different stages of the evaluation.

Ten persons responded to the Open Public Consultation (OPC). The small number of responses limits the robustness of the interpretation of the results of this OPC. Similar or poorer response levels were observed in other Consultations for major evaluations in the external action.

Conclusions

From the findings related to the EQs, the evaluation identified eight conclusions in the following three clusters.

Strategic framework

C1. The place of RoL in the overall EU policy framework

RoL has taken an increasingly central role in the EU policy framework during the relevant period, as has the strength of institutional coordination. RoL has been firmly, clearly and coherently anchored in EU policies and strategies, which are considered to be of high relevance and quality, and now occupies a central place in EU external support in the enlargement/neighbourhood regions. EU guidelines and reference documents have contributed to consolidating RoL policy, approaches and programming. Policy and strategy developments have integrated or responded to historic events, including the after-effects of the Arab Spring. Policy and strategy alignment between EU services has been strong and mutually supportive, and several mechanisms and inter-service initiatives helped strengthen coordination and internal coherence of EU support to RoL. There is however a need for increased RoL expertise at the Headquarters (HQ) and EU Delegation (EUD) level.

C2. EU support strategic orientations and responsiveness

EU actions in RoL and related areas of democracy and human rights have been strategically well designed, and have responded flexibly to changing national contexts. EU interventions have ensured relevance to national needs, conformity to national priorities, and coherence with EU goals, European and international standards, and legal harmonisation and the *acquis communautaire*. EU support has proven flexible in the face of emerging needs, challenges and opportunities. In general, the EU has chosen approaches, implementation strategies and modalities

appropriately. A full range of EU financing instruments has been strategically deployed to enhance flexibility, and whole of sector and other "holistic" approaches have been utilised in many contexts, and have provided some highly encouraging contributions. However, flexibility also brought risks of dilution of programme objectives; strengthened recourse measures could have helped mitigate these.

Results

C3. Overall results

While interventions have been generally well designed and many instances of progress have been identified, RoL as a whole has proven to be a difficult area in which the EU has not managed to fully comply with its own expectations. EU support has contributed to many positive developments, including constitutional, legal, and judicial reform, strengthening civil society, and support to legal aid, juvenile justice, and penitentiaries. Achievements have included development of sector strategies and action plans, support to electoral reform, integration of human rights in policies, capacity-building of institutions, and support to independence, accountability and access to justice. EU support has been most effective in situations where it has been long-term and intensive in nature.

However, in many contexts, progress has been limited, and sustainability has proven difficult to achieve. This is correlated to low levels of political will, institutional resistance to change, and inadequate participation or marginalisation of civil society.

C4. Civil society participation

The EU has consistently involved civil society in its RoL programmes, but with mixed results. The EU has contributed strongly to enhancing the role of civil society in RoL, in particular where it is under threat. Support to civil society is however also necessary as a long-term investment to reinforce accountability and prevent backsliding on RoL and human rights. The European Instrument for Democracy and Human Rights and the Civil Society Facility have provided essential complementary support to RoL. However, there is little evidence of civil society consultation influencing higher-level policy, nor of civil society stronger implication in sector and donor coordination mechanisms.

C5. Institutional capacity-building

EU support to training, capacity building, and infrastructure/ equipment provision did not bring the expected results, and was limited by the slow pace of change in judicial institutions and culture. The EU has engaged in extensive capacity building, and infrastructure/ equipment provision; however, political will remains problematic, and ownership of support has been highly variable. EU support has frequently failed to improve efficiency, even where IT has been provided. The use and sustainability of IT equipment and related support has been highly problematic in certain contexts. Monitoring and evaluation has stressed activities and inputs, rather than results (outputs, outcomes and impact).

Tools and approaches

C6. Engagement in policy dialogue

While the EU has everywhere, and at all levels, engaged in policy dialogue, this has tended to be formalistic in some contexts and focussed on strategic commitments rather than on solving problems in implementation and resulting barriers to progress. The EU has engaged in policy dialogue at several levels, often in tense contexts with limited political will on the partner country side. In some countries, policy dialogue is considered formalistic; an exception to this is in the context of budget support, where policy dialogue related to sector reform has been relatively fruitful.

C7. Addressing political resistance

EU programming was not successful in incorporating adequate assessment of political will, and resistance and backsliding have not been addressed in a clear and consistent manner. Issues of political will

have been identified in a number of countries, as has resistance to reform within institutions. EU programming processes do not integrate adequate political economy / technical assessments and risk analyses, nor do they link interventions with root causes of problems. Strategies and responses for addressing such difficulties are also lacking. The "more for more" principle and accession framework have stimulated alignment in some contexts; however, incentives are not uniformly effective in encouraging change, and available recourse and review options are rarely invoked.

C8. Learning & monitoring

Experience and information from the field is not sufficiently exploited to enhance programming and project design. The quality of reporting at the operational level is highly variable, and does not always contribute to higher-level policy, strategy and programming. There is inadequate support to internal promotion of, and training on, existing Guidelines and Tools. Results-Oriented Monitoring (ROM) and other monitoring and evaluation mechanisms were found to have uneven uptake. The design of actions has struggled to develop consistent and appropriate qualitative and quantitative indicators. This hinders the ability to measure results (outputs, outcomes and impact) and is compounded by an absence of longer-term assessment of impact and sustainability. Programming alignment and sequencing with evaluation is also problematic, with programmes often designed before previous support has been assessed. Learning occurred however where the EU has been engaged over long periods.

Recommendations

The main recommendations of the evaluation can be summarised as follows:

R1. The EU should continue to prioritise RoL in its co-operation policies and strategies

The EU should continue to place RoL at the centre of its cooperation policies and strategies, and reflect this in all dimensions of the next programming cycle. The EU should ensure that an adequate allocation and/ or re-distribution of resources is provided to enable the implementation of the Recommendations of this Evaluation. EU should maintain RoL as a pillar of cooperation with its partners, and continue to reinforce the relationship between RoL and other related issues, including human rights, democracy and civil society. Current cooperation and information-sharing efforts between EU services regarding RoL should be maintained. EU Delegations should continue to highlight RoL issues in their cooperation efforts, and ensure RoL programming is linked with related themes, in particular human rights, democracy, and civil society. Strategic and programming decisions should be based more strongly on the findings of technical assessments, rather than on political considerations. In IPA beneficiaries, EU should continue to ensure that accession negotiations prioritise discussion on Chapters 23 and 24 considerations. In ENI countries, strategy and programming of support to RoL should be linked to broader incentives, in particular economic reforms, and should also be more closely aligned with national sector strategies and action plans.

R2. The EU should develop clearer responses and associated criteria to address situations where serious RoL and related concerns arise, persist or worsen

The EU should apply greater conditionality and more stringently and consistently apply its available recourse measures, where there is evidence of poor commitment to RoL reform and EU cooperation or where there are serious and on-going RoL and human rights concerns... Such responses should be linked to clearly defined criteria. Particularly strict assessment procedures should be applied at the programming stage. Where difficulties arise during

programme implementation, EU should be more consistent and rigorous in the application of recourse measures, including suspending support to RoL. The EU should also develop responses or mechanisms to provide incentives to those beneficiaries aligning with European standards relative to RoL. Existing recourse and corrective measures for IPA beneficiaries should be more rigorously applied. Responses for ENI countries should include greater conditionality.

R3. The EU should strengthen its capacities to address RoL issues

Given the central role of RoL in EU cooperation, the EU should strengthen its expertise and technical capacities to address RoL issues, and make greater use of existing RoL tools and guidance. The EU should strengthen its technical capacity at HQ to critically analyse its support for RoL and adjust strategy and programming accordingly, and should support greater internal knowledge sharing and use of important EU tools and guidelines. DG NEAR HQ should provide greater technical support to EUD and to other EU services relative to RoL issues.

R4. The EU should strengthen its assessment of the RoL context at the country level, in particular the political commitment to RoL

The EU should strengthen its assessment of the RoL context at the country level, in particular the institutional framework and the socio-cultural context, and specifically the degree of political will and local ownership of RoL reform. The EU should develop and use political analysis tools to assess the degree of political commitment and institutional capacities relative to RoL reform based on specific criteria and indicators. The EU should develop a range of potential responses to any difficulties identified.

R5. The EU should encourage long-term actions featuring extended engagement

The EU should supplement traditional (stand-alone) measures with longer-term,

strategic sector wide approaches to support RoL. Flexibility should be embedded in project/programme design, particularly in volatile or complex contexts. The EU should increase the use of "mentoring" and "embedded" capacity building by EU Experts

R6. The EU should more actively and systematically promote learning

The EU should more actively and systematically promote capitalisation and learning from past experience, through improved exchanges and more effective measurement of results. The EU should develop or strengthen tools, databases or processes that highlight successful interventions, best practices, and lessons learnt. The HQ should provide additional support to the development of RoL indicators and benchmarks. EUD should improve the quality and frequency of its reporting to other EU services. The EU should continue to enhance the involvement of civil society in monitoring processes, which in turn would contribute to institutional learning.

1 Introduction

1.1 Objectives of the evaluation

The purpose of this evaluation was to provide an independent evidence-based assessment of the scope and performance of implemented and ongoing EU support for Rule of Law (RoL) funded by the Instrument for Pre-Accession Assistance (IPA I and II), the European Neighbourhood and Partnership Instrument (ENPI) and its successor the European Neighbourhood Instrument (ENI). It also encompasses support provided by global thematic instruments, such as the European Instrument for Democracy and Human Rights (EIDHR). The evaluation aimed to provide recommendations for the improvement of the programming and implementation of EU support to RoL in line with the principles laid down in the Communication "*A new EU Framework to strengthen the Rule of Law*" (COM(2014)158).

It is important to highlight that RoL reform cannot be compared to any other technical reform area (such as for example reforms in the field of agriculture). What makes RoL reforms a unique case is the fact that RoL reforms are often an essential part of a vaster state building exercise (like it is the case in the Neighbourhood East and the Western Balkans). This type of complex reform takes time and is subject to backsliding and progress over a long-term period. The underlying evaluation and its findings should be read and used keeping this fact in mind.

1.2 Evaluation scope and stakeholders

The evaluation assessed the performance of EU interventions to support RoL in ENI countries and IPA beneficiaries under implementation and/or decided during the period 2010-2017 (see below).

Table 1   Countries/ regions covered by the evaluation

IPA II beneficiaries	ENI partner countries
Albania, Bosnia and Herzegovina, Montenegro, Kosovo, the Republic of North Macedonia, Serbia, Turkey	Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Republic of Moldova, Morocco, Palestine*, Syria, Tunisia, Ukraine

Based on the description of RoL provided in the Commission's Communication entitled "*A new EU Framework to strengthen the Rule of Law*" (COM(2014)158) and other key policy documents, the evaluation focused on assistance provided to core state institutions, including the executive, the legislative, the judiciary, and relevant public institutions and civil society organisations. The evaluation assessed to what extent the EU support to these institutions led to strengthening of RoL in the respective beneficiaries, and in particular whether essential RoL principles were applied in practice. Table 2 gives an overview of areas of RoL covered.

Table 2   Areas of EU support to RoL covered by the evaluation

The Judiciary	Human Rights	Democracy
• Independence and impartiality • Accountability • Professionalism and competence • Quality of Justice • Efficiency	• Fair trial rights • Access to justice • Prevention of torture and ill treatment (prison system) • Freedom of thought, conscience, religion, expression (incl. free press & media), association and assembly	• Conduct of elections • Functioning of parliaments • Capacity building of political parties

The evaluation included an encompassing set of stakeholders, which included national, regional, and international stakeholders, as well as EU stakeholders. More information on the users and stakeholders is detailed in the updated consultation strategy (see Volume III - Annex 6).

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* This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of the Member States on this issue

2 Methodology

2.1 Overall approach

The methodology applied for this evaluation is based on the methodological guidelines on linking planning/ programming, monitoring and evaluation developed by the Directorate General (DG) Neighbourhood and Enlargement Negotiations (NEAR). Given the purpose and conditions of the evaluation, the most appropriate design for the evaluation was a multiple case study, applying a mixed-methods approach.

The evaluation was conducted in four main phases, as summarised in Figure 1 and detailed in Annex 2 (Volume III), between January 2018 and April 2019.

The evaluation was managed and supervised by the DG NEAR Unit A4 Thematic Support, Monitoring and Evaluation Unit. Evaluation progress was closely followed by an inter-service steering group (ISG), chaired by DG NEAR A4, and consisting of members of various EU institutions: Secretariat General, DG NEAR and DG for Justice and Consumers (DG JUST).

Figure 1   Key steps of the evaluation process
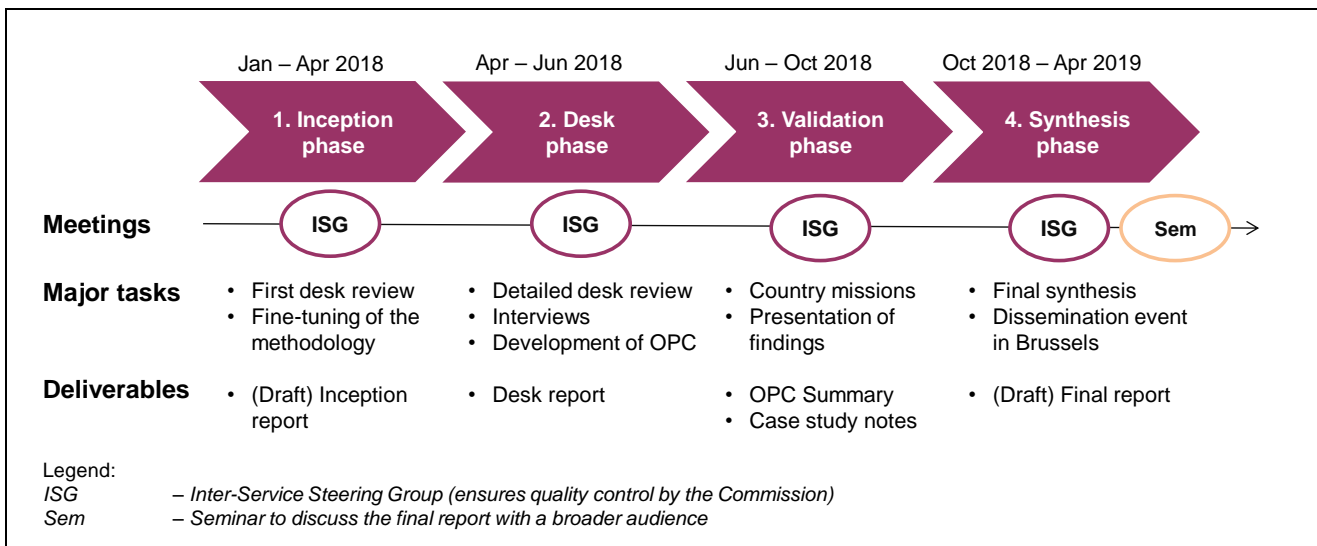
Building on a carefully reconstructed intervention logic, the evaluation process adopted a systematic approach that used various building blocks to gradually construct an answer to the eight Evaluation Questions (EQs) (see Figure 2), and to formulate conclusions and recommendations based on these findings.

Figure 2   Evaluation Questions

EQs	Evaluation criteria
Strategic framework, design and implementation	
EQ1: Overall strategic framework and EU institutional environment To what extent have the EU strategic orientations for the external support to RoL been clear and consistent with the wider goals of the EU's external co-operation?	Relevance, Coherence, Effectiveness
EQ2: Design process To what extent has EU support to RoL responded to the bilateral and regional contexts?	Relevance, Effectiveness, Sustainability
EQ3: Implementation/ modality choice To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?	Effectiveness, Efficiency, Coherence, Complementarity, EU value added
EQ4: Linkages with EU member states and other international stakeholders To what extent has the EU formed strategic and operational linkages with other international agencies, including EU Member State institutions, active in RoL?	Coordination, Complementarity, EU value added
Effects of EU Support	
EQ5: Effects on the legal and policy framework for RoL To what extent have EU-supported legal reforms and constitutional changes brought ENI countries and IPA beneficiaries into closer line with European standards in RoL?	Effectiveness, Sustainability
EQ6: Effects on RoL institutions I To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in ENI partner countries and IPA beneficiaries?	Effectiveness, Impact, Sustainability
EQ7: Effects on RoL institutions II To what extent has EU support increased the independence / impartiality / accountability of the judiciary and strengthened other institutions necessary for the RoL?	Effectiveness, Impact, Sustainability
EQ8: Broader effects To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?	Effectiveness, Impact, Sustainability

2.2 Intervention logic

In EU policy, a specific defined intervention logic or theory of change for ENI or IPA support to RoL does not exist. Moreover, although RoL principles have been developed in EU Member States (EU MS), a uniform official definition at the EU level has not yet been agreed on.

Given these circumstances, the evaluation team, in close consultation with the ISG, has reconstructed the intervention logic on the basis of EU policy documents relative to RoL, the ENI/IPA regulations, and the various strategic documents and reports prepared during the relevant period. This intervention logic (Figure 3) presents how EU support to RoL leads – starting with activities supported at beneficiary and regional levels – to anticipated outputs, outcomes and, ultimately, progress towards objectives in the form of impacts.

Figure 3 presents the reconstructed intervention logic (for more details see Volume III - Annex 2). It further presents at which stage of the intervention logic treated EQs are rooted.

Figure 3   Intervention logic and situation of the EQs
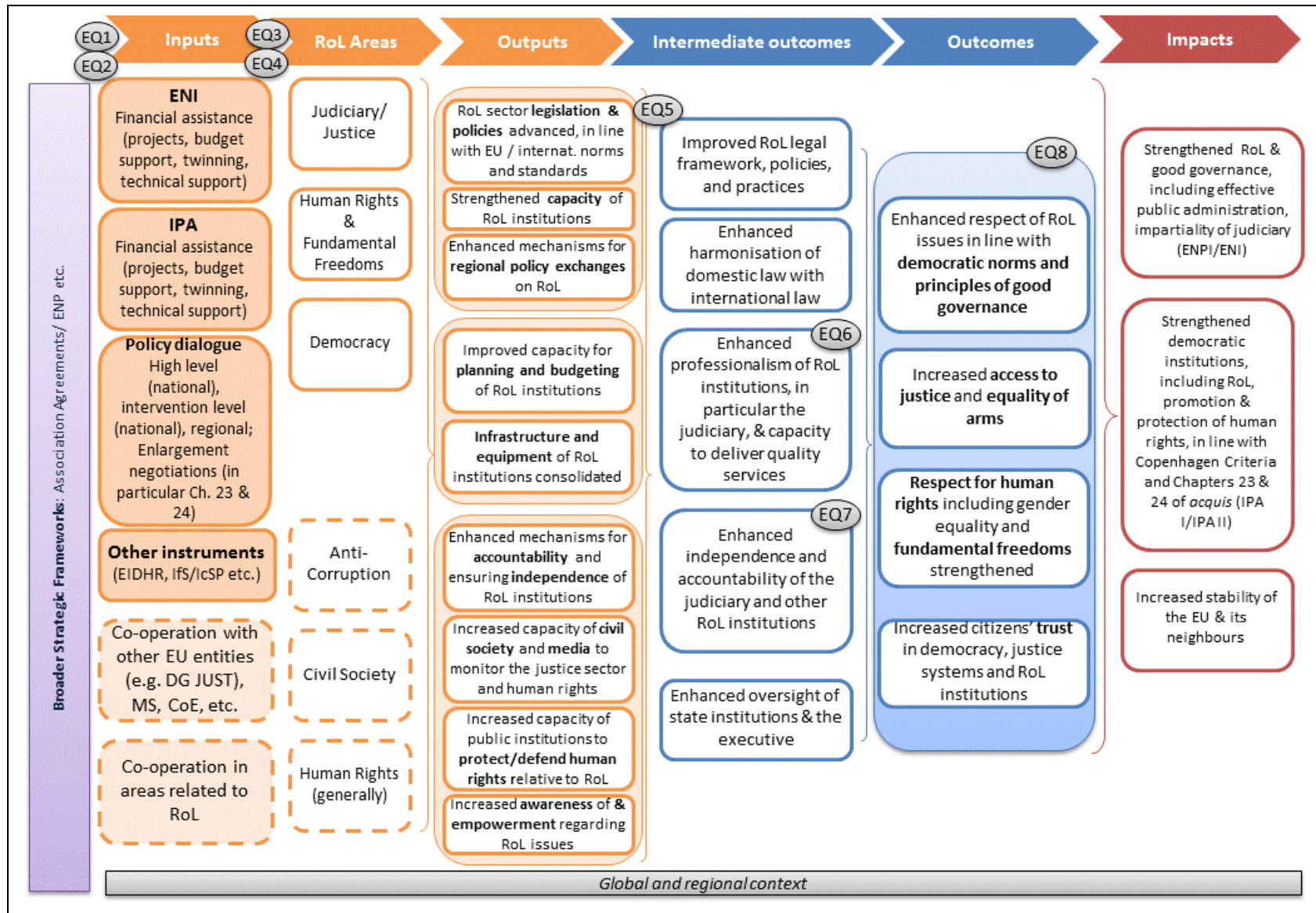
Source: Particip based on EU strategic and programming documents.

Note: in the Inputs and RoL areas columns, boxes with doted lines indicate elements that are relevant to RoL and were taken into account in a transversal and/or cross-cutting manner.

2.3   Data collection and analysis

The evaluation matrix, including the Judgement Criteria (JC) and indicators which structured each EQ, provided the overall framework for data collection and analysis. Data collection activities were carried out mainly during the desk phase and the field phase. These activities included the Commission's external relations data 'CRIS' extraction, document collection and review, case studies, email queries, phone and face-to-face interviews and an online Open Public Consultation (OPC). The combination of data collection methods and techniques varied according to the different JCs, but multiple sources were used systematically to triangulate the information collected (see Annex 2 - Volume III). Where possible, the evaluation team combined the use of qualitative and quantitative data, and relied both on primary and secondary data sources, while taking into account resource and time constraints. During all phases, the evaluation team verified that the set of methods and techniques was sufficiently broad to ensure a high level of data reliability and validity of conclusions, and identified gaps to be filled and hypothesis to be tested in the following phase (see Figure 4).

Figure 4   Data collection process
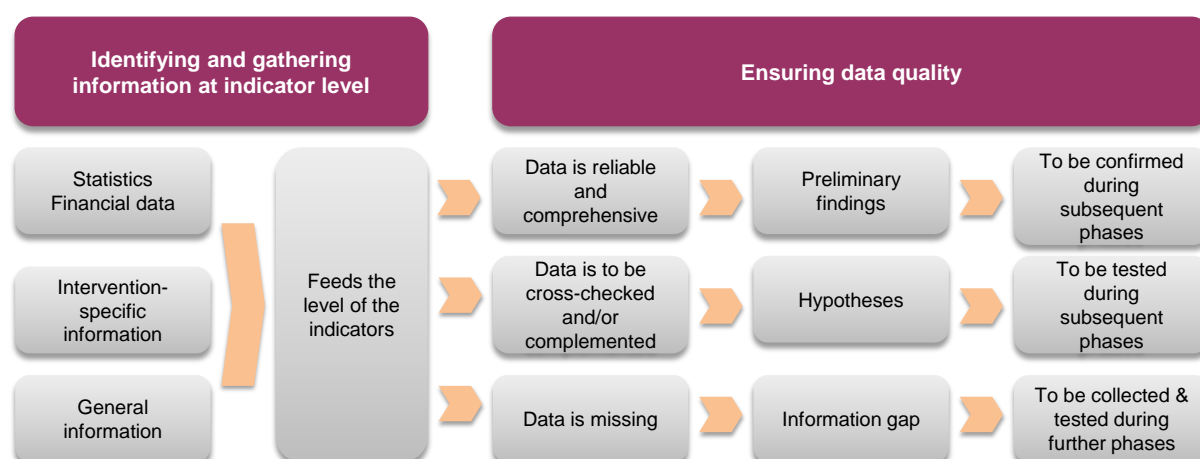
Source: Particip.

2.4   Main challenges and limitations

This evaluation did not face major or unusual challenges that would not be encountered in any other EU global thematic evaluation. However, like other evaluations, it faced a few external challenges over which the evaluation team had limited control. The most important challenges and limitations, together with steps taken in mitigation, are presented in Table 3.

Table 3   Main challenges and limitations

Challenge	*Situation encountered and mitigation response*
Related to the evidence base	
Scope	As early as the first ISG meeting, a number of issues related to the evaluation's scope needed to be dealt with, notably treatment of the security sector (generally excluded), corruption (included only when it directly involved the justice sector and other rule of law institutions), and the importance of including democracy and human rights. Close consultation with the ISG during the drafting of the Inception Report allowed all these issues to be resolved.
Project and programme documentation	Relevant information was not always easily retrievable, as only minor progress reporting (for example, ROM) was available in CRIS (and even this was incomplete). Therefore, the team combined data extracted from CRIS with information found online and documentation shared

Challenge	Situation encountered and mitigation response
	by EU Delegations (EUDs), geographical desks and stakeholders met during the field phase. This process proved however to be very time-consuming, with documents still being retrieved well into the field phase. The documents collected were organised in a structured database that could be accessed by the relevant team members via a secured platform.
Political and policy dialogue	Political and policy dialogue is complex, with a multitude of cause and effect linkages that the evaluation team was required to test. While documented effects were often not available in project and programming documents, the team conducted interviews at headquarters (HQ) and in partner countries, with a particular focus on questions related to policy and political dialogue. Given the close relationship between RoL, democracy and human rights, the team – during field missions – met with the political section as well as the co-operation section in EUDs.
The politicised nature of RoL	In a number of major partner countries, including case study and field mission countries, RoL is a heavily politicised topic. The evaluation team had to work carefully in such instances, triangulating official government interviews, EUD interviews, discussions with civil society groups, etc. Some difficulties were experienced in soliciting the views of civil society because of the risks implicit in providing a candid assessment. The field mission to Turkey, originally planned for soon after the presidential elections, was postponed to September as a result of political upheaval after the presidential elections held on June 24, 2018.
Mainly qualitative evidence	The evidence on which this evaluation builds is retrieved from its case studies and the OPC Summary, and is therefore primarily qualitative in nature. In order to draw on quantitative evidence, international indicators and indices related to RoL have been analysed and included.
Related to the planning and implementation of the evaluation	
Challenging field phase due to the summer break	Due to a minor delay in the submission of the desk report, the field phase started in July 2018. Given that this period included the European summer break period, the evaluation team encountered challenges in the organisation of field missions that allowed the experts to meet all relevant stakeholders. To ensure their availability, some missions and discussions were postponed to September 2018.
Limited field days	The proposed field missions were relatively short. To mitigate this, field mission preparation focused on identifying gaps in the evidence base and areas of uncertainty remaining after the Desk Phase. Further, a high number of phone interviews were conducted both before and after the formal in-country missions.
Perception of the evaluation	EUDs and stakeholders in case study countries were made aware that the purpose of the case study including a field mission was not to produce a country-level "mini-evaluation". However, the case study approach confused some of the entities involved. Misunderstandings on the scope of the evaluation generated a number of irrelevant comments in some case study responses.

3 Context

The evaluation took into consideration the overall political, social and economic context of both individual countries and regions during the period under consideration, and – where relevant – any events or conditions that had considerable influence on these contexts.

3.1 Context of EU Support to RoL

The concept of the rule of law (RoL) corresponds to a set of norms, policies, and practices based on the principle that the law is supreme, and that therefore Government and the people should act according to the law (Annex 3 - Volume III). It has become a dominant organisational model to regulate the exercise of public powers. RoL is fulfilled by ensuring that: (i) Constitutional or fundamental laws have supremacy over all other laws; (ii) Law has priority over the power of individuals, including leaders and officials; and (iii) Access to justice before an independent, efficient and professional judiciary is provided.

Although the RoL concept has been developed in individual EU Member States, a uniform definition at the EU level has not yet been developed. Nevertheless, the case law of the Court of Justice of the European Union (ECJ)[1] and of the European Court of Human Rights (ECtHR), and policy documents of the Council of Europe (CoE) have progressively complemented these general principles, and defined and expanded RoL as a common and fundamental value of the EU.

As further detailed in Annex 3 (Volume III), the historical and political context of countries has determined to a significant extent issues relating to RoL at local, country and regional levels. IPA beneficiaries' RoL context has been highly marked by (i) instability, ethnic, regional and cultural conflicts, (ii) steps towards accession, (iii) effects of global economic crisis, and (iv) political (in)stability. ENI countries' context has been marked by (i) the Arab spring, conflicts and rise of extremism in the southern Mediterranean as well as by (ii) (in)stability and democratic challenges in Eastern Europe.

3.2 Background analysis of EU Support to RoL (Mapping)

Throughout the evaluation, the evaluation team developed a database of main RoL interventions[2] supported by the **Instrument for Pre-accession Assistance (IPA) and European Neighbourhood Instrument (ENI)**. The inventory focussed on interventions that were directly related to the judiciary/ justice sector, human rights and democracy, the three areas of RoL under review in this evaluation. Annex 3 (Volume III) presents detailed analyses.

The inventory exercise led to the following overall observations:

- The overall commitments to IPA beneficiaries amounted to over EUR 563 million (for their evolution during the evaluation period see Figure 5); the overall commitments to ENI amounted to over EUR 700 million (excluding regional programmes) (for their evolution during the evaluation period see Figure 6); of this EUR 228 million was committed to ENI East countries and EUR 475 million to ENI South countries.

- The EU employed a diversity of methods of implementation in both IPA and ENI beneficiaries: sector support programmes (some, in the ENI region, using budget support), large programmes managed through service contracts, financing of infrastructure and

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[1] COM (2014) 158 Final "A new EU Framework to strengthen Rule of Law. Annex 1, pp. 1-2.

[2] For the sake of consistency and clarity, the evaluation team employs the term "intervention" to refer to actions, projects, programmes or a set of activities which share the same specific objectives and are funded under the same EU financing decision.

equipment, specific technical assistance (TA) projects, twinning, etc. It appeared that the use of specific modalities seemed to largely depend on country specificities.

- The four largest IPA recipients were Turkey (EUR 155 million), Albania (EUR 107 million), Kosovo (EUR 106 million), and Bosnia and Herzegovina (EUR 76 million). The ENI countries with the largest commitments were mostly in ENI South countries, including Tunisia (EUR 111 million), Jordan (EUR 91 million), Georgia (EUR 88 million, and Morocco (EUR 85 million). This is illustrated by Figure 7.

- Commitments have fluctuated from one year to another. Related to IPA beneficiaries, there is an upward trend over time driven by important allocations to Turkey since 2014. Related to ENI beneficiaries, there has been no clear upward or downward trend observed in any of the sub-regions.

Figure 5   Evolution of committed amounts in IPA beneficiaries over time
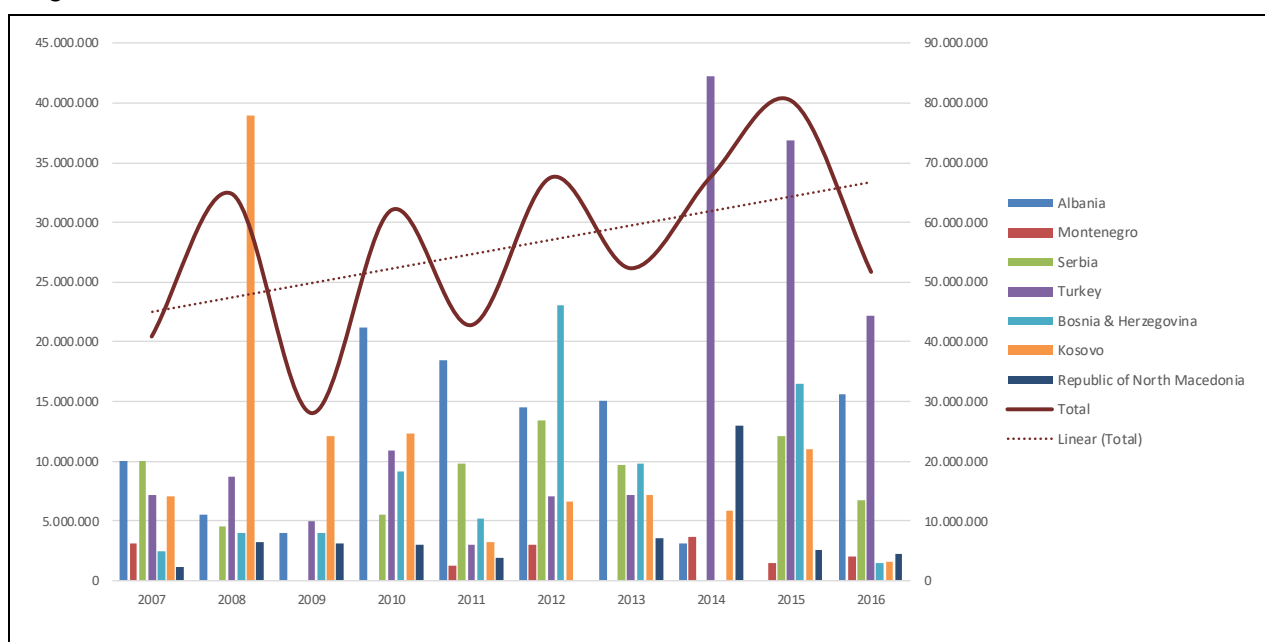
Source: Particip, based on data from programming documents (including action documents) and information received from EUDs.

Figure 6   Evolution of committed amounts in ENI countries over time
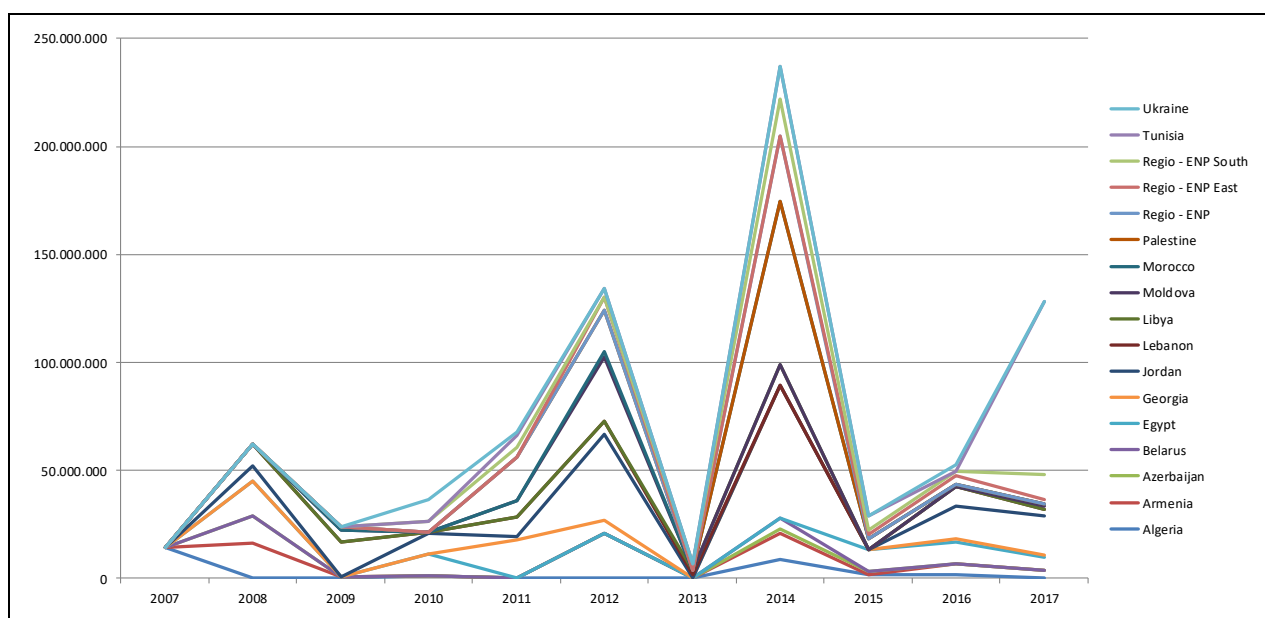
Source: Particip, based on data from CRIS

Figure 7   Committed amounts to ENI countries and IPA beneficiaries (2010-2017)
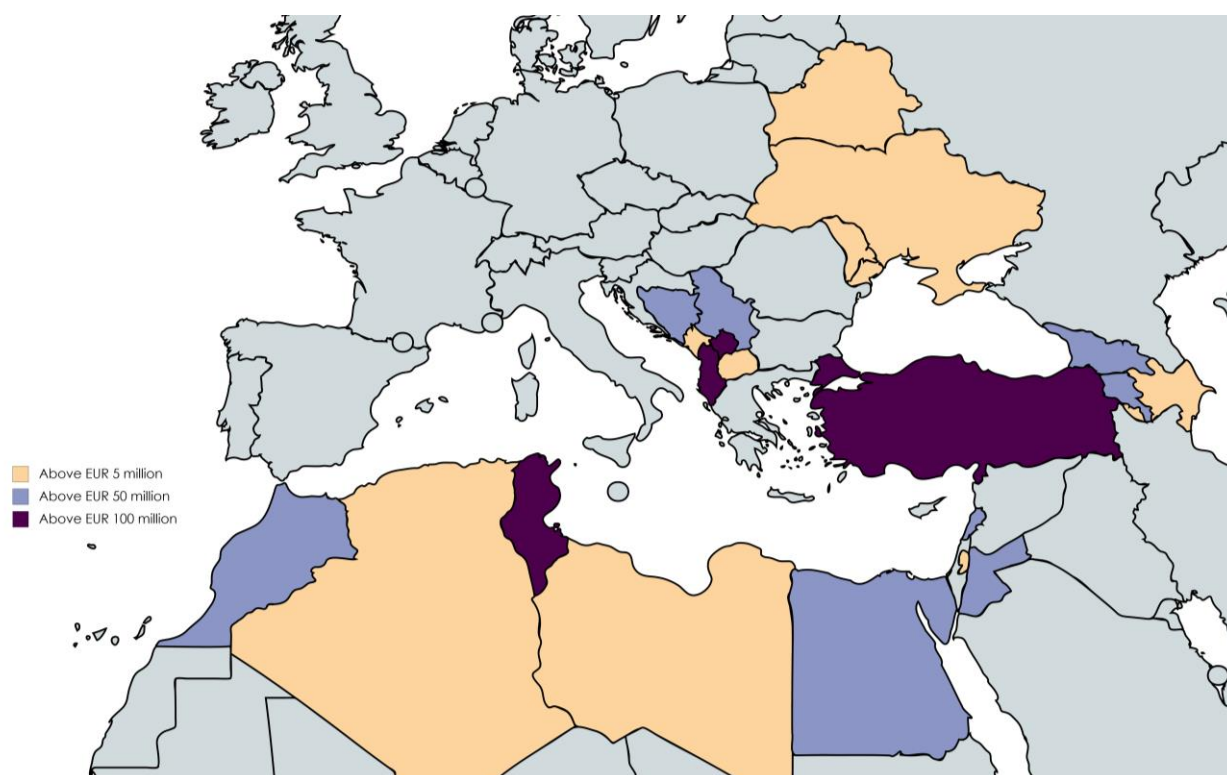
Source: Particip based on data from CRIS, programming documents and information received from EUDs.

EU support to the RoL in IPA beneficiary/ ENI partner countries[3] was also funded through **"non-geographic financing instruments"**. The **EIDHR** has been extensively used in the IPA and ENI regions to support projects in the area of human rights, fundamental freedoms and democracy. This instrument is designed to support civil society to become an effective force for political reform and defence of human rights. For the period 2007-2013, EIDHR support to IPA beneficiaries amounted to EUR 39 million, and the support to ENI partner countries to EUR 92 million[4]. The top five recipients were: (i) in ENI, Georgia (EUR 9.1 million), Israel (EUR 8.6 million), Palestine (EUR 7.4 million), Belarus (EUR 5.4 million) and Morocco (EUR 5.1 million); (ii) in IPA, Turkey (EUR 10.1 million), Bosnia and Herzegovina (EUR 8.9 million), Serbia (EUR 5,1 million), Kosovo (EUR 3,8 million) and the Republic of North Macedonia (EUR 3.4 million). For the period 2014-2017, EIDHR support to IPA beneficiaries amounted to EUR 20 million, and the support to ENI partner countries to EUR 50 million. The top recipients have remained unchanged in the IPA region, however, in the ENI region, Syria and Egypt have become the top recipients, followed by Palestine, Belarus and Israel, which were already top recipients in the previous period.

It is important to highlight that the **Instrument for Stability (IfS)** and its successor, the **Instrument contributing to Stability and Peace (IcSP)**, also have explicit objectives related to the RoL area.

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[3] Geographic areas under EIDHR do not explicitly refer to IPA and ENI. Relevant EIDHR "regions" for this evaluation are: "Western Balkans and Turkey" and "Neighborhood and Russia". In the following section on EIDHR, if not indicated otherwise, the expression "IPA beneficiary/ENI partner countries" refers to the countries mentioned in the ToR of the evaluation. In particular, this means that Russia is not included in this analysis.

[4] All figures correspond to contracted amounts.

4   Main findings

4.1   Strategic framework, design and implementation

A first set of EQs

This section presents the answers to EQs on the strategic framework, design and implementation.

4.1.1   EQ1 – Strategic framework and EU institutional environment

To what extent have EU strategic orientations for the external support of RoL been clear and consistent with the wider goals of the EU's external co-operation?
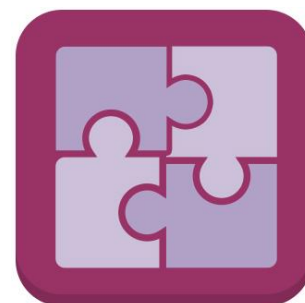
Rationale and coverage of the question

With the Agenda for Change (2011), and recently re-affirmed in the new European Consensus on Development (2017), the EU's goals in external support go beyond traditional development co-operation. Both documents explicitly highlight democracy, human rights, and the rule of law. The new Consensus calls for a rights-based approach in all development co-operation. The EU Global Strategy (EUGS) calls for external actions to support European values and goals, promoting the RoL, democracy, and human rights and fundamental freedoms being prominent among them.

Summary answer to the Evaluation Question
RoL occupies a central place in EU external support, and is firmly anchored in the establishing documents of the European Union, and articulated in the instruments under consideration and their policy documents. It is complemented by policy documents and instruments relative to RoL, democracy and human rights.
The consistency of the EU institutional framework has been high. EU strategic policies relative to RoL are internally consistent and conveyed uniformly across geographical regions. Interactions between EU headquarters (HQ) and EU Delegations (EUDs) have been mutually supportive. Thematic units and geographic desks have had a balanced role, and several mechanisms have helped strengthen coordination and internal coherence.
Bilateral support to RoL is coherent with other forms of support (ex. EIDHR, IcSP), and with broader external and security policy.
EU guidelines and reference documents, feed into policy, approaches, and programming. They are well communicated internally and are generally incorporated in programming. EU progress reports and action plans are of good quality, however, the quality of country-level monitoring processes is highly variable, and there is little evidence they feed adequately into strategy, programming or implementation. In the IPA context, however, EUDs are more routinely

involved in report writing.

As the Enlargement policy framework has evolved, the need to prioritise RoL early in the accession process has been emphasised. The "new approach" to accession negotiations[5], the recognition of the need for long-term processes and continuity of support and uptake, and a growing insistence on clear indicators of achievement and continuous assessment, represent major advances.

Dramatic shifts in the Neighbourhood South context required urgent reconsideration of the ENP, with greater support provided to building "deep democracy", in particular by strengthening RoL. The "more for more" principle is broadly understood, and has been actively used to stimulate alignment. In problematic contexts, however, the principle has not always been invoked, even where justified. Use of Article 7(10) of the ENI Regulation[6] provides one element of recourse, but has not occurred even where this has clearly been an option.

Political and policy dialogue, support to civil society, and the CoE's added value are considered to provide the strongest contributions to RoL. There has been increased emphasis on differentiation and more flexible approaches, however this brings some risk of dilution of EU external co-operation objectives. While considerable weight is given to political assessment in the development of policy and programming, greater emphasis could be placed on technical assessment.

Internal institutional clarity of EU strategic orientations achieved (JC11)

Overarching EU strategic orientations related to RoL

The intervention logic of RoL actions in third countries is anchored in EU policy documents, notably in the instruments under consideration (IPA I/IPA II/ENPI/ENI). These are complemented by other policies and instruments relative to rule of law, democracy and human rights having a general or global application. Furthermore, the EU policy framework consistently and clearly emphasises that EU support is to be based on strengthening democratic institutions, the RoL and respect for human rights. This is reflected in each of the financing instruments, and related policy and strategy documents.

RoL issues under IPA

As the Enlargement policy framework has evolved, the need to prioritise RoL early in the accession process has been emphasised. Under IPA I[7], assistance to candidate countries focused on adoption and implementation of the *acquis communautaire*, whereas assistance for potential candidates focused on progressive alignment with the *acquis*. This was framed differently in IPA II, whose overall objective was to support eligible beneficiaries to implement the reforms necessary to comply with European values and progressively align with the EU's rules, standards, and practices[8]. As the policy framework has evolved, the need

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[5] COM (2012) 600 Communication from the Commission to the European Parliament and the Council "Enlargement Strategy and Main Challenges 2012-2013": https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2012/package/strategy_paper_2012_en.pdf. See also Box 1 of this chapter and Annex 2: Policy framework relative to RoL in IPA beneficiaries.

[6] Regulation (EU) No 232/2014 of the European Parliament and of the Council establishing a European Neighbourhood Instrument: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:077:0027:0043:EN:PDF.

[7] Council Regulation (EC) No. 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession (IPA), Preamble, Article 2 and Article 21.

[8] Regulation (EU) No 231/2014 of the European Parliament and of the Council of March 11, 2014 establishing an Instrument for Pre-accession assistance (IPA II), Preamble, Article 1, Article 2, Article 3, Annexe II.

to prioritise RoL early in the accession process has increasingly been emphasised, particularly since RoL issues within the EU itself have emerged with regard to new EU member states (EU MS) since the 2010 enlargement. The box below provides details related to two recent policy documents.

Box 1   RoL in the evolving Enlargement policy framework

The "new approach" to accession negotiations outlined in the 2012 Communication on its Enlargement Strategy (COM (2012) 600) emphasised that "*the rule of law is firmly anchored at the heart of the accession process, laying the foundation also for future negotiations*". This introduced the first of three pillars of enlargement, under the heading of "fundamentals first", which focuses, inter alia, on RoL: Chapter 23 - Judiciary and fundamental rights, and Chapter 24 - Justice, freedom and security. The other two fundamentals are public administration reform and economic governance; the EU has stressed, however, the powerful inter-linkages between these pillars.

In the 2016 Communication on Enlargement Policy (COM (2016) 715), the Commission emphasised that, given the complex nature of necessary reforms and persistent structural shortcomings, long-term processes were necessary, particularly in the area of RoL. The existing IPA policy framework emphasises that in order to ensure internal institutional clarity of EU strategic orientations, there must be continuity of support and uptake across a broad range of RoL concerns, with clear indicators of achievement and continuous assessment of whether the necessary foundations for future support have been laid and remain in place.

RoL issues under ENPI/ ENI

Dramatic shifts in the Neighbourhood policy context required an urgent reconsideration of the ENP, and the EU undertook to provide greater support to building "deep democracy", in particular relative to RoL. The 2004 European Neighbourhood Policy[9] recognises that the future of the EU and its neighbours is interlinked, and provides a strategy promoting stability, economic growth and security. The ENPI[10] Regulation established in its areas of co-operation the promotion of RoL and good governance, promotion and protection of human rights, and support to democratisation.

Whilst the overall reaction of the EU in the aftermath of regional events was commendable, the current Evaluation highlights that this has proven challenging to implement in practice, in particular in contexts that have been hostile to reform.

EU engagement with RoL in the Neighbourhood has taken some time. Regional Strategy Papers[11] do not address core RoL concerns directly, but

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[9] COM (2004) 373 Communication from the Commission "European Neighbourhood Strategy Paper": http://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com(2004)0373_/com_com(2004)0373_en.pdf.

[10] Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood Partnership Instrument: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:r17101&from=EN.

[11] ENPI Eastern Regional Strategy Paper 2007-2013 and Regional Indicative Programme 2007-2010; ENPI Regional Strategy Paper for the Euro-Mediterranean Partnership 2007-2013 and Regional Indicative Programme 2007-2010 (revised by the Regional Indicative Programme 2011-2013, and reaffirming the RSP 2007-2013 and

refer to better governance, civil society, and promotion of European standards, approaches and practices. However, an examination of the entirety of bilateral strategic and programming agreements indicates that commitment to RoL issues is expressed frontally, and indeed the regional programmes under consideration (EuroMed Justice (EMJ) and Horizontal Facility (HF)) address these concerns almost exclusively.

Strengthening commitment to core EU values and consistency of approaches, the COM (2011) 303 "*A new response to a changing Neighbourhood*"[12] introduced the concept of "more for more"[13], meaning that partners that make progress on building and consolidating democracy and respect for human rights and RoL would receive greater support, not only financially, but also in terms of access to European markets and greater mobility. There appears to be broad understanding of this principle, which has been used to stimulate alignment in some countries, and to highlight and ensure accountability for backsliding in others. In certain countries that have experienced severe backsliding and challenges, and where authorities have manifested an unwillingness to engage in reform, the "more for more" principle has not been invoked, even where this would have been amply justified.

An in-depth 2013 analysis of twelve Country Progress Reports allowed the EU to assess the performance of the revised ENP, and contributed significantly to the overall policy framework. While progress across the Neighbourhood was considered "uneven", the resulting synthesis Communication[14] emphasised that reform is possible where political will is present and society is actively engaged in the process.

With regard to the Eastern Partnership (EaP) region, the role of improved governance, RoL and justice reform are partially encompassed by the "*EaP 20 Deliverables for 2020 – focusing on key priorities and tangible results*", which are reflected in subsequent programming documents and suggest consistency between broad strategic goals and programming. However, RoL is primarily addressed from an anti-corruption perspective, and reform of the judiciary and access to justice. Human rights and democracy are not directly within the scope of the deliverables, with the exception of references to women's rights and access to information.

While reaffirming RoL principles, the 2013 Communication and 2017 EaP Deliverables do not significantly develop RoL objectives beyond those already established in the founding instruments; they identify what the EU intends to provide, rather than how objectives are intended to be achieved. However, the 2015 Joint Communication on ENP review represents a

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ENPI Inter-Regional Strategy Programme 2007-2013); COM (2011) 303 "A new response to a changing Neighbourhood".

[12] COM (2011) 303 final, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A new response to a changing Neighbourhood": http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0303:FIN:en:PDF.

[13] Discussed in detail in the conclusions section.

[14] JOIN(2013) 4 final, Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "European Neighbourhood Policy: Working towards a stronger partnership":http://www.epgencms.europarl.europa.eu/cmsdata/upload/2a9f8c0d-5229-4304-8880-2507503cd005/EaP_2013_comm_conjoint_en.pdf.

milestone in ENP policy revision, with its emphasis on good governance, democracy, RoL, and human rights[15]. This went beyond what was already established in the ENI regulation, referring to the Action Plan on Human Rights and Democracy[16], to the EU Gender Action Plan II[17], and to increased support to civil society.

Whilst the principles, Communication and Deliverables are reflected in related strategy and programming documents, and almost certainly contribute to the flexibility required to achieve differentiation, overarching approaches are not articulated for the ENI regions as a whole.

General observations on transversal issues

While there is a high degree of specificity at the individual country level, it has been difficult to observe consistent trends across each of the regions relative to the causes of specific RoL challenges. The consistency between political and policy dialogue, the implications of different approaches and modalities of support, the degree of political and institutional will, and the level of consultation and implication of civil society are discussed as transversal issues throughout the current Report.

EU definition of RoL[18]

Whilst existing policy is considered internally coherent, the absence of a single, formal and comprehensive EU definition of RoL[19] may impede clarity and consistency, and more practically the development of approaches and indicators to achieve and measure change. It is also arguable however that the absence of such a definition may facilitate flexibility and responsiveness, particularly in the light of the considerable political and institutional diversity in the regions under consideration.

EU internal institutional coordination

Overall coordination and interactions between the various EU services in Headquarters is generally effective. DG NEAR thematic units and geographic desks have engaged in mutual support, providing direct inputs in the development of EU guidelines, ensuring that relevant RoL policy, strategy and guidelines are applied across all DGs and implemented in the field, maintaining direct contact with EUDs, and providing coordination for EIDHR issues. EU interlocutors confirm that relations with EEAS, DG JUST and DG DEVCO are qualitative and sustained. Several key mechanisms help strengthen this coordination and internal coherence, for example regular bilateral quality review processes, the annual risk management framework, and the informal European Commission inter-service group on justice reform in external relations, coordinated by DG JUST. This inter-service group brings together expertise on these issues within the Commission, and meets several times

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[15] SWD (2015) 500, Section IV.

[16] Council Conclusions (10897/15) on the Action Plan on Human Rights and Democracy 2015-2019: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/action-plan-on-human-rights-and-democracy-2015-2019_en.pdf.

[17] EU Gender Action Plan 2016-2020 at year one, European Implementation Assessment: http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603256/EPRS_STU(2017)603256_EN.pdf

[18] See Volume 3, Annex 3 for more details.

[19] The Venice Commission Rule of Law Checklist groups the various principles and sources of rule of law together in a single document, however its purpose is to "provide a tool for assessing the Rule of Law in a given country from the view point of its constitutional and legal structures, the legislation in force and the existing case-law" (paragraph. 24): http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e.

per year. DG NEAR also coordinates several internal EU networks encompassing justice, anti-corruption and home affairs (JAI-NET), fundamental rights and democracy (FRI-NET), public administration reform (PAR-NET), economic governance (ECONET), and civil society (CISO-NET).

A central place of RoL in external support (JC12)

RoL in EU external support under IPA

The specific objectives of IPA II include strengthening democracy and its institutions, and promotion of human rights and fundamental freedoms. **The thematic priorities for assistance related to RoL and human rights included establishing and promoting the proper functioning of all institutions necessary to secure the RoL**. The 2014 Joint Communication[20] repeatedly emphasises the interdependence of human rights, democracy and anti-corruption concerns. The 2018 Western Balkan Communication[21] identifies fundamental rights and good governance, along with RoL, as the most pressing issues in the Western Balkans, and the benchmark against which countries will be judged, characterising these as "well-established membership criteria" (p. 18).

RoL in EU external support under ENPI/ENI

As indicated above, **ENPI[22] called for a privileged relationship between the EU and its neighbours based on common values including democracy, human rights, and the RoL**[23]**.** The ENI Regulation[24] re-affirms these principles, with Article 2 outlining the specific objectives of EU support, which prioritises promoting, in addition to the RoL, human rights and fundamental freedoms, establishing deep democracy, promoting good governance, and developing civil society. Of particular relevance is Article 7(10) of the Regulation, which introduces the possibility of revising programmes in the event of crisis or threats to democracy and human rights, a provision that has not been utilised to date. Article 7(10) could be used not only relative to threats that are sudden, dramatic and visible, but also those that are more insidious and deeply corrosive in nature. It has been noted by the European Parliament that the ENI Regulation, unlike its predecessor, does not contain an explicit human rights suspension clause[25]; it is considered however that the current Article 7(10) allows for a broader range of responses, that does not explicitly exclude suspension.

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[20] COM (2014) 158 "A new EU Framework to strengthen Rule of Law".

[21] COM (2018) 65 "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans".

[22] Op. cit.

[23] Ibid. Preamble (4)

[24] Regulation (EU) No 232/2014 of the European Parliament and of the Council establishing a European Neighbourhood Instrument:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:077:0027:0043:EN:PDF.

[25] "*The European Parliament notes that [ENI does] not contain any explicit reference to the possibility of suspending assistance in cases where a beneficiary country fails to observe the basic principles enunciated in the respective instrument and notably the principles of democracy, rule of law and the respect for human rights*": https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013AP0567.

Regional East Strategy Papers[26] identify RoL and democracy as "*critical priorities*", and reaffirm that "*these values and principles [human rights, democracy and RoL] are […] the only non-negotiable issues underpinning our Eastern Partnership*" (p.9). The Regional South Strategy Paper (2014-2020) states that (p.2): "e*mbedding deep and sustainable democracy in the future will rely upon robust democratic institutions*". The 2015 review of the ENP committed the EU to continuing support to RoL, good governance, democracy and human rights, and pledged to support civil society. The 2017 joint report on the implementation of the ENP review[27] emphasised the EU's commitment to *"democracy, rule of law and respect for human rights, and good governance"* (p.3). Discussions on partnership priorities and revised Association Agendas and political dialogue promoting respect of international human rights commitments were stressed (p. 11), as were gender equality and integration of minorities through the strengthening of civil society in the South neighbourhood and the application of the EU Gender Action Plan 2016-2020[28].

RoL in broader EU policy

IPA/ENI strategy relative to RoL remains highly coherent with broader external and security policy, and with other instruments (EIDHR, CSF etc.). Large, structural democracy and governance programmes often integrate RoL concerns, with some components of direct relevance to RoL and others far less so. The Instrument contributing to Security and Peace (IcSP) provides "embedded complementarity", with EU interlocutors describing the instrument as a "speedboat" designed specifically to intervene rapidly in a highly targeted manner on themes addressing or complementary to RoL support provided by other, larger instruments.

Clarity for partner countries of EU expectations in RoL adequately achieved (JC13)

IPA

Clarity of EU expectations relative to RoL is not problematic in the Enlargement context, since its principles are firmly embedded in the *acquis* and notably within Chapters 23 and 24. DG NEAR representatives highlighted in exchanges with the Evaluators the essential role of EUD in this regard, since they prepare first drafts of Enlargement reports, structured around the criteria. It was also noted that planning shifted in 2015 from annual to multi-annual strategies, which is considered by these interlocutors to have increased overall levels of understanding, which they described as being very high. Prior to April 2018, RoL was reported in the political criteria, and then separately relative to Chapters 23 and 24; the issues are now, however, articulated in a clearer manner (sections for RoL, security, etc.), which has helped some EUD and IPA beneficiaries understand what is expected of them.

ENPI/ENI

Clarity of EU expectations for partner countries in the ENI region is

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[26] Regional East Strategy Paper (2014-2020) and Multiannual Indicative Programme (2014-2017): http://eeas.europa.eu/archives/docs/enp/pdf/financing-the-enp/regional_east_strategy_paper_2014_2020_and_multiannual_indicative_programme_2014_2017_en_.pdf.

[27] JOIN(2017) 18 final, "Report on the Implementation of the European Neighbourhood Policy Review": https://eeas.europa.eu/sites/eeas/files/2_en_act_part1_v9_3.pdf.

[28] EU Gender Action Plan 2016-2020 at year one, European Implementation Assessment, p.13-14: http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603256/EPRS_STU(2017)603256_EN.pdf

somewhat more uneven. Recent policies have emphasised the need to tailor support and adopt flexible approaches; this allows for greater alignment and responsiveness to both the country-level context and to EU expectations, but also entails certain risks, such as the dilution of objectives. The 2011 Communication "*A new response to a changing Neighbourhood*"[29] called for "*mutual accountability*", that is, partnership with societies, and more careful tailoring of support to individual country needs (sometimes referred to as "differentiation"). It recognised that not all partners aspired to European rules and standards, and promised renewed emphasis on differentiation as a consequence.

The 2015 Review of the European Neighbourhood Policy[30] committed to a more flexible approach based on less rigid progress reporting tied to agreed goals and relevant high-level meetings with partners, although reporting would still contain elements regarding human rights, and RoL. This opened up the possibility of support to partners wishing to address a limited number of priorities.

There is some concern as to whether bottom-up and flexible approaches, which can allow entry points into more sensitive sectors, also carry strong risks of diluting the coherence and consistency with the wider objectives and values of EU external co-operation.

On a similar issue, there are broad indications, and an inherent risk that some ENI partner countries align themselves with what they consider the EU wants, in order to secure financing agreements, and then utilising flexibility to gradually limit the scope of support. RoL issues are extremely sensitive in all the regions under consideration, and it is perhaps unrealistic to expect that EU and beneficiary/ partner countries will ever fully share all values. The clarity of EU goals in RoL may not be enough to dissuade partners from engaging in strategic behaviours to benefit from EU support while subverting its underlying goals.

EU institutional interlocutors repeatedly highlighted the importance of taking into account cultural and institutional factors in the design and implementation of programmes, since this also helps ensure clarity of EU expectations in individual partner countries.

Regular reporting at HQ level but with limited quality (JC14)

General observations

RoL has been recognised as an area in which progress is slow and which is often crucial in order to consolidate change within a large number of interlinked, and often conservative or even reactionary, institutions. In order to guarantee such incremental progress, timely reporting from field to HQ, learning, and strategic adaptation are critical. At the same time, assessing RoL reform is uniquely challenging, since it encompasses a series of complex principles that are difficult to analyse in the absence of technical knowledge, and a large number of institutions performing interlinked processes that cannot be quantitatively examined to the same extent as other sectors.

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[29] Op. cit.
[30] Op. cit.

RoL-related reporting by EU HQ

Reporting is conducted in a regular comprehensive and strategic manner at the HQ level, and serves to feed into overall policy, approaches and programming. EU regional and country progress reports and action plans are also of uniformly good quality. They outline the political and contextual developments that explain RoL improvements and backsliding. Various guidelines, reference documents and thematic fact-sheets are also utilised to support RoL policy, programming and implementation, including the ensemble of EU Human Rights Guidelines, Guidelines on Sector Budget Support, and Reference Documents on governance, parliamentary support, justice and RoL, and civil society.

Quality and use of EUD reporting

However, the quality and frequency of internal and external programme evaluation and monitoring processes and reports at the operational level is highly variable, and there is little evidence that they are being adequately shared and therefore feeding into strategy. This includes mid-term and final/ex-post project/programme evaluations, Results Oriented Monitoring reviews, and External Assistance Management Reports. Additionally, such documentation has proven at times extremely difficult to source, perhaps because it is not routinely sent from the field or not conducted, or because document archiving needs strengthening. There is little evidence that monitoring and evaluation processes are feeding into strategy or project/programme adjustments, or that there is integration of lessons learnt. Indeed, there are no centralised repositories or databases that highlight successful interventions and best practices, as well as lessons learnt.

However, various tools, currently under development, are intended to support the measurement of the results of EU support. A key initiative in this regard is the OPSYS programme[31], as well as the justice sector indicators currently being developed by DG JUST in line with CEPEJ guidelines.

While political assessment is given considerable weight in policy and programming development, greater emphasis on the use of technical analysis (for example, qualitative analysis of constitutions, assessments of court efficiency) of in-country situations and developments is needed, since this helps provide a basis for developing indicators, assessing risk, and pinpointing areas of need, and in turn supports political assessments, and the development of objectively justifiable "red lines" where support to RoL may be counter-indicated.

TAIEX (Technical Assistance and Information Exchange instrument) missions and the partnership with CoE address these aspects to some degree, in that these have provided to date important *ad hoc* assessments of key technical criteria, however these cannot replace the need for routine, systemic and cyclical technical analyses.

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[31] Operational Information system (OPSYS) is a programme that will gradually offer improved operational processes and tools to DG DEVCO, DG NEAR and FPI staff, allowing them to easily access information on projects/programmes, prepare, validate and monitor them, as well as manage results (https://europa.eu/capacity4dev/opsys).

4.1.2 EQ2 – Design Process

To what extent has EU support to RoL responded to the bilateral and regional contexts?

Rationale and coverage of the question

EU partners have inherited a RoL concept different than that in most EU MS; one in which the judiciary is heavily influenced by the executive (sometimes the legislature) and in which de jure rather than de facto justice is more to be found. The Balkan, post-Soviet Neighbourhood East, and post-Arab Spring Neighbourhood South contexts differ to some degree, but all share the same characteristic, reaffirmed in successive EU high-level strategy documents[32] and programme reviews[33], that basic European and international standards are not met. How has EU support to RoL been designed to address these issues and give rise to results? Have security and stability and the political conditions for constructive dialogue been taken sufficiently into account?

Regional RoL contexts could be briefly summarised as: i) the post-Soviet context in the Neighbourhood East, ii) the post-War context in the Western Balkans, and iii) the complex Arab Spring context in the Neighbourhood South.

Summary answer to the Evaluation Question
As a major donor, and with its accompanying leverage, a participant in policy dialogue and adherent to the partnership model that governs co-operation, EU alignment with national policy frameworks is something of a *fait accompli*. EU assistance has been highly responsive to needs identified in dialogue with partners and situation analyses. However, analysis of the political economy, socio-cultural, and institutional context has been weak at programming stage, in addition to which, lessons learned during implementation have not always been taken into account. Incentives on both the donor and beneficiary side favour agreement on actions even when opportunities for results are realistically limited. This explains the predominance of situations where policy commitments have been strong, but implementation has been weak.
Case studies have revealed many instances of EU flexibility. Flexibility is not, however, without its risks, and alignment can be a double-edged sword: just as the EU can align to national priorities, national authorities can align their priorities to EU expectations, in many cases with less than enthusiastic commitment when it comes to implementation. With the exception of Turkey, (where cooperation was redirected post-coup attempt from penitentiary and justice sector reform projects to support human rights and civil society[34])) and to some extent Moldova, (where budget support was drastically scaled back as a result of backsliding on judicial reform

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[32] ENI partner countries' and IPA beneficiaries' Country/ Regional Strategy Programmes, Single Support Frameworks and Multiannual/National Indicative Programmes related to the pre-2014 and the post-2014 programming cycle.

[33] Different reviews of EU interventions in ENI partner countries and IPA beneficiaries that fall into the evaluation period 2010-2017.

[34] See Volume 2: Case study note on Turkey.

and free and fair elections), thet EU has continued to support RoL reforms even when the implementation record was disappointing and political will to reform was evidently lacking.

Evidence is mixed on the participatory role of civil society. In countries where it is well-developed, civil society is, on the evidence, well involved in programming, implementation and monitoring of EU support to RoL; in those countries where it lacks capacity, its involvement is more problematic. The IPA region presents some troubling features. In the Western Balkans, the relationship between government and civil society has noticeably deteriorated over time, as documented in case studies notes for Serbia and Montenegro. The post-coup attempt crisis in Turkey has led the EU to seriously question support to Government, and aid has been re-directed to areas such as supporting civil society and human rights that are most threatened by the authoritarian turn in the country.

Successful alignment but challenges related to participatory processes (JC21)

Alignment with national policy frameworks

Alignment of EU support with national strategies and policies has not been found anywhere to be a problem. The EU has assiduously supported countries to develop policies (including deep constitutional and judicial reforms), strategies and action plans – through policy dialogue, TA, budget support, that is, the wide range of instruments and modalities (see also EQ 3). The case study notes found in Volume II document the technically proficient alignment of EU support to national priorities over a broad range of circumstances, from IPA beneficiaries where Stabilisation and Association Agreements (SAAs) and Chapters 23 and 24 are the touchstone accession to ENI beneficiaries where Association Agreements fill the same role. The EU is a donor with incentive to support in order to be a policy player; that is, the *realpolitik* of co-operation. Partner countries/ beneficiaries have an incentive, material if no more, to receive. In the case of IPA beneficiaries, the situation is quite particular: accession requires adherence to the *acquis communautaire* and European standards, which consists primarily of identifying priorities and potential areas for reform. The close partnership between the EU and the CoE, with its standard setting bodies, monitoring processes, and technical co-operation expertise, contributed to good alignment in IPA beneficiaries. Much the same is true for the Association countries, although with accession not on the table, the incentives are weaker on the beneficiary end.

The most important take-away message from this JC is that weaknesses in the effectiveness and impact of EU support for RoL and related democracy and human rights areas cannot be blamed on poor alignment, including engagement with civil society; nor can successes be attributed to good alignment. The real issue is the genuine national ownership of the priorities and policy reform goals being aligned to. This, in turn, highlights the importance of realistically assessing, including through policy and political dialogue, the prospects for national ownership of reforms supported.

Box 2   Alignment – The case of Albania

In **Albania**, EU interventions' alignment with national (and European) priorities was assured by the existence of a National Strategy for Development and Integration (NSDI) consistent with the 2009 Stabilisation and Association Agreement and other key European integration documents has played a key role. In line with the 2010 Commission Analytical Report and subsequent Council Opinion,

strengthening the RoL was given highest priority. With some gaps in the middle of the evaluation period, there has been a justice reform strategy in place throughout the period considered. Strategy and programming, in the form of formulating Multi-Annual Indicative Planning Documents (MIPDs) and the ISP (Indicative Strategy Paper), have involved close consultations with national authorities, International Financial Institutions, EU MS, other donors, and civil society. At the same time, some qualifications are needed: i) while there have been frequent consultations with civil society organisations (CSOs) and Local Authorities, both (and especially the first) are held to be weak in Albania, and ii) the relevant justice sector institutions over the evaluation period had extremely low capacity and were highly politicised. As highlighted in interviews conducted during the evaluation's desk and field phases in 2018 (see JC 21 in the case study), the national ownership at all levels was mixed; sometimes purely formalistic and particularly weak in the area of tackling corruption. However, the ambitious vetting of the judiciary, a process unique in the region, has attracted widespread support as a necessary step in the direction of EU accession. Despite the success obtained in vetting, reforms supported by the EU proved slow to implement either because of delays in passing enabling legislation or the weakness of institutions responsible for implementation – an example being reforms promoted by the TA project EURALIUS III (Assistance to Justice Reform – EURALIUS), IV (Pilot Sector Programme for JHA and Fundamental Rights) and V (Consolidation of the Justice System in Albania)[35].

Participation of civil society

While the EU has everywhere promoted the participation of civil society this has in some cases been problematic. Alignment with national priorities requires a participatory process, in particular one in which civil society is well implicated. Experiences vary across countries. Civil society involvement in Georgia was excellent over the evaluation period (although it has deteriorated since). In Ukraine, major projects described under JC21 of the case study, including the Justice sector Reform project, all had significant civil society involvement. This was also the case for the EU-supported development of the 2012-2016 Judicial and Legal Reform Strategy. Civil society involvement has been slightly problematic in Jordan, where government has become increasingly suspicious of civil society on security grounds. In Serbia, the country case study showed that relations between government and civil society have been difficult over the evaluation period[36]. The same JC in the Montenegro case study cites a comprehensive report by a regional consortium of NGOs, which points[37] to growing distrust and disengagement between government and civil society (see also two examples in Box 3). Turkey, where civil society is under frontal assault since 2016, presents unique problems described in detail in the case study.

Box 3   Participation – The cases of Montenegro and Georgia

In **Montenegro (IPA)**, EUROL I and EUROL II sector-wide approaches have been fully aligned with national strategies and designed through fully participatory approaches, which remained so during implementation and monitoring. While the Montenegro 2018 Report[38] cites constructive engagement of Government and civil society, an assessment by an EU Fund for the Balkans regional consortium of independent think tanks (cited in JC 21 of the case study) found downgrading of CSO contributions. The EU report just cited expresses the view that the potential benefits of CSO expertise are not fully realised. There is similarly mixed evidence on the degree of national ownership, which appears based

[35] EU (2009): D-021642.P3; EU (2013): D-024190.02; EU (2016): D-038717.04.
[36] See Volume 2: Case study note on Serbia, JC21.
[37] See Volume 2: Case study note on Montenegro, JC21.
[38] EU (2018): Montenegro 2018 Report, SWD(2018) 150 final.

on document review and stakeholder interviews to be limited beyond legislative reforms.

By contrast, in **Georgia (ENI),** conditions over the evaluation period were conducive to ensuring alignment and national ownership, not only by Government but also by civil society. Aligning with European standards in RoL, democracy and human rights has been a Government priority since well before the turn of the century. As by far the largest donor in RoL, and with European integration at the heart of the Government's priorities, the EU has been a privileged partner in policy dialogue. The greatest share of financial support made available was in the form of budget support to a national justice sector strategy and associated Action Plans (as well as to closely related strategies such as in human rights) that has been evolving since the mid-2000s. The directions of Constitutional reform since 2013 have been closely based on the recommendations of the EU Special Representative for Human Rights, former CoE Human Rights Commissioner Thomas Hammerberg, whose mandate covered 2013 and 2014. Through the Eastern Partnership and associated Civil Society Forum, the EUD has been closely involved in all stages of programming and monitoring with Georgian civil society. The fact that strengthening democracy, human rights, and the RoL have been at the centre of EU-Georgia discussions since the time of the EU-Georgia ENP Action Plan speaks to the EU's privileged position as a RoL partner. The importance of a continuous, intense engagement at times of sweeping government change (the political crisis of the fourth quarter of 2012) is clear. Some EU officials have warned, however, that since the end of the review period, relations between government and civil society have worsened.

Needs and opportunities successfully identified and flexible responsiveness to changes in context enabled (JC22)

Needs assessment

Needs have been carefully assessed in EU programming. Given the commitment of the EU to promoting European values and standards, this was usually done in close co-operation with national authorities (somewhat less often with civil society). This has been easier to accomplish in IPA beneficiaries because of the accession agenda. EU strategic documents were closely aligned with needs identified in national reform strategies in Albania, Serbia and Montenegro. This was the case for Armenia and Georgia, where most financial support made available was in the form of budget support to a national justice sector strategy and associated Action Plans that have been evolving since the mid-2000s. In general, these contain detailed analysis of the RoL context. Sector budget support in Moldova was based on a 2010 assessment performed by independent experts in consultation with the Government, the judiciary and civil society, which led to early ownership that, however, subsequently deteriorated (first in the judiciary and, more recently, in the Ministry of Justice). In Tunisia, EU support was designed based on a TAIEX-funded diagnostic needs-assessment exercise in 2010.

The Horizontal Facility was able to focus on needs identified by CoE monitoring bodies. In Association Agreement countries of the Neighbourhood East, and in the Neighbourhood South, the partners and the EU had no difficulty in reaching agreement on needs; see JC22 assessments of strategic and planning documents. During its long inception phase, EuroMed IV engaged in intensive identification of country priorities and discussions with Member State agencies as to their own priorities. In all countries, action documents for each of the interventions include analyses of national development policy and sector context.

Opportunities assessment

The EU has been eager to exploit strategic opportunities; however, these have been less realistically and systematically assessed than

needs. Political economy, socio-cultural issues and institutional capacities have not been analysed in depth in programme / project documents. EUD capacity to identify opportunities is affected by high turnover. While overall, EU reporting is critical and DG NEAR emphasised the highly consultative nature of the report preparation process, a number of civil society interlocutors perceived the assessments in a few Annual Reports as too positive (see JC34)

Responses to change

The EU has responded flexibly to dramatic changes in context such as the 2012 political crisis in Georgia, the 2011 Arab Spring events in Tunisia and Jordan (see Box 4), and the 2016 coup attempt in Turkey. In all these cases, the EU has shown itself highly responsive to the needs and requests of partner countries. In the case of the EuroMed IV project, responsiveness to needs and opportunities was encouraged by the intensive and extended inception phase, which saw numerous consultations with partner countries, EU MS, and European agencies. In Turkey, the EU oriented political dialogue towards emerging human rights issues, policy dialogue towards shared concerns regarding migration, asylum and refugees, and co-operation towards civil society and human rights defenders.

Box 4   Needs assessment and responsiveness – The cases of Jordan and Tunisia

In **Jordan**, institutional and capacity needs were little analysed in both the Country Strategy Paper (CSP), National Indicative Programme (NIP) 2007-2013 and the Single Support Framework (SSF) 2014-2017, although the latter was guided by lessons learnt of previous and ongoing programmes and relied on assessments provided in national documents (strategies) or international donor agencies' studies. Following the demonstrations of 2011, the EU responded to strengthen the democratic process in Jordan through an additional financial assistance regional programme, SPRING (Support for Partnership, Reform and Inclusive Growth) launched in 2011 to encourage the consolidation of political, social and economic reforms. Needs and opportunities have been identified in a series of discussion papers issued by the King. Specific needs addressed have included preparing the justice sector for budget support and strengthening the elections process.

In **Tunisia**, priorities to best meet the needs of Tunisian partners were identified in diagnostic needs-assessment and identification/ formulation exercises in 2011-2012. The majority of the recommendations of the European experts who carried out the peer review were adopted by the Ministry of Justice in its roadmap as well as in the March 2012 Government Plan (chapter on "rebuilding trust between the public and the judiciary and the strengthening of its independence"). The three components of the first EU programme supporting justice reform (PARJ I) were identified based on this review: independence and efficiency of justice, access to justice and law, and modernisation of the penitentiary system.

4.1.3 EQ3 – Implementation/choice of modality

To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?

Rationale and coverage of the question

The EU has a wide variety of financing instruments and implementation approaches and modalities at its disposal, from projects and programmes (financed by geographical instruments and thematic programmes) to budget support, including policy dialogue and technical assistance, to pursue its objectives in RoL. This EQ explores to what extent this range of possibilities has been deployed and synergies and complementarity between them were sought or achieved. EU value added can arise from a range of characteristics, including its credibility as a supranational organisation, the attractions of Accession and Association, and the sizeable financial resources and broad range of tools it can mobilise.

Summary answer to the Evaluation Question

In general, the EU has chosen approaches and modalities appropriately. In all countries, a mix of bilateral, regional and thematic programmes was used; they were complementary and achieved synergies, for example, the use of bilateral programmes to co-operate with government and thematic ones to strengthen civil society engagement. The EU-CoE Horizontal Facility worked well, although the regional dimension was understated and is only now being more fully developed. EuroMed was a significant success, in large part due to the intensive inception phase, which identified needs and promoted ownership (among European participants as well as beneficiary institutions). The regional dimension achieved full potential as experiences were shared and complex cross-border issues were addressed.

The move from project-based approaches to budget support (as well as the decision not to do so) has been well justified in countries that qualified for that modality, although budget support benchmarks tended to be output, not outcome oriented. See, for example JC 32 in Albania (where budget support was deemed appropriate only after the end of the evaluation period), Moldova (where the decision to implement budget support was appropriate even if political developments later caused it to be essentially abandoned), Georgia, and Jordan. The necessary conditions for budget support were a credible justice reform strategy and adequate PFM.

Implementing agencies were appropriately chosen, particularly the CoE due to its long presence and "triangle" of standard-setting, monitoring, and co-operation functions. This comes through clearly in the country case studies on CoE member states, but also in the successful Horizontal Facility (see, for example, JC 34 in the case study on that action). The United Nations Development Programme (UNDP) and specialised agencies such as the United Nations International Children's Emergency Fund (UNICEF) and others were reliable implementing partners due to their long in-country presence and specialised expertise; for example, as an umbrella human rights strategy implementing partner in Georgia. The expertise of specialized agencies such as UNICEF and the ILO were used in a number of

countries.

Policy dialogue has been used everywhere, perhaps most effectively in the IPA beneficiaries, where it is embedded in the accession process, but also in partner countries where it is integrated in Association Agreements and in budget support. EU HQ officials have commented, however, that capacity of partner institutions tends to be higher in IPA beneficiaries than in the ENI partner countries. Where budget support was used, it has significantly enhanced policy dialogue (see, for example, JC 31 in Georgia, Jordan, and Tunisia). However, some EUD officials interviewed were of the view that the tendency of the EU engagement in policy dialogue has been to remain formalistic and focussed on strategic commitments rather than concrete problems in implementation and resulting barriers to progress. Participation of civil society in policy dialogue was also variable due to varying capacities, e.g. strong in Georgia, weak in Tunisia.

While budget support programmes are systematically monitored through the assessments of the tranche release conditions, monitoring of other EU-funded interventions was not entirely satisfactory – result-oriented monitoring (ROM) and mid-term and final evaluation reports were scattered. Certain stakeholders, notably civil society representatives consulted as part of the in-country visit (e.g., Albania, Serbia), considered the IPA Annual Reports to be too positive.

EU value added has arisen from multiple characteristics of the EU support. Accession and Association both carry advantages, making the EU a privileged partner, especially in policy dialogue. In technical assistance, the EU is able to flexibly call on European expertise in partner-identified areas of need. As a large (often the largest in RoL) and long-standing donor, the EU is able to offer support across a broad front, for example supporting entire human rights strategies as opposed to "cherry picking" a few favoured aspects.

High quality policy and political dialogue established (JC31)

Policy and political dialogue

The EU engaged in intensive policy dialogue at various levels in all countries where it provided support. In IPA beneficiaries, high-level policy dialogue occurred in the context of Stabilisation and Association Agreements. SAA Councils meet twice a year, and sub-committees on Justice, Freedom, and Security focus on Chapters 23 and 24. In ENI countries, the context for high-level dialogue is provided by Association Agreements. However, some EU HQ officials commented that partner institutions' capacity for policy dialogue was generally higher in IPA beneficiaries than in the European Neighbourhood. Enlargement and Association gave the EU added value in the context of dialogue by enhancing access, leverage, and credibility. Additional high-level policy and political dialogue has occurred in the context of high-level visits (Moldova) and EU Special Representatives (Georgia on human rights, Moldova on Transnistria).

The EU has had a privileged position as dialogue partner in a number of countries under special circumstances corresponding to political turmoil – the 2012 crisis in Georgia, the 2018 Velvet Revolution in Armenia, the 2014 Maiden revolution in Ukraine, and the 2010-2011 Arab Spring events. European standards and principles have been consistently promoted, including in difficult settings. For example, in Jordan, policy dialogue has helped to ensure reasonable balance between security concerns and respect for human rights and fundamental freedoms although death penalty remains a point of disagreement. In Turkey, policy and political dialogue immediately shifted, following the July 2016 coup attempt, to focus on a combination of

continuing mutual interests (migration/ asylum/ refugees) and human rights and fundamental freedoms.

Quality of dialogue

In parallel with the above, dialogue in a number of IPA beneficiaries examined (for example, Albania and Montenegro) tends to be both formal and formulaic, resulting in concentration on broad strategic issues, rather than pressing problems in implementation (see JC 31 in these two country case studies). Opinions differed among EU officials, however, with some of the view that, in precisely those two countries, policy dialogue was flexible and candid. Policy dialogue in the context of the regional Horizontal Facility proved effective because all actions, in addition to having been decided in consultation with the EUD, were directly linked to Chapter 23 and 24 priorities. Based on the survey of all External Assistance Management Reports (EAMRs) in case study countries, reporting on policy dialogue tends to give more information on the quantitative aspects of dialogue, such as the number of meetings held and the subjects discussed, rather than the actual quality and value added of such meetings[39]. The quality of dialogue reflects EUD capacity in RoL, which is in some countries limited, as well as the quality of political economy analysis (see also EQ 2).

Engagement with civil society

The involvement of civil society in policy and political dialogue has been mixed. In countries with relatively well-developed civil society, such as Georgia, civil society involvement was good. In others, where civil society was weak (e.g., Moldova or Tunisia) or highly politicised (e.g., Albania), it was less satisfactory. A number of the countries reviewed here have seen deterioration in government engagement with civil society. Turkey vividly illustrates this, with hundreds of non-governmental organisations (NGOs) having been closed and their leading members exposed to serious legal sanctions, including imprisonment. Egypt, not a case study country, also provides an example of this. Less dramatic but worrying, relations between civil society and government have cooled in Jordan, Serbia, Montenegro, and Ukraine; even in Georgia, often identified as a civil society leader, one EU official considered recent trends to be disquieting. In all these cases, the EU has continued to support civil society, including using EIDHR and the CSF to provide support not requiring government signature.

Box 5   *High quality policy and political dialogue established – The case of Jordan*

During the 2007-2013 period, EU-**Jordan** policy dialogue focused on human rights (including women's rights), the judiciary, and civil society. In 2014-17, policy dialogue with the Ministry of Justice and justice stakeholders was enhanced in the context of budget support. A close dialogue on human rights continued to be maintained with the government, the judiciary, and civil society under the EU-Jordan Subcommittee on Human Rights and through other informal meetings. Security considerations have increased in prominence and have affected the overall long-term development of dialogue. The EUD engages in constant policy dialogue with the authorities to ensure that laws are proportionally applied and that a balance is maintained between legitimate national security concerns and respect for human rights and fundamental freedoms.

Since 2011, civil society organisations have been consulted prior to meetings of the human rights subcommittee, and subsequently debriefed. In 2014 civil society participation in policy dialogue related

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[39] EAMRs reviewed for this evaluation include the years 2009-2017 for ENI case study countries and the years 2011-2017 for IPA case study countries (to the extent available).

to the justice sector and human rights was for the first time welcomed by the government and the judiciary in the context of the budget support programme. According to the EUD, however, in recent years, civil society has been less involved in policy dialogue and legislative process organised by the government and consultations initiated by relevant ministries with civil society have been minimal[40]. Restrictions in the Law on Associations remain a critical issue and a major impediment to active participation of CSOs as partners in the policy dialogue with the government. Death penalty, restored during the evaluation period, remains a point of fundamental disagreement.

Policy dialogue under budget support

Budget support has enabled sector-level policy dialogue, complementing high-level policy and political dialogue. In Jordan, budget support has enhanced EU's engagement in policy dialogue with the partner government (see box above and JC 31 in the country case study). Among all support modalities, the advantage of budget support in bilateral dialogue at sector level is that (along with macro-financial assistance) it presents the clearest aspect of conditionality, in the form of tranche release assessments. In two other countries recipient of budget support, Georgia and Tunisia, justice-sector policy dialogue is explicitly tripartite between the EUD, government and civil society. Overall, synergies between operational and high-level dialogue have been achieved, although not always without tension, as in Jordan where multiple high-level political issues persist (e.g., death penalty, trying civilians in military courts, restrictions on civil society).

Policy dialogue and financial assistance has sometimes been cut back

When necessary, the EU has adjusted its engagement in policy dialogue to reflect unanticipated developments. One example is Moldova, where the early years of the review period saw numerous high-level visits and fruitful sector-level policy dialogue. Later political developments and the suspension of budget support have resulted, however, in a significant downshifting of dialogue. In Turkey, political dialogue in relevant high-level fora after the July 2016 coup attempt essentially focused on political developments and key shared priorities such as migration, counter-terrorism, energy, transport, economy and trade. However, following the suspension of funding to interventions related to penitentiary and judiciary reform, policy dialogue with the Ministry of Justice has been suspended and there are only occasional informal meetings with the Ministry of Justice or legal discussions at technical project level.

Limitations of policy dialogue

While high-level policy dialogue has been useful overall, it has often tended to be formalistic or, reflecting the nature of policy commitments. Its effectiveness as a tool for conditioning EU support, as a result, has been limited. The observation that policy dialogue tends to be formalistic (revolving around strategic commitments rather than concrete implementation problems) and formulaic (reflecting the nature of high-level policy commitments) derives largely from EUD interviews. Country-level case studies identify a number of instances where EU policy goals are not being achieved; for example, anti-corruption in Albania, aspects of judiciary reform in Georgia, civil society and human rights in Serbia, and a broad range of issues in Turkey and Jordan. One reason for this is the incentive structure of the dialogue, which encourages both the EU and its partners to continue to

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[40] Interview held with the EU delegation.

engage despite problems and disappointments. Policy dialogue at technical level tends to be more effective, because it involves peer-to-peer missions, expert reports and peer-to-peer interactions between EU TA project experts and counterparts.

Box 6   *Policy and political dialogue – The case of Turkey*

Annual Reports indicate the continuation of an enhanced political dialogue between the EU and **Turkey**, with the organisation of meetings at director level once or twice a year[41]. These focus on, among other things, the main challenges faced by Turkey under the Copenhagen political criteria. Following the July 2016 coup attempt, political dialogue essentially focused on political developments, as well as on areas of joint interest of EU-Turkey relations: migration, counter-terrorism, energy, transport, economy and trade, refugees/migration/asylum and visa liberalisation. Despite concerns raised by the EU, Turkey has reiterated its intention to continue what it regards as effective reforms in judiciary and fundamental rights. However, following the decision of the EU to suspend interventions supporting the judiciary and penitentiary sectors, formal policy dialogue between the EUD and Ministry of Justice has been interrupted. A few informal meetings occur between the Directorate General of EU Affairs at the Ministry of Justice and the EU Head of Delegation. The EUD is only in the position to raise political questions or discuss the implementation of laws at programming level through sector monitoring subcommittees and implementation review meetings, organised monthly for the remaining EU-funded projects in the RoL sector.

Implementation strategies appropriately chosen despite challenges, and synergies achieved within the EU RoL portfolio (JC32 & JC33)

The range of instruments and modalities

The EU has used the entire range of financing instruments and modalities available to support RoL in the Neighbourhood and Enlargement regions. The mix has been strategic. For example, bilateral and regional programmes have been used to support governments to devise and implement reform strategies in line with European and international standards. The regional Civil Society Facility has helped strengthen civil society participation in policy dialogue, advocacy, implementation, and monitoring. Thematic interventions, mainly those funded under the EIDHR, but also, to some extent, those financed under the DCI-CSO&LA[42] budget line, have ensured that actions not necessarily in line with government priorities were set in motion. Regional programmes, such as the Horizontal Facility in Enlargement partners and EuroMed Justice in the Neighbourhood South, have addressed problems with a common regional nature as well as cross-border legal issues. Twinning has been extensively used. Where major synergies were available between interventions in RoL and security (for example, EURALIUS concentrating on justice reform and PAMECA concentrating on security sector reform in Albania; or EuroMed Justice and EuroMed Security at regional level), these were exploited. TA provided by the EU has been regarded as of good quality in all the case study countries.

The EU has moved from project approaches to

The EU has moved bilateral co-operation from scattered project approaches to sector-wide ones using budget support in countries meeting the eligibility criteria. Armenia, Georgia, Jordan, and Tunisia are examples. Even in countries where unanticipated events subsequently

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[41] E.g. EU (2018): Turkey 2018 Report, SWD (2018) 153 final.

[42] These were mentioned by some stakeholders during the desk and field phase and are referred to in the case studies where deemed relevant.

budget support

caused budget support to flounder, such as Moldova, the original decision to use budget support was considered strategic and reasonable. The strategic nature of the EU's approach to budget support is well illustrated in Albania, where despite a country-wide move in this direction, the EU considered it wiser to adhere to a project approach in the justice sector. There, as in Georgia, a long-standing, continuing, and broad TA project (EURALIUS in the first, EU4Justice in the second) led to a sector-wide approach to justice reform. Budget support, as described under JC 31, has been a platform for sector-level policy dialogue. Policy matrices have been well-constructed, although they tend to favour mechanical quantitative indicators (for example, the construction of a juvenile detention centre in Georgia when EU-supported juvenile justice reform had greatly reduced the need for it).

Box 7   Implementation strategies and synergies within the EU RoL portfolio – The cases of Armenia and Georgia

About 40% of EU support to RoL in **Armenia** is in the form of budget support, of which there have been two programmes, with the remainder 60% using a wide range of tools including TA and Twinning contracts to international organisations and EU MS, and grants to civil society organisations. Priority in TA and capacity building was given to actions promoting approximation to EU legislation and technical standards. The first budget support programme was complementary to World Bank support, which was mostly in the form of support to infrastructure. The second budget support programme, which aimed to move beyond justice reform narrowly considered to a broader justice, liberty, and security perspective, was also complementary to World Bank support, and aligned itself as well with a large CoE project supporting legislative reform, prison conditions, and mediation and probation, as well as the work of the Venice Commission.

Long and broad EU involvement in RoL in **Georgia** has resulted in a high level of complementarity and synergy. TA and capacity building complementary to budget support were delivered across a wide front by the EU4Justice project. Further capacity building was supported using Comprehensive Institution Building, an approach under the Eastern Partnership's "more for more" principle. The Public Defender's (Ombudsman's) Office, in particular, benefited from Comprehensive Institution Building (CIB), and has since moved on to directly implementing an EU-financed anti-discrimination project. Parliament also benefited from CIB in the form of a UNDP-implemented support project. UNDP managed the "Human Rights for All" project, which built capacity in multiple agencies to implement and monitor the Human Rights Strategy. In addition to UNDP, which managed the project, UNICEF, International Labour Organisation (ILO) and the Office of the High Commissioner for Human Rights were involved. GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit) managed a project addressing private and administrative law. Under the regional Partnership for Good Governance (PGG), CoE implemented actions including institutional development of the Bar Association, needs assessment at the High School of Justice, implementation of the European Convention on Human Rights (ECHR) (with the Prosecutors Office and Public Defenders Office), prison health, promotion of CoE conventions, and media freedom. Some of these PGG actions were genuinely regional in nature. Other actions complementary to budget support included calls for proposals to involve CSOs in advocacy, monitoring, and service delivery. The only Twinning in the scope of this evaluation identified in Georgia was the High School of Justice.

Government partners continue to have difficulty in managing EU funds

Moving towards decentralised management has sometimes been problematic. In Turkey, despite EU capacity building, responsible government agencies proved incapable of contracting, implementing, etc. up to EU expectations and requirements. While Turkey qualified for budget support, government partners preferred to remain with project and sector

approaches. In Serbia, government authorities expressed a preference for EUD direct management, rather than assuming responsibility themselves. The problem is a mismatch between stringent EU requirements in contracting and management/administration of funds and low capacity in responsible government agencies. The EU has attempted to address this by providing technical assistance and capacity building (for example, Georgia, Moldova, Turkey).

Implementing partners

From the standpoint of a results-based orientation, the EU has chosen implementing partners well. Of particular note from JC 34 in the case studies is the close partnership with the CoE. The EU has taken advantage of the CoE's unique credibility, long-standing country-level relationships and specialised expertise across a wide range of issues – from prison reform to Constitutional issues to anti-discrimination, and more. The EU has recognised that, with its triple role in standard-setting, monitoring and co-operation, the CoE is an indispensable partner. The EU has also scored success by strategically selecting UNDP and other United Nations (UN) specialised agencies such as UNICEF, the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) to implement projects in areas where they have expertise. The joint EU-UNDP project "Human Rights for All" in Albania, where UNDP managed a project implicating UNICEF, ILO and the Office of the High Commissioner for Human Rights, is an example. In Tunisia, the United Nations Office for Project Services (UNOPS) was strategically selected to implement penitentiary infrastructure construction because the situation was urgent and UNOPS had the ability to contract quickly in a context where national agency contracting procedures were woefully inefficient. While EU MS have proven effective implementing partners for some Twinning projects, difficulties have also been observed. These include in some cases low interest from EU MS institutions in these projects (for example, Turkey after the attempted coup); the short duration of these projects (for example, Tunisia); the institutional environment in which these projects operate (for example, judicial education in Albania). The results of most Twinning projects as observed by EU interlocutors dissipated in some circumstances after implementation ended.

Box 8   *Implementation strategies and synergies within the EU RoL portfolio – The case of the Horizontal Facility*

The **Horizontal Facility (HF)** follows a two-fold approach, including technical assistance and legal and policy advice. Technical assistance (under the Tri-Annual Plan of Action (TAPA)) is based on the CoE "triangle" of standard setting, monitoring, and co-operation, and adds value by helping countries to comply with CoE standards and facilitating the adoption and implementation of European standards under Chapters 23 and 24. The Expertise Co-ordination Mechanism provides CoE expertise in response to requests for constitutional, legislative and policy advice. The Mechanism complements TAPA with smaller ad-hoc demand-driven support to meet specific beneficiary requests, however this was initially under-utilised. Despite being a regional facility, stakeholders in IPA beneficiaries reported that the HF does not have a genuinely regional dimension; rather, it is more an instrument for financing country-specific actions on a more predictable basis than in the past. More engagement and collaboration between the IPA beneficiaries on common issues would have provided obvious added value, and interviews document agreement on strengthening the regional dimension going forward.

> There has been good synergy and complementarity with bilateral EU (and other donor) programmes, and the HF has served to address gaps left by large structural EU programmes. It has been highly complementary to other TA programmes such as TAIEX and Twinning.

Efficiency aspects of implementation successfully taken into account (JC34)

Efficiency has been well taken into account

The EU's approach to implementation has been strategic, including consideration of efficiency aspects. Despite delays in several instances, efficiency of EU-funded interventions has been satisfactory. While the EU's international organisation partners such as CoE, UNDP, and UN specialised agencies have significant overheads, they have been strategically chosen because of their long country presence, credibility vis-à-vis national partners, and specialised expertise. Where possible, there has been a move towards budget support, with a corresponding reduction in transaction costs.

EU visibility

EU visibility, while occasionally called into question when working through international partners, has been satisfactory. Basic visibility is always assured – no implementing agency fails to place the EU on the project logo. In the specific case of the CoE, the inability of many beneficiaries to distinguish the EU and CoE (for example, in Ukraine) has long been known, but is not a major factor in discouraging cooperation with the CoE. In the Enlargement region, EU visibility is assured by the prominence of the accession process. In some Association countries (for example, Georgia and Ukraine), the EU is a privileged partner because European integration is a broadly shared goal, guaranteeing a high level of visibility. EU visibility is likely lower in the Neighbourhood South, but this is understandable in view of the fact that integration is less proximate.

Box 9   Efficiency and EU visibility – The case of Georgia and Albania

In **Georgia**, the move to budget support responded to the 2007 TACIS (Technical Assistance to the Commonwealth of Independent States) evaluation, which found that support was losing efficiency by being too fractured among small, independent actions. During the evaluation period, there has been consensus among stakeholders[43] that budget support was more efficient (lower management costs, closer alignment to government priorities, etc.) than the project approach. The ROM reports examined, as well as reporting on the 2014 justice sector support strategy, have in place extended analysis of efficiency, monitoring, and visibility aspects of EU support with overall positive assessments. The EU has been highly visible in support to RoL, democracy, and human rights because of the central place of European integration in government policy. To the extent that policy dialogue under justice sector budget support has been characterised by high-quality discussions focused on the policy matrix (i.e. the agreed conditions for the disbursement of consecutive tranches), it is clear that areas of progress and lack thereof have been discussed with beneficiary Government institutions. Overhead costs for projects implemented through UN agencies and CoE have been high, but justified by these agencies' experience and expertise.

In **Albania**, ROM reports paint a mixed picture for project efficiency. A major component of EU support was the 2011 IPA project "Construction of a new pre-detention centre and prison at Shkodra". At the time of the field mission, the facility had still not opened due to flaws in the original design, additional beneficiary requests, and delays in delivery of beneficiary inputs. By contrast, the November 2017 ROM report on the EU-CoE joint programme on human rights of prisoners found that the choice of CoE as implementing partner added considerable value, and that most activities were running on schedule. Efficiency and effectiveness of EURALIUS improved between its Phase III and Phase IV

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[43] Interviews held during desk and field phase.

due to of an improved political environment and the accumulated experience of all actors in managing such a broad project. As lead donor in justice, democracy, and human rights, as leader of the relevant donor working group, and in view of the centrality of European integration in Albania's development strategy, the EU was highly visible in the sector.

Frequency and quality of monitoring, evaluation and reporting

Monitoring and evaluation has been scattered and of variable quality. . Given the large size of the portfolio, timely mid-term reviews and frequent final project/programme evaluations have had to be strategically limited. Where performed, they have been thorough, albeit too focused on activities and inputs rather than actual results. A shift from monitoring and evaluation at intervention-level to higher-level effects would require better indicators and data collection systems in place. . Budget support monitoring is of mixed quality. It tends to be oriented towards process and output rather than outcome indicators. Implementing agency reporting, unsurprisingly, has been depended on the capacity of the implementing agency concerned.

Situation assessments, including IPA Annual Reports and other periodic reporting, are technically of high quality and prepared in a consultative participatory process (notably between EUDs and HQ). In a number of cases, civil society emphasized that critical assessments should be included in the reports in clearer language.

EAMRs, as reported above when discussing policy dialogue, tend to stress process rather than results.

4.1.4 EQ4 – Linkages with EU member states and other international stakeholders

To what extent has the EU formed strategic and operational linkages with other international agencies, including member state institutions, active in RoL?

Rationale and coverage of the question

RoL is a favoured area, and the number of players – World Bank (WB), UN agencies, CoE, EU MS, USAID, and others – is high. While all are promoting similar values, the possibilities for overlap and competing priorities are marked. This EQ explores the extent to which the EU has successfully exploited opportunities to align with other donors, including division of labour where appropriate, to promote European RoL goals and values.

Summary answer to the Evaluation Question
The EU has significantly and proactively increased its global partnerships in areas related to RoL, with these initiatives having accelerated in recent years, including with the Organization for Security and Co-operation in Europe (OSCE), United States Agency for International Development (USAID), and UNICEF. The Council of Europe (CoE) remains the key technical and strategic partner in nearly all of the contexts examined. There have also been several notable project-based partnerships with international organisations as implementing agencies. The EU has closely and consistently worked with EU bilateral governmental and semi-governmental agencies and non-governmental organisations in a wide range of countries. Overall, the EU has consolidated its added value as a committed donor and preferred technical and operational partner on RoL issues, and appears poised to capitalise upon this momentum in coming years.
Donor coordination in RoL has contributed to avoiding duplication and overlap. The fields of RoL and related democracy and human rights are extremely crowded with development partners. Despite this, donor coordination has improved in almost all the countries reviewed, in line with the aid effectiveness agenda and other international commitments. In addition, DG NEAR has increased its efforts to monitor international and bilateral donor support. EU contributions to donor coordination mechanisms have been both informal and formal, notably through budget support, with thematic and technical groups established, however some structures are considered to be overly rigid and time-consuming. In almost all countries there is some degree of effective Government coordination in the sector, however this has been uneven, and TA to strengthen government capacity to coordinate donors has had very mixed results. The EU is active in all relevant coordination fora, and frequently takes the lead.

Diversity of partnerships established at global level (for example, CoE and development partners such as UN agencies, EU MS bilateral agencies, WB, USAID) (JC41)

Increase of global partnerships	**The EU has significantly and proactively added to its global partnerships in areas related to RoL, with these initiatives having accelerated in recent years.** The EU partners with the Organisation for Economic Co-operation and Development's (OECD) Anti-Corruption Network

(ACN) for Eastern Europe and Central Asia on anti-corruption in Neighbourhood East countries, with specific projects aimed at strengthening legal and institutional capacity to prosecute high-profile corruption cases. DG NEAR and USAID have had a yearly "structural dialogue", however relations in the past two years have been characterised by disengagement on the part of USAID. UNICEF and the EU Regional Trust Fund in Response to the Syrian Crisis aim to support children affected by the war in Syria, and have also developed a Child Rights Toolkit. Concerns have however been expressed by EU institutions about the tendency of some national partners to apply their own domestic models, without always adapting these to beneficiary needs.

<table>
<tr><td>CoE is the key partner on RoL issues</td><td>The Council of Europe remains a key technical and strategic partner in nearly all of the contexts examined, including in the Neighbourhood South (for example through the EU funded South Programme). This privileged and symbiotic relationship is provided through strategic partnerships and interventions (see Annex 7)[44], and is manifested in multiple ways, including the implementation of bilateral and regional projects or initiatives[45], the provision of ad hoc and longer-term technical expertise, and the development and use of tools that contribute inter alia to the efficiency of justice systems. It provides considerable elements of added value, including the identification of shortcomings to help compliance with CoE standards relative to rule of law and facilitate accession under Chapters 23 and 24; its capacity to link support directly to its own monitoring mechanisms; and its status as an international organisation of which all the countries under consideration are either members or active partners.</td></tr>
<tr><td>Project-based partnerships</td><td>There have also been several notable project-based partnerships where international organisations are implementing agencies. For example, the OSCE has been implementing interventions to support elections in the Western Balkans, as well as war crime and corruption trial monitoring, with the latter expected to expand into the entire Balkan area. The World Bank has been working on EU country-specific interventions related to justice reform (Montenegro and Serbia), and a Regional Justice Survey project will monitor the impact of justice reforms in the Neighbourhood East and Western Balkans. The EU has provided long-term structured funding to Transparency International, with one project in the Western Balkans and Turkey aimed at raising awareness of grand corruption. In Enlargement and Neighbourhood regions, the EU supports a number of UNICEF projects, including on juvenile justice and addressing violence against children. UNDP has implemented projects on governance and in one case (Georgia) has supported implementation of the entire human rights strategy, allowing the EU to rise above the "cherry picking" typical of bilateral donors. There are a number of on-going DG NEAR-UN Women initiatives, including the Gender Equality Facility, and projects addressing for example gender violence in the Western Balkan countries and Turkey, empowerment of women and girls affected by the Syrian Crisis, and enhancing participation of women in political processes.</td></tr>
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[44] See also Volume 2: Case study note on the Horizontal Facility, Introduction.

[45] To be found amongst many interventions analysed in the frame of individual case study notes (Volume 2).

Cooperation with EU MS and agencies	**Moreover, the EU has closely and consistently worked with EU bilateral governmental/semi-governmental agencies** (for example Justice Cooperation International – the implementing agency of the French Ministry of Justice) and non-governmental organisations (for example German Foundation for International Legal Cooperation – IRZ) in a wide range of beneficiaries, including Georgia, Kosovo, Moldova, Serbia, Turkey, Ukraine, and others.

Mechanisms and processes to ensure coordination/complementarity with EU MS and other donors at country level have improved (JC42)

Importance of donor coordination in RoL	**Donor coordination in RoL remains of considerable importance**, since it contributes to avoiding duplication and overlap, with benefits for efficiency. It prevents donors with differing priorities from competing for government attention, which can result in reform overload or promoting competing proposals in the same area, which can result in reform paralysis. RoL institutions and issues are themselves somewhat fragmented, which further complicates coordination efforts.
Improvement of donor coordination	**Donor coordination has improved over the years in almost all the countries reviewed,** in line with the aid effectiveness agenda and other international commitments. This has included observable positive changes in coordination structures and practices, for example a balance of formal and informal mechanisms, routine consultation of civil society, and increased levels of stakeholder engagement, including of governments, as reported by numerous interlocutors. Added to this, DG NEAR conducts regular monitoring and mapping of international and bilateral donor support relative to RoL. These improvements have occurred despite the fact that, in every country reviewed, the fields of RoL and related democracy and human rights are extremely crowded with development partners, ranging from large international agencies (EU, UNDP, UNICEF, CoE, OSCE etc.), to bilateral agencies (DfID, SIDA, many smaller national agencies), to international NGOs, both large (for example Open Society Foundation) and small. Nevertheless, certain countries have shown some evidence of donor shopping (for example, Albania (see Box 10)), with some overlap of certain interventions, such as IT. Donor coordination has often been structured around specific thematic and technical concerns (Montenegro and Georgia). In several contexts, direct budget support has contributed to the establishment of donor and/or sector coordination mechanisms, however newer structures have not always supplanted informal groups, since the former are often considered to be too rigid and time-consuming (Serbia). EUDs in eight out of the ten case study countries examined reported to actively participate in coordination fora and working groups[46]. In several countries (Georgia, Jordan, Moldova, Tunisia and Turkey), the EU and EU MS closely align their programming and strategic approaches to ensure coverage of RoL issues.
Government	**In almost all countries there is some degree of effective Government**

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[46] For details, see Volume 2: Case study notes on Albania, Armenia, Georgia, Jordan, Moldova, Tunisia, Turkey and Ukraine.

coordination **coordination in the sector;** however, this is uneven, ranging from fairly strong (for example Georgia) to fairly weak (for example Albania), and in many if not most EU support programmes reviewed, there has been a TA component to strengthen government capacity to coordinate donors in the sector. The EU very frequently takes the lead in the relevant RoL donors group and, where it does not, is active in all relevant coordination fora.

Box 10   *Mechanisms and processes to ensure coordination/ complementarity with EU MS and other donors at country level – the cases of Albania and Ukraine*

In **Albania**, as the EU is the Lead Donor in the RoL and SSR areas, it has had a significant coordination role, including responsibility for the donor mapping that seeks to avoid duplication and overlap. However, coordination is difficult. There are many donors, both EU MS and other agencies (such as USAID). In addition, the justice sector is highly fragmented, with many institutional players, each having its own set of strategic and institutional priorities. Donor shopping on the part of the Government is reportedly common. In some sub-areas, such as IT for the court system, it is clear that there has been some overlap in donor support, however, rough division of labour has been ensured for the sector as a whole. There were also notable instances of close inter-project cooperation, for example between EURALIUS and the USAID/US Embassy's Justice for All project, or EURALIUS and the SSR PAMECA project.

Donor coordination functions reasonably well in **Ukraine**. The EUD and individual project staff participate in the monthly rule of law donor and implementers' coordination meetings, convened by the USAID-funded "New Justice" project. The mid-term Justice Sector Reform Strategy, the development of which was facilitated through the Justice Sector Reform Project, has become the key strategic document to which wider donor community technical assistance is aligned. For support to penitentiary reform, the "Passport for Reform", developed with the assistance of the CoE-implemented and EU-funded Further Support to Penitentiary Reform project, has become the strategic document to which support by other, bilateral donors align. The EU Needs Assessment Mission (EUNAM) provided the roadmap for parliamentary reform that was subsequently adopted by the Ukrainian parliament, and which provides the overall strategic framework for international support, including USAID and some smaller projects.

4.2   Effects of the EU support to RoL

A second set of EQs   After having responded to EQs on the strategic framework, design and implementation, this section focuses on the effects of EU support on the RoL situation in ENI countries and IPA beneficiaries.

4.2.1   EQ5 – Effects of EU support on the legal and policy framework for RoL

To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with international standards, norms, and values in RoL?

Rationale and coverage of the question

A crucial distinction in RoL, and one that is increasingly debated, is between effectiveness (outcomes) and actual impact. To give one example, laws passed may be cited as progress, whereas their implementation – that is the difference between de jure results and de facto impacts – may be weak. Judges and other RoL personnel, may be trained, but if the independence of the judiciary (a matter of the separation of powers) and of other oversight institutions is not promoted, that training may have no practical effect. Partner countries' progress towards European standards in RoL will not be possible if the necessary legal and policy basis is not in place. This JC assesses the extent to which the EU supported putting that legal and policy basis in place, and the extent to which that contributed to actual progress on RoL.

Summary answer to the Evaluation Question
EU support has contributed to progress on policy frameworks. Constitutional and legal reforms have been passed with extensive EU support through policy dialogue, budget support, TA and twinning. However, implementation has been generally disappointing, for reasons including lack of adequate skilled human resources, overly ambitious mandates of institutions, and failure to pass necessary secondary legislation and regulations and make necessary institutional changes. As discussed particularly under EQ 8, weak political will and broad-based lack of enthusiasm have contributed to limiting results.
Sector strategies and action plans have been put in place, again with adequate EU support, but implementation has been often poor. Receiving beneficiaries have adhered to international conventions, and the CoE has been a particularly valuable EU partner in this regard, but beneficiaries still languish far behind European standards in every area reviewed (including the strengthening of legal and constitutional reforms and Parliaments, consolidation of national RoL policy/strategic framework, and integration of Human Rights and democracy issues into partner countries' RoL policy). For the specific area of the quality of justice systems, including efficiency aspects, see EQ 6. Judiciary reforms in line with CoE recommendations and good practice have been adopted in a number of beneficiaries, but actual implementation of reforms has been slow.
A brighter picture can be painted regarding democracy. A number of case study countries have

seen reform of electoral law and international observers have generally judged elections fair. Where democratic processes are functioning poorly, this is more because of political fracture than outright electoral fraud.

To summarise, progress on paper has been considerable; in practice, it has been less satisfactory, and very poor in some cases. This is true even in beneficiaries where EU accession is a palpable incentive.

Legal and constitutional reforms and Parliaments strengthening initiated but slow implementation (JC51)

EU support to legal and constitutional reforms

In all countries reviewed, the EU has contributed to legal and constitutional reforms through financial support, technical assistance, and policy dialogue. Sometimes (for example, Albania, Jordan, Tunisia, Ukraine, Turkey), this support can be linked to consequential reforms. In a number (for example, Tunisia, Jordan, Georgia), there was capacity building to strengthen parliaments. Most countries reviewed have undertaken constitutional and legal reforms with EU support. The process of reform seems in some to be a punctuated one; for example, in Albania, reforms that were blocked by Parliamentary logjam in the first half of the evaluation period were able to proceed in the second.

Legislation and implementation

In most cases, however, the implementation of reforms has been much slower than their passage. Framework legal reforms, like constitutional ones, require considerable secondary legislation and regulations in order to be implementable – and actual implementation requires yet further action by the responsible institutions (which may need to be put in place de novo). In Tunisia, formation of the Constitutional Court was delayed by the failure of Parliament to agree on the selection of judges. Major reform legislation was drafted with EU support in Ukraine, but had still not been adopted by the end of the evaluation period. In virtually all countries considered, the effectiveness of reforms in anti-discrimination has been less than hoped for (see also JC 53): political will and public enthusiasm (as well as capacity) are lacking, and the main impetus for reform has been the desire to conform to European and other donor demands. EU support is, through its major strategy documents, firmly tied to a European vision that is not shared by all beneficiaries, either at the level of political elites or more broadly. The dysfunctionality of political processes, some of recent vintage following structural change and upheaval, is commonly evident, as is the novelty of European approaches. The EU has contributed by means of TA support to legislative drafting in line with European directions for justice institution reform (for example, Albania, Tunisia, Georgia), capacity building for institutions including parliaments (for example, Albania, Georgia, Tunisia), and institution building, but results are often slow in coming. In general, EU support is more effective in promoting fundamental reforms than in following through on the nitty-gritty of implementation. In addition, while support to legislative reform has been considerable, EU stakeholders observe that relatively little parallel support has been provided to parliamentary institutions to support the passage of reform, including secondary legislation and by-laws.

Box 11   Legal and constitutional reforms advanced and Parliaments strengthened – The case of Albania

The Parliamentary gridlock that marked the beginning of the evaluation period in **Albania** was broken and, particularly in 2016 and 2017, a flood of constitutional and legislative reforms advanced the RoL agenda. An EU Twinning project built capacity in the Albanian Assembly. Among the most controversial of the voted changes are those in the recruitment, advancement, and inspection of judges and the status of the High Court and Constitutional Court. In all of these and other areas, heavily influenced by Venice Commission opinions, the EU played an important role in drafting, through the TA work of the EURALIUS project. Ad Hoc Parliamentary commission on Justice reform proposals on constitutional amendments reviewed by the Venice Commission were adopted by Parliament in July 2016. However, progress in passing needed secondary legislation meant that, in some of the most controversial areas related to reform of the judiciary, implementation had not yet commenced at the end of the evaluation period. Three major legal initiatives supported by the EU led to progress regarding the *acquis*: (i) changes in the Civil Procedure Code to shorten court proceedings and encourage mediation, (ii) a new law on legal aid significantly improving access to justice, and (iii) comprehensive reform of juvenile justice, as well as strengthened rights of victims and their families and criminal defendants.

Limited results of national RoL policy/strategic framework consolidation (JC52)

EU-supported RoL strategies

In all countries reviewed, an EU-supported RoL strategy and action plan was in place over the evaluation period, but progress in the strengthening of the RoL strategic framework has led to fewer concrete results than hoped. In most cases, there is evidence of EU support (including in the form of budget support and complementary TA) (see also Volume 3, Annex 7) having contributed to the strengthening of the RoL national strategic framework. Examples include Ukraine, Jordan, and Georgia (all benefiting from budget support) and, outside the budget support domain, Montenegro and Albania. Both the HF and EuroMed contributed to the development of policy and legal frameworks adapted to the radically changed post-Arab Spring environment.

However, too often strategies and plans have not resulted in concrete action, or have only been partially implemented (for example, budget support in Moldova was effectively suspended due to political developments; in Albania, as mentioned above, implementation of major judicial reforms was slower than anticipated[47]). Some of the reasons for this have been discussed under JC 51 above. In all countries, policy dialogue was used to promote improvements in the RoL. Each case study country presents its particularities, but the overall impression is that governments, closely advised and supported by the EU, have worked to strategise and plan, but with mixed results. Some of this is inherent in the area being dealt with: legal culture and the institutions and power relations that it embodies have deep roots in history and are firmly entrenched in national political structures. In general, and as exemplified by the case study conducted in Serbia[48], realistic, costed and resourced plans for implementing strategies have lagged behind the strategies themselves; in Montenegro[49], the donor-dependence of the subset of actions which have been costed is a cause for concern.

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[47] See Volume 2: Case study note on Moldova; Case study note on Albania.
[48] See Volume 2: Case study note on Serbia.
[49] See Volume 2: Case study note on Montenegro.

Box 12   National RoL policy/strategic framework consolidated – The cases of Serbia and Jordan

The **Serbian** policy and strategic framework for RoL is in place. Since 2016, the overarching strategic framework for reforms are the Action Plans for Chapters 23 and 24, drafted with the assistance of donors including the EU, in particular as part of the Multi-Donor Trust Fund for Justice Sector Support. Consecutive Justice Sector Reform Strategies and corresponding Action Plans were in place in 2013-2018, and a new strategy is under development. However, as noted in the EU's Serbia 2018 Report[50], the impact of the strategy's implementation is limited, and a revision is required. The 2014-2018 Anti-Discrimination Strategy has expired, and no follow-up replacement has been developed; this applies also to the National Strategy and Action Plan for Combating Violence Against Women and the National Plan of Action for Children. Implementation of the Action Plan on national minorities needs to be hastened.

Jordan presents a more optimistic example. During the period under review, the strategic legal and policy framework for RoL has been improved and updated. The EU, in cooperation with other donors, has been a key actor in the progressive justice sector reform process. Justice sector reforms and other national development policies developed to frame the sector include the Judicial Council Strategy 2012-2014, the Ministry of Justice Strategy 2014-2016, the Jordan 2025 National Vision and Strategy launched by the government in 2015, the National Plan for Human Rights 2016-2025, the Criminal Justice Strategy approved in 2013 (although proper implementation only started in the second half of 2015), the 2016 Royal Recommendations for justice reform, which set the priorities and timeframe for any intervention in the sector, providing also legislative texts and a strong new momentum for reform, and the Justice Sector Reform Strategy 2017-2021. The latter includes three sectorial strategies for the Ministry , the Judicial Council, and the Judicial Training Institute.

Progress in integrating human rights and democracy issues into partner countries' RoL policy (JC53)

Progress on human rights and democracy issues

Despite challenges in translating policies into results, there has been overall progress in the integration of human rights and democracy issues into national policy frameworks, and, in many cases, the EU has played a positive role in this regard. No case study has uncovered a situation where there was a complete lack of progress on improving the policy framework for the human rights of prisoners, children, women, the disabled, and sexual minorities. Progress has also been made on policies regarding penitentiary conditions and juvenile justice (Georgia, Albania, and Tunisia).

However, as discussed above under JC 51 and in greater detail below under EQ 8, the pace at which policies translate into results has nowhere been entirely satisfactory. Sometimes, there has also been significant backsliding, like in the case of Turkey after the 2016 coup attempt [51]. Ombudsman and anti-discrimination Offices are active (with EU support) but usually lack enforcement powers (for example, Albania[52]), and National Human Rights Institutions, while present in many contexts, do not always conform with international standards, particularly relative to their independence, or receive inadequate funding to be effective and therefore credible. Most beneficiaries have progressively adhered to international conventions on the rights of women, children, minorities of all kinds, the disabled, etc., but with limited

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[50] EU (2018): Serbia 2018 Report, SWD(2018) 152 final.
[51] See Volume 2: Case study note on Turkey.
[52] See Volume 2: Case study note on Albania.

tangible impact on the concerned populations.

A brighter note can be struck on democracy: **in almost no case studies** was there evidence of backsliding on the commitment to (reasonably) free and fair elections; international monitoring reports were uniformly (reasonably) positive. **The more negative examples of backsliding on democracy** were in Turkey under the State of Emergency and, in Moldova, the effective overturning of the election of an opposition candidate as Mayor of Chisinau. When political gridlock has arisen, as it has in Moldova and to some extent Georgia and Albania, it is because of the fracturing of popular opinion and the resulting political landscape, not because of outright electoral fraud. At the same time, many countries continued to suffer from less visible but pernicious threats to democracy, such as barriers to the diaspora vote (Armenia), media ownership issues (Georgia), media freedom issues (Turkey), "fake news" and political fracturing of media (Moldova), etc.

Box 13   *Integration of human rights and democracy issues into partner countries' RoL policy – The cases of Turkey and Tunisia*

In **Turkey**, ensuring women's rights and gender equality remains a challenge despite legal and constitutional reform. While laws and policies have improved, honour killings, early and forced marriages, and domestic violence remain serious problems. Despite EU support to many gender actions, there is a lack of strong political commitment to gender equality, a lack of capacity in the public administration, and an overall absence of gender perspective. Turkey's approach to minority and cultural rights remains restrictive. On-going EU-supported improvements in prison conditions were reversed by the surge in incarceration following the 2016 coup attempt, which saw some 150.000 persons detained. The EU also supported initiatives in juvenile justice, however minors continue to be tried in non-specialist courts and detained with adults. Legislation has not adequately addressed homophobia and hate crimes based on sexual orientation. The first direct presidential election in August 2014 was found by international observers to have been conducted fairly. The human rights and democracy situation has deteriorated badly since the 2016 attempted coup.

Parliamentary and local elections have been generally held to meet international standards in **Tunisia**. The Tunisian authorities invited the EU to deploy an Election Observation Mission (EOM) to cover the 2011 and 2014 elections. In 2011, the Mission recognised that the Tunisia legal framework complied with international standards for democratic elections. In 2014, the Mission considered that the Independent High Authority for Elections (ISIE), formed at the beginning of 2014, had ensured the effective organization of the polls, including in terms of their transparency and impartiality, despite the very tight deadlines between the approval of the legislative framework and the elections. In 2017, Parliament unanimously adopted the Comprehensive Law to Combat Violence against Women, following many years of engagement of civil society and government. The EU supported gender issues through the bilateral programme on equality between men and women. This programme includes a section devoted to the fight against violence against women, which effectively assisted the Tunisian authorities in the preparation of the Bill. Substantial preparatory work has been carried out by the Delegation on the issue of gender-responsive budgeting, which materialised in 2017 through several pilot initiatives set up in key ministries.

4.2.2 EQ6 – Effects of EU support on RoL institutions and quality/ efficiency of justice systems

To what extent has the EU support contributed to enhancing the quality/ efficiency of justice systems in ENI partner countries and IPA beneficiaries?

Rationale and coverage of the question

Results have tended in RoL to be judged in de jure rather than de facto terms; for example, "law amended" rather than "new law effectively implemented". Similarly, there has been a tendency to monitor on the basis of output indicators, for example the number of judges trained, with insufficient attention given to the actual outcome indicators; for example, whether the training was actually translated into improved jurisprudence given the broad political context and overall quality/efficiency of the justice system. As implicit in (i) the progressive hardening of EU strategic tools in RoL (for example, "more for more," "mutual accountability," and differentiation) and (ii) discussions with the Inter-Service Group for this evaluation, an assessment is provided of what has been actually achieved through EU support to RoL; what approaches have worked well, and what less so or not at all.

Summary answer to the Evaluation Question

The EU has supported a wide range of key RoL institutions to improve efficiency in terms of institutional structure, administrative and management practices, strategic planning and budgeting processes, and so forth. The evidence gathered in the case studies in IPA beneficiaries shows that the justice sector institutions are functional, budgets are adequate, even if they are still behind European standards, and infrastructure is capable of delivering justice. However, these indicators of quality are not a guarantee of reform: many of the problems identified are often linked to the attitudes of persons occupying positions of responsibility in the justice sector, and the political and institutional, not physical, environment in which they work.

In some partner countries, the EU has supported the construction or rehabilitation of facilities such as court buildings and penitentiaries. Some projects may have contributed to enhancing justice and improving conditions of detention by reducing overcrowding and serving as a launch pad for European standards and good practice. The EU has delivered large amounts of capacity building – training, study visits, workshops, networking, etc. – to the entire range of persons working in the justice sector. Emblematic of this has been EU support to High Schools of Justice, while prison staff, court administrators, bar associations, and others have often been beneficiaries. Such capacity building has had, at its core, the promotion of European good practices and harmonisation with international law including increased awareness of and compliance with ECtHR jurisprudence. While some of this capacity building is effective at the individual level, the effects can be diluted at the institutional level where attitudes, incentives and processes may remain unchanged. The continuing power of what are euphemistically referred to as "prominent voices" in the Georgian judiciary is an example. At the same time, the willingness of the Albanian judiciary to accede to the vetting

procedure is a sign that, when the political forces are correctly aligned, genuine progress is possible.

Legal education, and in particular the training of judges and prosecutors, often remains weak in institutions that, despite generous donor support, do not apply up-to-date pedagogic approaches. In assessing JC 63, the evaluation team found that judicial training institutions sometimes receive support from multiple donors as a result of poor coordination and complementarity. The most successful capacity-building actions identified here were due to the regional Horizontal Facility and EuroMed projects, for differing reasons. EuroMed was characterised by an extended, highly participatory inception phase to identify specific needs, as well as strong ownership by both beneficiary institutions and participating EU MS agencies. The Horizontal Facility benefited from being implemented by the CoE, which identified capacity building needs based on the assessments carried out by its monitoring bodies.

An identifiably disappointing area, particularly related to the efficiency of justice systems, is EU support for IT. The EU has supported the installation of information technology and, specifically, tools to generate European Commission for the Efficiency of Justice (CEPEJ) statistics, highly relevant for improving resource allocation and case management, handling case flow, addressing backlogs, etc. With a few exceptions, the results have been meagre in case studies from IPA beneficiaries (see JC 62 case studies for Albania, Serbia, and Montenegro). Some IT systems developed with EU support have never really been utilised, others have been allowed to fall into disrepair, because of a lack of beneficiary interest.

Many case study countries/beneficiaries have made considerable progress on de jure compliance with international law and conventions, particularly in human rights and fundamental freedoms, including gender equality, rights of the child, rights of the disabled, minority rights, etc. De facto compliance, as discussed under EQs 7 and 8 (see also EQ 5), is much weaker in most. EU TA, capacity building, and policy dialogue (especially, in the context of budget support programmes) has clearly contributed to improved *de jure* compliance, as has strengthening the advocacy and monitoring roles of civil society organisations. Limited progress in implementation is to some extent due to lack of specialised capacity, but mostly reflects meagre political enthusiasm.

Justice system planning and budgeting improved (JC61)

Improvements and sustainability

Although the sustainability of the effects differs across contexts, **the EU has contributed to improved administration, planning, budgeting, and procedures in key RoL entities** (as discussed also under JC 63 on capacities, skills, and procedures). This is revealed in quantitative indicators related to the share of the justice sector in national budgets, budget allocated to courts and prosecution office, and judges' and prosecutors' salaries cited in assessing JC 61 in Georgia, Jordan, Serbia, Tunisia, and Turkey (see also Table 4). While concrete improvements in skills have been identified in virtually all case study countries examined (e.g. Albania and Moldova), a persistent issue is the extent to which persons trained will be able to apply these new skills, and whether institutional reforms will be sustainable. Some of this enhanced capacity will arguably prove durable at individual level; however, some will fail to have institutional impact if basic conditions and incentives do not change in justice systems. Overall the justice system planning and budgeting processes examined in the context of the case studies, many of which were strengthened with EU support, are functional

(for example as found in assessing JC 61 over the evaluation period in Albania and Moldova). Some countries (for example, Georgia and, in the case of judges' salaries, Moldova) have seen increases in resource allocations to the justice system, but these remain inadequate in others (e.g. Turkey). Backlogs remain persistent in Georgia.   Diminishing efficiency gains overall have been IT weaknesses (see JC 62), in part because of stubborn backlogs (Georgia). Backlogs have been especially problematic in Albania because the overhang of property cases from the Communist era has not been addressed.

Box 14　　　*Justice system planning and budgeting improved – The case of Georgia*

As part of its budget support programme focussing on the justice sector in **Georgia**, the EU has contributed to significant improvements in budgeting in a sector with multiple agencies spanning the executive and the judicial branches. Budgetary needs have been assessed in support for justice sector reform; in addition to which, the EU has built capacity of relevant institutions to plan and implement budgets. A recent assessment found that the relevant budgets were credible instruments aligned with a credible Medium-term Expenditure Framework and provided a sound basis for planning and implementation. CEPEJ statistics reveal significant increases in overall budget allocations to the justice system (specifically, to the judiciary, prosecutors, and legal aid) and in some justice professionals' salaries (notably, first-instance judges), a finding supported by the 2015 Transparency International National Integrity Assessment.

Table 4　　　*JC61-relevant CEPEJ indicators*

Country	Budget of all courts - Total annual budget as % of GDP (CEPEJ Q 6.2.1)		Budget of all courts - Gross salaries per capita (CEPEJ Q 6.2.2) (in EUR)	
Country	*2014*	*2016*	*2014*	*2016*
Albania (IPA)	0,10%	0,15%	3,49	3,87
Armenia (ENI)	0,13%	0,18%	3,87	4,71
Georgia (ENI)	0,21%	0,18%	4,02	4,38
Montenegro (IPA)	0,57%	0,85%	24,19	33,44
Serbia (IPA)	0,47%	n/a	17,21	14,93
Turkey (IPA)	n/a	n/a	n/a	n/a
Ukraine (ENI)	n/a	0,25%	n/a	4,19

Source: Particip (2018), using CEPEJ data from https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Explorerv4_0/Tables.

Infrastructures and equipment improved (JC62)

Infrastructure projects　　**The EU has financed the construction of facilities – for example court buildings and penitentiaries (e.g. in Armenia. Georgia, Albania, Serbia, Turkey, and Tunisia), as well as their equipment and access to legislation, case-law, publications, and journals).** This has included providing European expertise (for example, architects, construction experts, etc.) and ensuring fulfilment of European standards (for example, video and audio recording facilities in courtrooms and police station interview rooms, sufficient space in penitentiaries, etc.). Some interventions (for example, new courthouses in Armenia, Jordan, and Serbia and new penitentiaries in Tunisia and Albania) have likely contributed to enhancing the quality of justice and improving conditions of detention, although problems in both areas are by no means all facility-related. Improved infrastructure is no panacea: if facilities improve but the attitudes and incentives of the people

staffing them remain the same, progress will be limited. Nonetheless, some progress has been observed by combining facility improvements with training of penitentiary staff, e.g. in Turkey and Georgia. New courtrooms are of little use if justice continues to be corrupt (Armenia is an example), and new prison facilities will quickly fill up again if overuse of custodial sanctions and pre-trial detention are not addressed – something that remains to be seen in Albania.

Box 15   Infrastructure and equipment improved – The cases of Serbia and Jordan

The EU has provided considerable support to infrastructure and IT in **Serbia**, even in the early stages of the pre-accession process. EU-financed interventions supported the introduction of infrastructure, equipment, including case management software and other IT support to improve efficiency and transparency in the judicial system by facilitating the clearance of the case backlog, as well as by improving the access of the public to judicial proceedings and statistics. Since the early phases of the pre-accession process there have also been numerous interventions in support of the key priorities outlined in the MIPDs (for example the 2007-2009 MIPD highlighted the need for the introduction of an effective case management system), including through the financing of modernisation of court infrastructure, such as courts' IT systems. As described under JC 62 in the Serbia case study, EU interventions supported modernisation and IT systems, including for the Belgrade District Court and five municipal courts in Belgrade as well as numerous courts elsewhere in the country. Under IPA 2007, new prison facilities were constructed and existing ones renovated according to European standards.

EU support to infrastructure in **Jordan** was delivered under sector budget support (SBS) to the Justice Sector Reform (JSR) Programme. Out of EUR 16 million foreseen for infrastructure development by the government EUR 10 million was provided by the EU. The EU contribution supported the construction of two justice palaces, a court of appeal, and the Judicial Institute building. EU budget support has also contributed to an increase in the availability of justice-related statistical data on the justice sector on the internet and in annual reporting. Data pertaining to the police, prosecution, judiciary, bailiffs and prisons are available and processes are controlled with workflow. An external service provider has developed a specific tool (dashboard) for statistics that is very flexible in delivering up-to-date and accurate statistics. Under the EU's SBS to the JSR, a performance indicator on an updated electronic and statistical system (timely availability of relevant data on the internet and in the annual report of the Judicial Council) was introduced. Key CEPEJ indicators (the clearance rate and disposition time) have been integrated into the Ministry of Justice's automated judicial scoreboards and reporting systems.

Support to IT technology   **EU support to application of IT technology to justice has had limited results**. With some exceptions such as Jordan described above and Georgia, European software introduced has not been effectively applied and has sometimes failed to be utilised or fallen into disuse despite training, capacity building, and EU-financed technical assistance (in Albania, Serbia, Montenegro). Some of this is due to lack of interest or distrust on the part of the justice system staff involved. In Albania, the CoE-implemented SEJ (Strengthening the Efficiency of the Albanian Justice System in line with European standards) interventions and supported the application of CEPEJ statistical methods, which provide data that are the basis for improving resource allocation, case management, identification of staff needs and bottlenecks. However, application of IT tools did not fulfil expectations; not so much because of a lack of capacity but because of a lack of interest, as

CEPEJ itself noted in a situation report cited in the country case study note[53]. In Moldova, evidence was found that the random case assignment algorithm was overridden to ensure that cases were heard by favourable judges[54]. Some disappointments are due to the fact that provision of IT is a favoured donor intervention, resulting in systems, as in Albania, which cannot communicate with each other. Some are also due to the fact that old paper-based work habits persist. This is not to say that all of the EU's investments in justice system IT have failed, but for those examined here, effectiveness has been limited.

Box 16   IT equipment improved – The case of Albania

Results relating to IT have been disappointing overall in **Albania**. The EU and other donors supported introduction and use of Integrated Case Management Information Systems (ICMIS) throughout the evaluation period. A persistent problem, and one that has resisted substantial support from the EU and other donors, is the lack of a proper case allocation system. ICMIS includes provision for random allocation of cases, but the vast majority of cases continue to be allocated by lottery controlled by the court president. The 2018 Albania Report noted no progress made in allocating cases randomly to judges. Case allocation continued to be often done in judges' chambers, with complete lack of transparency. Moreover, according to the 2017 EURALIUS IV final report, ICMIS still could not produce the efficiency statistics requested by CEPEJ and promoted by the EU-CoE SEJ project (Strengthening the Efficiency of the Albanian Justice System in line with European standards). This led EURALIUS experts to integrate the CEPEJ indicators in another software package, PAKS+, promoted and provided by the 2016 USAID/US Embassy "Justice for All" project. The EU has provided continuous TA to the MoJ for case management, but the level of beneficiary interest appears to be low. For example, when the maintenance contract for ICMIS expired, the government took no steps to renew it, raising serious issues of sustainability of the EU's contribution.

Capacities, skills and procedures in key RoL entities improved (JC63)

Contribution to capacity building

As found in assessing this JC in case study countries such as Albania, Serbia, Tunisia, and Turkey, EU support contributed to capacity building by strengthening judicial training of judges, prosecutors, and other justice sector professionals. A large number of judges, prosecutors, lawyers, court administrators, penitentiary staff, and others involved in RoL have benefited from EU-financed study visits and training workshops financed under bilateral programmes. In Turkey, a distance education programme was developed to ensure that penitentiary staff throughout the country had access to training[55].

Support to judicial training academies in Albania and Georgia aimed to develop and improve curricula in line with European practice. In all case study countries receiving budget support (Armenia, Georgia, Moldova, Tunisia) actions were taken to improve administrative and organisation structures and processes. There was EU-financed training on human rights in all case study countries and beneficiaries and, in CoE members, training on ECtHR jurisprudence.

However, it is challenging to measure the effects of EU support to capacity

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[53] See Volume 2: Case study note on Albania, JC62.
[54] See Volume 2: Case study note on Moldova, JC62.
[55] EU (2007): Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey, TR070218.

building since many other donors were present and, indeed, some institutions (such as High Schools of Justice in Albania, Montenegro, Serbia, Turkey, and Georgia) were over-endowed with donor support. Overall, the impression left by assessing JC 63 in the case study countries and beneficiaries is that there is a lack of coordination and complementarity between donors in capacity building, a problem especially pronounced in support to judicial training institutions (as opposed to training provided to persons already in justice-related professions such as sitting judges and prosecutors).

There are fewer issues with the effectiveness of EU support to building the capacity of civil society. In all countries and beneficiaries reviewed, the EU has supported increased capacity of civil society organisations, Ombudsman's Offices (for example Georgia, Albania, Serbia, Ukraine), and in some countries, (for example Georgia, Jordan, Tunisia), Parliaments. Civil society organisations (CSOs) in Georgia have cited, in field mission interviews, the EU's support as having leveraged their advocacy and monitoring roles, even in difficult situations (Serbia) and in countries where their very existence is under attack (Turkey).

The two regional projects examined in this evaluation, the Horizontal Facility and EuroMed, were strongly focused on capacity building and both have been successful. Contributing to the success of the first was the selection as implementing partner of the CoE, which was able to deliver capacity building in line with cooperation needs identified by its monitoring bodies. In the case of EuroMed, the factors contributing to success included the careful participatory identification of needs and, the high degree of ownership by EU MS participating agencies closely related to shared security and migration concerns.

More generally, the EU financed capacity building across a broad front of RoL entities: prison staff (Albania, Georgia, Turkey), bar associations (Georgia, Turkey), and institutions responsible for civil enforcement (Albania, Georgia, Moldova).

Contribution to procedures **Many capacity building activities contributed to improving procedures for needs assessment, activity planning, budgeting, human resources planning, and management of donor funds** (Turkey and Moldova for the latter), as discussed under JC 61. Prosecutors were trained in how to identify and prosecute hate crime and gender-based violence, and members of the police were trained in basic investigative procedures (Georgia).

Box 17 *Capacity building – The cases of the Horizontal Facility, Moldova, and Georgia*

The contribution by the **Horizontal Facility** to the improvement of skills and procedures in RoL entities is the strongest aspect of its support, with dozens of actions having provided highly targeted assistance to a range of institutions. Positive examples are numerous and broad-ranging. These have included: the quality, efficiency and effectiveness of courts and justice institutions; the status, organisation and professionalism of court and prison staff; prison health; internal procedures; knowledge and capacities of judges, prosecutors and other legal professionals; capacity of judicial training centres; development of new guidelines; offender management programmes; and cooperation between Ombudsmen, public institutions and civil society. Examples of procedures having been improved include: developing and piloting rehabilitation programmes; improving risk and needs

assessment tools; strengthening safeguards against ill-treatment and self-harm in prisons; revising prisoners' disciplinary procedures and measures; strengthening preventive safeguards against ill-treatment and enhancing an internal police investigative mechanism. Considerable added value has been provided relative to alignment with European standards, applying the ECHR, and building capacity using CEPEJ tools. Concrete improvements in outcomes (namely structured support to human rights and anti-discrimination, as well as enhancement of the Alternative Dispute Resolution (ADR) and of the application of European Commission for the Efficiency of Justice (CEPEJ) methods to assess justice sector efficiency) due to Horizontal Facility capacity building are cited in the Albania case study[56], and others were reported by Horizontal Facility in Bosnia-Herzegovina, Kosovo and the Republic of North Macedonia (none of them the subject of individual case studies)[57].

In **Moldova**, there was training and capacity building provided under sector budget support for each of the Working Group members responsible for the seven pillars of Justice Sector Reform strategy. With EU support, the National Institute of Justice and the Equality Council in partnership with the Office of the United Nations High Commissioner for Human Rights (OHCHR) organised a series of trainings for judges and prosecutors to address and rule on discrimination and equality issues. EU-financed TA advised on new criteria for selection of prosecutors, assisted in drafting a Code of Ethics for them, and built capacity in a range of areas including electronic case management and investigative techniques. Other areas where the EU provided training and capacity building include enforcement, probation, and rehabilitation in the penitentiary system; accountability and transparency of the judiciary, and court administration. Results, from all indications, however, have been meagre.

In **Georgia**, EU capacity building trained a cadre of prosecutors in gender-based violence, leading according to filed mission interviews to an increase in the number of prosecutions. Just recently started is an EU initiative to train investigators in the Ministry of Internal Affairs in the basics of criminal investigation – the low quality of investigations was cited in interviews with justice sector officials as one of reasons for the continuing low public opinion of the justice system, and prosecutors in particular. Investigators were too quick to identify suspects on the basis of weak evidence, often hearsay, resulting in arrests and defendants' being thrust into a judicial system heavily weighted against the defendant.

De jure but less de facto harmonisation of domestic law with international law and enforcement (JC64)

Promotion of legal harmonization

EU support has promoted harmonisation of domestic law with international law, but, while de jure compliance has improved, de facto compliance lags behind. All EU assistance has directly or indirectly promoted harmonisation of domestic law with international law, whether in the form of European legal good practice, ECtHR jurisprudence or, in the case of the EuroMed project, regional harmonisation. Under JC 64, case studies for Albania, Georgia, Jordan, and Serbia describe EU support to public dissemination of laws and administrative regulations. Many case study countries and IPA beneficiaries have increased their de jure compliance with international standards by adhering to conventions, and EU support and policy dialogue contributed to this, but de facto compliance lags far behind. Generally speaking, the identification of institutions responsible for enforcement has been slow, and political will to enforce has been weak (see EQs 7 and 8), resulting in limited impacts. In countries with strong interest in European integration, such as Georgia (ENI) and Albania (IPA), there has been significant progress, to which EU cooperation has contributed. The EU supported interventions in a number of countries to strengthen the application

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[56] See Volume 2: Case study note on Albania, JC32.

[57] See Volume 2: Case study note on the Horizontal Facility.

of ECtHR jurisprudence, often through CoE-implemented Horizontal Facility actions. ENI partner countries (Georgia) and IPA beneficiaries (Albania, Serbia, and Turkey) have received considerable European assistance promoting the ECHR, conformity with ECtHR case law, European approaches to human rights and fundamental freedom. Yet, harmonisation in areas having to do with trade and the economic sphere has been more rapid than in sensitive areas having to do with RoL, democracy, and human rights.

Box 18   Harmonization with international law - The case of Turkey

In **Turkey**, the 2008 IPA intervention "Enhancing the role of the Supreme Judicial Authorities in respect of European standards" aimed to increase the commitment of the High Council of Judges and Prosecutors and of the high courts to EU accession criteria in the area of human rights. The intervention achieved concrete results by introducing the Turkish superior judiciary to the *acquis communautaire*, fundamental rights and freedoms guaranteed by the ECHR, provisions of the EU social charter, and other European standards shared by the EU and CoE. Study visits, conferences, seminars, and case studies were arranged. Important outcomes were the introduction of individual applications before the Constitutional Court as of September 2012 and the adoption of the filtering system of the ECtHR to manage the high number of incoming individual applications, as well as procedural rules from the ECtHR. Other developments around this time were also favourable: the establishment of a Department of Human Rights within the Ministry of Justice and the putting in place in 2012 by the High Council of Justice of new criteria for assessing judges and prosecutors which respected ECtHR provisions. In 2013, the Constitutional Court aligned with ECtHR case law in annulling provisions of the Anti-terror Law increasing detention on remand. Examples of such progress are, however, rare in the post-coup attempt period.

4.2.3 EQ7 – Effects of EU support on RoL institutions II (independence of the judiciary and accountability of the judiciary and other institutions)

To what extent has EU support increased the independence/ impartiality/ accountability of the judiciary and strengthened other institutions necessary for the RoL?

Rationale and coverage of the question

One of the fundamental weaknesses in many IPA beneficiaries and ENI partner countries is the lack of judicial independence. Without independence, the effectiveness of the EU's RoL interventions will be low – outputs will not translate into outcomes, and impact will be impaired. Sustainability will also be affected because, for example skills gained in training will not be applied and will depreciate over time. Accountability of justice system institutions, not just limited to the judiciary, is also a prevalent weakness, and brings into play the important role of civil society as an advocate for, and monitor of, RoL reform.

It is to be generally noted that any issues of constitutional independence of the judiciary and the separation of powers are examined in EQ 5, in particular relative to the alignment with European standards, whereas issues of effective respect of independence and separation of governance pillars are addressed here; they are of course strongly interlinked.

Summary answer to the Evaluation Question

EU support to independence and accountability of RoL institutions, where provided, has been relatively cohesive and strategic at the national level. However, overall improvements have remained scattered, and it is difficult to draw conclusions based on specific regions or EU instruments.

There are numerous examples of significant and sustainable EU contributions to legislative reforms and the strengthening of institutional frameworks and procedures. EU technical assistance for strategies, legislative and regulatory drafting, and subsequent implementation, has been used to good effect, even in some countries where political resistance has been high. Other effective support with tangible results has included the development of manuals and ethics codes (multiple countries), strengthening of vetting processes (multiple countries), case allocation (Serbia), development of information-sharing (Montenegro, Armenia), monitoring and complaints systems (Turkey, Montenegro). Moreover, EU support has often targeted higher-level courts and judicial councils. It appears to have been a strategy that has provided considerable leverage in numerous contexts (notably Jordan and Georgia). It has incidentally paved the way for European standards to be integrated at the supreme levels of jurisprudence. Building on a existing instruments referred to elsewhere (EIDHR, CSF etc.), EU support has also underscored the essential role of national human rights institutions (NHRI), Ombudspersons, civil society, the media and other oversight institutions in ensuring independence and accountability.

The principles of independence, impartiality, separation of powers and accountability are interdependent. Much of the EU's direct support to RoL institutions has correctly taken a

"broad-brush" approach in this regard, in particular where large sector programmes (including budget support) have developed strategic and complementary activities complemented by continuous policy dialogue. In general, technical assistance activities have been most effective when underpinned by other interventions and active policy dialogue.

Moreover, public distrust of authorities and the legal system has been a significant barrier to support to the independence and accountability of rule of law institutions in most countries reviewed. In most instances, the EU has addressed this issue strategically by providing ancillary support to awareness-raising and communication strategies, and their implementation (for example Albania).

Despite significant achievements, overall improvements in independence and accountability have remained limited, and several contexts have experienced worrying trends. Difficulties are linked to political will and a desire to maintain the status quo, with resistance often found within institutions themselves. Practical implementation of reforms remains a challenge, which highlights the need to provide complementary and continuous support. Other obstacles include the need for deep systemic changes, including constitutional and legislative reform. Serious lagging or backsliding on Chapter 24 requirements relative to independence and accountability have been observed in several IPA and Neighbourhood contexts. However, there is no suggestion that EU support has shied away from these issues, and indeed has suspended cooperation where serious concerns have arisen (Moldova, Turkey). Related to this, the suspension of three judicial projects in Turkey was based on inputs from the Venice Commission, which underscores the importance of supporting political decisions with technical assessments.

Limited effects with regards to the independence/impartiality of the judiciary (JC71)

Main trends in independence of judiciary

While some achievements have been observed relative to independence of the judiciary, these have proven fragile, and underscore the need for complementary approaches. Difficulties and overall changes observed regarding the independence and impartiality of the judiciary are broad and highly variable, both geographically and temporally. Turkey is a strong example of the fragility of achievements[58], but other contexts have also been disappointing (Serbia, Moldova (see also Box 19), Georgia[59]). Difficulties are not always linked to political will, however, often arise from a desire to maintain a beneficial status quo, with resistance often being found from within institutions themselves, notably the judiciary.

Other barriers to change can include the need for profound systemic changes (Serbia, Georgia), or for necessary constitutional and other legislative reform required for changes to be implemented (Jordan, Horizontal Facility)[60]. Indeed, practical implementation of legal and procedural reforms remains a challenge in all contexts examined. This highlights the importance of not simply providing technical expertise relative to law reform, but providing complementary support to ensure the application of such reform in line with international standards of independence. Albania is an example of where such support was provided, with good effect (see Box 20).

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[58] See Volume 2: Case study note on Turkey.
[59] See Volume 2: Case study notes on Georgia, Moldova and Serbia.
[60] See Volume 2: Relevant case study notes.

Public distrust is another significant barrier in most contexts[61], and hence support to awareness-raising and communication strategies and their implementation has been a particularly strategic approach, which has helped to amplify other results (Serbia, Albania[62]).

The decision to suspend support to three significant judicial projects in Turkey was based on inputs from the Venice Commission and recommendations from the European Court of Auditors, relative to threats and attacks on the independence of the judiciary and other rule of law institutions. This therefore also underscores the importance of supporting political decision-making through independent (and credible) technical assessments, where possible.

Box 19   Independence/impartiality of the judiciary – The case of Moldova

Moldova ranks poorly on independent assessments of judicial independence, and while legislative amendments to strengthen the independence, impartiality and regulation of the judiciary through the Superior Council of Magistracy (SCM) were adopted in 2012, implementation in practice is poor, and supporting legislation has not been passed[63]. The grounds for dismissal of judges were amended in 2014, despite Venice Commission concerns, participation of the Minister of Justice and Prosecutor General in the SCM was criticised by the CoE's Group of States against Corruption (GRECO), and judicial disciplinary procedures are not effectively applied. There have been instances of intimidation of judges who are out of line with the Government. Constitutional amendments intended to increase the judiciary's transparency, accountability and independence as recommended by the EU-funded peer review mission of 2016 have not been passed. On a more positive note, the 2014 law reforming the Prosecutor's Office was adopted following the positive opinion of the Venice Commission; and the merit-based system of selection and promotion of prosecutors is functional, however this area of reform is undermined by on-going corruption and nepotism within the institution.

While EU support to independence has been very limited in some contexts, this can generally be justified on the grounds that the sensitivity of these issues can be such that interventions are simply unfeasible (and possibly even counter-productive to broader cooperation objectives); or support was provided by parallel interventions of other actors or donors, from which indirect contributions can subsequently be inferred. Even where independence has not been directly targeted (EuroMed Justice (EMJ), and others), indirect contributions to issues of independence (exposure to international standards, support of the judicial networks, etc.) can nevertheless be inferred. There is no suggestion however that EU support has deliberately shied away from supporting these fundamental principles.

Positive examples of EU contributions
Despite the challenges outlined above, there is nevertheless evidence that EU approaches and specific interventions provided a number of broad, **direct and effective contributions to judicial independence**. There are also general indications on the basis of the kinds of support provided, that sustainability is likely to be very high, particularly those

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[61] For details on civil society perceptions of RoL institutions' independence, see Volume 2: Case study notes on Georgia and Ukraine.
[62] See Volume 2: Case study notes on Albania and Serbia.
[63] See Volume 2: Case study note on Moldova.

addressing legislative reform (which was supported in the vast majority of contexts), and institutional frameworks and procedures.

Some examples of strong contributions include Jordan and Albania, which focussed on holistic, broad interventions, addressing all RoL institutions, and Ukraine, where significant support has been provided to implementation of laws and procedures, and where an innovative selection process showed initial promise. Even where progress and prospects are bleak, some positive inroads can nevertheless by observed.

Some evidence of the effectiveness of policy dialogue has also been observed in some contexts (Albania, Armenia), **in that this has contributed to providing additional leverage and buy-in for existing support to the judiciary.** Technical assistance has been widely used, such as support to drafting strategies, legislation, codes and specific procedures, but appears most effective when complemented by other modalities and forms of support, such as political dialogue, support to civil society and media, and community outreach; that is when a broad whole-of-sector approach is taken.

Considerable support to Ombudspersons has been provided, but gains are often undermined by inadequate state resourcing, and threats to their credibility (Serbia[64]). Indeed, in this and other IPA contexts, serious lagging or backsliding on Chapters 23 and 2 requirements relative to the independence of RoL institutions is observed, and supported by EU political analysis, country level interlocutors, and numerous independent sources.

Box 20   Independence/impartiality of the judiciary – The case of Albania

Successive EURALIUS programmes in **Albania** have targeted key constitutional and institutional problems that, amongst other areas of reform, have resulted in considerable progress relative to judicial independence, impartiality, and accountability. The interventions were holistic in the sense that they addressed judicial and prosecutorial independence, regulation and accountability as part of an ambitious strategic overhaul of these institutions, and using a variety of modalities. Technical assistance, EU exchanges and high-level conferences were employed to improve the framework and procedures for inspection of judges, and to contribute to reform of the High and Constitutional Courts, despite political resistance. Expertise was also provided for the drafting of the Status Law regarding the recruitment, appointment, promotion, and transfer of judges, and the Analytical Report on the legal framework for a performance evaluation system for judges and prosecutors, and contributed directly to the implementation of the new system by the nascent High Judicial Council and High Prosecution Council. EU Expertise also contributed to the evaluation scheme of the High Court of Justice (HCJ) and the Independent Qualification Commission responsible for monitoring the "vetting" of sitting judges. Most important, the EU has provided an on-going monitoring mechanism for the vetting of judges, an enormous exercise, which has resulted in to date over 100 decisions and related sanctions, and which has acquired a high degree of credibility due to EU involvement.

Accountability of the judiciary and other RoL institutions improved despite strong internal resistance (JC72)

Main contributions   **The EU has provided considerable support that has served to specifically strengthen the accountability of RoL institutions; this has in**

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[64] See Volume 2: Case study note on Serbia.

to strengthening accountability

turn complemented support provided to institutional independence and human rights. There is no overall observable trend in the targeted regions relative to accountability of RoL institutions. In general terms, difficulties correlate to high levels of corruption, inadequate respect of the separation of powers and institutional independence, threats to freedom of expression and the media, restricted civil society space, and political or institutional volatility. EU support that has contributed to strengthening the accountability of RoL institutions has included: the development of ethics codes for RoL professionals (multiple), and practical manuals for judges and prosecutors (Albania); support to vetting processes (multiple), development of information-sharing strategies, processes and platforms (Montenegro, Armenia); case load analysis and case allocation (Serbia); awareness-raising and visibility (Turkey); monitoring and complaints systems (Turkey, Montenegro); support to anti-corruption measures relative to the judiciary (Armenia); the development of e-governance, e-parliament and e-justice platforms and tools (Armenia, Ukraine); and development of declarations systems for RoL personnel (Ukraine)[65].

Interventions targeting accountability not only help to define the responsibilities of RoL institutions and reduce scope for corruption and nepotism, but also address issues that provide practical protection of institutional independence and help ensure the quality and consistency of judicial and oversight institutions: career and remuneration structures; appointment, promotion, and removal provisions, etc. These elements in turn help to bolster public confidence in these structures, which in some countries is in sharp decline.

Support to accountability is often "bundled" with support to the independence of RoL institutions, and in this respect, many of the points raised at JC 71 above are also applicable.

Building on a useful mix of instruments and continuous policy dialogue, EU has successfully consolidated and strengthened the role of civil society and oversight institutions. Policy dialogue between civil society and authorities has provided considerable leverage to organisations, by underscoring the importance of participative processes, enhancing their credibility, and underlining their oversight role and commitment to international and European standards (generally, but most observable in Georgia). Specific initiatives that have brought together government and civil society in joint planning and implementation of activities have also contributed to strengthening their relations (Ukraine). Technical and practical support has been provided to civil society and the media to monitor judicial and other RoL processes (Ukraine). In some contexts, support to parliamentary oversight could be strengthened (Tunisia), and it is considered that such support could be more routinely addressed in all contexts. Nevertheless, the essential role of NHRI, Ombudspersons, other oversight institutions, civil society and the media as transversal driving forces in ensuring accountability has been repeatedly underscored, and also supported in a complementary manner through other instruments (EIDHR,

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[65] See Volume 2: Relevant case study notes.

etc.).

While some interventions did not target accountability directly (EMJ), some contributions can be inferred through, for example, technical and capacity-building support (see also JC 63) since this contributes to judicial accountability relative to the quality of justice.

There is often powerful internal resistance by RoL institutions to accountability mechanisms, since they may threaten existing hierarchies and practices, cultures of nepotism or impunity, and in transitional or highly corrupt contexts may give rise to criminal, professional and other serious sanctions, and which may therefore explain why certain contexts did not appear to have addressed this issue directly.

Box 21   Accountability of the judiciary and other RoL institutions – The case of Tukey

In **Turkey**, the Ombudsman institution was established in June 2012 and was supported by the EU for two years in its early stages through a twinning programme, and technical assistance project supporting communication and visibility, training in human rights, and a review of its legal framework. The number of complaints submitted to the Ombudsman has risen from 7 638 in 2013 to 17 321 in 2017, and compliance has increased from 20% in 2013 to 67% in 2017. The EU contributed to institutionalising relationships between the judiciary and media through the establishment of a system of judicial spokespersons. EU commenced support in 2015 to the High Council of Judges and Prosecutors, to implement and raise awareness of the Code of Judicial Ethics; however, this was suspended in 2017.

4.2.4 EQ8 – Broader effects

To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?

Rationale and coverage of the question

Between 2010 to 2017, the EU has provided over EUR 563 million to IPA beneficiaries and over EUR 702 million to ENI partners (see Volume 2, Annex 3), and has engaged in continuous policy dialogue to support strengthening the RoL. Judges have been trained, facilities have been upgraded, laws have been drafted, constitutions have been amended, civil society has been engaged, all with EU support. Bringing RoL in line with European and international standards has been considered a fundamental objective of all EU relations with partner countries.

Summary answer to the Evaluation Question

EU contribution to sustainable improvements in access to justice, governance, and human rights has been variable between countries and across specific areas within countries. A consistent finding is that "whole of sector" approaches have provided sustained and sometimes remarkable results – by engaging a broad range of actors and institutions, and diversifying the scope of interventions. In all countries examined, the EU has provided crucial support to civil society as key actors in ensuring access to justice, and protecting democratic governance and human rights. Such support, whether embedded in RoL programmes or directly supported by complementary instruments such as the CSF and EIDHR, has unquestionably strengthened civil society organisations and legitimised their role. In some areas, however, for example relative to access to justice, civil society has not been consistently targeted, even where their contributions would have provided significant added value. Added to this, certain countries have experienced on-going or even increasing restrictions of civil society space and attacks on their credibility or worse, including, most worryingly, in some accession countries.

Principles of human rights, governance and democracy are not being integrated in a systematic way, but are approached in a compartmentalised manner. For example, while alternatives to imprisonment and fair trial rights have been addressed in some contexts, high pre-trial detention rates suggest that fundamental causes, such as court efficiency and backlogs, are not being addressed. Similarly, construction of penitentiaries is of limited effectiveness and sustainability without support to strategies to reduce prison populations and support alternatives to detention. These difficulties suggest that human rights approaches are not being adequately integrated into structural reform efforts.

Similarly, while support to governance principles and institutions has made contributions to RoL actors and institutions, including to thorough legislative and electoral reform and improved democratic processes, RoL and democratic/ governance support are not directly linked in programming and implementation. Finally, while human rights, like democracy and governance, are integrated in policy dialogue and programming, they have not been systematically integrated in implementation.

EIDHR, CSO-LA, and JUFREX have been used as complementary mechanisms in all contexts to support human rights, civil society and democratic governance, and have made significant contributions, particularly since they make available support that does not require government agreement. There has been only limited support to the media sector and public awareness-raising activities that have directly or indirectly supported human rights issues.

Overall progress in access to justice has been disappointing, and vulnerable persons have not been targeted in a systematic manner. While there has been some progress on legal aid, poor quality advocacy and financial sustainability are on-going concerns in many settings, and support to ADR has been limited, or has not had sustained uptake. The efficiency of court systems has not been visibly improved by the provision of court infrastructure and IT technology, largely since this relies on deeper institutional change. Indeed, resistance to judicial reform at all levels has often been rooted in the judiciary itself. Access to justice is perpetuated by low general knowledge of legal rights, and hence there has been some success observed in approaches that incorporate awareness raising in access to justice initiatives.

Access to justice strengthened (JC81)

Access to justice

EU's broad support to justice sector reform has contributed to increasing access to justice, with the overall strengthening of the justice sector institutions observed in some countries where the EU has been particularly active (for example Jordan, Georgia – see EQ6) having had positive effects on access to justice (see Box 22). However, backsliding is seen elsewhere. Challenges vary in their origin, but can result from unevenness in geographic access, service delivery, or quality (Serbia); poor implementation of laws (generally, but notably in Moldova, Tunisia); and low public trust in the justice system (supported by numerous independent sources in Moldova and Ukraine). In some contexts, legal aid appears to be reasonably well-functioning (Montenegro) hence intervention in this respect has not been prioritised by the EU. Georgia, where EU-supported legal aid is regarded by national and EU interlocutors as a sustainable model, represents a success in this regard. By contrast, in other cases (Moldova, Turkey etc.), sustainability concerns persist since legal aid systems are overly reliant on the good will of bar associations, and the quality of legal representation is low or questionable due to inadequate payment structures and/or the use of junior lawyers; resources for legal aid are also generally dependent on prevailing political will (see overall court budgets and numbers of judges in Table 4). There are several examples of sector-wide support (for example legislation and policy reform, engagement of a broad cross-section of stakeholders, public outreach), provided by EU that has targeted access to justice, with some strong quantifiable results (as evidenced by sector strategy, legislative, institutional and budgetary reform, and confirmed by all stakeholders in Jordan), some that are generally encouraging (similarly, in Armenia), and others more modest (similarly, in Albania)[66]. Related to this, certain overall improvements that can be attributed to budget support are observed.

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[66] See Volume 2: Case study notes on Albania, Armenia and Jordan.

Box 22   Access to Justice – The cases of Jordan and Georgia

In **Jordan,** the 2017 EU disbursement report for the SBS programme "Support to the JSR in Jordan" states that access to justice has improved through increasing the budget for legal aid and the creation of a working group chaired by MoJ. The programme contributed to changes related to the legal aid system, with the 2017 EAMR stating that access to justice was enhanced, and legal aid services increased by 10% from 2016 to 2017. The TA component also provided advice to the ministry and stakeholders on legal aid strategy, including a module on legal aid access on criminal matters. The 2017 programme "Support to the Rule of Law" includes a key component on access to justice, including legal aid for vulnerable groups, and aims to reduce inequalities and strengthen the rule of law.

In **Georgia**, with EU support, the legal aid service was moved within the Ministry of Justice to an independent existence reporting to Parliament, a major upgrade in status and reinforcing its independence and stability, both operationally and financially. An increase in national budgetary support to the service was also secured, and is to date sustained, and the legal aid service is now considering expanding its coverage from criminal to civil and administrative law cases. This direct support to the service has been complemented by support to the Georgian Bar Association, the development of "child friendly" justice approaches, and reinforcing Alternative Dispute Resolution mechanisms, including a new draft law on mediation. Considered a significant success by national and international interlocutors, the Georgian legal aid experience is being actively considered by the EU and other donors for replication in other countries.

ADR, awareness raising, and information

Some programmes have targeted ADR (Armenia), **but even in contexts where alternatives exist, uptake is often low** (Albania, Moldova, Serbia). Support has also been given to awareness raising and access to legal information, not only of the public (Armenia), but also legal professionals and the judiciary itself (Albania, Serbia). The EuroMed project contributed to the availability of legal information in Arabic (see comparable numbers on court interpreters in Table 5). However, in many settings, general knowledge of legal rights and consequently access to justice remains low. This suggests a considerable need for awareness raising in parallel to access to justice (and general justice) initiatives. These may be especially effective in anti-discrimination and gender/ minority rights (see also references to whole-of-sector approaches above).

Table 5   JC81-relevant CEPEJ indicators

	Budget of all courts (Total annual budget as % of GDP) (CEPEJ Q 6.2.1)		Professional judges (per 100 000 inhabitants) (CEPEJ Q 6.1.1)				Number of court interpreters (absolute number) (CEPEJ Q 1.9.9)			
Country	*2014*	*2016*	*2010*	*2012*	*2014*	*2016*	*2010*	*2012*	*2014*	*2016*
Albania (IPA)	0,10%	0,15%	11,67	13,5	12,55	12,62	148	262	604	35
Armenia (ENI)	0,13%	0,18%	6,74	7,24	7,51	7,74	n/a	n/a	n/a	n/a
Georgia (ENI)	0,21%	0,18%	5,24	5,4	6,81	7,48	n/a	21	23	30
Montenegro (IPA)	0,57%	0,85%	41,93	42,42	40,97	51,29	368	544	625	573
Serbia (IPA)	0,47%	n/a	33,67	40,51	37,95	38,45	2100	2100	n/a	n/a

Turkey (IPA)	n/a	n/a	10,65	10,74	11,37	14,06	n/a	n/a	2877	2441
Ukraine (ENI)	n/a	0,25%	16,88	17,06	18,84	14,57	n/a	n/a	n/a	n/a

Source: Particip (2018), using CEPEJ data from https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Explorerv4_0/Tables.

Alternatives to imprisonment and court backlogs

Access to justice includes alternatives to imprisonment and fair trial rights, which have been addressed in some contexts (Albania, Tunisia), but high pre-trial detention rates in numerous contexts suggest that root causes are not being addressed (for example investment in diversion mechanisms, increased sentencing options, probation systems etc.). In the specific area of juvenile justice, in Georgia, the EU supported highly successful changes in the attitudes towards detention, and indeed encouraged cases to be diverted from the criminal law system altogether, as confirmed by numerous national and donor sources. Related to this, court backlogs in some contexts are highly worrisome (in most contexts, but particularly in Turkey, Tunisia); while support in Serbia in this regard initially helped, backsliding soon occurred. Albania continues to experience backlogs in property rights cases, as well as in cases of all kinds at high-instance. Backlogs of criminal cases in all contexts examined are of significant concern, since these have direct effects on prison over-population, and hence on human rights.

Limited effects related to respect for human rights including gender equality, minority rights, and fundamental freedoms (JC82)

Human rights situation in regions of focus receiving EU support to RoL

The degree and nature of human rights challenges in the RoL environment is highly variable. Some strengths and advances have been observed over the evaluation period: Georgia has seen an overall improvement in human rights protection, including a decline in ill treatment, and an increase in general accountability (cases and prosecutions brought), Montenegro is now considered a regional leader in Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) rights, which have been supported by EIDHR. Despite serious challenges outlined below, Serbia undertook considerable legislative reform, and the Constitutional Court of Turkey delivered some promising decisions. The human rights situation in Georgia improved in a number of respects, notably ill-treatment and penitentiary conditions.

However, serious human rights challenges persist. Significant backsliding relative to human rights has been observed in certain contexts, and in particular Turkey. Torture, ill-treatment and poor prison conditions are widespread (notably Albania, Turkey, Moldova, Jordan), and fair trial rights often ignored (many, but notably Turkey, Moldova, Jordan). While EU support and policy dialogue have encouraged many countries to align with international human rights conventions, implementation everywhere lags far behind. Gender inequality and violence remain troubling (Montenegro, Serbia, Turkey, Jordan, Georgia); and, in some contexts, LGBTI rights are either non-existent or poorly enforced (Serbia, Tunisia). Minority rights are not always protected (Montenegro, Serbia, Turkey), and freedom of

expression has been seriously threatened in some contexts (Serbia, Turkey, Jordan). CSOs, human rights defenders (HRDs), and journalists have been routinely and brutally targeted in Turkey.

Challenges arise primarily from an absence of political will, but also from other factors (see also JC51)**.** These include inadequate implementation of strategy and legislation (most countries, but notably Albania, Montenegro, Moldova), lack of institutional capacity (Montenegro), lack of continuity after support has been provided (Albania, regarding the functioning of a constructed penitentiary), and a lack of adequate resources and credibility of human rights oversight institutions (Albania, Serbia, Ukraine). Some instances of progress can be seen, for example, the EU trained prosecutors in Georgia to tackle gender-based violence (GBV), anti-discrimination, and hate crime. Yet, distinct from political will and in part explaining it, popular support for real progress, particularly in minority rights and anti-discrimination, is often low outside of European-oriented urban elites.

EU support to human rights

The EU has supported human rights in the RoL context through whole sector approaches as described earlier, support to civil society, and the use of complementary instruments such as the EIDHR, but serious challenges to human rights remain in some contexts. An EU freedom of expression intervention in Turkey working with the judiciary[67] was very successful (see Box 23). Some whole-system approaches, that is engaging multiple institutions and stakeholders, have addressed human rights concerns (Montenegro with respect to detainee rights and juvenile justice), and supported human rights strategies, or sector strategies with significant human rights aspects (many, but notably in Georgia). Considerable support has been provided to creating of strengthening legislation in conformity with European standards (Albania, Serbia, Horizontal Facility, Armenia), and ratifying European and International treaties (Armenia).

Juvenile justice (Montenegro, Georgia, Serbia), various fair trial rights (most), penitentiary reform (Montenegro, HF, Armenia, Georgia, Albania), and prevention of and accountability for ill treatment (most, but notably Armenia and Georgia), have also been routinely addressed.

Training on human rights standards has been provided for legal and other RoL professionals (for example, Albanian judges and prosecutors); oversight institutions have been supported (HF, Armenia, Ombudsman's Offices in a number of countries); and tools have been developed to monitor and mainstream human rights issues (HF).

The construction of penitentiary facilities was supported in several countries (see also EQ6), which are generally intended to ease overcrowding, however construction efforts alone are of limited effectiveness and sustainability without concomitant support to alternatives to imprisonment (including pre-trial), diversion mechanisms, probation services, and other strategies proven to reduce prison populations.

Media and complementary

Some public awareness-raising activities have been conducted (for example in Montenegro with respect to juvenile justice and detainee rights)**,**

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[67] EU & CoE (2011): Strengthening the capacity of Turkish Judiciary on freedom of expression.

support	**however, similar to access to justice above, support to the media could be strengthened.** Various media programmes have helped establish sustainable media sector frameworks and supported the capacity of media institutions (Jordan[68], Tunisia[69]), which have directly or indirectly supported human rights issues within the RoL context.

Many RoL programmes in all case study countries have contained components intended to support civil society, human rights, and democratic institutions, and EIDHR, CSO-LA, and JUFREX have been used as complementary mechanisms in all contexts (see below related to governance and oversight). Comprehensive civil society, human rights, and democracy portfolios[70] have been established in some contexts, notably in Armenia[71]. |
| *Dialogue on human rights* | **Dialogue on human rights has been mainstreamed and sustained in all contexts**. The EU has directly linked human rights concerns to fulfilment of interim benchmarks under Chapter 23 in Montenegro and Serbia, but this does not appear to be occurring in the overall IPA context. In Turkey, EU interlocutors confirmed that human rights violations following the 2016 coup attempt led to the immediate re-orientation of political dialogue[72]. |
| *Integration of human rights in EU support* | **Human rights form the subject of dialogue, are the subject of many specific interventions, and are integrated (on paper) in programming, but are not systematically integrated in the implementation and content of activities**, which in general terms can be described as the absence of a consistent human rights-based approach to RoL support. The EU Rights Based Approach Tool-box[73] was developed in 2014, during the period under consideration, however its implementation is still being rolled out. Similarly, EU Human Rights Guidelines are important pragmatic tools for dialogue, for developing strategies for EU action, and for engaging with stakeholders, in particular civil society. Guidelines that are of particular relevance to the regions and to RoL issues include those relative to torture and ill-treatment, LGBTI rights, human rights defenders, freedom of expression, women's rights, and EU human rights dialogue. |

Box 23   Respect for human rights – The case of Turkey

In **Turkey**, a significant downward trend relative to ill-treatment and arbitrary detention has been observed, particularly in the context of various emergency measures, and the attempted coup. CSOs no longer have access to places of detention, but continue to collect data from eternal sources. The EIDHR has supported numerous rights projects, in particular targeting persons in detention and anti-discrimination. Protection of gender rights is poor. An EU strategy for HRDs has been implemented, involving local stakeholders and EU MS. Freedom of expression remains extremely problematic,

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[68] EU (2014): Support to Media action (C347257); EU (2013): Support to CSO and Media in Jordan (D23849)

[69] EU (2014): Programme d'Appui aux Médias en Tunisie (D37337)

[70] See Volume 3, Annex 7 for inventory of interventions; related to human rights see EIDHR as financing instrument.

[71] See Volume 2: Case study note on Armenia, for example EU (2009): Support to Office of Human Rights Defender (C219390); and EU (2014): Support to Human Rights Protection in Armenia (D032771 & D039823).

[72] See Volume 2: Case study note on Turkey.

[73] SWD (2014) 152 final, "A rights-based approach, encompassing all human rights for EU development cooperation": https://ec.europa.eu/europeaid/sites/devco/files/online_170621_eidhr_rba_toolbox_en_a5_lc_0.pdf.

legislation provides inadequate protection, and journalists were aggressively targeted in the wake of the attempted coup. An EU freedom of expression project[74] worked with the Justice Academy to ensure alignment with ECtHR case-law, and is considered to have been very successful. The Constitutional Court has delivered some promising decisions, for example supporting social media freedom, and protecting certain LGBTI rights.

Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved despite challenges (JC83)

Challenges related to EU support to governance and democratic processes

Principles of human rights, governance and democracy are approached in a rather compartmentalised manner. The interdependence of human rights and RoL has been long integrated into EU approaches, but this appears to be less evident relative to support to democratic institutions. One example of this disconnect is the enormous support given to legislative drafting, but with relatively little parallel support provided to parliamentary structures to help support the passage of reforms, as well as to drafting secondary legislation and bylaws to adopt needed regulations.

Governance deficiencies[75] are the core driver of many of the difficulties observed in all aspects of RoL. Some democratic challenges that are prevalent in the regions include weak democratic processes and parliaments (Moldova), politicisation of institutions (Albania), lack of confidence in parliament (Ukraine, Georgia), dubious legitimacy of elections (Moldova), and, in some contexts, significant restrictions on freedom of assembly and association (Turkey, and increasingly Serbia). A lack of implementation of reform again emerges as a problem, for example anti-corruption and other governance legislation and strategies (Ukraine), or GRECO recommendations (Turkey).

Successful EU support to governance and democratic processes

Nevertheless, substantial support to broader governance principles has been provided with direct and indirect contributions to RoL actors and institutions. Key amongst these has been support to constitutional and legislative reforms, for example in Albania and Georgia and through the Horizontal Facility. Support to processes has also had some impacts, for example to judiciary vetting in Albania (see Box 24). Anti-corruption efforts have been supported in a majority of contexts, but notably in Albania (with, however, limited enthusiasm on the part of the government), Montenegro, and in Turkey in the earlier years of the period under consideration. The development of the World Bank's Worldwide Governance Indicator[76] (WGI) on Control of Corruption development[77]

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[74] EU & CoE (2011): Strengthening the capacity of Turkish Judiciary on freedom of expression.

[75] For details on international indices of good governance, see Volume 3, Annex 3.

[76] Based on a long-standing research program of the World Bank, the Worldwide Governance Indicators (WGI) project reports aggregate and individual governance indicators for over 200 countries and territories over the period 1996–2017, for six dimensions of governance: (1) Voice and Accountability, (2) Political Stability and Absence of Violence, (3) Government Effectiveness, (4) Regulatory Quality, (5) Rule of Law, (6) Control of Corruption. The WGI are composite governance indicators based on over 30 underlying data sources. Since 2002, it is updated annually. The six aggregate indicators are reported in two ways: (a) in their standard normal units, ranging from approximately -2.5 to 2.5, and (b) in percentile rank terms from 0 to 100, with higher values corresponding to better outcomes. For an analysis of the Rule of Law dimension and further details, see Volume 3, Annex 3.

during the evaluation period showed various development for IPA beneficiaries and ENI partner countries (see Figure 8**Error! Reference source not found.**). Electoral reform has received some assistance, including fighting electoral fraud and the creation of an e-Civil registry (Armenia).

According to the World Bank's WGI on Voice and Accountability[78], the extent to which civil participation could take place in IPA beneficiaries and ENI partner countries during the evaluation period mostly stagnated (see Figure 9**Error! Reference source not found.**). However, EU support on this end, like the strengthening of the electoral commission, and of the participation of the grassroots population in politics, as well as the provision of TA to the political party system and parliament, have shown promising results in Jordan. These interventions were complemented by the promotion of CSO inclusiveness and participation (although government has recently been more wary of engagement with civil society, as in Serbia).

EIDHR has proven a valuable instrument to directly support progressive civil society groups (sometimes at some risk to themselves), thereby ensuring that cooperation does not narrow down to geographic (usually bilateral) support channelled through governments that are by no means necessarily in line with European and international standards.

Figure 8   *WGI – Control of corruption development (2010-2017) in ENI countries and IPA beneficiaries selected as case study countries under this evaluation*

Source: Particip, based on World Bank dataset (2018), http://info.worldbank.org/governance/WGI/#home.

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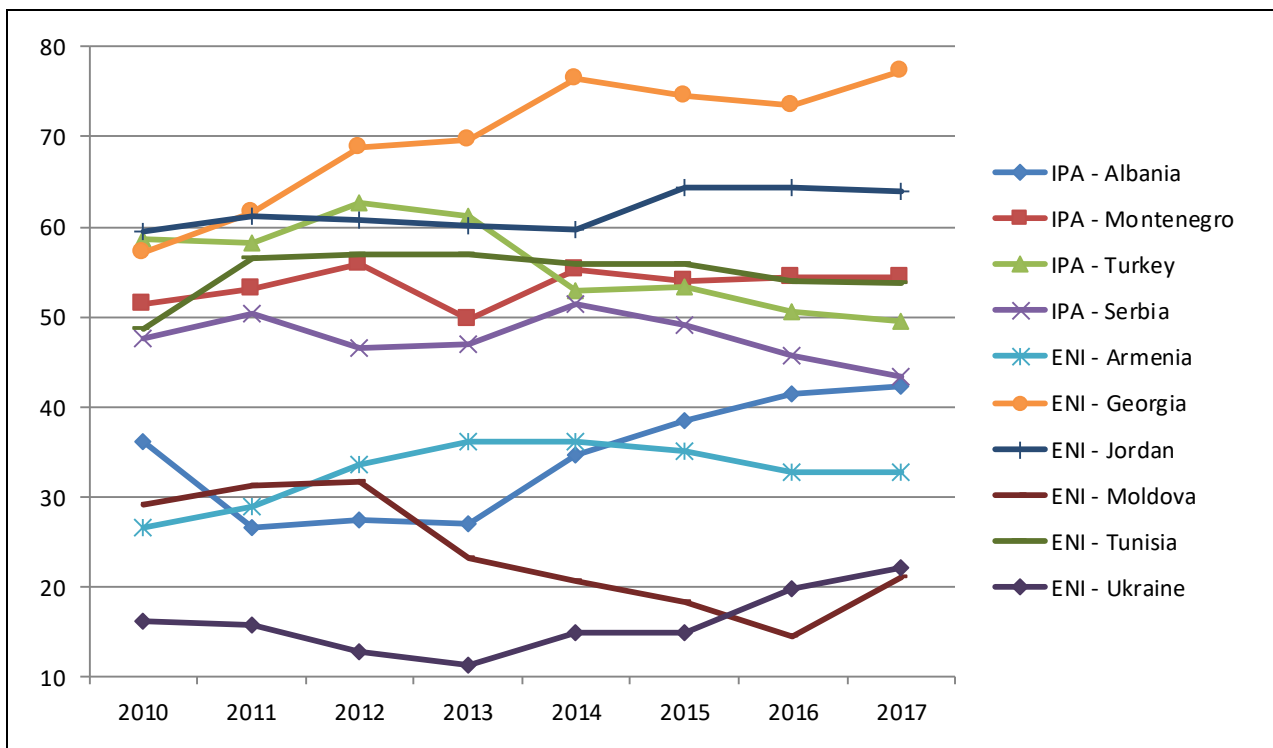
[77] Captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.

[78] Captures perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.

Figure 9   WGI – Voice and Accountability development (2010-2017) in ENI countries and IPA beneficiaries selected as case study countries under this evaluation
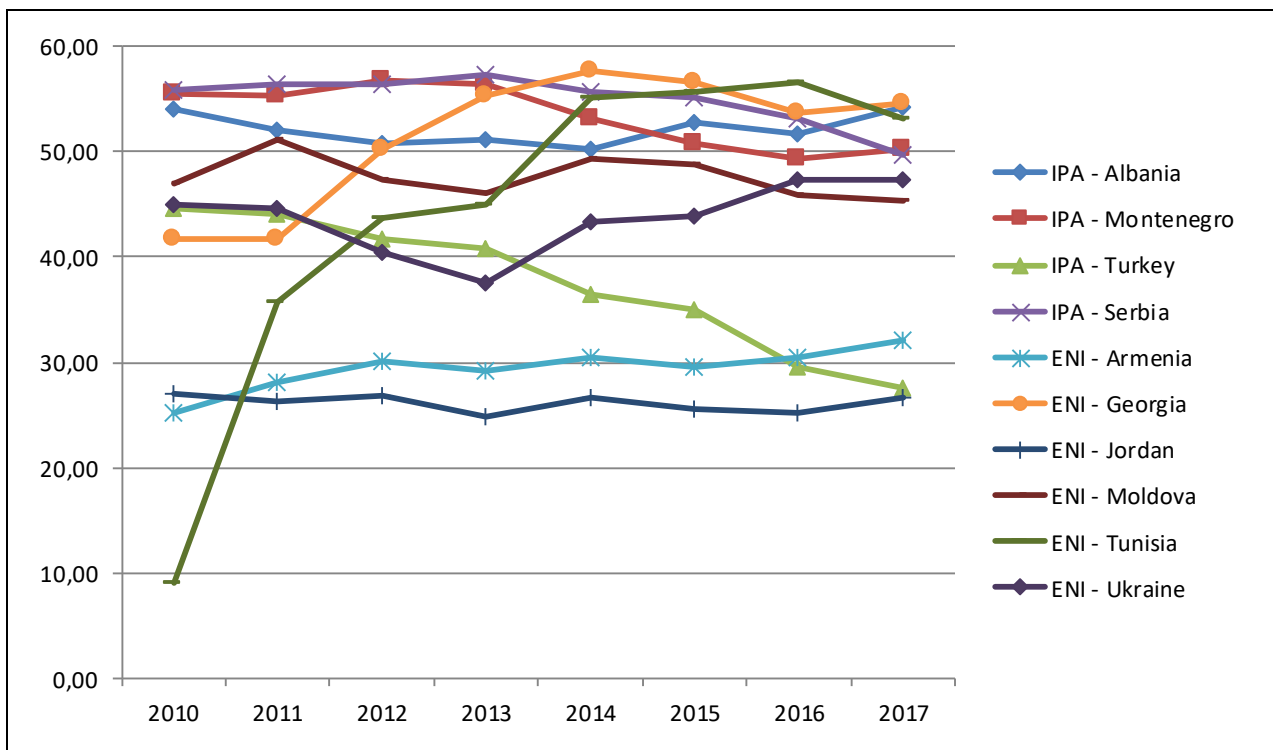

Source: Particip, based on World Bank dataset (2018), http://info.worldbank.org/governance/WGI/#home.

Box 24   Governance and democratic processes – The cases of Turkey, Tunisia, and Albania

In **Turkey,** limited progress has been made in the implementation of anti-corruption legislation and successive national strategies and action plans; corruption is prevalent in many sectors. GRECO recommendations have not been implemented. An EU anti-corruption programme "Strengthening National Integrity Systems in the Western Balkans and Turkey"[79] monitors anti-corruption developments in beneficiary countries. Freedom of assembly and association is restricted in law and practice; while the legal framework is broadly in line with European standards, authorities exercise excessive control over CSOs, with activists routinely arrested, and hundreds of organisations closed.

In **Tunisia**, the government remains committed to preventing and prosecuting corruption, including relative to the pre-2011 regime, however it remains a pressing public concern. The EU has supported the fight against corruption through the TAIEX instrument. Despite liberalisation of the legal framework concerning freedom of association, the directorate responsible for monitoring the activities of associations lacks resources and laws are not enforced. The PASC (programme supporting civil society) has provided broad support to civil society in this regard, and is considered to have been highly relevant and effective, its results having been achieved through well-defined strategies and a decentralised structure (see JC 82).

In **Albania**, while government commitment to root out corruption is limited, the vetting of the judiciary to weed out suspect judges is generally regarded as a success. With hindsight, this proved much more complex and resource- and time- intensive than imagined at first, but with the notable support of an EU monitoring team, has achieved notable success. Supported by the PAMECA security-sector TA project, which well complemented the EURALIUS justice reform TA project, an elite team of special prosecutors authorised to investigate economic crime is being formed.

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[79] As part of IPA 2013 (D24091).

5   Conclusions

Three sets of conclusions   For analytical clarity, the conclusions are grouped into three clusters as summarised in the table below.

Table 6   *Overview of the conclusions*

Cluster	Conclusion
Strategic framework	C1. The place of RoL in the overall EU policy framework
	C2. EU strategic orientations and responsiveness
Results	C3. Overall results
	C4. Civil society participation
	C5. Institutional capacity-building
Tools and approaches	C6. Engagement in policy dialogue
	C7. Addressing political resistance
	C8. Learning and monitoring

5.1   Cluster 1: Strategic framework

5.1.1   Conclusion 1: The place of RoL in the overall EU policy framework

RoL has taken an increasingly central role in the EU policy framework during the relevant period, as has the strength of institutional coordination.

This conclusion is based mainly on EQs 1, 2, 3 and 4.

The rule of law has been firmly, clearly and coherently anchored in EU policies and strategies, which are considered to be of high relevance and quality. It now occupies a central place in EU external support in the IPA/ENI regions. A diversity of EU guidelines and reference documents, including in RoL-related areas such as human rights and democracy, have contributed to consolidating overall RoL policy, approaches and programming. Policy and strategy developments have occurred incrementally, and have integrated or responded to historic events in the regions under consideration, including for example the events resulting from the Arab Spring, which resulted in adjustment of ENI policies and strategies.

Policy and strategy alignment between EU services, particularly DG NEAR, DG JUST, and EEAS with some involvement on security-related issues of DG HOME, has been strong and mutually supportive, and several mechanisms and inter-service initiatives helped strengthen coordination and internal coherence of EU support to RoL. Despite the centrality of RoL, there are only a handful of dedicated RoL specialists at DG NEAR and DG JUST. As a result of their strong expertise and close coordination, this has so far not represented a major limitation, however there is a need for more RoL specialists, in particular within DG NEAR and DG JUST, including at the operational level.

5.1.2   Conclusion 2: EU strategic orientations and responsiveness

EU actions in RoL and related areas of democracy and human rights have been strategically well-designed and have responded flexibly to changing national contexts.

This conclusion is based mainly on EQs 1, 2 and 3.

In both the Neighbourhood and Enlargement regions, EU interventions have aligned to SAAs

and AAs, thus ensuring relevance to national needs, conformity to national priorities, and coherence with EU broad goals. All actions have served to promote alignment with European and international standards and, where called for, legal harmonisation and the *acquis communautaire*.

EU support has proven flexible to meet emerging needs and opportunities and, when situations worsened, has often been adjusted. The entire range of EU financing instruments – (bilateral and regional), geographic and thematic support – has been strategically deployed to enhance flexibility.

In general, the EU has chosen approaches, implementation strategies and modalities appropriately, although this is qualified to some extent in Cluster 3 below. Whole of sector and other "holistic" approaches, which targeted multiple strategic institutions and a broad cross-section of stakeholders, including the media, civil society and the general public, through a range of interventions, have been utilised in many contexts, and have provided some highly encouraging contributions. Flexibility in the face of shifting situations has sometimes been a double-edged sword. It has allowed responsiveness, but has also brought risks of dilution of programme objectives.

Moreover, while priority has been given to political elements in the development of policy and programming, greater emphasis is needed on utilising the findings of technical assessments to guide such development (see also Conclusion 7). As a key example, the recommendations of the Venice Commission relative to the Turkish constitutional amendments of 2017 were strongly relied upon to bolster the political decision to justify the suspension of projects in the country. In Georgia, the CoE recommendations have played a key role in determining the strategic directions of EU support.

5.2   Cluster 2: Results

5.2.1   Conclusion 3: Overall results

While interventions have been generally well designed and many instances of progress have been identified, RoL as a whole has proven to be a difficult area in which the EU has not managed to fully comply with its own expectations.

This conclusion is based mainly on EQs 5, 6, 7 and 8.

EU support has contributed to many positive developments in RoL in the partner countries and beneficiaries, ranging from broad ones such as constitutional, legal, and judiciary reform and strengthening civil society to finer-grained ones in areas such as legal aid, juvenile justice, and penitentiaries. In every country studied, areas of success could be identified. Some notable achievements have included contributions to the development of sector strategies and action plans, judicial reform in line with CoE standards, harmonisation of national laws with international law, support to electoral reform, integration of human rights in beneficiaries' policies, capacity-building of RoL institutions, and in particular of the judiciary, as well as support to independence and accountability and access to justice in a variety of ways.

In general, EU support has been most effective in situations where it has been long-term and intensive in nature; for example, with flexible technical assistance lasting through many project cycles in Albania and Georgia. This allows for, among other things, the learning of lessons and the proper sequencing of reforms. The two regional programmes examined have demonstrated that necessary adjustments in approaches, leveraging commonalities, and visible commitment to sustained partnership can provide significant benefits, even across country borders, in complex contexts, and while addressing highly sensitive issues (religious courts, mutual legal

assistance, judicial vetting and discipline, amongst many others).

Nonetheless, equally in every country studied and even in those where EU support can be broadly considered a success, areas of insufficient progress have been identified; this is correlated to low levels of political will (see Conclusion 7), institutional resistance to change (Conclusion 5), and inadequate participation or marginalisation of civil society (Conclusion 3). While addressed in a number of interventions, certain issues are not adequately or routinely supported, notably interventions aimed at prisoners' rights, support to lawyers and the legal profession (outside of legal aid), capacity building of media representatives relative to RoL issues, and support to oversight institutions, in particular, Ombudspersons and parliamentary committees. Sustainability has also been problematic in some contexts, with capacity-building (Twinning, and other technical assistance) diluted by institutional flux and other constraints at the country level, and equipment languishing after installation and considerable investment in training. This is also linked to political will, but also to a lack of alignment of evaluation and programme design processes, and a failure to conduct longer-term assessment and monitoring of results and sustainability (see Conclusion 8). Investment in infrastructures (courts, prisons, etc.) is also of limited sustainability if not complemented by support in other areas (alternatives to imprisonment, ADR, probation services, etc.).

5.2.2   Conclusion 4: Civil society participation

The EU has consistently involved civil society in its RoL programmes, but with mixed results.

This conclusion is based mainly on EQs 2, 3, 4, 6, 7 and 8

The EU has actively promoted the role of civil society in RoL, in particular where threats to its credibility and operational space have arisen. Notably, funds have been increased or diverted to civil society support when structural backsliding on the part of public authorities has occurred. It is important however to add that support to civil society is necessary not only in critical or hostile situations, but also as an on-going long-term investment to reinforce accountability and prevent such backsliding.

The EIDHR and CSF have also provided essential complementary support to RoL; with the effectiveness of EU support to civil society having been most notable relative to accountability of institutions, access to justice, human rights, governance and democracy.

However, there is little evidence of civil society involvement in the sector and donor coordination mechanisms at the country level. Moreover, there is little evidence that civil society consultation is being incorporated at the higher, EU policy level. This is likely a result of inadequate flows of information between EUD and HQ, which impacts on programmes' alignment and responsiveness to country-level needs and contextual shifts.

5.2.3   Conclusion 5: Institutional capacity-building

EU support to training, capacity building and infrastructure/ equipment provision did not bring the expected results, and was limited by the slow pace of change in judicial institutions and culture

This conclusion is based on all EQs.

The EU has engaged in extensive training, capacity building and infrastructure/ equipment provision to promote efficiency and alignment with European and international standards. Yet, while capacity constraints play a role, particularly in the European Neighbourhood, the key ingredient is political will to place alignment with European standards above domestic policy and long-embedded institutional interests. New policy frameworks cannot have impact when institutions, actors, the incentive structure, and judicial culture in general remain the same. This has been particularly the case at the level of the judiciary and Ministries of Justice. Ownership has been highly variable. As to the persistence of poor institutional habits and culture, the frequent failure of EU support to promote efficiency in situations where state-of-the-art IT has been provided is an important example. The use and sustainability of IT equipment and associated support has also proven highly problematic in certain contexts (see Conclusion 2). The monitoring and evaluation of training, capacity building, and infrastructure/ equipment provision has stressed activities and inputs, not actual results, leading to continuation and even expansion of interventions when curtailment would have been more appropriate.

5.3 Cluster 3: Tools and approaches

5.3.1 Conclusion 6: Engagement in policy dialogue

While the EU has everywhere, and at all levels, engaged in policy dialogue, this has tended to be formalistic in some contexts, and focussed on strategic commitments rather than on solving problems in implementation and resulting barriers to progress.

This conclusion is based on all EQs.

In all countries examined, the EU has engaged in policy dialogue at several levels, often in tense contexts characterized by limited political will on the partner country side to undertake meaningful reform (see also Conclusion 7). Human rights dialogue has been essential in this regard, since this underscores fundamental rights as a cornerstone of the rule of law. Engaging civil society in such dialogue has served to support and legitimise their role as essential actors in promoting and protecting rule of law principles.

There is however little qualitative information as to the results of such efforts; even where information is available, in certain contexts results appear to have been negligible. In this regard, policy dialogue outcomes are strongly linked to the degree of political will, and follow a similar trajectory in terms of areas of difficulty and success. In some countries, policy dialogue is reported to be formalistic/ formulaic, tending to concentrate on strategic aims rather than challenges in implementation.

An exception to this is policy dialogue in the context of sector budget support, where it has been relatively fruitful, evidently linked to the prerequisites that must be fulfilled for budget support eligibility, and to the obligation to meet clearly defined benchmarks before moving through to a new funding tranche. In addition, informal dialogue processes have been observed in numerous contexts, but here again, results of these endeavours are not routinely tracked, shared or easily accessible.

5.3.2 Conclusion 7: Addressing political resistance

EU programming was not successful in incorporating adequate assessment of political will, and resistance and backsliding have not been addressed in a clear and consistent manner.

This conclusion is based on EQs 1-8.

There is broad consensus that reform will most likely occur where political will is present and civil society is engaged. Issues of political will have been identified in a number of countries, as

has resistance to reform within institutions. Political resistance has been observed most strongly relative to lack of legislative reform and/ or inadequate implementation of such reform, inadequate financing of RoL institutions, particularly those with oversight functions, and threats to the independence and accountability of RoL institutions. While countries have adhered to many international human rights conventions, implementation and enforcement have lagged far behind, another strong indicator of poor political will. Political resistance is strongly correlated to human rights concerns and restrictions on civil society space, and served to undermine the effectiveness and sustainability of less politically-charged forms of support, such as infrastructure and capacity building.

Current programme formulation processes do not integrate adequate political economy/ contextual analyses, sector and technical assessments and risk analysis and risk-monitoring processes, which could contribute to the development of more realistic and sustainable interventions. There are also inadequate links established between the theory of change of the interventions and the root causes of problems. Where technical assessments occur, these are not given sufficient weight relative to political considerations. Risks of resistance and backsliding are not addressed in a clear and consistent manner during the design and implementation of interventions, although an exception to this are the efforts related to the use of Risk Management Frameworks in the context of budget support. There is also a lack of clear and consistent strategies and responses for addressing such difficulties. Political and policy dialogue has been utilised in all contexts, but with highly varying degrees of success (see conclusion above). Adding to this, significant differences in perceptions exist regarding the quality of reporting of the political situation on the ground.

The "more for more" principle and accession framework have stimulated alignment in some contexts. However, incentives are not uniformly effective in encouraging change, and conditionality has been rarely applied in practice. In addition, available recourse and review options in the event of deterioration of the RoL or human rights context are not routinely invoked. While in a few extreme cases the EU responded to backsliding by drastically adjusting its cooperation strategy, such measures were *ad hoc* and reactive, rather than arising from a predictable institutional framework with agreed indicators to assess the degree of political buy-in, with pre-defined criteria pursuant to which a review of EU cooperation will be triggered, and a spectrum of available measures.

5.3.3 Conclusion 8: Learning and monitoring

Experience and information from the field is not sufficiently exploited to enhanced programming and project design.

This conclusion is based mainly on EQs 1, 2 and 4.

HQ-originated evaluation and reporting feeds into overall policy design and programming, and to some extent into the design of individual actions. However, the quality and frequency of reporting at the operational level is highly variable across all regions under consideration, and hence does not always contribute to higher-level policy, strategy and programming. There is inadequate support to internal promotion of, and training on, existing Guidelines and Tools, including EU Human Rights Guidelines, the Rights Based Approach Tool-kit; and relevant EC Reference Documents (e.g. N° 15 Support to Justice and Rule of Law). Monitoring and project/ programme evaluation mechanisms have uneven uptake, and while there is evidence of these contributing to strategic and implementation adjustments, evaluation efforts have struggled to develop consistent and appropriate qualitative and quantitative indicators, in large part due to indicators being poorly articulated in programme design, and benchmarks and baselines not

adequately identified.

This clearly hampers the ability to measure results; this is compounded by an absence of follow-up assessment of the long-term effects of EU support to the desired reforms, which in RoL institutions can take many years to manifest, and of the sustainability of EU interventions, which as indicated above can be highly problematic. Programming alignment and sequencing with evaluation processes is also problematic, with new programmes often designed well before previous cycles have been assessed.

There are, however, indications that learning has occurred from previous experiences, in particular where the EU has been engaged in a specific area over long periods, where for example lessons are directly incorporated into subsequent programme cycles, and successful pilot initiatives expanded. There has also been some replication of successful interventions, at the national (expansion of pilot projects) and regional levels; however, there have been only a few initiatives to facilitate cross-country/regional learning, through the regional programmes, which have focussed on peer-to-peer exchanges and activities centred on common areas of concern.

6 Recommendations

How to strengthen EU support

The following six key recommendations emerge from the conclusions. The linkages between EQs (findings), conclusions and recommendations are illustrated in the following figure.

Figure 10   Linkages between EQs, conclusions and recommendations
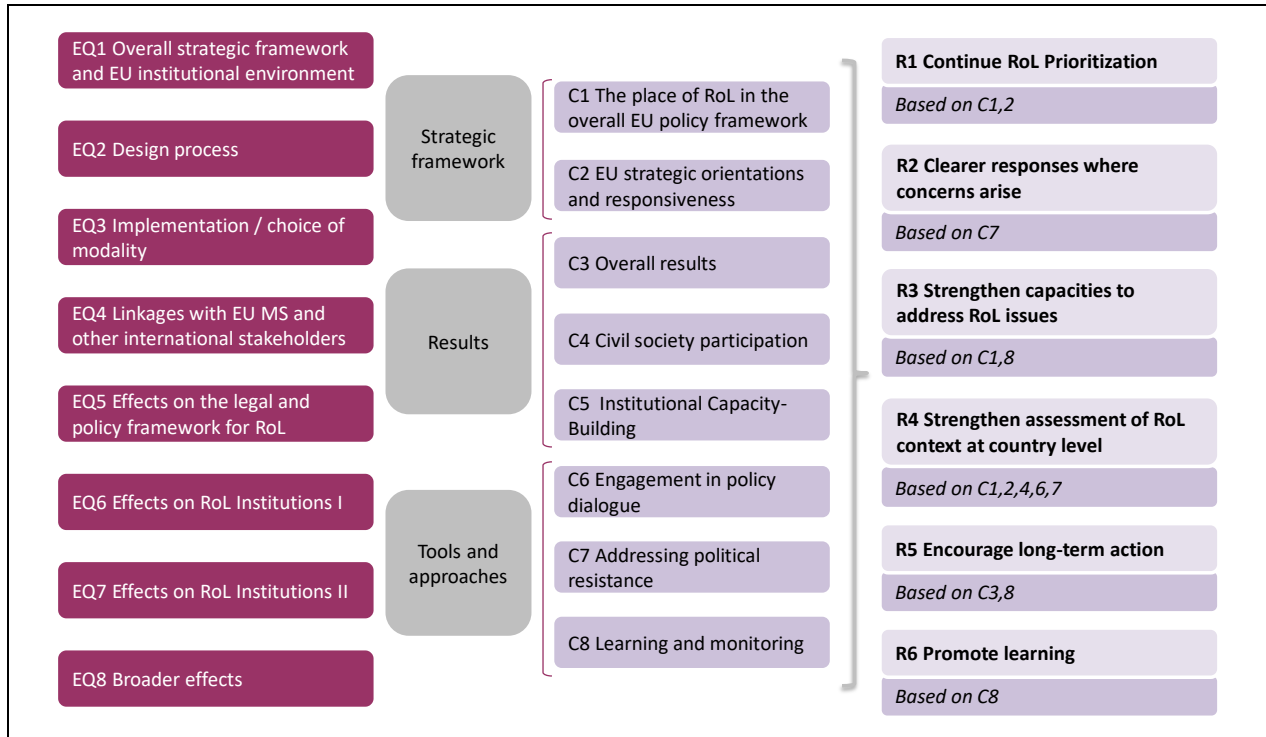
Prioritising recommendations

The table below provides an overview of the level of priority in terms of importance of the recommendations and the urgency (agenda) of their realisation. Addressing these priorities requires actions by different actors. Therefore, each recommendation includes suggestions for operational steps to put it into practice, and proposes implementation responsibilities.

Table 7   Overview and prioritisation of the recommendations

Recommendation	Importance*	Urgency*
R1. The EU should continue to prioritise RoL in its cooperation policies and strategies.	3	2
R2. The EU should develop clearer responses where serious RoL and related concerns arise, persist or worsen.	4	4
R3. The EU should strengthen its capacities to address RoL issues.	4	3
R4. The EU should strengthen its assessment of the RoL context at the country level, in particular the political commitment to RoL.	4	4
R5. The EU should encourage long-term actions featuring extended engagement.	3	2
R6. The EU should more actively and systematically promote learning.	3	2

* 1 = low, 4 = high

Recommendation 1: The EU should continue to prioritise RoL in its cooperation policies and strategies

The EU should continue to place RoL at the centre of its cooperation policies and strategies, and reflect this in all dimensions of the next programming cycle.	
This recommendation is mainly linked to conclusions 1 and 2.	
Main implementation responsibility: DG NEAR, EEAS and EUDs, relative to programming, DG JUST relative to analysis and oversight.	
What works and should continue?	
EU should maintain RoL as a pillar of EU cooperation with ENI countries and IPA beneficiaries.	
EU should continue to reinforce in its policy and programming the relationship between RoL and other related issues, including human rights and democracy and civil society, but also prosperity and sustainable economic development.	
Current cooperation and information-sharing efforts between EU services regarding RoL should be maintained, and continuously strengthened.	
At country level, EUD must continue to address RoL issues in their cooperation efforts following a sector wide approach.	
In IPA beneficiaries, EU should continue to ensure that accession negotiations prioritise discussion on how to bring Ch. 23 and 24 considerations in line with European standards, the "fundamentals first" approach and existing negotiation methodologies.	

What should be strengthened?	How should this be done?
The EU should ensure an adequate allocation of resources to enable the implementation of these Recommendations.	While an increase of the overall budgetary allocation in support of RoL is desirable, this would not necessarily be required. However, the human and financial allocations should reflect the strategic orientations suggested in the recommendations below, in particular to address: • Capacity issues (including human resources at HQ tools/capacities for enhanced political economy analysis at the country level, and support of RoL specialists where possible); • Comprehensive approaches to support RoL at the country level.
Strategic and programming decisions should be based more strongly on the findings of technical assessments, rather than on political considerations.	Strengthening the technical expertise and resources at HQ level would ensure that technical constraints, priorities and feasibility issues that are relevant to RoL reform are embedded in strategy, programming and reporting (performance framework). Such expertise should be supported or corroborated by technical assessments of specialised European or EU MS institutions, and notably the CoE and its agencies. Opportunities for close cooperation with the CoE and its agencies should continue to be identified and pursued.
In ENI countries, the strategy and programming of RoL support should be linked to broader incentives, in particular economic reforms.	This can be achieved through, for example, complementing the current emphasis on human rights and democracy with increased emphasis on the civil, commercial, and administrative aspects of RoL, which have recognised close links to investment and sustainable economic growth.
In ENI countries, the strategy and programming of RoL support should in particular address the development and/ or implementation of country/ sector strategies and plans.	Alignment with sector strategies and plans should represent the first "port of call" for RoL support, and a key area where technical and political economy assessments would be required (*see Recommendation 4*). EC Reference Document N°15, amongst other tools, provides considerable guidance in this regard. The absence of a sector strategy could be considered a "red flag" concerning political will, but could also represent an important entry point for support to RoL reform.

Recommendation 2: The EU should develop clearer responses and associated criteria to address situations where serious RoL and related concerns arise, persist or worsen

Where there is evidence of poor commitment to RoL reform and EU cooperation or where there are serious and on-going RoL and human rights concerns, the EU should develop clearer responses and associated criteria apply greater conditionality and more stringently and consistently apply its available recourse measures.

This recommendation is mainly linked to conclusion 7.

Main implementation responsibility: DG NEAR, EEAS and EUDs, relative to programming, DG JUST relative to design, analysis and oversight.

What should be strengthened?	How should this be done?
The EU should develop and consistently apply clear, appropriate and consistent responses, with associated criteria, for situations where serious difficulties arise, continue or worsen relative to political and institutional commitment to: • RoL reform; • Human rights and governance; and/or • Cooperation with EU.	*Situations where responses are advised* could include: progress in Chapters 23 and 24 significantly lagging behind, failure or refusal to advance with the national RoL reform agenda; repeated or grave interferences with judicial independence; repeated or grave human rights violations; serious and/or widespread corruption; serious underfunding of RoL institutions, etc. Clear distinctions would naturally need to be drawn between capacity and willingness to adhere to reform commitments, or address RoL and human rights concerns. Difficulties may arise at any time during the programme management cycle, and appropriate measures should be developed for each phase*.*
The responses should be directly linked to specific criteria, and formalised, with adequate resources allocated for their application	The steps necessary to achieve this could therefore entail: • Identification of criteria relative to assessing political will and local/institutional ownership of reforms; • Identification of available and potential responses linked to these criteria; • Development of "flow-charts" to link potential situations with potential responses; • Development of a related EC Communication and/or formalisation within existing instruments; • Development of appropriate guidance and tools for implementation; • Allocation of appropriate resources to implement necessary additional processes; • Dissemination and awareness raising within all EU services; • Monitoring of the application of such measures.
Particularly strict assessment procedures of the political and institutional context (and oversight of these) should be developed and applied at the programming stage, and where a decision is made to proceed, more stringent conditionalities should be considered on a case-by-case basis.	Programme design remains a critical area where significantly increased investment should be made to ascertain existing, latent or potential difficulties, and develop appropriate, tailored responses. Procedures must be developed to ensure that in depth assessment of the political and institutional context occurs, and that more stringent oversight is applied before financial resources are committed, for example through approval by a specially constituted body or committee, notably in the ENI context. Programme design should be directly linked where possible with a final evaluation of any precursor (or similar) programmes in the country/ beneficiary. The EU should not hesitate to suspend contracting, or even

	cooperation, relative to RoL where progress on pre-defined "sine qua non" and "red flag" political criteria or indicators is not observed (*see indicators below*), meaning conditions of sufficient seriousness to justify such suspension.
Where difficulties arise, continue, or worsen during implementation, EU should be more consistent and rigorous in its decisions to continue to support RoL (wholly or in part), or suspend further engagement.	This aspect should be directly embedded in the response framework. Complete disengagement (cancellation of programmes) may be warranted in more extreme circumstances. Consideration should be given to diverting funds towards civil society or specific RoL institutions (this would vary widely from context to context, but could include for example specialised prosecutors or courts, training institutes, and independent oversight bodies) in order to stabilise or facilitate the improvement of the overall RoL or human rights situation (*see also positive incentives in ENI below*)[80]. Where serious difficulties exist, EU should not disengage from policy dialogue, but should rather intensify it in proportion to the gravity of the situation.
The response framework should also include potential responses/ strategies for situations where the political will to reform the different areas of RoL is uneven (commitment to some areas of RoL and little or none to others).	RoL, like human rights, is comprised of a set of complex and indivisible concepts. The EU should not attempt to compartmentalise these principles, but insist on the respect of RoL in its entirety. While this does not oblige the EU to actively engage in all areas of RoL, the proposed response framework should provide guidance on balancing and addressing uneven commitment, which should be assessed on a case-by-case basis. This should incorporate, for example, "*sine qua non*" indicators, and positive incentives to engage in more sensitive areas.
Existing recourse and corrective measures for IPA beneficiaries should be more rigorously applied.	Such responses should include: a more rigorous invocation of the "overall imbalance clause" relative to Chapters 23 and 24 (effectively ceasing technical work on negotiations on other Chapters, including withholding recommendations to open and /or close other Chapters, until this disequilibrium is resolved); the suspension of specific programmes, projects or areas of support (for example as has occurred in Turkey, relative to support to the judiciary) in response to specific concerns. Other interim, emergency and warning responses need to be developed, with clear criteria for their application.
Responses and recourse measures for ENI countries should include greater conditionality, and in more serious situations the invocation of Article 7(10) of the ENI Regulation.	The need to develop clearer and consistent responses to sector and political backsliding is most urgent in the ENI context. This would in essence require the development of a concrete and predictable framework for the application of the existing "more for more" principle. The EU should consider the development of "sequenced" interventions, linked to the achievement of RoL reform indicators, similar to those for budget support. This is partly addressed by the "performance-based approach" of the draft Neighbourhood, Development and International Cooperation Instrument (Article 7(1)). The EU should consider defining more innovative responses, for example instigating mediation or similar

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[80] Indeed, this is envisaged by the draft Neighbourhood, Development and International Cooperation Instrument COM (2018) 460: "*In the event of serious or persistent degradation of democracy, human rights or rule of law, support to these actions may be increased*".

	independent and neutral interventions, when RoL projects/ programmes risk or are experiencing serious stagnation, failure, or even doing harm to EU overall cooperation.
The EU should also develop criteria and responses intended to provide genuine incentives to align with European standards relative to RoL and human rights.	The response framework described above should, in addition to other efforts, provide more tangible "rewards" for genuine and sustainable progress, which should be formalised in EU policy and instruments, and specifically embedded in financing agreements.
	Such incentive-based responses could include, for example, visibly increased support in areas of interest (including outside the RoL sector), directly linked to achievements; and in the case of ENI countries, trade and market incentives or visa liberalisation.
	Incentives should be also directed towards specific institutions that have demonstrated a genuine willingness to engage in reform.
	Specific strategies for positively fostering political will should be developed, linked to the above mentioned incentives, but also through, for example emphasising the economic benefits of RoL reform; leveraging local political interests; strengthening trust and collaboration between civil society, the private sector and state actors; enhancing public awareness of RoL issues; supporting high-visibility events to celebrate achievements; developing strategies to encourage healthy rivalry between neighbouring countries/ beneficiaries; etc.

Recommendation 3: The EU should strengthen its capacities to address RoL issues

Given the central role of RoL in EU cooperation, the EU should strengthen its technical capacities to address RoL issues, and make greater use of existing RoL tools and guidance.
This recommendation is mainly linked to conclusions 1 and 8.
Main implementation responsibility: DG NEAR and EEAS with inputs from DG JUST and DG HOME where relevant.

What should be strengthened?	How should this be done?
The EU should strengthen its technical capacity both at HQ and EUD levels to critically analyse its support for RoL and adjust strategy and programming accordingly.	EU technical capacity needs to be strengthened relative to understanding and addressing direct RoL concerns (judiciary, penitentiary, oversight etc.), but also its interaction with related areas, including human rights, governance, security, and public finance management.
The EU should support building greater internal knowledge of existing specific EU tools and guidelines, and ensure their implementation in practice.	Existing tools should be utilised far more systematically, including the Rights-Based Approach Tool-Box[81], EU human rights guidelines, and justice and RoL thematic reference documents.
	The more recent Thematic Factsheets distributed by DG NEAR Centre of Thematic Expertise on Rule of law, fundamental rights and democracy should continue to be broadly distributed
	Increased training in HQ and the field on the use of these tools (for example as has been rolled out for the Rights Based Approach Tool-Box) is essential for these to be applied in practice.
	Regular monitoring is also necessary to assess the level of

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[81] EU (2014): A Rights-Based Approach, encompassing all human rights for EU development cooperation - Tool-Box, Commission Staff Working Document: https://ec.europa.eu/europeaid/rights-based-approach-encompassing-all-human-rights-eu-development-cooperation-tool-box-commission_en.

	uptake, and to update tools as required.
DG NEAR should provide greater technical support to EUD and to other EU services relative to RoL issues, and increase the number of in-house experts in the field.	The engagement of RoL specialists to provide technical support within DG NEAR should be prioritised.
	Dedicated thematic focal points at HQ, and perhaps at the regional level, should be established, in order to provide on-going practical and technical support.
	These would serve to pool expertise and foster excellence, and provide identifiable "help-desks" for EUD and EU services to assist in the development or implementation of RoL strategies and programmes.

Recommendation 4: The EU should strengthen its assessment of the RoL context at the country level, in particular the political and institutional commitment to RoL reform

The EU should strengthen its assessment of the RoL context at the country level, in particular the institutional framework and the socio-cultural context, and specifically the degree of political will and local ownership of RoL reform.

This recommendation is linked to conclusions 1, 2, 4, 6 and 7.

It is also strongly linked to Recommendations 2, 5 and 6.

Main implementation responsibility: DG NEAR, EEAS and EUDs, relative to programming, DG JUST relative to analysis and oversight.

What should be strengthened?	How should this be done?
The overall political context should be more routinely and stringently analysed, in particular to assess the degree of willingness of governments and RoL institutions to engage in RoL reform.	Such assessment, which could take the form of political economy analysis, should be conducted at EUD level in collaboration with HQ, and should serve as a key element in the development of strategy and programming of EU support relative to RoL.
	The analysis should also guide the implementation of EU interventions, and be regularly reviewed and adjusted.
	Analysis should entail a more in-depth assessment of a country and sector context than current analytical processes allow, and should incorporate inter alia: extensive stakeholder mapping, including donor mapping; sector strengths and weaknesses; strategic interests and incentives; and thorough risk analysis. Interventions should focus more on addressing the root causes of obstacles to RoL reform.
The EU should develop political analysis tools (DG DEVCO pilot initiatives were discontinued in 2013[82]) to assess the degree of political commitment to reform, and institutional capacities.	Political analysis tools are no longer used by the EU institutions and hence should be re-developed/ re-introduced, ideally in collaboration with other donors.
	Political analysis should be conducted in full consultation among the concerned EU services, with inputs from academia and other relevant institutions, civil society and the international community.
Appropriate political criteria and indicators should be developed to guide such analysis, and which develop a series of practical and political responses to difficulties.	Indicators should identify common areas of difficulty, and in particular "sine qua non" or "red flag" political indicators, which will help identify when EU support should be adjusted, suspended or halted.
	In ENI countries, EU should consider the development of agreed "milestones" or process indicators, whereby commitment, and progress, can be assessed on a continual basis throughout programmes ("if X is achieved, then Y can follow…"). This is related to the concept of "sequenced interventions" above, however linked more to the political

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[82] See EC-DEVCO Background Note "Using Political Economy Analysis to improve EU Development Effectiveness" (2011), and discussion at: https://ecdpm.org/talking-points/is-there-a-future-political-economy-analysis-european-commission/.

	context.
The EU should ensure that such analytical tools are utilised in the development and implementation of its support to RoL in each partner country/ beneficiary.	The EU should ensure that analysis tools are made available to the EUD and other EU services, and that adequate resources and support, such as training, are provided. Monitoring of uptake of tools and quality of analyses would also be necessary.

Recommendation 5: The EU should encourage long-term actions featuring extended engagement

The EU should supplement traditional (stand-alone) measures with longer-term, sector wide more strategic approaches to support RoL.

This recommendation is mainly linked to conclusions 3 and 8.

Main implementation responsibility: DG NEAR and EUDs/EEAS, relative to programming, DG JUST relative to analysis and oversight.

What should be strengthened?	How should this be done?
The EU should employ long-term and more strategic approaches to RoL support.	Whole sector approaches, where a broad range of RoL institutions and stakeholders are engaged, and the public kept abreast of developments through media and other outreach, should be prioritised. Sequenced interventions in the same sector(s) should draw directly on the strengths and "lessons learnt" from previous cycles.
Flexibility should be embedded in the design of EU interventions, particularly in volatile or complex contexts.	While the intervention logic (including indicators) should be clearly spelled out, programming documents should be framed in an indicative rather than directive terms, to allow for subsequent adjustment. Programme inception phases should allow time and resources to engage in consultative processes, and update context and risk analyses. In this phase, it should be still possible to adjust the activities and expected results (including indicators), if necessary, to reflect changes in the context. This will help establish trust and cooperation between all parties, engender ownership of beneficiaries, and manage parties' expectations. Significant caution should be exercised, however, to ensure that flexible approaches are not improperly appropriated to dilute overall reform objectives.
The EU should increase the use of "mentoring" and "embedded" capacity building by EU Experts.	This would entail continuing "classic" approaches, such as TAIEX, Twinning, and training components within individual programmes, and engaging in longer-term investment within ministries or institutions, for example in the context of Advisory Missions, and the appointment of High-Level Advisors.

Recommendation 6: The EU should more actively and systematically promote learning

The EU should more actively and systematically promote capitalisation and learning from past experience, through improved exchanges and more effective measurement of results.

This recommendation is mainly linked to conclusion 8.

Main implementation responsibility: DG NEAR and EUDs/EEAS, with inputs from DG JUST where relevant.

What should be strengthened?	How should this be done?
The EU should develop or strengthen tools, databases and processes to highlight successful interventions and best practices, as	There is no centralised repository of EU learning relative to RoL, human rights and democracy issues. Therefore, a database and processes need to be developed to collate these. Such processes should be facilitated by regular and

well as lessons learnt.	qualitative reporting and evaluation. DG NEAR and DG JUST should work with CoE to develop an overview of European standards. Mechanisms that facilitate learning between donors that are active in RoL should also be developed, for example a network of RoL experts from different donors, in order to share expertise, experiences, best practices, etc.
EUDs should improve the quality and frequency of its reporting to other EU services.	The implementation of this recommendation would likely require an overhaul of reporting guidelines and requirements, in terms of time-frames, content, distribution, and their uptake at HQ level. Programme reports should be routinely provided to HQ, and should not be simply activity/ output-based, but provide qualitative information on strategies to addresses difficulties, potential impacts, results achieved etc. Reporting should provide clear and actionable recommendations, and more rigorous mechanisms for follow-up of such recommendations should be implemented. Results from project/ programme evaluations and ROM reviews (stored in ROM and EVAL modules) should be more systematically analysed at portfolio levels. Reporting on policy dialogue should be strengthened through the definition of specific indicators to allow for a more qualitative, less formalistic, and more robust assessment of progress towards goals related to RoL. In partner countries/beneficiaries receiving budget support, current monitoring processes should be further enhanced, with an emphasis on developing outcome indicators and establishing reasonable, achievable, and objectively measurable benchmarks. Increased capacity relative to monitoring and reporting is urgently required, and related training should be provided, not only to EUD Operational Managers, but also Policy/Political Heads and Officers, and Human Rights Focal Points.
The EU should develop a set of quantitative and qualitative RoL indicators and benchmarks (for example, relative to the efficiency of the court system).	Such benchmarks should also include those relative to Chapters 23 and 24 in IPA beneficiaries. In all contexts, such benchmarks should be developed alongside existing ones, such as those developed by CEPEJ, and should form the basis upon which strategies and programmes are developed, and results subsequently assessed. These should guide baseline assessment during programming, implementation regular monitoring, and should provide the basis for final/ ex-post project and programme evaluations. The benchmarks should be developed in parallel with the political and institutional/ social criteria/ indicators referred to above, since these are closely interlinked. Support should also be provided to increasing institutional understanding and utilisation of such benchmarks and more generally of European RoL standards.
The EU should continue to strive to enhance the involvement of independent civil society in monitoring processes, in particular, where it is under threat, but also as a long-term investment in contexts where it is not.	Thematic instruments (e.g. EIDHR), and the Civil Society Facility for IPA beneficiaries, should continue to be utilised, in order to strengthen organisations and civil society space.