EU SUPPORT TO RULE OF LAW IN MONTENEGRO
EUROL I AND II CASE STUDY
Abstract

The EU support to the Rule of Law (EUROL) I and II projects in Montenegro supported Police and Judiciary reform over a period from 2014 to 2020, and a follow-on project is planned from 2021. Rule of Law reform is a key priority for Montenegro for its EU accession prospects. Accession negotiations and dialogue identified critical areas for necessary reforms in judiciary and policing. The EUROL projects, funded by the Instrument for Pre-accession Assistance (IPA), have been the flagship forms of assistance for Montenegro to address priority shortcomings.

The EUROL approach has combined elements of twinning with elements of more traditional technical assistance and a longer-term engagement than is usual. This case study assesses the main strengths of this approach, sets out the lessons learned and identifies some recommendations for future similar approaches. The case study draws on the evidence collected for the 2021 “Evaluation of the European Union’s Cooperation with Montenegro 2012-2019”. The evaluation adopted a contribution analysis approach to assess the EU contribution to building institutional capacities and improving institutional performance, and findings from the contribution analysis are included here.
Background and purpose of the EUROL projects

The EU supported two projects, ‘EU support to the Rule of Law’ I and II, over the period 2013 to 2020, with a third follow-on project (‘EUROL III’) to begin in 2021. The projects are interesting to study because of the importance of Rule of Law reform in Montenegro, which is perhaps the key reform needed for Montenegro to join the European Union. The modality is also interesting, since it offers an unusual combination of peer-to-peer collaboration as found in Twinning projects, as well as components of project management and procurement found more usually in services contracts. Finally, the long duration of this engagement, over 6 years so far, responds to many of the criticisms of EU institutional support in the Western Balkans under IPA I, which were considered too short term to achieve sustainable impact.

EUROL I and EUROL II were implemented in close sequence and can be considered as two phases of a single intervention, lasting from 2014 to 2020. They both had two main components: reform of the judicial system and strengthening of the police capacities to fight crime and corruption.

EUROL I was implemented by a publicly owned body, Northern Ireland Cooperation Overseas (NI-CO), from January 2014 to January 2017, and EUROL II was implemented by the International Cooperation unit of the Italian Central Police Directorate (Direzione Centrale Polizia Criminale - Servizio per la Cooperazione Internazionale di Polizia) from June 2017 to December 2019. Both were grants contracts (not twinning), with a value of EUR 3 million and EUR 2.8 million respectively.

The EUROL I Specific objective was: “Strengthening the independence, efficiency and accountability of the Judiciary, and the fight against corruption and organised crime.” And EUROL II aimed: “To further strengthen judiciary and law enforcement institutions in order to meet the criteria for Montenegro accession to the EU. To support Montenegro to strengthen the efficiency of the judiciary and to counter corruption and organised crime through more effective investigation and prosecution.”

The logic of the EUROL project is clear. For judicial reform, the project aimed to increase the capacity of the Ministry of Justice to manage reforms overall. Improved judicial statistics would assist in monitoring the process of judicial reform and ensuring it was on track. Strengthening the judiciary itself through training and support would upgrade capacities, while investing in the Judicial Training Centre would improve the ability to sustainably strengthen capacity over time. Finally upgrading the IT systems in the justice sector was intended to improve efficiency and impartiality (e.g., by random allocation of cases to judges). On the police reform side, there were three areas which the project aimed to strengthen – overall strategic capacity of the police, the operational capacity to undertake special investigative measures and the operational capacity to establish and conduct investigations with joint investigative teams.

EUROL II built on the objectives of EUROL I. In judicial reform, it aimed to rationalise the processes of court case management, strengthen capacities to evaluate performance and manage discipline among judges and prosecutors, and further build the capacities of the Judicial Training Centre to train judges and prosecutors. On the police side, the project aimed to support the police’ ability to fight
organised crime and corruption, particularly financial investigations, and promoting coordination between the various state institutions with partial responsibility in this area.

**Specific characteristics**

Both EUROL projects were action grants awarded under direct management (centralised for IPA I). Only public sector bodies from the EU were eligible (EUROL II), and the applicants had to have experience in law enforcement and justice sector. EUROL I was staffed by former police and judicial experts with experience in international development projects acting as consultants, while EUROL II was led mostly by currently serving police and judiciary administrators on secondment from their national authorities.

EUROL II in particular, took on many of the characteristics of a Twinning project, with a close peer-to-peer relationship between the resident advisors/team leaders and their counterparts in the police and judiciary. They both drew on resources made available by their consortium partners, including the Asser Institute (a mandated body, for EUROL I), and the Austrian police (EUROL II).

**Outcomes**

The evaluation assessed the extent to which the projects contributed to institution building by identifying two distinct and sequential steps. First is the intervention’s contribution to building organisational and institutional capacities. This can be briefly summarised as (positive) changes to people (skills, knowledge, attitudes), organisational structures, systems and processes, strategies and legal mandates, organisational culture and leadership, and resourcing. According to the design of the intervention, these capacity changes are then assumed to be necessary contributions to realise organisational performance improvements. Performance is defined in a way that is contingent on the function of the organisation or institution under study. For Montenegro, many of the expected performance improvements are defined by the interim benchmarks of the accession process: a more independent and impartial judiciary, and a track record in fighting organised crime and corruption, for example. The second step of the evaluation exercise was then to assess the extent to which any achieved capacity changes had led to performance improvements. Performance improvements at the institutional level were then expected to contribute to performance at the country level in relation to Montenegro’s overall accession progress.

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As far as the Judiciary is concerned, EUROL I and II were able to contribute to some significant capacity changes. A new ‘systematisation’ document (organisation design) for the Ministry of Justice, an ICT strategy and a new Strategy for Judicial Reform were all adopted. The Judicial and Prosecutorial Councils had been established before the start of EUROL I, but support from the projects contributed to strengthening staff capacities through training. While levels of staffing and funding increased substantially, staff performance, especially their abilities to manage recruitment, professional assessment, promotion and disciplinary accountability of judges and prosecutors respectively were still not satisfactory. The EUROL support to the Judicial Training Centre strengthened its ability to administer and deliver training, alongside a substantial increase in budget and staffing. The EUROL I project supported the State Prosecutor’s Office with a ‘Case Manager for Investigations’ software package specially adapted for Montenegro.
For the Police side of the EUROL projects, there were a number of significant interventions, with a mixed record in contributing to identifiable capacity improvements. The main recognised success has been in the introduction of a culture and principles of *intelligence-led policing*. This was complemented by training in use of Covert Human Intelligence Sources, Special Investigative Measures and Asset Seizure and Confiscation. The introduction of software to assist banks disclose suspicious transaction reports was credited as an advance in the capabilities to fight financial crimes. Support for Special Investigative Measures – both in terms of training and provision of specialist equipment – has led to an increase in the number of such investigations being carried out (a 50% increase in 2020 compared to previous years). EUROL support led to the creation of an Asset Recovery Office (ARO), as a means

<table>
<thead>
<tr>
<th>Contextual factors, political economy, national agenda</th>
<th>Non-EU interventions - e.g. World Bank, bilateral donors’ projects</th>
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<tbody>
<tr>
<td>EU Cooperation</td>
<td>Institutional <strong>capacity</strong> improvements</td>
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<tr>
<td><strong>Finance, expertise, project management, alignment with EU requirements</strong></td>
<td>Changes in: People, Structures, Processes, Strategy, Leadership, Financial resources, Accountability, Legislation</td>
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</table>
to tackle organised crime. The Office gradually enhanced its capacities, including obtaining access to critical databases and an increase in staffing from 1 to 5 persons. Support for the Financial Intelligence Unit provided training and an upgrade of software to support interoperability with other databases. The EUROL II project logical framework set out some useful outcome-level indicators. The following table summarises the key indicators and targets, and actual achievements; most targets were met or exceeded.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Target</th>
<th>Met</th>
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<tbody>
<tr>
<td>Clearance rate of courts</td>
<td>Increase in 5% by the end of 2020</td>
<td>Target value reached</td>
</tr>
<tr>
<td>Efficiency rate</td>
<td>Increase in 5% by the end of 2020</td>
<td>Target value reached in 2018, but subsequently declined</td>
</tr>
<tr>
<td>Decreased number of non solved old cases (cases older than 3 years)</td>
<td>Decrease in 10% by end of 2020</td>
<td>Target value almost reached (number of unsolved old cases is 302 lower, or 9.5%)</td>
</tr>
<tr>
<td>Increased public confidence in criminal justice system and judiciary</td>
<td>NGO Surveys on efficiency of justice</td>
<td>NGO CEMI Survey on public confidence in justice March 2020</td>
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**OC2 Enhanced institutional capacities and effective enforcement of legislation concerning the fight against OC and corruption, particularly for financial investigations and the coordination mechanisms of the State Prosecution Office, Police Administration, Administration for Prevention of Money Laundering and Financing of Terrorism, State Property Administration, Customs and Tax Administrations**

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Target</th>
<th>Met</th>
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<tbody>
<tr>
<td>Number of indictments against perpetrators of Organised Crime</td>
<td>Increase in 20% by the end of 2020</td>
<td>Target value reached: increase of 40% of indictments for OC relative to 2016 baseline</td>
</tr>
<tr>
<td>Number of indictments against perpetrators of High-level Corruption</td>
<td>Increase in 20% by the end of 2020</td>
<td>Target value reached: increase of 70% of indictments for high-level corruption by 2020 relative to 2016 baseline</td>
</tr>
<tr>
<td>Number of financial investigations</td>
<td>Increase in 20% by the end of 2020</td>
<td>Target value reached: increase of 700% by 2020 relative to 2016 baseline</td>
</tr>
<tr>
<td>Number of plea agreements in the field of OC and Corruption</td>
<td>Increase in 10% by the end of 2020</td>
<td>Target value reached: increase of 56% by 2020 relative to 2016 baseline</td>
</tr>
<tr>
<td>Number of asset confiscation cases</td>
<td>Increase in 10% by the end of 2020</td>
<td>Not met</td>
</tr>
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The overall picture painted by these numbers suggests good improvement in most areas, with some challenges in court efficiency and asset confiscation. Higher level measures of judicial independence, such as the index provided by the World Economic Forum, can only give us data to 2017 (as of March 2021), and so cannot tell us anything about more recent change in Montenegro, and hence whether there might feasibly be a EUROL project contribution.

The project’s draft final report was careful not to attribute all changes to the EUROL projects, and it was clear from all evidence that many factors contribute to building organisational capacities and improvements in institutional performance. The following summary of the contribution analysis highlights the mechanisms that interlocutors described as a way of explaining how the EUROL projects contributed to the observed outcomes, and the factors that seemed to constrain the projects’ contribution.
Accession negotiations in Montenegro have a high profile, and the requirements to meet EU standards in rule of law are well known thanks to the Fundamentals First agenda. The design of both EUROL I and II were closely tied to the benchmarks that Montenegro was expected to meet, particularly in terms of the fight against organised and serious crime, and the independence and impartiality of the judiciary. The relevance and the high profile of the issue contributed to sustained political and EU attention on the projects’ achievements.

The design of the activities within the projects was feasible and realistic, and offered a clear logic of how activities might lead to the desired objectives, even though there was no explicit Theory of Change. Project activities were broader than would be found in a ‘traditional’ twinning and included hands-on procurement of equipment, provision and support for IT systems development, as well as a creative and ambitious approach to training. Training went beyond the classroom, and involved on-the-job support and long-term intensive training, and materials drew from examples of current cases in Montenegro.

The project design itself was intentionally flexible, and a 6-monthly steering committee was able to approve requests for changes in content to address unforeseen or new requirements.

EUROL II was seen to be more responsive to the needs than EUROL I, and this is likely in part because EUROL I was able to provide practical knowledge and experience of managing change in the judiciary and police to inform the design of EUROL II. EUROL I, by contrast, relied on more superficial needs assessments and did not have the same depth of practical experience to draw from. This points to the added value of continuity and learning from interventions that aim to achieve deep institutional reforms.

Interlocutors in the Montenegro authorities also claim that financial support for equipment is often more useful than advisory and project support, and this is a reason why the EUROL projects are valued.

A good proportion of the project budget (c EUR 700,000 of the EUR 2.5 million for EUROL II was dedicated to purchase of equipment. This practical assistance is visible and contributed to the perceived legitimacy of the EUROL support.

The peer-to-peer relationship, particularly under EUROL II, achieved a high degree of mutual trust and respect, because professionals were talking to professionals in the same field, facing similar issues.
EUROL II’s approach was not to recommend or provide a single prescribed solution, but to offer a range of possible solutions, identified through study visits and experts from different countries. This ensured that the ownership of decision-making remained with the national authorities, and the solutions found were more likely to be appropriate to the (perceived) needs. A shared and holistic vision of what was needed to be achieved was also considered an essential component of the success of EUROL II. This approach, while resulting in greater ownership of solutions (and hence sustainability) demands rather more flexibility from the project design compared to more standard EU technical assistance projects. It is a step towards a more ‘adaptive’ approach.

The EUROL project teams’ insights into changes and challenges in their partner institutions was able to inform the dialogue participants, so that related policy dialogue could raise critical constraints or challenges faced in the process of judicial and police reform.

Key positive external (to the EUROL projects) factors

Policy dialogue within the framework of the Stabilisation and Association Agreement (SAA) is perhaps the most influential and positive factor affecting reform in Montenegro.

Montenegro reports that its own abilities to define and obtain the support that it needs has strengthened over the years, and that from 2014 onwards it was in a better position to determine and argue for appropriate support, rather than accept whatever was offered.

Key internal constraints

EUROL I was seen as taking a more directive line in advice to the national authorities than EUROL II. This approach was criticised by some because it was seen as not fully understanding the needs and responding with inappropriate solutions. That EUROL II was seen as more supportive derives from a) being able to learn from the experience and analysis of EUROL I, and b) being staffed by currently serving officers with ready access to expertise within the public institutions in the EU.
EUROL II was able to maintain a good positive relationship with partners; however, this can come into conflict with the necessity to either deny requests or be tougher on demanding contributions from the partner side. ROM reviews were able to contribute to learning and to maintain some reflection on direction.

Elements of the project, such as the planned replacement of the PRIS IT system faced unexpected internal (to national authorities) resistance because of unseen vested interests. The flexibility to change the project activities to the development of an ICT strategy instead was appropriate, but did not address the fundamental problem, which could only be tackled by the national authorities.

EUROL I did not benefit from a precursor, and so was to some extent working in the dark. EUROL II was able to build on the knowledge of EUROL I, from the outset having a greater understanding of what was needed, what was possible, and how to work.

Both projects, though especially EUROL II, had difficulties in maintaining coherence between both halves of the projects – judiciary and policing. Project design and management could have helped to reinforce the commonalities between the two halves and increased cooperation between police and judiciary. This could have contributed to improved judicial understanding of police evidence and process, and in this sense was a missed opportunity.

There was no independent external evaluation for either EUROL I or EUROL II. Both projects produced good quality reports and solid evidence of deliverables. ROM reviews provided some useful insight into management arrangements and constraints. Nevertheless, for a long-term investment of this nature, an external evaluation is needed to provide an independent assessment of priorities and what works at the level of impact.

Key external constraints

Real change in the judicial system, and the required track record of convictions for serious and organised crime and corruption are still missing. Policing methods and motivations may have improved, resulting in higher arrest rates, but there are still challenges in getting convictions in courts. The most common reason interlocutors offered for this failure to deliver was the problem of ‘political will’. The roots of the problem of insufficient political will lie hidden under complex webs of personal relationships, expectations, interests and assumptions that even the most intricate political economy analysis would find difficult to unpick. A superficial analysis would argue that the perceived costs of change outweigh any perceived benefit. In order to enable the change to happen, the perceived benefits (as perceived by the key decision-maker/s) must outweigh the perceived costs. The challenge therefore lies in changing perceptions and calculations. The swearing in of a new Government in Montenegro at the end of 2020 could be the turning point at which the calculus has changed, and judicial and police reform will move forward. At the time of writing, however, this remains to be seen.

Some interlocutors argued that the EU has the appropriate instruments and political power to influence judicial reform in Montenegro, but that it has still not learned how to use them to good effect, and that it is afraid of upsetting a ‘balance’ with other powerful and influential countries.

More practically, interlocutors reported other constraints that affected the realisation of project activities. Key among these was the time lag between identification of an issue or need and the delivery
Conclusions and Lessons learned

The modality of the EUROL projects can be described as ‘Twinning Max’, an approach that successfully combines the advantages of peer-to-peer support of Twinning, with the added value of training and procurement that a services or TA contract can bring. There is value in further entrenching and exploring possibilities of this approach in other EU cooperation. The approach is similar to that of the Swedish central government authorities’ development cooperation, and many of the lessons learned by Sweden are also applicable to this form of EU cooperation project.¹

The success of the EUROL projects needs to be seen in the context of EU accession and their link to the priority of Rule of Law reform and the Fundamentals First agenda. The projects took place in an environment of heightened attention and close observation by experts, EU officials and civil society. In this context, there was readily available information and policy guidance to inform the process of reform, particularly in deciding practical priorities of what should be achieved to set objectives. The related policy dialogue was frequent and detailed enough to ensure that the project activities – and particularly the expected contributions from the side of the national authorities – were provided. The increasing effectiveness of the project and acceptance by the national authorities can be seen as a product of continuity and learning. The lessons learned by EUROL I served to enhance the understanding of how change can take place in this particular environment, providing EUROL II with a springboard to begin rapidly. This lesson highlights the importance of continuity and learning: ensuring hand-over between teams, minimising the time gap between phases, expressing and documenting learning. For new projects where there has been no precursor, this reinforces the need for an in-depth inception phase, more open project design to allow for adaptation and learning, and a strong monitoring and steering arrangement that can regularly review progress and make changes as necessary. The EUROL II approach of offering examples of solutions rather than prescribing solutions underscores the importance of a flexible and adaptive approach to project design.

common in twinning projects, the value of the EUROL project in adding on elements of technical assistance projects meant that the EUROL project successfully combined the benefits of both. The risk of this arrangement is that the professional skills and experience are preferred over project management experience, and that the relationship dominates over delivery of results. Future projects should prioritise the peer relationship – this is the foundation on which change can happen – but reinforce project management capability with an additional team member or perhaps a team leader that can also bridge the divide between police and judiciary sides of the project.

More frequent evaluation is needed to ensure that projects are doing the right sort of things and having an impact.

The long-term nature of the EUROL projects – three phases of three years each – is an appropriate response to the recognition that fundamental institutional reform can take a long time. Long term projects, however, also face the risk of strategic drift, and more frequent evaluation is needed to ensure that projects are doing the right sort of things and having an impact. The ROM reviews are helpful, and dialogue and steering provide direction, but credible external and independent evidence of project results are needed, particularly to inform decisions about design of follow-on projects.

The flexibility of the EUROL projects and the importance of the personal relationships exposes the projects to risk of strategic drift, where responding to immediate requests and preserving the relationship is more important than making tough decisions and requiring national contributions. The policy dialogue and steering mechanisms in the case of EUROL were valuable in maintaining focus on the project goals; this worked reasonably well in this case but cannot be taken for granted. Future projects need to ensure that strong steering mechanisms, rooted in evidence of (likely) achievements against both capacity and performance changes, are in place.

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