



# 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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Final Report  
Volume 2 – Case Studies  
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*Evaluation carried out on behalf of the European Commission*





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Neighbourhood Countries and Candidates and Potential  
Candidates of Enlargement  
(2010-2017)**

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***The opinions expressed in this document represent the authors' points of view  
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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)**

## **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

# 1 Introduction

## 1.1 Purpose of the case studies under this evaluation

This Volume presents the evaluation team's notes for the desk and field case studies performed for ten beneficiaries/partner countries and two regional programmes.

The case study notes do not constitute separate evaluations of the EU support in a country or its situation with regard to Rule of Law. They present country-related findings in relation to the evaluation questions, judgement criteria and indicators assessed and feed the synthesis analysis presented in Volume I - Main report of the Thematic Evaluation of EU Support for Rule of Law in ENI partner countries and IPA beneficiaries (2010-2017).

## 1.2 Temporal scope

The temporal scope of the evaluation covers the years 2010 to 2017. However, the evaluation team took into account also data and information up to mid-2018, for instance where information on current developments received during the field missions (which took place from July to September 2018) was considered valuable in order to provide a comprehensive analysis.

## 1.3 Case study selection

During the inception phase, the Evaluation Team has adopted a purposive sampling strategy to develop the selection criteria that have been utilised to identify and choose the most relevant interventions within the overall portfolio supported by IPA and ENI. These criteria can be summarised as follows:

### **Criterion 1: Geographic / Contextual Diversity**

The team sought a close geographic balance between the IPA and ENI beneficiaries. Two regional programmes have also been selected (EuroMed Justice III and IV, and the Horizontal Facility) in view of their significant long-term investment, their very broad thematic scope, their political weight, and the large number of beneficiaries covered.

### **Criterion 2: Weight of EU support to rule of law**

This criterion was divided into four interlinked elements:

- a) Number of interventions: priority has been given to those beneficiaries/partner countries with a large number of interventions in RoL areas to provide a rich and diverse source of qualitative and quantitative evidence to inform the evaluation team's analyses, conclusions and recommendations; thus, priority has been given to beneficiaries/partner countries that: (i) have had a series of significant RoL interventions over time which reflect the continuation of previous support, in order to assess flexibility and response to lessons learnt; and (ii) have a large number of relevant RoL interventions to provide an understanding of how the selected interventions were integrated more broadly into the overall country and regional context.
- b) Strategic significance: Priority has been given to beneficiaries/partner countries where the RoL was/is of particular importance in national/sectorial strategies and programming, as evidenced by explicit references to RoL as a main sector (or sub-sector) of cooperation. For this sub-criterion, the selection has been made based on an analysis of available documents (including strategy papers), interviews conducted with EU services as part of the Inception Phase, and the Evaluators' combined and specific project, country, and regional knowledge.
- c) Financial allocation: Priority has been given to beneficiaries/partner countries with the largest allocations of RoL financing, in part because it provides an objective indicator of the Action's political significance. Specific attention has been given to interventions where the support provided represented a relatively high per capita investment.

d) Contemporariness: Priority has been given to beneficiaries/partner countries with on-going or relatively recent EU-funded RoL interventions of significant size, whose design and implementation reflects the on-going intervention logic, and where implementation was not so far in the past as to be outside the scope of institutional memory.

#### Criterion 3: Thematic Diversity

While selecting the 10 country case studies, the evaluation team has sought balance within the core areas of the rule of law sector.

#### Criterion 4: Strategic Approaches

This criterion sought to achieve diversity in terms of strategic approaches adopted for the delivery of EU support, and mainly related to the choice of modality of intervention (budget support, project approach, specific technical assistance, twinning) and the channels and implementing partners used.

#### Criterion 5: Evaluability

This criterion concerned: the availability of documentary evidence (e.g. evaluation reports), the stability of the country context, availability and willingness of institutions to cooperate within the evaluation process etc. In selecting the case studies for Field Phase visits, the capacity of EU Delegation to be involved in the Evaluation was a criterion, as well as the “do no harm” principle of not exposing persons interviewed (particularly civil society advocates) to the danger of reprisals.

Based on the selection criteria outlined above, twelve case studies were selected for an in-depth analysis under this evaluation. Table 1 presents the sample divided according to (i) beneficiaries/partner countries contexts, which look at the entirety of support to RoL under IPA and ENI, and (ii) regional interventions under the two instruments.

*Table 1: Overview of case study sample*

<b>Case</b>	<b>Strategic value</b>	<b>Amount (million EUR)</b>	<b>Time</b>	<b>Themes</b>	<b>Approach</b>	<b>Evaluability</b>
<b>IPA</b>						
<b>Albania</b>	Medium	99.6	Long-term; current	Penitentiary; justice; justice reform strategy; witness protection; infrastructures; justice & human rights; media As relevant: Anti-corruption; general civil society; general human rights	Multiple (Construction, Service contracts, Twinning, Contribution/delegated agreement, Supply, stand-alone project, other)	High
<b>Montenegro</b>	Medium	12.7	Long-term; current	Justice; justice reform strategy; general RoL As relevant: Anti-corruption; general civil society	Multiple (Twinning, Contribution/delegated agreement, other)	High
<b>Serbia</b>	Medium-High	71.8	Long-term; current	Judiciary; Ombudsman; justice; general RoL; human rights agency; media As relevant: Anti-corruption; general civil society	Multiple (Construction, Service contracts, Twinning, Trust fund, Contribution/delegated agreement, etc.)	High

<b>Turkey</b>	Very High	152.5	Long term	Justice reform; justice system; judiciary; penitentiary; media As relevant: general civil society	Multiple (Construction, Twinning, Supply, Service contracts, Contribution/delegated agreement etc.)	Medium-Low
<b>ENI</b>						
<b>Georgia</b>	High	88.3	Long term; current	Justice; judiciary; penitentiary; private & admin. law systems As relevant: general human rights; governance	Multiple (SBS, Twinning, Project)	High
<b>Moldova</b>	Medium	35.7	Long-term; current	Penitentiary; justice; media	Multiple (Twinning, SBS, Project)	High
<b>Armenia</b>	Medium	59.1	Long-term; current	Justice reform; judiciary As relevant: human rights defenders; general human rights	Multiple (Twinning, SBS, Project)	High
<b>Jordan</b>	High	90.7	Long-term; current	Justice; electoral processes; rule of law As relevant: governance; civil society & media	Multiple (Twinning, SBS, Project)	
<b>Tunisia</b>	Very High	135.6	Long-term; current	Justice; judiciary; admin. Tribunal; constitution; penitentiary; democratisation; media As relevant: general civil society; general human rights; gender	Multiple (Twinning, Contribution agreement, Project)	High
<b>Ukraine</b>	Very High	14.4	Long-term; current	Justice; judiciary; general RoL As relevant: general human rights; general civil society; anti-corruption	Multiple (Twinning, Projects)	Medium
<b>Regional</b>						
<b>EuroMed Justice</b>	Very High	15	Multiple phases; Current	Justice	Project	High
<b>CoE Horizontal Facility</b>	Very High	25	Current	Justice; anti-corruption & transparency; anti-discrimination	Project	High

The cases for the field study analysis were selected out of the case studies analysed in the desk phase (ten countries and two regional case studies). The size of the field phase sample (eight cases) was established in line with the ToR and the Inception Report, which foresaw a maximum of eight field cases. It has been kept large to maximise the diversity of cases covered during this phase.

The selection of countries and regions visited followed similar guiding principles as those used for the selection of cases to study in the desk phase. However, these criteria were complemented by the following considerations:

- The field studies should contribute to complementing information from the desk phase;
- The field studies should be diverse enough to validate the preliminary findings that emerged from the desk phase;
- The field studies should be chosen to highlight potential interesting lessons learned, and examples of good practice.

The table below presents the final proposed selection of field study cases.

*Table 2 Selected case studies enhanced by a field mission under this evaluation*

<i>IPA</i>	<i>ENI</i>	<i>Regional cases</i>
Albania	Georgia	CoE Horizontal Facility
Serbia	Tunisia	EuroMed Justice
Turkey	Ukraine	

## Case study note – Albania

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## 1 Introduction/Context

The EU's relations with Albania are characterised by the context of the April 2009 Stabilisation and Association Agreement (SAA). In that month Albania presented its application for membership in the European Union, and in June 2014 the European Council granted Albania candidate status. In November 2016, the European Commission recommended opening accession negotiations. Visa liberalization has been in place since 2010.

Over the bulk of the evaluation period (2010-2017) priorities under the SAA, on which Albania was judged to have made sufficient progress to justify the opening of accession negotiations, were (i) public administration reform, (ii) judicial reform, (iii) the fight against corruption, (iv) the fight against organised crime, and human rights, including anti-discrimination and property rights. In the area of judicial reform the priorities were: increasing the independence, impartiality, and accountability of the judiciary (judges, prosecutors, and court administrators). This required deep changes in the governance of the judiciary as well as a comprehensive “vetting” (i.e. assessment of competence and suitability) of sitting judges.

EU financial assistance to Albania in 2007-2013 was under the Instrument for Pre-accession Assistance (IPA I) in the amount of EUR 594 million. In the period 2014-2020, Albania benefits under IPA II, with an indicative allocation of EUR 649.4 million. Specific objectives for Albania under IPA II are (i) political reforms; (ii) economic, social and territorial development, (iii) support to institutions in order to strengthen their ability to align to the EU acquis, and (iv) strengthening regional integration and territorial cooperation. The 2014-2017 action programmes provide EUR 170 million to promote reforms in Rule of Law (RoL), democracy, and human rights. Albania also benefits from the European Instrument for Democracy and Human Rights (EIDHR), IPA multi-country programmes and cross-border cooperation. While the country has recently instituted budget support for justice reform under IPA 2018 — judging that the justice sector strategy is adequate and a systemic approach is justified — this approach was not applied in Rule of Law over the evaluation period. Support has rather been through TAIEEX, Twinning, service contracts, works and supply contracts for infrastructure, and grants contracts with EU Member States (MS).

Anticipated results for the 2014-2020 period include an overall review of the justice system, legislative reform to enhance the independence and accountability of the judiciary; improved selection, promotion, and disciplinary procedures for the judiciary, reductions in the duration of proceedings, improved enforcement, compliance of the penitentiary system with international standards, advancement of property rights management in line with the European Court for Human Rights (ECtHR) jurisprudence, and the establishment of a legal framework regarding human rights in line with EU legislation and international obligations, and implementation of enhanced anti-discrimination legislation related to protection of human rights, particularly the national action plan for the Roma and Egyptians communities, and fight against organized crime.

The table below presents an overview of the main IPA-funded interventions.

Table 1 Overview of IPA-financed interventions in the area of RoL in Albania

Decision year	Title	Planned EU contributions (mEUR)	Implementation methods / channels
2007	Support to the Penitentiary Infrastructure	0.5	Service
2008	Support to the Penitentiary Infrastructure	0.4	Service
2009	Assistance to the Justice System – EURALIUS	2.3	Grant (FIIAPP)
2009	Reform of the Penitentiary in Albania, with special focus on Probation services	1.0	Twinning (UK)
2009	Enhancement of operational and logistical capacities of Witness and Special Persons Protection Unit	0.6	Twinning
2010	Modernisation of the Albanian Justice system	3.0	Service
2010	Support to the Penitentiary Infrastructure and improvement of training and accommodation capacities in the Police Education Centre	0.7	Service
2010	Criminal Justice (design of case management system)	1.0	Service
2010	Design revision of Tirana Justice Palace	0.2	FWC
2011	Construction of new pre-trial detention centre and prison in Shkodra, Albania	14.4	Works
2012	Efficiency of Court management and administration	1.0	Contribution Agreement
2012	Support to Alternative Dispute Resolution in Albania	0.7	Twinning (Finland-Czech)
2012	Improvement of the enforcement system in Albania	0.8	Twinning
2013	Pilot Sector Programme for Justice and Home Affairs and Fundamental Rights	11.5	Service
2013	Enhancing the effectiveness of the Albanian system of human rights protection and anti-discrimination	1.5	Grant (CoE)
2013	Support to the Penitentiary System and the Probation Service in Albania - AL 13 IB JH 01.	1.0	Grant (UK)
2014	Economic and Social Empowerment of Roma and Egyptians – a booster for social inclusion - ESERE	4.0	Grant (UNDP)
2014	EURALIUS IV - Consolidation of the Justice System in Albania	4.0	Grant (IRZ)
2015	Support to the development of Alternative Dispute Resolution in Albania	0.7	Twinning
2016	Support to the formulation, coordination and implementation of anti-corruption policies	3.0	Twinning (AED - Germany)
2016	Consolidation of the Justice System in Albania - EURALIUS V	12.5	IRZ

In addition to these actions, IPA supported the International Monitoring Operation (IMO) that oversaw the vetting of the Albanian judiciary, significant RoL initiative discussed at length below. IPA also supported “Consolidation of Law Enforcement Capacities in Albania” (PAMECA IV and V) were major EU-supported Security Sector Reform projects with some, but limited, overlap with RoL as defined by the Terms of Reference for this evaluation – especially anti-corruption aspects. Where relevant, these are referred to below.

Albania was also covered by EU regional programmes focussing on RoL such as:

- The EU-CoE Horizontal Facility for the Western Balkans and Turkey. Examples of actions implemented in Albania:
  - 2014 - Increase the efficiency of the Albanian justice system, in line with European standards (SEJ)
  - 2016 - Protection of HR of Prisoners and anti-discrimination
  - 2017 – support to the preparation of the framework law on minorities
  - 2016 - Strengthening the Quality and Efficiency of Justice (SEJ2)

The European Instrument for Democracy and Human Rights (EIDHR) was also used to finance interventions in areas such as marginalised and vulnerable groups. Examples of EIDHR projects include:

- 2011 - Improving access to justice and access to rights of children and marginalized families with a special emphasis on Roma community
- 2015 - Civil Society in Action for Protection of Child Rights in Albania

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

<b>EQ2</b>	<b>To what extent has EU support to RoL responded to the bilateral and regional contexts?</b>
<b>JC21</b>	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
<b>JC22</b>	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 Summary of key findings

RoL was given highest priority in the 2010 Commission Analytical Report and Council Opinion on Albania's potential EU accession. Throughout the evaluation period, there has been in place a National Strategy for Development and Integration (NSDI) consistent with the 2009 Stabilisation and Association Agreement (SAA) and other key European integration documents. During the same period, MIPDs (2009-2011 and 2011-2013) and the Indicative Strategy Paper (ISP) 2014-2020 have closely aligned with the NSDI and national priorities, which have themselves been informed by dialogue of the EU with national authorities, International Financial Institutions (IFIs), Member States (MS), other donors, and civil society. Weakening the quality of this dialogue, civil society in Albania is not strong and relevant justice sector institutions in Albania were fragmented and politicised. Needs and institutional challenges of national institutions were taken into account in EU strategic documents, albeit at a fairly shallow level of analysis. The high point of EU responsiveness was the flagship EURALIUS project which provided high-quality European technical assistance (TA) across the broad range of RoL issues. At the highest level, reforms supported by the EU also proved slow to implement either because of delays in passing enabling legislation or the weakness of institutions responsible for implementation. Based largely on this, EU Annual Reports on Albania, while of high quality, have had the tendency to err on the side of optimism.

#### 2.1.2 Alignment and participatory processes (JC21)

Broad alignment with national (and European) priorities has been excellent in Albania, because throughout the evaluation period there has been in place an NSDI consistent with the 2009 SAA and other key European integration documents. In line with the 2010 Commission Analytical Reports and subsequent Council Opinion, strengthening the RoL was given highest priority. This priority was reflected in the high profile given to the focal area of RoL in the 2009-2011 and 2011-2013 MIPDs under IPA I and the ISP 2014-2020 under IPA II. 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 MIPDs and the ISP, have involved close consultations with national authorities, IFIs, MS, other donors, and civil society. At the same time, two qualifications are needed: (i) while there have been abundant consultations with civil society organisations (CSOs) and local authorities (LA), both (and especially the first) are broadly 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. National ownership at all levels was mixed. At the highest level, reforms supported by the EU proved slow to implement either because of weak political will, delays in passing enabling legislation (including ministerial bylaws) or the weakness of institutions responsible for implementation. Persons interviewed during the field visit reported that national ownership of the anti-corruption agenda was particularly low.

The key basis for the EU's RoL strategy in Albania is Article 78 of the April 2009 SAA calling for "consolidation of the RoL," "reinforcement of institutions [...] [in] the administration of justice," and "strengthening the independence of the judiciary and improving its efficiency" and the subsequent Albania assessment in the 2018 Communication on EU enlargement policy (COM (2018) 450 final). The NSDI 2007-2013 adopted in March 2008 mirrors the main SAA priorities and lays out steps for implementation. It enumerated, inter alia, the following priorities: (i) increasing the independence and accountability of the judiciary, (ii) increasing transparency of criminal and civil processes, (iii) improving legislation in line with the European acquis, (iv) strengthening policy planning and management, (v) improving prison and re-trial detention conditions, (vi) setting up Administrative Courts, and (vii) protecting human rights.

The Albanian Justice Inter-Sectorial Strategy 2011-2013 was adopted in 2010 with the Ministry of Justice (MoJ) responsible for implementation. The EU MIPD 2009-2011 (C(2009)5911 03 31.07.2009), in line with the SAA and NSDI, and noting that the capacity of Albanian institutions in democracy and RoL was

low, gave an indicative allocation of 30-35% of the EUR 269 million in IPA I Transition Assistance and Institution Building to the broad range of RoL, democracy, and HR issues. Specifically, objectives included judicial system reform and facilities (including penitentiaries), media, minorities and vulnerable groups, and civil society.

Expected results in the justice sector were:

- improved functioning and capacity of institutions;
- reduced number of pending cases and strengthened prosecution system;
- better infrastructure and penitentiary facilities; and
- introduction of a case management system.

Under the IPA I MIPD 2011-2013, specific objectives in this sector were:

- separation and balance between powers to increase independence;
- directing the court system towards best European practices;
- strengthening the status and professionalism of judges and prosecutors;
- achieving a sustainable increase in the level of execution of court decisions; and
- improving the infrastructure in the judicial sector, i.e. the courts, prison and pre-detention systems;
- steps to promote anti-discrimination and HR were also proposed.

Indicative funding for justice including anti-discrimination and HR for 2012-2014 amounted to 15% of the EUR 257.7 MIPD total (p. 13).

A new NSDI was adopted in late 2014 and served as the basis for the IPA II Indicative Strategy Paper 2014-2020. The 2011-2013 justice sector reform strategy expired and the Ad Hoc Parliamentary Committee on Justice Reform (with support from the EURALIUS project) drafted a strategy, adopted in July 2016, which was an ad interim document (focused largely on legislative reform of the judiciary) that provided the basis for government to draft a wider sector strategy. The ISP 2014-2020 proposed an indicative allocation of 15% of the EUR 649 total MIPD to RoL and fundamental rights (p. 36).

All ROMs consulted have judged EU support, whether broad (at the level of the EURALIUS TA) or specific, as in the case of facility construction, to be highly relevant to national needs.

The MIPD 2009-2011 represented the outcome of an enhanced consultation process (pp. 9-10). A first draft was produced consolidating EU and Government strategy papers. The first MIPD document was discussed with Government in July 2010, resulting in agreement on the sectors to be covered. At the beginning of December 2010, after refinement, the draft MIPD was discussed in Tirana with MS, IFIs and other bilateral donors, and the Government. In preparing the ISP 2014-2020, consultations took place with the judiciary, local government, civil society, IFIs, international organisations, and other donors (p. 4). Albanian self-assessments of sector policies and strategies, medium-term budgeting, coordination, monitoring, and performance were taken into account. There was a strategic dialogue with the European Parliament and additional consultations took place with the newly elected government after the July 2013 elections.

Strategic documents consulted contain no detailed information on strategic and programming consultations with civil society; however, External Assistance Management Reports (EAMRs) list frequent meetings with civil society and Local Authorities (LAs). According to the 2012 EAMR, the EUD engaged in preparation of the 2012 and 2013 EIDHR CBSS allocations. Annual Action Plans were shared with CSOs, and civil society provided input to the mid-term review of the ISP 2014-2020 (EAMR 2016, p. 17). The April 2012 Thematic Evaluation of EU Support to Civil Society in the Western Balkans and Turkey characterised (pp. 55-59) civil society in Albania as weak, fragmented, and overall ineffectual. The EAMRs for 2012 and 2013 made much the same point that the EUD repeatedly advocated that CSOs be more involved in legislative drafting. The general impression of the entire range of stakeholders interviewed during the field mission is that civil society, including some major international NGOs active in the country, tends to be highly politicised. Civil society representatives interviewed expressed dissatisfaction, in varying degrees, with the transparency and effectiveness of the donor funding (essentially calls for proposals) process, including that of the EU.

For policy dialogue, see JC 31 below.

National ownership is judged to be mixed, and programming documents regularly identified it as a risk. While ownership of the EURALIUS TA was high from the outset, as evidenced by the number of ad hoc requests, this came at the cost of threatening efficiency (ROM 141162.02 of 21.11.2012) and diverting the project from accomplishing planned outputs. As evidenced by the fact that recommendations far exceeded actually passed legislative reforms and legislative reforms far outpaced the secondary legislation necessary to implement them, political ownership of TA was an issue. The Ministry of Justice,

the key EU partner, was described by one stakeholder interviewed as too often following in Parliament's wake, rather than proactively promoting reform. In one facility project for which there was ROM reporting, beneficiary participation in project governance was judged to be formalistic and government resources needed for project completion were late in coming. While the EU and other donors have repeatedly supported the use of IT in the justice system, ownership of the new technology has been weak (trained staff transferred to new functions, maintenance contracts allowed to lapse, etc.). One person interviewed expressed the view that the real criterion for judging the entire justice sector reform strategy will be whether it effectively addresses corruption, which is by no means yet clear.

### **2.1.3 Needs, opportunities, and responsiveness (JC22)**

There was broad agreement between government and the EU on needs and priorities in RoL. Strategic and programming documents all outline needs and institutional challenges, but at a fairly superficial level of analysis. The standout example of responsiveness is the multi-phase EURALIUS project, which ran throughout the evaluation period, delivering European TA flexibly in response to a large number of requests spanning the entire justice sector.

There was agreement on priority areas such as independence of the judiciary (requiring constitutional reform and necessary legislative follow-up), penitentiary reform, capacity of the School of Magistrates, etc. Priority areas conformed to those identified in the 2010 Analytical Report and Opinion, as well as the EU's 2015 Enlargement Strategy. Strategic documents such as MIPDs and the 2016 justice sector Action Document, as well as project fiches, contain assessments of the weaknesses of the various institutions in the highly fragmented justice sector. However, lacking is a deeper analysis of the reasons underlying these weaknesses and needs.

EU responsiveness has been at two levels. Through the flagship EURALIUS programme, which antedated the evaluation period and stretched over EURALIUS III, EURALIUS IV (and as of summer 2018, EURALIUS V), the EU provided highly responsive, flexible, and timely European TA. At a strategic level, while no outstanding examples of adjustment were found, the excellent annual situation analysis in Annual Reports indicates that the EU monitored the context closely. One example of flexibility is that, following the 2013 elections, the EU, then in the stage of finalising its ISP 2014-2020, consulted with the new government regarding possibly changing priorities. At the same time, a range of persons interviewed in the field expressed the view that Annual Reports tended to err on the optimistic side.

## 2.2 Implementation / choice of modality (EQ3)

<b>EQ3</b>	<b>To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?</b>
<b>JC31</b>	<b>High quality policy dialogue established: frequency, content, synergies between operational (intervention-level) and high-level dialogue, etc.</b>
<b>JC32</b>	<b>Implementation strategies appropriately chosen and combined / complemented</b>
<b>JC33</b>	<b>Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)</b>
<b>JC34</b>	<b>Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, visibility, and quality of monitoring taken into account</b>

### 2.2.1 Summary of key findings (EQ3)

RoL and related democracy and human rights issues have figured prominently in all dialogue, both high level and at justice sector level. The five key priorities are good governance, organised crime, corruption, judiciary system and fundamental rights. Reporting under the SAA has tracked alignment with EU policies and the acquis. At EUD level, the EU was in permanent policy dialogue with national and international stakeholders in Tirana. Relations with Government are cordial and access is adequate. As sector actions were closely aligned with integration and accession issues, a good degree of synergy between operational and high level dialogue was achieved. The EUD sends frequent situation reports, sometimes containing recommendations, to Brussels. The EUD political and cooperation sections work closely together. A weakness observed was that, due to the very formal nature of Commission dialogue processes, implementation issues are not always fully captured. The view was also expressed that, in part because implementation issues tended to be under-treated in policy dialogue, EU Annual Reports, while of high quality overall, tended to be on the optimistic side.

As there was no budget support for justice during the evaluation period, there was no policy dialogue in that context. While there was a move towards budget support in Albania (which is currently being programmed), this was judged premature during the evaluation period in the justice sector, where most support was provided in the form of projects. However, EURALIUS was so broad as to amount to non-budget support sector support. Recently, the EU has adopted justice sector budget support, as the need was identified at the end of the evaluation period for a systemic rather than a scattered approach.

The EU supported facility construction (a penitentiary and pre-detention centre) and through the EU-CoE Horizontal Facility for the Western Balkans and Turkey, human rights and anti-discrimination, Alternative Dispute Resolution (ADR), and the application of European Commission for the Efficiency of Justice (CEPEJ) methods to assess justice sector efficiency. Indirectly, the EU's partnership with the CoE supported the Venice Commission's crucial advice on constitutional aspects of justice sector reforms. The Thematic Programme for Civil Society Organisations and Local Authorities (CSO-LA), the Civil Society Facility (CSF), and EIDHR were all deployed in Albania. The EU's support programme in RoL was reasonably well reported on and monitored. ROMs were adequate and, in one case examined, identified significant efficiency problems. There were two significant evaluations over the period: a Mid-term Review (MTR) of IPA I 2007-2013 carried out in 2010 and an IPA Justice and Home Affairs (JHA) sector evaluation carried out in 2016. In view of the central role of European integration and as Lead Donor in justice, the EU was highly visible throughout the evaluation period.

### 2.2.2 Policy dialogue (JC31)

As RoL and related democracy and human rights issues were identified as fundamental to EU accession in the 2010 Council Opinion, they figured prominently in all dialogue, both high level and at justice sector level. Over the evaluation period, the EU-Albania High Level Dialogue initiated in 2009 followed up on progress regarding the five key priorities set for the opening of accession negotiations - good governance, organised crime, corruption, judiciary system and fundamental rights. Alignment with EU policies and the acquis was covered and followed up on through reporting under Stabilisation and Association Agreement (SAA) and the regular sub-committees. At EUD level, EAMRs report that the EU was in permanent policy dialogue with national and international stakeholders in Tirana. As sector actions were closely aligned with integration and accession issues, a good degree of synergy between operational and high level dialogue was achieved.

Policy dialogue in the context of JHA sector budget support did not occur in Albania over the evaluation period.

Some persons interviewed identified weaknesses in policy dialogue, chiefly that it tends to be highly formal and tends to gravitate towards broad strategic issues, at some expense to operational implementation issues.

### 2.2.3 Choice of implementation strategies (JC32)

The EU moved towards sector budget support in Albania over the evaluation period, but judged that the necessary conditions were not yet in place in the justice sector. In JHA, therefore, they continued to rely mostly on projects. At the end of the evaluation period, with a Justice Reform Strategy in place and progressing, and with the perceived need for a systemic rather than a piecemeal approach, the EU has moved to sector budget support. The flagship justice reform project over the evaluation was (and continues to be) EURALIUS, which contributed TA over a broad range and with a reportedly high level of quality and (to judge by the number of requests) beneficiary satisfaction. EURALIUS was so broad as to amount to a non-budget support sector reform programme. The EU also supported facility construction (a penitentiary and pre-detention centre). Largely through support for the CoE through the EU-CoE Horizontal Facility, the EU financed that institution's contributions in human rights and anti-discrimination, ADR, and the application of CEPEJ methods to assess justice sector efficiency and make recommendations accordingly. Indirectly, the EU's partnership with the CoE supported the Venice Commission's crucial advice on constitutional aspects of justice sector reforms, including the sensitive areas of "vetting" sitting judges and prosecutors, designing a judicial inspection and disciplinary process compatible with European standards, and tackling difficult problems of the lack of independence and politicisation of judges at all levels. An EU-financed International Monitoring mission comprised of experts played a crucial role in overseeing the vetting process.

The establishment of the Horizontal Facility under IPA II was a move towards more structured, predictable aid. This is under IPA regional, as opposed to the bilateral aid received under IPA I. Albania is the largest recipient of HF support. Bilateral support (about 10% of support implemented through the CoE) is still present and complements HF, but the latter dominates. Through HF, the CoE has implemented three actions on justice (enforcement of ECtHR judgments, penitentiary reform, and the SEJ efficiency of justice projects).

The general move over the evaluation period was towards sector budget support (sector reform contracts), but this progress has not extended to the justice sector until the very end of that period. The IPA mid-term evaluation from 2010 found that pre-requisites for sector-based approaches were in place in Albania (MIPD 2011-13, p. 8). However, the MIPD added that, while Albania might be able to develop the necessary administrative capacity in a relatively short time, the conditions were not yet sufficiently good. Over the evaluation period, the EU moved to budget support in Public Finance Management and Technical and Vocational Education and Training, but continued to apply the project approach in matters related to justice. Twinning was also used. For example, a UK twinning in penitentiary reform, mobilised European expertise, as did the Twinning project "Strengthening the Assembly of Albania" implemented by a French-Hungarian consortium. A Twinning between Finland and the MoJ (with the National Chamber of Mediation as primary beneficiary) promoted Alternative Dispute Resolution.

Both EIDHR and the CSF were used extensively to support civil society and promote human rights. However, national CSO representatives interviewed expressed some misgivings about the implementation of the CSF, feeling that calls and award procedures lacked transparency.

Despite the absence of budget support, the EU's portfolio in RoL, democracy, and HR was broad enough to qualify as project-based but sector-wide support for reform. The SEJ and SEJ2 projects implemented by CoE, as well as the CoE's involvement in far-reaching constitutional and legislative reform of the judiciary in 2017 and the International Monitoring Operation observing the vetting of judges and prosecutors broadened the scope of EU support by calling on partner international organisations.

EU annual Albania Reports minutely followed developments in RoL, democracy, and HR. Some interviewees were of the view however, that they tended to gloss over implementation issues, giving an overly optimistic view of progress.

### 2.2.4 Synergies and complementarity within the portfolio (JC33)

Representatives from both projects reported good complementarity between EURALIUS and the regional SSR project PAMECA, as well as actual cooperation in trainings and the preparation of recommendations. The CoE HF was a regional IPA programme, but the CoE expressed the view that regional aspects were insufficiently present; this aspect is, however, in the process of being corrected (see discussion in the HF case-study).

EAMRs report that EIDHR and CSO-LA were effectively deployed in Albania. The EAMR 2017 reports (p. 21) that the EUD ensured coordination and complementarity between EURALIUS and the SSR regional project PAMECA, a claim endorsed in interviews by representatives of both projects.

### 2.2.5 Efficiency, monitoring and visibility (JC34)

The EU's support programme in RoL was reasonably well reported on and monitored. ROMs were adequate and, in one case examined, identified significant efficiency problems. Project reporting was mixed: of two EURALIUS Final Reports examined, one was technically poor but nonetheless contained useful end-of-project situation assessments; the other was technically proficient but concentrated too much on mechanically reporting activities and outputs. There were two significant evaluations over the period: an MTR of IPA I 2007-2013 carried out in 2010 and an IPA JHA sector evaluation carried out in 2016. In view of the central role of European integration and as Lead Donor in justice, the EU was highly visible throughout the evaluation period.

Available ROM reports paint a mixed picture for JHA project efficiency. A major component of EU support was the 2011 IPA project "Construction of a new pre-detention centre and prison at Shkodra." The Council Opinion of November 2010 identified (p. 7) prison and pre-detention conditions as a "serious concern" and the Albania Report of 2016 stated that overcrowding in prisons remained an issue. The proposed prison intends to increase detention capacity by 15%, eliminate overcrowding, and move the county closer to European and international standards. Whether these intentions come to fruition will depend in part on whether sentencing practices shift in the context of justice reform. According to the ROM report of October 2017, the EU contract was completed, albeit with delays, because the contractor and supervisor selected had long experience with similar projects in Albania. However, the facility had still not opened due to flaws in the original design, additional beneficiary requests, and delays in delivery of beneficiary inputs. It was anticipated that the facility could open in 2018 at which point, as the ROM put it, the main challenge to effective delivery of the expected results would no longer be technical, but strategic and political. A stakeholder interviewed confirmed the likelihood of the facility opening in the very near future.

Another proposed major facility project was the construction of the Tirana Courthouse, but this had to be cancelled when a property issue arose. As discussed at other points in this report, legal reform in Albania has failed to come to grips with the complex issues arising from the country's communist past. This has given rise to a large backlog of property rights cases.

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 (with the notable exception of setting up a coordination body for the relevant institutions) were running on schedule. The quality of outputs produced was characterised as high, as was the likelihood of the project producing the expected result, improved anti-discrimination and human rights protection.

The November 2016 ROM of EURALIUS IV found that the project had mobilised a large amount of high quality expertise while intensely advising the Ad Hoc Parliamentary Committee on Justice Reform on legislative drafting.

There was an IPA programme justice sector external evaluation in 2016. Among the conclusions were that EURALIUS and PAMECA, taken together, were a consistent set of measures to achieve basic levels in adjudication and law enforcement, and that their goals were measurable, achievable, and realistic. Efficiency and effectiveness of EURALIUS drastically improved between its Phase III and Phase IV because of an improved political environment and the accumulated experience of all actors in managing such a broad project. Impact, the report found, was still limited by systemic weaknesses but had the potential to "radically increase" if the pending justice reform removed structural obstacles to the RoL.

ROM missions were reasonably frequent. Project reporting was mixed; for example, the EURALIUS III Final Report was written in English so poor as to be incomprehensible at points, while EURALIUS IV reporting was of higher technical quality. Ironic, EURALIUS IV reporting suffered from the defect of being too oriented towards activities and outputs, while the less technically proficient EURALIUS III Final Report offered candid end-of-project assessments.

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.

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and DPs such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination / complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

As the EU is the Lead Donor in JHA, 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 MS and other agencies (i.e., 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 donors have been stepping on each other's toes. However, rough division of labour has been ensured for the sector as a whole. There were also notable instance of close inter-project cooperation, e.g. between EURALIUS and the USAID / US Embassy's Justice for All project.

### 2.3.2 Partnerships established at global level (JC41)

This JC is examined in the overall analysis in Volume I, the main report.

### 2.3.3 Coordination with EU MS / other donors at country level (JC42)

Donor coordination in RoL has proven a challenge in Albania, but the EU has done its best to play a leading role. The number of active donors is high, as is the degree of institutional fragmentation on the beneficiary country side. As lead donor in JHA, the EU has mapped all donor activity in the area, ensuring coordination and promoting complementarity. In some sub-areas, such as IT for the court system (see below) it is clear that donors have been stepping on each other's toes. However, rough division of labour has been ensured for the sector as a whole. Making coordination difficult, there is a multiplicity of beneficiary country institutions as well as a multiplicity of donors each (on both sides) responding to different political and strategic incentives. Coordination meetings are held, but one member of the donor community reported that donors are not necessarily forthcoming with their priorities and plans when pursuing national interests (e.g., cultivating favoured political factions, ministries, etc.). There is no donor coordination group on RoL and, in the case of the Judiciary, no institution to take charge of coordination. Donor shopping on the part of Government; seeking cooperation on the most favourable terms available and, sometimes, requesting support that is duplicative or lacking in complementarity, is reportedly common. In some cases, e.g. anti-corruption, it may be indicative of an overall absence of political will to meaningfully follow sector strategy.

Since the beginning of the evaluation period, IPA coordination has occurred both at local level, through regular coordination meetings with IFIs, MS, and non-MS donor agencies, as well as at central level focusing primarily on strategic orientations and the regional dimension of IPA planning and programming (MIPD 2009-2011, p. 7). The EUD was, at the beginning of the evaluation period, rotating (later permanent) chair of the Donor Technical Secretariat coordination group. Within JHA, there were sub-working groups on juvenile justice, judicial infrastructure, and prison reform (MIPD 2011-2013, p. 15). The EU is the Lead Donor in the area of JHA, meaning that it takes the lead in mapping the interventions of donors active in the sector in order to prevent overlap and duplication.

The donor field related to RoL, democracy, and HR in Albania has, over the evaluation period, been a very crowded one (MIPD 2009-2011, p. 9; MIPD 2011-2013, p. 15). Among MS, France, Italy, Sweden, and the UK have been active in RoL (the latter through a Twinning project with the Prisons Directorate); Austria, Germany, Italy, the Netherlands, and Spain are also present. An even broader range of MS was active in protection of HR and anti-discrimination; for example, Denmark provided crucial core support to the Ombudsman's Office. One European expert interviewed characterised the MS support as "fragmented." USAID, through its "Justice for All" project, was a major player in RoL (mostly judiciary reform, including reform of the School of Magistrates). OSCE (penitentiary reform) and the CoE were also significant partners, as were UNICEF in the area of juvenile justice and UNDP on Roma issues and promoting rights of the disabled.

Given the large number of players, both on the donor and Government side, coordination in the justice sector has proven challenging. The 2016 Action Program for Albania for "Consolidation of the Justice System in Albania" noted (p. 9) that donor fragmentation was a problem and the GoA was still in the

process of establishing a system of Integrated Policy Management Groups (IPMGs) to take the key role in sector coordination. Donors interviewed report that the Albanian government's coordination has not met expectations to improve aid effectiveness, elements being scattered over different ministries run by different political parties and addressing different sections of donor structures that are themselves "fragmented and subject to different political and strategic interests". However, the EAMR 2016 (p. 3) cited improvements in coordination due to the IPMG system, even though, there was still no IPMG in existence for JHA.

While overall donor coordination is far from optimal, there were good examples of cooperation at project level. One of these is between EURALIUS and the USAID Justice for All project, who worked closely together to draft the law on legal aid enacted in 2012 despite lack of initial interest from Parliament and the Bar Association. UNDP, as well, was involved through support for budgeting the law on legal aid, i.e. estimating the budgetary requirements. Good cooperation between EURALIUS and PAMECA was mentioned earlier.

### 3 Effects of the EU support to RoL

#### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened with EU support</b>
<b>JC52</b>	<b>National RoL policy/ strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion / minority rights / gender) and democracy issues into partner countries' RoL policy</b>

##### 3.1.1 Summary of key findings (EQ5)

There have been significant legal and constitutional reforms advancing the RoL agenda. With advice from the Venice Commission and the support of EURALIUS, there have been fundamental reforms affecting the independence of the judiciary (status of the High Court and Constitutional Court) and changes in the recruitment, advancement, and inspection of judges. EU support contributed to *acquis*-compatible reforms to the Civil Procedure Code, a new law on legal aid, and comprehensive reform of juvenile justice. At the same time, the political will and institutional capacity to pass lower-level legislation necessary to implement the reforms was not always evident. For example, while significant reforms to institutions such as the High Council of Justice (HCJ), High Court (HC), and Constitutional Court were unanimously approved by Parliament during 2017, they had not actually been implemented at the end of the evaluation period. One of the challenges was that laws were being drafted while the Constitution was being amended, almost to the point of being re-written in significant sections. This significantly complicated and slowed down the reform process.

While by the end of the evaluation period Albania had adhered to all major international conventions-including those on gender, children, and the disabled- enforcement was lax. For example, while there was comprehensive reform of juvenile justice, an Action Plan for implementing the reform was still lacking at the end of the evaluation period. LGBT and Roma issues were covered by anti-discrimination issues, and there was some training, however discrimination remains common. One of the major constraints is at the level of ministries, where the staff and capacity necessary to draft needed bylaws are absent. The Ombudsman's (People's Advocate's) office was active throughout the evaluation period, but there is no evidence of major direct EU support (most funding came from Denmark) and both the profile of the Office and the implementation of its recommendations is currently weak. Through the CoE, the EU provided some support on anti-discrimination to the Commission for Protection Against Discrimination, but staff and visibility are lacking.

##### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)

The parliamentary gridlock that marked the beginning of the evaluation period was resolved and, particularly in 2016 and 2017, a flood of constitutional and legislative reforms advanced the RoL agenda. Among the most controversial of these were changes 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 a crucial role in drafting through the work of the EURALIUS project (see also JC 71). Among other legislative amendments, EU (particularly EURALIUS) support contributed to *acquis*-compatible reforms to the Civil Procedure Code, a new law on legal aid (in cooperation with USAID), and comprehensive reform of juvenile justice (an area in which Sweden, amongst others, was involved).

The beginning of the evaluation period marked a low point for Parliament, with the opposition boycotting it and most reform legislation requiring a 3/5 qualified majority vote. Over the evaluation period, and particularly as a result of the parliamentary elections of 2013, the blockage was resolved, and many of the subsequent constitutional and legislative changes necessary for justice reform were passed with unanimity. While final steps remained undone at the end of the evaluation period, necessary changes in highly sensitive areas such as the evaluation of sitting judges, recruitment, advancement, and disciplinary procedures, reinforcement of the separation of powers, de-politicisation of the High Court, and others, had been far advanced with EU support. Ad Hoc Parliamentary Committee on Justice Reform proposals for constitutional amendments reviewed by the Venice Commission were adopted by Parliament in July 2016 (2016 Action Programme for Albania, p. 9). 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. One international expert interviewed stated that, prior to reform, Albania's protection of victims' rights was the weakest in Europe.

A particular challenge was posed by the fact that new laws were being drafted at the same time that the Constitution was undergoing sweeping changes. Some laws were (according to national experts interviewed) inappropriately imported, i.e. copied, without sufficient consideration of their appropriateness in the Albanian legal and social context. Translation into Albanian of international experts' inputs imposed high transaction costs. EURALIUS, and especially EURALIUS IV, gave massive support to the legislative drafting necessary to align then various aspects of the justice system to European and international standards.

### 3.1.3 National RoL policy / strategic framework (JC52)

The EU, through EURALIUS, made a significant contribution to the setting of justice reform strategy and the drafting of legislation to implement fundamental reforms to whose design the Venice Commission contributed. Particularly in the second half of the evaluation period, national ownership of high-level reforms was good. At the same time, monitoring reports reveal that the political will and institutional capacity to pass lower-level legislation necessary to implement the reforms was not always evident. For example, while significant reforms to institutions such as the HCJ, HC, and Constitutional Court were unanimously approved by Parliament during 2017, they had not actually been implemented at the end of the evaluation period. The Ministry of Justice, as the EU's main partner, tends to follow Parliament rather than initiating reforms in a pro-active manner. As some persons interviewed observed, the prospect of accession, particularly given the generally optimistic tone of EU Annual Reports, can serve as a disincentive, as well as an incentive, to reform. Albania's rapid progress towards accession in the face of limited progress in tackling corruption can hardly have stiffened Government's resolve in this challenging and politically controversial area.

At the beginning of the evaluation period, no national strategy for justice reform was in place. In August 2011, a strategy 2011-2013 was adopted. This, as admitted in the EURALIUS III Final Report (p. 8), did not contain a realistic plan for financial and human resources necessary for implementation. In January 2014, Albania took a major step forward when it requested the Venice Commission to advise it in drafting a comprehensive judicial reform 2014-2020. In November 2014, the Ad Hoc Parliamentary Committee on Judicial Reform was put in place and a group of experts drafted a judicial reform strategy and action plan the lack of establishment of HJC has been a result of delay in the start of vetting and not due to lack of secondary legislation (Annual Report 2015, p. 52). The Parliamentary Committee analysis identified a long series of problems relating to governance of the judiciary, for the most part revolving around the HCJ (IPA 2016 Action Programme for Albania, p. 5). The analysis also identified problems related to the independence and effectiveness of the Constitutional Court. The independence of the Council of Prosecutors was questioned because of the extreme hierarchical structure of the prosecutorial service. Due to procedural requirements, this strategy was a document only of the Ad Hoc Committee, and a new official government-wide justice reform strategy was not adopted until November 2016. In 2017, a series of amendments to laws were adopted: amendments to the Law on the High Council of Justice, the Law on Administrative Courts and the Law on the School of Magistrates. Only at the end of the evaluation period had key legislation necessary to reform the Constitutional Court, the High Court and the Prosecution Office been adopted. The lack of establishment of HJC resulted from delay in the start of vetting, not from lack of secondary legislation.

Under IPA I 2009, the EURALIUS III project assisted in drafting the first justice sector reform strategy. The project was also heavily involved in advising on amendments to the Civil and Criminal Codes in line with European standards (Final Report, p.p. 74-75). Under IPA II's EURALIUS IV, the EU provided TA to support strategic planning in the MoJ and other parts of the judiciary and prosecution offices all with the goal of helping to draft legislation in line with European standards (Action Programme 2016 for Albania, p. 7). It provided support, as well, to the implementation and monitoring of the justice reform strategy and assessing the budgetary and human resources necessary for its implementation. The EU contributed across the board to improving the quality of the justice sector at all levels and in all aspects of its operation (Action Programme 2016 for Albania, p. 8). Particular attention was given to improving data and IT-based case management (with questionable results). EURALIUS supported Parliament in the adoption of reform legislation on court fees (with implications for access to justice; see EURALIUS IV Final Report, pp. 29-30), legal aid, and notaries.

Ownership of policy initiatives supported by EU technical assistance is high on paper, but implementation of the relevant legislative provisions lags behind. A recurrent theme in monitoring (e.g., ROM 141162.02.02 of 21.11.2012) is that results often take time extending beyond project end to achieve. This leads, among other things, to the need to extend projects to follow through the legislative and operational processes (e.g., framework legislation will be passed but necessary secondary legislation lags, as do Ministry-level bylaws needed for implementation). The ROM report noted

important advances: clarification of the roles of the HC and Constitutional Court, facilitated inspection procedures, improved workflow and transparency between stakeholders, significant training of trainers, and improved assessment of prosecutors' work performance. However, it also noted the danger of the assumption on the part of beneficiaries that assistance would continue indefinitely, and pointed to the limited budgetary resources allocated by national authorities. According to persons interviewed during the field mission, national ownership was weakest in the area of anti-corruption. This is worrisome given Albania's good accession prospects and appears to be contrary to the EU's "fundamentals first" commitment.

At the level of individual projects, ownership was mixed. ROM reports on the construction of a prison and pre-detention centre at Shkodra report that, in the design phase, the beneficiary's involvement was purely formal, as was its participation in steering the project forward during implementation. Only near the end of completion of the facility, when it became evident that more Ministry funds than originally envisaged would be required, did MoJ commitment and ownership increase. Coordination between the MoJ, responsible for the sector as a whole, and the Prisons Directorate was poor.

### 3.1.4 Integration of HR and democracy issues (JC53)

While some progress was made over the evaluation period – by its end, Albania had adhered to all major international conventions, including those on gender, children, and the disabled – enforcement was lax, in part because judges and prosecutors lacked training; in part because Albanian civil society is weak. There was comprehensive reform of juvenile justice (see JC 51), however, an Action Plan for implementing the reform was still lacking at the end of the evaluation period. LGBTI issues were covered by anti-discrimination issues and there was some training, but discrimination remains common. The Ombudsman's (People's Advocate's) office was active throughout the evaluation period, but the EU did not provide major support apart from some TA for anti-discrimination via the CoE. The profile of the Office is currently low and implementation of its recommendations has been weak. The Commission for Protection Against Discrimination, which, unlike the Ombudsman's Office, has the power to sanction, was also supported by the EU through CoE; however, staff and public visibility are both low. The 2015 Albania Annual Report cites (p. 58) an increase in the participation of the Commissioner for Protection against Discrimination in judicial proceedings but also the need for further development of anti-discrimination law.

At the beginning of the evaluation period, according to the EC's Analytical Report (p. 95), the legal and institutional framework for enforcing fundamental rights was in place and the People's Advocate's Office was characterised as functioning well. However, the offices of the Commissioner for Protection from Discrimination and People's Advocate had been vacant for months. Additional resources were needed for effective implementation of laws aimed at ensuring fundamental rights. Despite reform of the juvenile justice system, gaps remained (p. 96). There was an absence of a framework law covering all persons with disabilities. Civil society representatives interviewed confirmed that, despite legislation in force, the situation of persons with disabilities remains dire. While local CSOs supporting the disabled have been strengthened (in part through EU Civil Society Facility funding), there is no national overview. Gender-based violence remained high. Anti-discrimination laws are generally in line with European standards, but judges and prosecutors lack the knowledge to implement the legal framework. A step forward was the adoption of a framework law on anti-discrimination in October 2017. There has been progress on discrimination against sexual minorities, with a functioning inter-ministerial team monitoring the 2016-2020 National Action Plan and training of police, prosecutors, and ministry gender focal points.

The Commission for the Prevention of Torture visited Albania in early 2017 but the most recent report available dates from 2014. According to the Albania Report 2018, one finding is an urgent need to improve the conditions of detention for detainees suffering from mental illness, a problem that can be found, as well, in the CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) report on its visit in 2010. It was reported during the field visit that the opening of the Shkodra prison facility, by permitting the rationalisation of other facility use, will permit prisoners with mental health problems to be transferred to better facilities. Complaints of beatings and ill-treatment continue to emerge. The Committee expressed particular concerns about conditions of detention in police stations and of remand prisoners. Albania has not implemented the recommendations made by CPT based on its 2010 visit. As of the end of the evaluation period, laws related to prisons and prison police remained uncompliant with European standards (Albania Report 2018, p. 26). The action plan to improve conditions of detention put in place in 2014 continued to be unmonitored. While a National Preventive Mechanism was and is in place, the enforcement of the People's Advocate's recommendations has remained weak and prosecutions rare.

## 3.2 Quality / efficiency of justice systems (EQ6)

<b>EQ6</b>	<b>To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?</b>
<b>JC61</b>	<b>Justice system planning and budgeting improved</b>
<b>JC62</b>	<b>Infrastructures and equipment (e.g. court facilities, IT systems) improved</b>
<b>JC63</b>	<b>Capacities, skills and procedures in key RoL entities improved</b>
<b>JC64</b>	<b>Legality ensured, harmonisation of domestic law with international law and jurisprudence promoted, and enforcement of international judgments improved</b>

### 3.2.1 Summary of key findings (EQ6)

A significant EU contribution to judicial planning was the EU-CoE Horizontal Facility project “Strengthening the Efficiency of the Albanian Justice System in line with European standards” (SEJ I) and its successor SEJ II, which introduced CEPEJ approaches to assessing efficiency and quality. Despite the fact that donors persistently cite shortages of financial and human resources, the sense of analysis done under the project is that rather institutional factors, not resources per se, are to blame for the poor state of the justice sector.

On the infrastructure point, there has been universal agreement that there were insufficient courtrooms and that prisons are overcrowded. The EU supported two major infrastructure projects; construction of the Tirana Courthouse (but this was cancelled due to a property dispute) and the construction of a pre-detention centre and prison at Shkodra, the latter with the claimed potential to completely eliminate prison overcrowding (a claim which may be disputed if the supply of places simply leads to more detainees being placed in them). While the EU completed its contract, delays in the provision of national resources postponed the opening of the facility until after the end of the evaluation period.

Computerised case management, with important implications for efficiency as well as transparency and accountability, has been a problem area. The EU and other donors supported introduction and use of computerised case management systems throughout the evaluation period, though largely with disappointing results. Laws and administrative regulations are disseminated on websites. However, due to poor use of IT, many courts are unable to report or late in reporting. Through EURALIUS, the EU supported the School of Magistrates (SoM) throughout the evaluation period to strengthen its curricula and to improve the process by which students are recruited. However, the situation at the end of the evaluation period was dire: having been assigned broader and deeper responsibilities by the justice reform, the SoM was still dependent on donor funds, short of premises and staff, and far from up to international standard in pedagogy. The EU, through the EU-CoE Horizontal Facility supported a joint programme to improve enforcement of national judgments and increase compliance with ECtHR case law. While considered as a reasonable ECtHR performer in these areas, there were severe backlogs in dealing with cases arising under fair trial and property rights areas of the ECHR.

### 3.2.2 Justice system planning and budgeting improved (JC61)

Financial governance of the court system does not appear to be problematic: the judicial budget is managed by the Judicial Budget Administration Office, an independent office that collects requests, makes policy and provides resources to courts at all levels (2016 Action Programme, p. 6).

Financed by the EU-CoE Horizontal Facility for the Western Balkans and Turkey, the CoE-implemented projects “Strengthening the Efficiency of the Albanian Justice System in line with European standards” (SEJ 1, January 2014-June 2016) and its successor SEJ 2 (2016-2019) have introduced CEPEJ standards and tools. The main beneficiaries are the MoJ, the HCJ, the SoM, and the Office for Administration of the Judicial Budget and the General Prosecutors Office. The projects pursued two objectives: (i) to enhance judicial statistics and improve time management and (ii) to enhance the quality of courts. For EU support to ICT (Information and Communication Technology), see JC 62. Somewhat surprising in view of the fact that virtually all other sources cite insufficient resources, authors of a comprehensive SEJ 1 assessment refrained from declaring that the level of resources (judges, salaries, budgets, etc.) was insufficient to allow the court system to deliver justice. This suggests that institutional factors, not resources, are more to blame for the poor state of the justice sector. For example, the SEJ 1 assessment found (p. 9) that the share of the courts budget spent on ICT was about equal to the CoE average, and attributed underuse of ICT (further discussed under JC 62) to lack of readiness in the sector. One bottleneck that all analyses (e.g. the Albania Annual Report, p. 2) agree on is the insufficient availability of courtrooms, a problem the EU attempted to address by financing the subsequently cancelled construction of the Tirana Courthouse. The 2018 Albania Report observed (p. 20) that, due to the continuing shortages of court facilities, some hearings continue to be carried out in judges’ offices.

The Ministry of Justice, in cooperation with the High Judicial Council, is set to establish a facility mapping that should support more efficient use of resources.

Not all have evidently agreed with the SEJ I assessment that resources are adequate. One of the first actions of the EURALIUS III project was advising the Ministry of Justice of the need to increase the overall number of judges and rationalise their distribution (Final report, pp. 8-9). The 2016 Transparency International National Integrity Assessment found (p. 60) the judiciary to be constrained by insufficient resources in terms of staff and salaries as well as poor working conditions.

### 3.2.3 Infrastructures and equipment improved (JC62)

At the beginning of the evaluation period, working conditions in courts, particularly those of first instance, were poor and hearings were often held in judges' chambers (see JC 61). A persistent problem, and one that has resisted substantial support from the EU and other donors, is the lack of a proper case management system. A computerised case management system (ICMIS), including provision for random allocation of cases, was in place at the beginning of the evaluation period but not functioning in all courts (EC Analytical Report, p. 94). Field mission interviews confirmed that ICT results had been disappointing overall. Despite intense TA from EURALIUS III, ICMIS was still not functioning in all courts by the time of the June 2013 Final Report (p. 60). Due to underuse of the system, the majority of cases continue to be allocated by lottery controlled by the court president (Albania Report 2014, p. 40), a system that according to field mission interviews is not working well. The 2018 Albania Report noted no progress made in allocating cases randomly to judges (p. 16). Case allocation continued to be often done in judges' chambers, with complete lack of transparency. The electronic case management system is reported (p.19) to be deficient and often not fully used.

The EURALIUS IV Final Report (p. 53) also states that ICMIS continued to be problematic. It could not produce efficiency statistics called for by CEPEJ and promoted by the EU-CoE SEJ project. This led EURALIUS experts to integrate the CEPEJ indicators in another software package, PAKS+, promoted and provided by the USAID / US Embassy "Justice for All" project. The process of aligning ICMIS to the revised Civil and Criminal Codes was delayed, leading to problems described as "serious". The Final Report described (p. 25; pp. 60-62) continuing TA to the MoJ in the case management and data area and drew attention to the lack of Government funding for necessary steps; for example, the maintenance contract for ICMIS expired and the Government took no steps to renew it. Combined with the CoE's assessment (see JC 61), this suggests lack of interest in modernising the case management system despite EU support in the area throughout the evaluation period.

Publication of reasoned decisions at the appellate level was slow and there was no availability in a harmonised, searchable database of judicial decisions. All courts have publicly accessible websites, but these are often in disrepair (p. 21). In part because the electronic management system is unsatisfactory, many courts lack the capacity to produce reports and there was significant delay in the production of the 2016 High Council of Justice annual report. A rare success under EURALIUS III was the introduction of an electronic registry for notaries, with significant contribution to fighting corruption.

All sources agree that the prison system was seriously overcrowded. The EU supported the construction of a pre-trial detention centre at Shkodra. This latter project promises to eliminate prison overcrowding while providing a launch-pad for professionalisation of the prison profession and introduction of European standards. As some experts interviewed during the field mission observed, a prerequisite for relieving overcrowding is a shift in sentencing philosophy. If this remains unchanged, there is a risk that the number of prison inmates will simply expand to fill the new facility. It is not clear that the EU's justice reform support addressed the issue of the overuse of pre-trial detention and custodial sentences. While the EU completed its contract, delays in the provision of national resources postponed the opening of the facility until after the end of the evaluation period. See JC 35 for a ROM on efficiency aspects of this project.

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

The most important judicial training institution is the School of Magistrates (SoM), which provides initial and continuing training for judges and prosecutors. Through EURALIUS, the EU supported the School throughout the evaluation period to strengthen its curricula and, in particular, to improve the process by which students are recruited. Some improvements were noted as a result, but at the end of the evaluation period, the school was still dependent on donor funds and short of premises and staff. With the requirements for training more magistrates as a result of the vetting process, there is need to at least double the number of classrooms. A reasonable plan for expansion is in place, but was never properly budgeted. Pedagogical quality is reported to be very poor. Towards the end of the evaluation period, the EU began to support the SoM in the coordination of donor funds.

The responsibilities of the SoM were significantly broadened by legislation passed during the evaluation period (2018 Progress Report, p. 20) – and some would say the SoM does not have adequate capacity

to implement these wider responsibilities. Under EURALIUS III, the EU provided continuous support to the development of the School of Magistrates. However, the Final Report of EURALIUS III identified (pp. 17-18) challenges facing the institution: poor recruitment procedures, insufficient provision of continuing education, and complete dependence on donors combined with weak coordination of support. Representatives of the USAID/US Embassy Justice for All Project were harshly critical of the SoM's pedagogical approach; however opinions are mixed. The analytical report of the Ad Hoc Parliamentary Committee on Justice Reform found that the School had difficulty recruiting appropriate candidates, in large part because it could not assess their moral and ethical fitness for office (IPA II 2016 Action Programme for Albania, p. 6). It was foreseen that, in view of the goal of increasing professionalisation of judges and prosecutors, and the importance of preparing judges to understand procedural rights related to the acquis, the School's training capacity was in need of strengthening.

There has been no shortage of European training at the SoM. A series of continuing education trainings organised by EURALIUS IV trained judges and prosecutors on Article 6 of the ECHR and trial in absentia, EU standards on victims' and defendants' rights, and other subjects (EURALIUS IV Final Report, pp. 53-55). In all these trainings, EURALIUS mobilised high-level EU MS expertise. EURALIUS also (jointly with the USAID/US Embassy "Justice for All" project) contributed to the design of School of Magistrates curricula for court administrators such as chancellors (Final report, pp. 63-64). By the end of the evaluation period, the recruitment process for the School was improved by the addition of an integrity test and psychological evaluation of candidates' fitness for office (Albania Report 2018, p. 19).

As described by the Final Report of EURALIUS III (pp. 47-52) the administration of the Albania court system was seriously deficient at the beginning of the evaluation period. Regarding the judicial system's efficiency during the evaluation period, the backlog of cases was "problematic" and enforcement lagged, particularly when judgments were against state institutions (EC Analytical Report, p. 94). The clearance rate, while close to 100% at first instance, was only 62% at third instance in 2010 (SEJ 1 "In-depth assessment," p. 24). Disposition time was 97 days at first, 340 days at second, and 980 days at first, second, and third instance (p. 25); the third dataset places Albania well above comparator countries (p. 33). The report commented that while Albania performed much worse than other European countries, this was entirely due to the backlog at highest instance. Property rights were inadequately enforced, with a large backlog of cases, a process marred by corruption, and failure to enforce court judgments (p. 97).

According to the 2018 Annual Report, data were lacking to establish efficiency measures at all levels of the court system. The clearance rate of the Appeal Administrative Court was particularly low (37%), allegedly because of a lack of judges and the high number of appeals brought (perhaps because poor access to appellate decisions promoted frivolous or doomed-to-fail appeals). The High Court ended the evaluation period seriously understaffed (9 out of 19 members) and a backlog of 20,000 cases (EURALIUS IV Final Report, p. 33).

Execution of judgments is a cause for concern. The 2018 Annual Report characterised the impact of ADR as low (p. 21). At the end of the evaluation period, a new Law on Legal Aid was passed broadening the categories of persons eligible (p. 30). Amendments to the Criminal Procedure Code in 2017 strengthened victims' rights -- characterised by one expert as among the weakest in Europe -- including such basics as establishing the right to an interpreter if requested.

An area of particular concern is property rights, where the 2018 Progress report (p. 28) found no progress in implementing the reform of the legal framework for registration, expropriation and compensation called for in the 2010-2020 strategy on property rights. An EU property rights project from 2012 was cancelled. Government adopted a property rights Strategy in 2012 according to which responsibility would shift from civil to administrative courts, but this was never implemented. Thus, thousands of property rights cases deriving from the Communist era languish in the pipeline, and at the ECtHR.

### **3.2.5 Harmonisation of domestic law with international law (JC 64)**

Dissemination of reasoned judicial decisions online has continued to be a problem. Laws and administrative regulations are disseminated on websites, but court judicial decisions at first and second instance are often not reasoned and unavailable online. The latter may be understandable at first instance, but inability to access decisions at second instance can lead to frivolous appeals. Due to poor use of IT, many courts are unable to report or late in reporting.

In 2016-2017, the ECtHR issued 131 judgments, of which 117 were executed (Progress Report 2018, p. 21). In general, Albania's cooperation with the ECtHR is characterised as "good" (Albania Report 2018, p. 25). However, a slow pace of enforcement was observed for decisions involving property and fair trial rights (2014 Albania Report, p. 45).

At the beginning of 2017, the EU-CoE Horizontal Facility project "Supporting effective domestic remedies and facilitating the execution of ECtHR judgments" was launched, with objectives to improve

national-level application of ECtHR case law and address problems with the enforcement of national judgments. For EU contribution to legal reforms in line with European standards, see JCs 51, 52 and 71.

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence / impartiality / accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence / impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of RoL institutions enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

At the beginning of the evaluation period, multiple constitutional and institutional problems impaired the independence, impartiality, and accountability of the judiciary. Among the most important were that the High Court was a political body outside any disciplinary structure. Inspection of the judiciary was shared between the HCJ and MoJ, leading to overlap and duplication. The role of the MoJ, a political institution, was in violation of European standards. The School of Magistrates was failing to properly assess the suitability, in terms of ethics and character, of applicants. With EU support through EURALIUS, all of these problems were addressed during the evaluation period, and progress was made. However, the drafting of secondary legislation to actually implement some of the most consequential changes (such as creating a High Judicial Council to replace the existing HCJ) had not been completed by the end of 2017. One of the most controversial aspects of the reform period was the re-evaluation or “vetting” of sitting judges for competence and honesty. The Venice Commission proposed a process, which was upheld by the Constitutional Courts, and the first results began to manifest themselves in September 2017. The EC created an International Monitoring Observation mission to oversee the process. While the vetting process has proven more difficult and time-consuming than at first foreseen, in part because a political boycott delayed its start, there is broad feeling that it represents a unique achievement and one that could have only been accomplished at this unique point in history.

#### 3.3.2 Independence / impartiality of RoL institutions (JC71)

At the beginning of the evaluation period, multiple constitutional and institutional problems impaired the independence and impartiality of the judiciary – weakening, in particular, its ability to call the Executive to task in matters related to corruption. Without enumerating all of these problems, among the most important were that the High Court was a politicised body outside any disciplinary structure. Inspection of the judiciary was shared between the HCJ and MoJ, leading to overlap and duplication. The role of the MoJ, a political institution, was in violation of European standards. The School of Magistrates was failing to properly assess the suitability, in terms of ethics and character, of applicants. With EU support through EURALIUS, all of these problems were addressed during the evaluation period, and considerable progress was made. The breakthrough years were 2016 and 2017, a period of intense constitutional reform and legal drafting. One of the most controversial aspects of the reform period was the re-evaluation or “vetting” of sitting judges for competence and honesty – essentially fitness for office. The Venice Commission proposed a process, which was upheld by the Constitutional Courts, and the first results began to manifest themselves in September 2017. The EC created an International Monitoring Observation mission to oversee the process, a major contribution. The vetting process proved more time-consuming and complex than in hindsight could have been predicted, in part because a political boycott delayed the start, but persons interviewed during the field mission were without exception supportive of it.

While the principle of independence of the judiciary is enshrined in the Constitution and legislation was in place in 2010, the EC’s Analytical Report described three obstacles (p. 93). Judges of the High Court and Constitutional Court, as well as the General Prosecutor, were appointed by the President subject to simple Parliamentary majority, leading to politicisation of the process. The High Council of Justice, while exercising powers of appointment, evaluation, transfer, dismissal, and evaluation of judges of first instance and appeal, had no authority over the High Court. The latter, politically appointed, thus was immune to all but political supervision. The HCJ provided no reasoning for its decisions and there was no appeals mechanism, which opened the door to political pressure and corruption. While immunity from prosecution was meant to guarantee independence of judges, it also contributed to a situation in which corruption flourished. The need for reform of the institutional framework and procedures for inspection of judges was, as the Final Report of EURALIUS III put it (p. 22), “an old story.” Inspection of the judiciary was undertaken by the Inspectorate of the HCJ as well as by the Ministry of Justice, with overlap and lack of coordination resulting in duplication and contradiction. Disciplinary procedures were initiated by the Ministry of Justice, with consequent possibility of political pressure and in violation of European standards.

The 2016 Transparency International National Integrity Assessment found (p. 60) that the judiciary scored low on independence, with “poor accountability, integrity, and transparency in practice”. As a result, the judiciary failed to fulfil its role to hold the Executive accountable in the area of corruption. Judicial appointments and career decisions were subject to political interests, the inspection system was poorly designed, and the High Court was a political body not part of the disciplinary system.

Issues regarding the independence of the High Court and the High Council of Justice proved stubborn (Albania Annual Report 2014, p. 40). The non-transparency and politicisation of the HCJ and other justice institutions continued to be cited (Albania Annual Report 2015, p. 52). Presidential nominations were blocked by Parliament and key legislation on judicial reform was stalled. While coordination between HCJ and MoJ on inspections appears to have improved somewhat, the Report called for more progress on transparency and efficiency of the process. Corruption in the judiciary remained an issue of “serious concern”. There was some progress when constitutional amendments limiting the right of immunity and were implemented in the Criminal Procedure Code in 2014.

Major progress occurred in the last two years of the evaluation period. In November 2016, a justice sector strategy 2017-20 was adopted. This envisaged forming a High Judicial Council and High Prosecutorial Council, independent from Government (members elected by Judges Assembly and Prosecutors Assembly, respectively), to appoint judges and prosecutors and oversee the evaluation and promotion process (Albania Annual Report 2018, p. 18). At the end of the evaluation period, both Councils were still being constituted and work the work of the upcoming High Judicial Council was being carried out by the existing High Council of Justice. The key feature is that the Ministry of Justice no longer has a say in matters pertaining to judges. Appointments to the Constitutional Court and the office of the High Justice Inspector are the responsibility of a Justice Appointment Council, still being formed at the end of the evaluation period (Albania Annual Report 2018, p. 20). However, the transitory period from the HCJ to the HJC was a complicated one: “Overall, the HCJ continued to face challenges in the uniform application of the law in this prolonged transitory period.” (EURALIUS IV Final Report, p. 33). Judges and prosecutors can be transferred only with their acquiescence. Judges may be dismissed only for misconduct or criminal conviction, and may appeal their dismissal to the Constitutional Court (Albania Annual Report 2018, p. 19). Constitutional amendments and the Status Law brought the HC under the aegis of the HJC.

A major challenge during the evaluation period was to put in place a fair system of re-evaluating (“vetting”) sitting judges and prosecutors in order to eliminate corruption, weed out incompetents, bolster independence, and improve the low level of public respect for the judiciary. During 2017, a political compromise was reached on an approach approved by the Venice Commission as being in line with European standards and upheld by the Constitutional Court. This revolved around the key tests: proficiency, background checks, and asset declarations. Under the scrutiny of an International Monitoring Operation (IMO) put in place by the European Commission, the process began to deliver first results in September 2017, including the removal (in 2018, post-evaluation period strictly speaking) of some judges and the voluntary resignation of others who did not wish to undergo the demanding and rigorous process (Albania Annual Report 2018, p. 17). Under the new system, judges must declare their assets annually and are subject to automatic dismissal for failure to comply.

Vetting was extensively discussed in field mission interviews, and a number of views were broadly shared. The vetting process was (and still is) uniquely ambitious; it grew out of a very particular historical confluence of interests around reform. With hindsight, the problems, delays and resistance, not to mention sheer transaction costs of the process, could have been better predicted. Indeed, the negative effect on the morale and performance of judges and prosecutors was easily foreseeable, and the fact that the vetting law was adopted by only a simple majority was indicative of only lukewarm political support. Overall however there was a strong sense on the part of interviewees that the process marks a milestone in judicial reform.

Improving the institutional framework and procedures for inspection of judges has been a focus of EU TA from the very beginning of the evaluation period (EURALIUS III Final Report, p. 21). Workshops, study tours, etc. were organised in cooperation with MS. Under EURALIUS III, expertise, a high-level conference, and European study visits were used to support reform of the High Court in the face of significant stakeholder resistance (Final Report, p. 33). Regarding the Constitutional Court, EURALIUS III had to cope with a low level of Government interest. In general, though, field interviews suggested that EURALIUS III was a successful project, with very broad incorporation of civil law concerns. EURALIUS III supported the drafting of the law for the School of Magistrates and the law for Administrative Courts.

Through EURALIUS IV, the EU advised on legislation regarding the recruitment, appointment, promotion, and transfer of judges (Final Report, p. 42), specifically, the drafting of the Status Law. Through its “Analytical Report on the Legal Framework for the Performance Evaluation System for Judges and Prosecutors in Albania”, it contributed expertise to the nascent HJC and HPC on

implementation of the new system. Through support for the International Monitoring Observation mission, the EU contributed to the vetting process (2018 Action Programme for Albania, p. 8). Through EURALIUS, it provided expertise on all aspects of the evaluation scheme (EURALIUS IV Final Report, p. 43) to the HCJ. The International Monitoring Operation provided support for the Independent Qualification Commission, the first instance for vetting decisions which assesses all three pillars of proficiency, assets, and background. Through workshops and the production of a Manual for Disciplinary Investigation of Judges and Prosecutors, EURALIUS provided assistance to the HCJ Inspectorate (and emerging High Judicial Inspectorate) in implementing the new disciplinary framework.

#### **Other elements relevant to separation of powers and independence of the judiciary**

Article 145 of the Constitution states “Judges are independent and subject only to the Constitution and the laws.

#### **3.3.3 Accountability of the judiciary and other RoL institutions (JC72)**

As described under JC 71, at the beginning of the evaluation period, the inspection and disciplinary processes ensuring accountability of the judiciary were deeply flawed. These problems have largely been addressed, if not yet resolved in practice, by reforms supported by the EU. A compulsory Code of Ethics is now in place for judges and prosecutors. No particular problems of media access to courts, etc. have emerged.

At the beginning of the evaluation period, a Code of Judicial Ethics overseen by the National Judicial Conference was in place, but adherence was voluntary (EC Analytical Report, p. 94). Over the evaluation period, a new compulsory Code of Ethics for judges and prosecutors was established (Albania Annual Report 2018, p. 19). Improvements in the disciplinary process, supported by the EU, are discussed under JC 71. The most important of these are that an independent High Justice Inspector, and no longer the Ministry of Justice, investigates disciplinary infractions and that the High Court is now subject to independent disciplinary procedures.

Despite constitutional guarantees of media freedom and the existence of a pluralistic media, combinations of political and business pressures and lack of transparency in ownership were problems (p. 96). The 2018 Albania Annual Report (p. 16) saw no progress having been made on delivering reasoned decisions in a reasonable amount of time. The 2015 Report notes (p. 58) some improvement in transparency of media ownership but remaining concerns over financial ownership and the non-transparency of state advertising. Media ownership is highly concentrated among a handful of prominent families. The evaluation period saw progress in strengthening the independence of the media regulatory authority, but transparency of state advertising remained to be achieved (Progress Report 2018, p. 6).

Concerning the EU contribution regarding accountability, please see JC 71.

### 3.4 Broader effects on the RoL (EQ8)

<b>EQ8</b>	<b>To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?</b>
<b>JC81</b>	<b>Access to justice strengthened</b>
<b>JC82</b>	<b>Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened</b>
<b>JC83</b>	<b>Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved</b>

#### 3.4.1 Summary of key findings (EQ8)

Returning to the list of results anticipated in the 2014-2020 ISP, there has been some progress in almost all areas. However, recent assessments suggest that in many of these areas, tangible impacts on affected populations have been modest. With EU support, a new Law on Legal Aid was passed that broadened availability, but it is not known how effective this has been. The EU also supported increased use of ADR, but reportedly with little effect. Access to justice continues to be problematic for sexual minorities, victims of domestic violence, and others; an estimate has it that only about half of persons with legal problems saw them resolved. Victims' rights have been strengthened and criminal trial procedures are generally in line with international standards. There was some progress on human rights, as the legal framework now in place is largely in line with international standards and Albania's commitments. EURALIUS TA made a contribution to this. Implementation and enforcement, though, are constrained by the weakness of responsible institutions. However, the EU's 2018 Progress Report reported progress in enforcement and some strengthening of institutional mechanisms. Through the CoE, the EU supported better enforcement of anti-discrimination and human rights laws, Penitentiary conditions should improve when the EU-supported penitentiary and pre-trial detention centre at Shkodra opens. There are continuing reports of beatings (mostly during arrest and interrogation) and Committee for the Prevention of Torture recommendations for medical care of prisoners have not been implemented. The Ombudsman's Office functions, although there have been gaps in filling the office and appointing Commissioners; however, recommendations are frequently not acted upon. Hoped-for progress on adjudicating and enforcing property rights has not occurred. The evaluation period saw sweeping constitutional change and, as described under EQ 6, there were major changes in the governance of the judiciary. After delays and challenges before the Constitutional Court, the "vetting" of judges and prosecutors began under international monitoring in the closing months of the evaluation period; this was a significant step forward. In its 2018 Progress Report, the EU noted that new legislation addresses problems related to the justice system's lack of independence, efficiency and professionalism; but corruption in the system is still common.

#### 3.4.2 Access to justice (JC81)

Recent assessments suggest that tangible impacts have been modest. A 2017 UNDP survey of 1,700 persons found that most legal problems experienced by respondents (about half the sample) went unresolved, partly because of lack of legal awareness and partly because of the weakness of justice sector institutions. This was particularly true for vulnerable and excluded groups such as sexual minorities, victims of domestic violence, and others. Nonetheless, UNDP concluded that most disputes resolved were done so at reasonable cost and that outcomes were "moderately fair." Supported by EURALIUS, a new Law on Legal Aid significantly broadening eligibility was adopted; whether the extra demand was actually met is not known. Changes in the Civil Procedure Code aimed to shorten proceedings and encourage mediation. Through CoE, the EU supported efforts to increase the efficiency of the court system, and a Twinning supported increased use of ADR, although its use at the end of the evaluation period remained low. Amendments to the Criminal Procedure Code in 2017 strengthened victims' rights, including establishing the right to an interpreter if requested. Criminal trial procedures – the right to counsel, the right to time to prepare an adequate defence, etc. – are generally respected. While the law requires completion of most pretrial investigations within three months, a prosecutor may extend this period to two years or longer. As of 2017, 44% of the prison and detention centre population was in pre-trial detention – an unacceptable proportion. An area of particular concern is property rights, where the 2018 Progress Report (p. 28) found no progress in implementing the reform of the legal framework for registration, expropriation and compensation called for in the 2010-2020 strategy on property rights. The EU-supported reform to transfer property claims from the civil to the new administrative courts, but thousands of property claims have either not been adjudicated or, where adjudicated but not enforced. Hundreds of property-rights cases are backlogged at the ECtHR.

### 3.4.3 Respect for human rights (JC82)

There was some progress. Over the evaluation period, Albania ratified the main international conventions and passed legislation largely in conformity with European standards; EURALIUS TA contributed to the latter. Implementation and enforcement remain weak because the responsible institutional structures responsible are poor despite EU support. Despite this, in its 2018 Albania Annual Report the EU reported progress in enforcing human rights, especially at the local level, and on strengthening institutional mechanisms. Through the CoE, the EU supported better enforcement of anti-discrimination and human rights laws, in particular through training of judges and prosecutors. Support for the construction of the new penitentiary and pre-trial detention centre at Shkodra should improve conditions, but the facility had still not opened at the end of the evaluation period, due in large part to failure of the responsible Ministry to mobilise needed funding. There continue to be reports of beatings, usually during arrest and police interrogation. Conditions in some detention facilities remain so poor as to amount to inhumane, including the lack of adequate medical treatment, a problem specifically highlighted in the 2010 visit of the CPT and so far unaddressed. While the Ombudsman has adequate legal means to investigate the conduct of public institutions and violations of citizens' rights, it is at times obstructed in the exercise of its duty, and most often disregarded by key institutions. Therefore, responses to and the implementation of the Ombudsman's recommendations remain weak. The Commission on Prevention of Discrimination is short of staff and has poor visibility.

### 3.4.4 Governance and democratic processes (JC83)

The evaluation period saw sweeping constitutional change and, as described under EQ 6, there were major changes in the governance of the judiciary. This was a major objective of EU support, and was heavily informed by European expertise under EURALIUS. The successful start up of the "vetting" of sitting judges and prosecutors under international monitoring near the end of the evaluation period (after delays due to political deadlock) was a significant achievement. In its 2018 Progress Report, the EU noted that new legislation addresses problems related to the justice system's lack of independence, efficiency and professionalism; but corruption in the system is still common. The proposed Special Prosecution Office (SPO), a small group of prosecutors with their own investigators, is scheduled to come into existence in the second half of 2019 and represents some hope for tackling corruption. The SPO will be supported by the EU PAMECA project.

## 4 Annexes

### 4.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Commissioner for the Protection from Discrimination	Commissioner for the Protection from Discrimination
Deputy Head of Office	CoE
Programme Manager	EU-EEAS, EUD Tirana
Project assistant	EU-EEAS, EUD Tirana
Desk officer	EU-EEAS, HQ
Policy Officer, Unit D.4 / Albania and Bosnia Herzegovina	EU-NEAR
Policy Officer - European Integration / Rule of law	EU-NEAR
Team Leader EURALIUS	EURALIUS
Expert on IT systems	EURALIUS
Chief Inspector of High Council of Justice	High Council of Justice
Deputy Minister	Ministry of Justice
Resident Advisor	OPDAT
Executive Director	OSF
Team Leader PAMECA	PAMECA
People's Advocate	People's Advocate of Albania
Programme Manager Gender Equality/GBV & Access to Justice	UNDP
Team Leader USAID "Justice for All" project	USAID
Child Protection Technical Advisor	World Vision
Education Technical Advisor	World Vision
Grant Acquisition & Management Lead	World Vision

### 4.2 List of documents

#### 4.2.1 EU strategy and programming

European Commission (2007): Multi-annual Indicative Planning Document 2007-2009 for Albania.  
 European Commission (2008): Multi-annual Indicative Planning Document 2008-2010 for Albania.  
 European Commission (2009): Multi-annual Indicative Planning Document 2009-2011 for Albania.  
 European Commission (2011): Multi-annual Indicative Planning Document 2011-2013 for Albania.  
 European Commission (2014): Indicative Strategy Paper for Albania (2014-2020).

#### 4.2.2 EU reporting

EU (2011-2013, 2015-2017): External Assistance Management Report (EAMR). Albania.  
 European Commission (2011, 2014, 2016, 2018): IPA Progress Report.

#### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2007 Support to penitentiary infrastructure
- 2008 Support to penitentiary infrastructure
- 2009 Assistance to the Justice System - EURALIUS III
- 2009 Reform of the Penitentiary in Albania, with special focus on Probation services
- 2009 Enhancement of operational and logistical capacities of Witness and Special Persons Protection Unit
- 2010 Modernisation of the Albanian Justice system
- 2010 Support to the Penitentiary Infrastructure and improvement of training and accommodation capacities in the Police Education Centre
- 2010 Criminal Justice (design of case management system)
- 2010 Design revision of Tirana Justice Palace

- 2011 Construction of new pre-trial detention centre and prison in Shkodra, Albania
- 2012 Construction of the Tirana Court building – Phase I
- 2012 Efficiency of Court management and administration
- 2012 Improvement of the enforcement system in Albania
- 2013 Construction of the Tirana Court building – Phase II
- 2013 Enhancing the effectiveness of the Albanian system of human rights protection and anti-discrimination
- 2013 Pilot Sector Programme for Justice and Home Affairs and Fundamental Rights (incl.EURALIUS IV)
- 2013 Support to the Penitentiary System and the Probation Service in Albania - AL 13 IB JH 01
- 2014 EURALIUS IV - Consolidation of the Justice System
- 2015 Support to the development of Alternative Dispute Resolution in Albania
- 2015 Effective Human rights protection
- 2016 Support to the formulation, coordination and implementation of anti-corruption policies
- 2016 Consolidation of the Justice System (EURALIUS V)

#### **4.2.4 Evaluation and studies**

AETS (2017): Mid-term Evaluation of the Civil Society Facility for the Western Balkans and Turkey.

Berenschot/ Imagos (2013): Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organised Crime in the Western Balkans – Lot 3.

European Policy Institute (2016): Monitoring and Evaluation of the Rule of Law in the Western Balkans.

IBF (2016): Evaluation of Justice and Home Affairs (JHA) sector IPA programmes in Albania.

Particip (2017): External Evaluation of the Instrument for Pre-accession Assistance (IPA II) (2014–mid 2017).

## Case study note – Montenegro

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# 1 Introduction

## 1.1 Context

Following a referendum, Montenegro has been an independent country since 2006, and has been an accession candidate country since then. While the fighting in the former Yugoslavia did not affect the territory of Montenegro, its economy as well as its power structures have been significantly shaped by the 1992-1995 war. While officially embracing the EU accession process and thus, the adherence to democratic values and the RoL, Montenegro's political elite have also faced continuous criticism from civil society who has questioned the legitimacy of a political class that is seen as having profited by organised crime during the Yugoslav wars.

The relatively small size of Montenegro—with a population size of only approximately 640.000 poses a considerable challenge for cooperation: human resources available to implement political and institutional change/reforms are very limited; this has a knock-on effect on the ability of the government and institutions to transpose the complex and numerous provisions of the EU accession requirements into national legislation; in terms of assistance programmes, these are faced with stretched absorption capacities.

The Rule of Law (RoL) is a key thematic area of both the **European Partnership** and the **Stabilisation and Association Agreement with Montenegro**, which underline the importance of the consolidation of the RoL, law enforcement and the administration of justice in particular. The SAA stresses that co-operation will aim at strengthening the independence of the judiciary and improving its efficiency.

The **2007-2009 MIPD** focused on support to strengthening democratic institutions, good governance, judicial reform and the reinforcing of the RoL; the development of civil society and an independent media; the protection of human and minorities' rights, and the rights of vulnerable groups (including children and disabled people).

The **2008-2010 MIPD** highlighted the “*increased importance of the accession process' political criteria, and thus, the focus on the consolidation of democratic institutions, reform of the judiciary, [...], fight against corruption and organised crime, human rights and protection of minorities, anti-discrimination, as well as the media. Civil society development will be given special attention for the promotion of dialogue; small grants will assist environment, anti-discrimination, gender equality [...].*” This emphasis was reiterated in the 2009-2011 MIPD.

The **2011-2013 MIPD** outlined, for the first time, a sector approach to its technical assistance, and where RoL was one of those priority sectors. It also highlighted the fact that RoL had been a priority for the donor community in Montenegro, through EU CARDS and IPA, as well as through assistance provided by the OSCE, UNDP, the Council of Europe, and bilateral donors. Interventions in particular focused on justice reform, including juvenile justice reform; improvement of the efficiency of the judiciary; and the fight against corruption.

Priority areas to be addressed by IPA assistance as highlighted in the the **Indicative Strategy Paper (ISP) for Montenegro 2014-2020** includes strengthening the efficiency and professionalism of the judiciary; the rationalisation of the judicial network; the reduction of the backlog of cases; improving the access to justice; insufficient number of courtrooms; further harmonisation with EU legislation, and specialisation of courts as priority areas that will be addressed by IPA assistance. Priorities further include the strengthening of the system of enforcement of judgements, as well as the introduction of a reliable system of judicial statistics, which should provide all relevant data on the performance of courts and judges, and which should be used as a management tool for allocating human and financial resources.

This desk report focuses on interventions in the area of reform of the judiciary and penitentiary reform, as well as support to human rights.

The table below presents an overview of the main IPA-funded interventions.

*Table 1 Overview of IPA-financed interventions in the area of RoL in Montenegro*

<i>Decision year</i>	<i>Title</i>	<i>Planned EU contributions (mEUR)</i>	<i>Implementation methods / channels</i>
2007	Justice Reform (MN 07/ IB/ JLS/ 03)	1.5	Twinning (Germany)
2007	Juvenile Justice System Reform	0.5	UNICEF (Direct Contribution Agreement )
2007	Legal Harmonisation - MN 07 IB JLS	1.0	Twinning (Slovenia)
2011	Support Penitentiary Reform	0.6	Grant (IRZ, Germany)

2011	Justice for Children	0.5	Financing Agreement (UNICEF)
2012	EUROL I	3.0	Grant (NI-CO, Northern Ireland)
2014	EUROL II	3.0	Grant (Italy)
2014	Support to the Implementation of Integrity Measures	0.6	Twining (Italy)
2014	Support the adoption of the Schengen acquis	1.0	Grant (Germany)
2015	Support to the anti-discrimination and gender equality policies	0.7	Grant (UNDP)
2015	PREDIM - Support to the National Institutions in Preventing Discrimination in Montenegro	0.7	Grant (CoE)
2016	Result Oriented Review on Delivery of Justice	0.3	IBRD (WB)

Montenegro was also covered by EU regional programmes focussing on RoL such as the Horizontal Facility. Examples of CoE actions implemented in Montenegro are:

- 2016 - Accountability of the Judicial System in Montenegro
- 2016 - Enhancing human rights protection for detained and sentenced persons in MNE
- 2016 - Fighting ill-treatment and impunity and enhancing the application of ECtHR case law on national level (FILL)

The EIDHR instrument was also used to finance interventions in areas such as minority rights (LGBTI, Roma). Examples of EIDHR projects include:

- 2015 - Fair Elections Free of Corruption
- 2015 - Contributing to improvement of LGBT people's quality of life in Montenegro
- 2015 - Strengthening capacities of Roma for public activism – United we reach more!

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

EQ2	To what extent has EU support to RoL responded to the bilateral and regional contexts?
JC21	Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened
JC22	Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled

#### 2.1.1 Summary of key findings

EU technical assistance is aligned with EU accession requirements. Concerns exist, however, with regard to ownership of reforms, and which is explicitly discussed only in shadow reports by civil society organisations and in very few project documents (including ROM reports). A specific challenge for Montenegro is its size: with a population of just 640.000, the capacities of the government to transpose accession requirements into national legislation and strategies are limited, as are the limited absorption capacity for technical assistance projects. Montenegro is also characterised by an increasing polarisation between civil society and the government and where there are largely opposing views on the progress of reforms in key RoL areas (JC21). While there is evidence in the project reports of participatory processes both in the design and the implementation stages, views of civil society on the nature of their participation seem overall much more sceptical.

#### 2.1.2 Alignment and participatory processes (JC21)

EU technical assistance is fully aligned with Montenegro's national policies and strategies and which, in turn, are themselves informed by the EU accession process. In the area of RoL, there have been a multitude of strategic documents the implementation of which EU technical assistance has supported, notably consecutive judicial reform strategies; consecutive anti-corruption strategies (anti-corruption is not part of the scope of this evaluation) and action plans; and consecutive gender equality action plans; etc.

A 2016 ROM evaluation report suggested that with regard to EUROL I—the first sector-wide approach to RoL reform in Montenegro—and EUROL II, the follow-up action to EUROL I, has aligned explicitly with national strategies and policies. EUROL I and II have been designed through a highly participatory process, and which, in the case of EUROL I, continued throughout the implementation and monitoring of the action. However, an independent *Monitoring and Evaluation Report on Rule of Law in Montenegro*, part of a regional effort by several independent think-tanks published in the same year, was overall more sceptical: “Cooperation between civil society and the government has slid backwards. [...] EU membership talks continue to involve the government and the European Commission almost exclusively. Other relevant actors, including CSOs, are side-lined, and their role is further downgraded by the lack of public access to expert opinions issued in the process of approximation of Montenegrin legislation with EU standards.”<sup>1</sup>

The IPA 15160 ROM report on the project Support to the Anti-Discrimination and Gender Equality Policies remarks that “overall, from the institutional side, there is a lack of readiness in engaging in an open and productive dialogue with NGOs.” The 2017 Non-Paper on the State of Play Regarding Chapters 23 and 24 states that “the inclusion of civil society in the reform process and working groups for chapters 23 and 24 is noted as positive. However, overall the potential benefits of civil society expertise are not yet fully recognised and exploited. It needs to be ensured that consultation of civil society is done in a systematic and meaningful way.” And the 2018 EU Progress Report notes that “there is a need to strengthen transparency, stakeholders' participation, and the government's capacity to implement reforms. Coherence of the policy-making system should be ensured through co-ordinated policy development. Mechanisms for government's consultation of civil society organisations are in place, but they need clear rules, and genuine involvement on both sides.”

A mixed picture with regard to **ownership** emerges from the document review and the stakeholder interviews conducted. The ROM report on EUROL I suggested strong ownership on the side of the Montenegrin institutions, though this is somewhat contradicted by the project's final report. Overall,

<sup>1</sup> <http://media.institut-alternativa.org/2017/01/monitoring-and-evaluation-of-rule-of-law-in-montenegro.pdf>

document review and stakeholder interviews suggest that ownership of reforms beyond legislative drafting is limited.

However, with regard to the IPA 15160 *Support to the Anti-Discrimination and Gender Equalities* project implemented by UNDP, the ROM report remarks, inter alia, that “*the MHMR [the Ministry for Human and Minority Rights] does not show the proactive approach required for steering the Anti-Discrimination and Gender Equality strategic frameworks across the institutional setting. [...] assistance is largely perceived as an obligation “imposed” by the Accession requirements. Staff participation in training activities is considered a luxury.*”

### **2.1.3 Needs, opportunities; and responsiveness (JC22)**

There is evidence that assistance is preceded by detailed needs assessments, as well as that consecutive assistance projects inform one another. A general challenge appears to be the overall quality of the strategic documents themselves that assistance efforts align to: while formally, sector strategies are in place (often these have been a result of obligations coming from the EU accession process), these tend to be formulaic, and with a considerable emphasis on quantitative indicators, rather than capturing the quality of measures. A report published by an EU co-funded NGO monitoring the track record of results of consecutive judicial reform strategies suggests that the current, 2014-2018, Strategy lacked a thorough analysis of the results and impact of previous reforms.<sup>2</sup>

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<sup>2</sup> <http://www.hracion.org/wp-content/uploads/lzvjestaj-o-primjeni-Strategije-reforme-pravosudja-2014-2018-u-periodu-2014-2016-ENG.pdf>

## 2.2 Implementation / choice of modality (EQ3)

EQ3	To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?
JC31	High quality policy dialogue established: content (promotion of RoL and European standards and principles), frequency, synergies between operational (intervention-level) and high-level dialogue, etc.
JC32	Implementation strategies appropriately chosen and combined / complemented
JC34	Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)
JC35	Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into account.

### 2.2.1 Summary of key findings (EQ3)

As in other accession candidate countries, policy dialogue around RoL issues takes place at various levels. The Stabilisation and Association Council between Montenegro and the EU takes place once per year and reviews progress on the implementation of the Stabilisation and Association Agreement, and on RoL, is structured around the accession negotiations for Chapters 23 and 24; on the Montenegrin side, it is headed by the Minister of Foreign Affairs. A Subcommittee on Justice, Freedom and Security between Montenegro and the EC once per year and takes stock of progress with regard to chapter 23 and 24 benchmarks through assessing the implementation of the two chapters' Action Plans. The EC reports twice a year to the Council on progress on the two chapters. Policy dialogue takes place on a day-to-day level, too, through regular and frequent contact between the Montenegrin institutions charged with RoL reforms and DG NEAR. There is a clear synergy between operational and high-level dialogue in that information from projects informs and feeds into policy dialogue. With regard to implementation strategies, the evaluation period saw the entire spectrum of modalities; stakeholder interviews suggest that in the context of Montenegro, Twinning is very effective, as it allows close, day-to-day contacts with the partner institutions. There are synergies and complementarities within the portfolio of interventions and between instruments. With regard to efficiency considerations, these eventually have to be informed by the level of results achieved in the projects.

### 2.2.2 Policy dialogue (JC31)

As in other accession candidate countries policy dialogue between the EU and Montenegro takes place at various levels. The Stabilisation and Association Council between Montenegro and the EU takes place once per year and reviews progress on the implementation of the Stabilisation and Association Agreement, and on RoL, is structured around the accession negotiations for Chapters 23 and 24. A Subcommittee on Justice, Freedom and Security between Montenegro and the EC convenes once per year and takes stock of progress with regard to chapter 23 and 24 benchmarks through assessing the implementation of the two chapters' Action Plans. On the Montenegrin side, the Subcommittee meeting is chaired at ministerial or chief negotiator level. A specific challenge reported by stakeholders as well as being extensively corroborated by external reports, and already mentioned in the previous chapter, is the formulaic nature of the Action Plans. Reporting is detailed in terms of quantitative indicators, but there is a specific difficulty to capture the overall qualitative changes on the progress in the sector. The EC reports twice a year to the Council on progress on the two chapters, a novelty that was introduced when Montenegro was given candidate status.

Policy dialogue takes place on a day-to-day level, too, through regular and frequent contact between the Montenegrin institutions charged with RoL reforms and DG NEAR. There is a clear synergy between operational and high-level dialogue in that information from projects informs and feeds into policy dialogue. Stakeholders have reported that technical assessments produce as part of projects, such as the Horizontal Facility which is implemented by the Council of Europe (and which is subject of a separate case study), are very useful and feed into the overall sectoral analyses.

Civil society is involved in the accession process through a Joint Consultative Committee of the Civil Sector between the EU and Montenegro.<sup>3</sup>

At the national level, a Working Group on Chapter 23 is chaired by the Ministry of Justice; the group has 67 members, of which 10 are representatives of civil society organisations.<sup>4</sup>

### 2.2.3 Choice of implementation strategies (JC32)

With regard to implementation strategies, the evaluation period saw the entire spectrum of modalities. A gender, and an anti-discrimination project are implemented by UNDP and the Council of Europe Office in Montenegro respectively. The choice of UNDP is being justified by the organisation's "experience in the country and its strong programming capabilities (including procurement and mobilisation of expertise)" (ROM report on 15160 *Support to the anti-discrimination and gender equality policies*). However, judging by the ROM report of this specific project, this is somewhat contradicted by criticism raised with regard to the formulation of the project's log frame; performance indicators; and the absence of risk-mitigating measures, i.e. which do not corroborate strong programming capabilities. Arguments that seem to determine implementation arrangements are the standard-setting nature of the Council of Europe, and which makes it a natural partner; and the historical presence of organisations such as UNDP, as well as smaller implementers such as HELP (a small German NGO that has specialised, over the years, on implementing projects in support of the Roma minority). Stakeholder interviews suggest that in the context of Montenegro, Twinning can be a particularly effective modality, as it allows close, day-to-day contacts with the partner institutions which in many cases, lack resources themselves.

### 2.2.4 Synergies and complementarity within the portfolio (JC33)

There are synergies and complementarities within the portfolio of interventions and between instruments. There is but anecdotal information available on this JC, primarily related to overlap and lack of coordination of select interventions (gender and anti-discrimination projects implemented by UNDP and CoE respectively). Early concerns with regard to the need to clarify the complementarities between EUROL II and projects in the Horizontal Facility, have, according to the EC, been addressed.

### 2.2.5 Efficiency, monitoring and visibility (JC34)

Generally (and the case with other countries), there is no consolidated discussion available on efficiency across the portfolio. The end-of-project report of EUROL I (2012 IPA funding suggests that because of challenges during implementation resulting from resistance to reform and overall lack of leadership at the Ministry of Justice, resources could have been used better at the implementation stage. Efficiency concerns also exist with regards to two projects, on gender equality and anti-discrimination, respectively (implemented by CoE and UNDP).

Ultimately, an assessment of efficiency needs to relate results achieved to resources invested both from the EU side as well as from the side of the Montenegrin institutions. Such an assessment necessarily runs against several obstacles, including the lack of a baseline on what is considered an acceptable price tag for reforms in general, and what level of investment of resources should yield what level of returns in a severely resource-constraint environment such as Montenegro.

From the documents gathered to date, it is difficult to come to any comprehensive and authoritative assessment on the monitoring of EU interventions. Overall, an avenue to explore further would be the ability of the EU to formulate meaningful performance indicators across the portfolio of RoL and fundamental rights projects. The 2012 EU Support to Rule of Law (EUROL), the implementation of which started in 2014, was the first project in this sector to use a sector-wide approach, and which is taken forward by EUROL II which started at the end of 2017. According to a 2016 ROM report, EUROL did not include any baselines and targets as part of the project design. The Action Fiche for the action *Support to the Implementation of Chapters 23 and 24* (itself consisting of 3 separate actions, including EUROL II), contains a Logical Framework Matrix, including indicators at overall and specific objective levels, as well as at the results levels. There would appear to be a number of concerns with these indicators, in terms of coherent quality – there seem to be a number of OVIs that are quantitative outputs ("*number of adopted integrity plans*"), rather than suggesting a qualitative link to the result to be achieved ("*effective enforcement of integrity plans*"), as well as their level of realism: by the end of the action period, the following indicator is to be achieved "*Rule of Law in Montenegro fully in line with EU standards and best practice*". Beyond that, there seems to be a certain circularity to the indicators, for example "*Chapters 23 and 24 Action Plans are implemented in line with EU*

<sup>3</sup> <https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-montenegro-joint-consultative-committee>

<sup>4</sup> <https://www.eu.me/mn/23>

*standards and best practices as confirmed by the EC Progress Report*". One might argue that the results-reporting from the action itself feeds into the findings of the EC Progress Report (see also above discussion on the linkages between projects and policy dialogue), which then, in turn, will be used as an outside affirmation of the project results – overall, this logic is problematic.

Specific challenges in terms of this evaluation relate to the output-orientation of those projects where end-of-project reporting was available (i.e. there was an understandable lack of relating the achievements to overall changes in the RoL system). The quality of the reporting is very uneven, too. A notable exception is the EUROL I end-of-project report, which gives an exceptionally candid picture of the problems the project encountered during implementation—related from a lack of absorption capacity on the Montenegrin end, to what appears to be oscillating political resolve to implement reforms.

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination/complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

In the pre-2010 stages of the accession process, there has been a considerable multitude of bilateral (EU MS) donors involved in judicial reform in particular, and which were not necessarily aligned with EU accession requirements (pursuing different agenda). Since 2010, the to date donor landscape has considerably thinned out, and stakeholders have suggested that donor coordination has not been an issue of concern. Regular thematic technical coordination meetings are held among those donors and international organisations that are present in the country, this includes a thematic forum on the judiciary.

### 2.3.2 Partnerships established at global level (JC41)

This JC is examined in the overall analysis in Volume I, the main report.

### 2.3.3 Coordination with EU MS/other donors at country level (JC42)

Formally, the Ministry of Justice leads on RoL and fundamental rights and is in charge of the overall coordination of key stakeholders with respect to EU assistance. The MoJ, along with the Ministry of Interior are coordinating donors, which includes the holding of regular thematic meetings with donors and implementing organisations.

Programme and project documentation suggests a somewhat uneven picture in practical terms. The 2012 sector-wide RoL project (EUROL) appeared to have been excellently coordinated, according to a 2016 ROM monitoring report, which highlighted regular coordination meetings at a 6-week interval. EUROL seems to have also been effectively monitored by a Sectoral Monitoring Committee, and which reported to the IPA Monitoring Committee.

However, there appears to have been a duplication of efforts in the implementation of IPA funds on gender equality and anti-discrimination and ultimately, a lack of coordination between UNDP and the CoE, resulting in a fragmentation of efforts, with an impact on effectiveness and efficiency. The two ongoing projects on gender equality and anti-discrimination are found to “*work in isolation, and the lack of a unified approach makes training activities cumbersome for the existing limited resources and available capacities.*” (ROM report on IPA 15160 *Support to the anti-discrimination and gender equality policies*).

It has been difficult to establish through desk review only whether the level of ownership depends on the specific line ministries (for example, Ministry of Justice vs. Ministry for Human Rights and Minorities); whether ownership has changed in quality over the evaluated period; and if so, whether this has had a direct influence on the level and effectiveness of donor coordination. There is also no information available from document review as to whether there are informal donor/international community coordination mechanisms in parallel to the officially established ones. Inferring from the Action Fiches, it seems that there is a division of tasks among bi-lateral donors. For example, Norway seems to be a fairly constant player on anti-corruption projects (anti-corruption is not part of the scope of the evaluation), and Roma projects appear to be mainly supported by the German Ministry for Cooperation (and implemented by the German NGO HELP).

### 3 Effects of the EU support to RoL

#### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy/strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion/minority rights/gender) and democracy issues into partner countries' RoL policy</b>

##### 3.1.1 Summary of key findings (EQ5)

As in other IPA countries, progress on legal reforms and constitutional change to align with European norms and values are inextricably connected to the EU accession process, as irrespective of the actual technical assistance provided, the EU's accession requirements as stipulated in the Stabilisation and Association Agreement; the European Partnership; the chapter 23 and 24 benchmarks etc. provide the framework for reform and are legally binding obligations to be implemented by Montenegro.

The most recent, 2018, EU Progress report finds that Montenegro is “moderately prepared” to apply the *acquis* and European standards in the area of judiciary and fundamental rights. The June 2018 Stabilisation and Association Council welcomed Montenegro's progress on putting in place the legal and institutional RoL framework; however, it also urged more concrete results in the implementation of this framework. Constitutional amendments have been adopted in 2013 and which affect the independence of the judiciary. The capacity of the parliament to perform its legislative and oversight functions is weak, exacerbated by political crises in 2016 and onwards.

Montenegro has Action Plans for Chapters 23 and 24 (the current versions having been adopted in 2015). The Chapter 23 Action Plan outlines activities in the area of judicial reform, the fight against corruption (not part of this evaluation), and fundamental rights. Many, but by far not all, actions have been costed, and of those, the implementation of a considerable number appear to depend on donor funding/technical assistance projects. There is six-monthly reporting on the implementation of the Action Plan. There is a separate, 2014-2018, Judicial Reform Strategy, which has a separate Action Plan covering two years; the current Judicial Reform Strategy has been preceded by earlier strategies. Human rights are also covered by various strategic documents, including the 2008 Strategy for Minority Policy (“The Policy of the Government of Montenegro in the Area of Respect and Protection of Minority Rights”); there is also a 2017-2021 Action Plan for Achieving Gender Equality, which has a bi-annual implementation plan (the current one is covering 2017 and 2018), based on the Beijing Platform for Action. There is a 2017-2021 Strategy for the Protection of Persons with Disabilities and Promoting Equality. Penitentiary reform is covered by the Action Plan for the Implementation of the Strategy for Execution of Criminal Sanctions (2017-2021). As highlighted above, technical assistance aligns with the sector strategies as well as the overarching framework provided for by the Action Plans for chapters 23 and 24. A specific concern highlighted elsewhere in the report is the quality of these strategic documents.

Montenegro has established a Ministry for Human and Minority Rights (MHMR) in charge, *inter alia*, of aligning the national legal, institutional and policy frameworks to the EU *acquis*. The Ministry has a separate Gender Equality Department.

Montenegro also has an Ombudsperson's office which is accredited under the Global Alliance of National Human Rights institutions (B status). The 2018 EU Progress Report states that the work of the Ombudsman's Office had overall improved on visibility, outreach and productivity, with room for improvement of the office's efficiency and quality of outputs. The report states an increase in public trust in the office. The resources available for the Ombudsman's Office and to the MHMR to fulfil its task are deemed insufficient.

##### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)

In its press release following the June 2018 Stabilisation and Association Council welcomed, “*the results already achieved and the continued implementation by Montenegro of the Action Plans for chapters 23 and 24, and the fact that the legal framework has improved and the institutional set up is largely in place. It recalled that it remained essential for the overall pace of the negotiating process that the entire rule of law system deliver more concrete results, and encouraged Montenegro to*

*pursue more proactive and vigorous progress in reform implementation and concrete results in the area of rule of law [...]*<sup>5</sup>The most recent, 2018, EU Progress report finds that Montenegro is “moderately prepared” to apply the *acquis* and European standards in the area of judiciary and fundamental rights.

The independence of the judiciary has been guaranteed by the 2006 Constitution of Montenegro, and has been strengthened by amendments to the constitution in 2013, in particular through limiting the political influence over judicial appointments, and following an opinion of the Venice Commission,<sup>6</sup> which also highlighted the need to reform related legislation (on the Constitutional Court, the Supreme State Prosecutor, and the Judicial Council), on which it also provided opinions in 2012 and 2013.

The 2018 Progress Report on Montenegro finds that “the legislative framework on the judiciary intended to increase its independence and professionalism has yet to be fully implemented.”

Two projects in the portfolio of interventions selected for this assignment addressed the reform of the juvenile justice system. An early, 2007, project implemented by UNICEF worked on the development of a new Juvenile Justice Law fully in line with international legal standards, which, however, had not been implemented by the end of the project. Through IPA 2011, UNICEF continued its work on the reform of the system through a *Justice for Children* project implemented between 2012 and 2014, and which aimed at the development and implementation of a legislative and policy framework for juvenile justice, including the adoption of an appropriate juvenile justice data collection and information system upgraded and harmonised with internationally recognised standards. An evaluation of the project, carried out in 2014, found that the project had helped to put in place legislation and a policy framework that, by and large, was in line with international standards. However, certain aspects needed further improvement, in particular in relation to “*the implementation of the criminal sanction of referrals to closed-type institutions for children in conflict with the law*” (end-of-project evaluation report, p. 8).

A 2011 IPA Twinning Project, implemented over 18 months between 2013 and 2014, *Support to Penitentiary Reform in Montenegro* worked to reform the penitentiary sector in line with European standards and best practices. According to the final project report (which is rather difficult to understand as it seems to contain different sections from different stages of the implementation process that have possibly been used in progress reports), the key results were a new draft Law on Imprisonment, as well as a draft Law on Alternative Sanctions in line with EU standards, the improvement of the prison system, the creation of a system of alternative sanctions, and a reduction in the prison population/overcrowding. The project assisted in the drafting of by-laws on the 2014 Law on the Enforcement of Prison Sentences and the 2014 Law on the Execution of Suspended Sentences and Community Work Sentences.

A 2018 Report by the Bertelsmann Foundation finds that “Parliament’s capacity to perform its oversight and legislative functions is still weak. Political crises throughout 2015 and 2016 brought to the surface many flaws in parliament’s ability to effectively perform.”<sup>7</sup> None of the projects in the portfolio of projects selected specifically worked with the Montenegrin parliament. However, the lack of capacity surrounding the parliament, as well as the political crisis affecting its proper functioning are issues that were raised during various levels of political dialogue.

### 3.1.3 National RoL policy/strategic framework (JC52)

Montenegro has Action Plans for Chapters 23 and 24 (the current versions having been adopted in 2015). The Chapter 23 Action Plan outlines activities in the area of judicial reform, the fight against corruption (not part of this evaluation), and fundamental rights. Many, but by far not all, actions have been costed, and of those, a considerable number appear to depend on donor funding/technical assistance projects. There is six-monthly reporting on the implementation of the Action Plan. There is a separate, 2014-2018, Judicial Reform Strategy, which has a separate Action Plan covering two years. Human rights are covered by various strategic documents, including the 2008 Strategy for Minority Policy (“The Policy of the Government of Montenegro in the Area of Respect and Protection of Minority Rights”); there is also an 2017-2021 Action Plan for Achieving Gender Equality, which has a bi-annual implementation plan (the current one is covering 2017 and 2018), based on the Beijing Platform for Action. There is a 2017-2021 Strategy for the Protection of Persons with Disabilities and Promoting Equality. Penitentiary reform is covered by the Action Plan for the Implementation of the Strategy for Execution of Criminal Sanctions (2017-2021); other notable strategies include the 2012 Strategy on the Prevention of Abuse and Violence among Inmates. As highlighted above, technical

<sup>5</sup> <http://www.consilium.europa.eu/en/press/press-releases/2018/06/25/joint-statement-following-the-ninth-meeting-of-the-stabilisation-and-association-council-between-the-eu-and-montenegro/>

<sup>6</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)024-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)024-e)

<sup>7</sup> [http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI\\_2018\\_Montenegro.pdf](http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI_2018_Montenegro.pdf)

assistance aligns with the sector strategies as well as the overarching framework provided for by the Action Plans for chapters 23 and 24.

There have been two Judicial Reform Strategies (2007-2012; 2014-2018) since the signature of the Stabilisation and Association Agreement in 2007. Action Plans for the implementation of chapter 23 (and 24) is in place since 2013, as well as an Action Plan for the current Judicial Reform Strategy, covering the period from 2017-2018. The implementation of the Judicial Reform Strategy and Action Plan (itself a benchmark under chapter 23) is overseen by the Ministry of Justice, which leads the Council for the Monitoring of the Implementation of the Judicial Reform Strategy and Action Plan. There is a separate Council for the Rule of Law, which tracks the achievement of benchmarks on chapters 23 and 24; this Council appears to primarily operate beyond closed doors and whose reports are not made public, putting into question the actual value of also existing Working Groups with the participation of civil society, and which would appear to be merely meeting formal requirements. EUROL I provided support to the drafting of the current, 2016-2020 ICT Strategy for the Judiciary.

Under IPA I and IPA II, technical assistance has been specifically aligned with the Action Plans for chapters 23 and 24. EU Support to the Rule of Law (C-333932) using IPA 2012 funds (implemented from 2014-2016) was the first sector-wide approach to RoL reform, and set out to “*strengthen independence, efficiency and accountability of the judiciary, and the fight against corruption and organised crime.*” There is no end-of-project report on file that would provide an overview over the project’s achievements. EUROL II is a follow-up project as part of the Action on Rule of Law (which consists of two other projects) has started recently (end of 2017), and thus, no definitive results can as yet be reported. However, stakeholders report that EUROL II has directly contributed to the drafting of legislation, for example on judicial cooperation.

The EU co-funds independent monitoring of the judicial reform strategy, through grants to national civil society organisations such as Human Rights Action (HRA). One of HRA’s reports, *Report on Realisation of the Judicial Reform Strategy for 2014-2018*<sup>8</sup> finds that “[t]he Strategy 2014–2018 contains the same strategic objectives as the previous one, strengthening of independence, impartiality, efficiency, responsibility, and accessibility of judiciary and strengthening of public trust in judiciary.” The same report states that “[u]ntil April 2017, the Government of Montenegro adopted five semi-annual reports of the Council on implementation of measures from the Action Plan 2014–2016 covering the period until 31 January 2017. Not a single report communicated any dilemma or criticism. According to the reports, the reform process is idyllic, implemented with the ‘satisfactory level of realisation’ As much as 83% of strategic measures are considered as fully implemented, 12% partly, while only 4% remain not implemented, so it appears that the reform is at its very end. This report of non-governmental organisations presents a different picture. It questions and disputes the majority of conclusions on the closure of realised measures and contains 180 recommendations on measures that should still be undertaken to allow for goals of the judicial reform to be accomplished.”<sup>9</sup> A longitudinal regional project by a coalition of think tanks from the Western Balkans region further criticises the fact that key parts of the government’s report on the results of the Action Plan are actually not publicly available. One of the key lacunae voiced by HRA in the report was the lack of a thorough needs assessment of the 2014-2018 Strategy on the results and impact of previous reforms.

### 3.1.4 Integration of HR and democracy issues (JC53)

Montenegro has established a Ministry for Human and Minority Rights (MHMR) in charge, inter alia, of aligning the national legal, institutional and policy frameworks to the EU acquis. The Ministry has a separate Gender Equality Department.

Montenegro also has an Ombudsperson’s office which is accredited under the Global Alliance of National Human Rights institutions (B status). The 2018 EU Progress Report states that the work of the Ombudsman’s Office had overall improved on visibility, outreach and productivity, with room for improvement of the office’s efficiency and quality of outputs. The report states an increase in public trust in the office. The resources available for the Ombudsman’s Office and to the MHMR to fulfil its task are deemed insufficient.

There is a Parliamentary Committee for Gender Equality, which is reported to have good capacities. The same report, on the IPA15160 Project *Support to the anti-discrimination and gender equality policies* which specifically works with the MHMR notes that despite progress on the development or adaptation of gender and anti-discrimination legislation (the overall framework for which remains incomplete, and is further hampered by the opposition’s boycott of the work of the parliament, resulting

<sup>8</sup> The report can be found at <http://www.hracion.org/wp-content/uploads/lzvjestaj-o-primjeni-Strategije-reforme-pravosudja-2014-2018-u-periodu-2014-2016-ENG.pdf>.

<sup>9</sup> Ibid.

in limited legislative activity), “*the implementation of the existing strategies and action plans is weak*” – a result of the limited institutional capacities in the Ministry as well as across the public administration to ensure that the objectives of the Action Plan on Gender Equality is mainstreamed across line ministries and institutions. The report highlights that “*key gaps remain: [...] a weak horizontal and vertical coordination that limits the possibility to pool resources for implementing shared institutional priorities and the lack of a reliable statistical base necessary for defining targets, evaluating the effectiveness of the affirmative action policies and ultimately monitor progress and achievements. This is fully reflected in the formulation of various action plans, including the APAGEs, that only explain progress in achieving institutional goals but remain blind about the concrete achievements.*”

Specific lack of capacity concerns the Ministry’s ability to monitor the implementation of national policies as well as to effectively comply with the country’s international reporting obligations (for example on the Istanbul Convention). There is a noticeable lack of gender analyses in government planning, including the impact of new government policies on women. Overall, there is limited case law in the judiciary and the Ombudsperson’s office on gender-based violence, and which according to the report, is a function of the “*under-performance of the institutions involved in the protocol of cooperation, including judiciary, police and welfare institutions.*” (ROM Report)

According to the above-mentioned ROM report, a 2010 IPA *Gender Programme* addressed gender-based and domestic violence, political empowerment of women and women’s entrepreneurship. However, there is no evidence to fully assess the scope of this programme towards progress on gender and anti-discrimination policies. The ROM report highlights, however, the programme’s success in coalition-building that resulted in the introduction of a 30% women’s quota in the electoral lists of the 2016 parliamentary elections.

A 2015 IPA project *Support to the anti-discrimination and gender equality policies*, implemented by the United Nations Development Programme (UNDP) in Montenegro, is ongoing. Its specific objective is to improve the social and institutional responsiveness towards promotion, protection and enforcement of human rights and equal opportunities, specifically focusing on the implementation of the Anti-discrimination and Gender Equality policies. An ongoing Council of Europe (CoE) implemented project, *Support to the National Institutions in Preventing discrimination in Montenegro* (PREDIM) also works with the Ministry for Human Rights and Minorities, as well as the Ombudsperson’s office on “*strengthening their internal organisational efficiency and resources and improve their public communication practice.*” PREDIM specifically seeks to address the Ministry’s capacity to protect the human rights of LGBT, Roma, minority groups, and people with disabilities. PREDIM also seeks to develop a training curriculum for the Judicial Training Centre to become the educational platform for the judiciary on human rights and anti-discrimination. The 2018 Progress Report makes a specific reference to the two projects, stating that the MHMR and the Ombudsman’s Office “*continued to receive assistance, with a view to strengthening their respective capacity*”.

However, according to ROM, neither action sufficiently addresses the capacity gaps of the Ministry and other stakeholders in accordance with the limited resources available. A specific concern is the lack of focus of both projects (as well as the lack of coordination between both interventions, see above). There is no clear evidence available that would provide a direct link between EU-supported interventions to the two institutions (MHMR and Ombudsman’s Office) and the increase in their capacities. Stakeholders interviewed for the purposes of this case note have confirmed that the capacities of the MHMR remain very limited, and that this also results in the Ministry not being able to attract IPA-funding.

In the area of penitentiary reform, the most recent, 2018 EU Progress Report states that “*detention conditions continue to improve, including in juvenile detention facilities, but they remain poor overall. This is also the case for the provision of healthcare to inmates and for staff working conditions.*” The report highlights that measures have been put in place to limit the use of restraint as means of coercion, and that there are now procedures in place for emergency situation in prisons, along instructions on healthcare. The report further notes that there is a continued need for capacity building and trainings on human rights, as well as on the implementation of the alternative sanction system.

Under the CoE/EU Horizontal Facility, the project *Enhanced Human Rights Protection for Detained and Sentenced Persons in Montenegro* is underway, and which works on “*enhancing the capacities of prison guards, police officers and medical staff in preventing ill-treatment and combating impunity; providing necessary tools to beneficiaries in their efforts to reduce overcrowding and improve detention conditions; strengthening interinstitutional co-operation in order to provide better access and better health care services to prisoners; protection of the rights of patients under compulsory psychiatric treatment; development of rehabilitation and reintegration programme; co-operation with civil society organisations.*”

### 3.2 Quality / efficiency of justice systems (EQ6)

<b>EQ6</b>	<b>To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?</b>
<b>JC61</b>	<b>Justice system planning and budgeting improved</b>
<b>JC62</b>	<b>Infrastructures and equipment (e.g. court facilities, IT systems) improved</b>
<b>JC63</b>	<b>Capacities, skills and procedures in key RoL entities (e.g. judiciary, courts, public agencies, professional associations) improved</b>
<b>JC64</b>	<b>Legality ensured, harmonisation of domestic law with international law / jurisprudence promoted, and enforcement of international judgments improved</b>

#### 3.2.1 Summary of key findings (EQ6)

Evidence suggests that EU support (through EUROL I) has assisted the Ministry of Justice in capacity building with regards to strategic planning and performance management, however, capacity needs remain. Specific challenges relate to the sustainability of investments in IT, and where international assistance has been provided to upgrade ICT systems, and where a medium-term ICT strategy exists, but where existing tools are not being used. A Case Weighting System has been piloted by EUROL I, but is not being implemented. Capacity-building has extended to the court presidents, and support was provided to the Judicial Training Centre. However, results have been limited in terms of the Centre being able to fulfil its role, as well in terms of budgetary independence of the institution. Montenegro's cooperation with the ECtHR is in general good, but there is a need to increase knowledge and awareness of the institutions and the judiciary on the scope of the ECHR.

#### 3.2.2 Justice system planning and budgeting improved (JC61)

The 2018 EU Progress Report on Montenegro finds that *“instructions for collecting statistical data in compliance with the European Commission for the Efficiency of Justice (CEPEJ) guidelines have not yet been fully implemented. Data on the total length of proceedings is still not available. Statistical information on the performance of the judicial system is not systematically analysed, nor used for management and policy-making purposes.”*

EUROL I (under IPA 2012) provided capacity building assistance in strategic planning to the Ministry of Justice, with the aim of helping to develop good strategic planning and performance management mechanisms for the Ministry. However, by the end of the project in 2017, it was uncertain whether the assistance had led to any lasting changes; stakeholders suggest that capacity issues are still a concern. EUROL I worked on the introduction of a Regulation on Judicial Statistics to CEPEJ (European Commission for the Efficiency of Justice). EUROL I's end-of-project report states that *“the Regulation fully complies with all CEPEJ criteria but cannot be fully implemented until the problems associated with PRIS are resolved. This Regulation, the new methodology for the allocation of cases [...] business planning for Court Presidents and the professional evaluation (appraisal of judges), to name but a few, are in all in many ways dependant on a fully functional Business Intelligence (BI) Tool to interrogate the judicial information database and provide relevant data and reports for all stakeholders. A sophisticated BI tool was donated by USAID some years ago but not used. In March 2015, IMG on behalf of the Kingdom of Norway, invested significant resources in training Judicial Council ICT staff to use it but it remained none functioning.”* The upgrade of the IT system is the responsibility of the Ministry of Justice, and stakeholders suggest that the main constraint is the lack of resources to implement the existing Strategy on Information and Communication Technology for the Judiciary for the period of 2016-2020 action plan; EU stakeholders have indicated that IPA 2018 programming will address ICT issues. EUROL I also worked with court presidents in pilot courts on their business planning skills ahead of the introduction of delegated budgets.

#### 3.2.3 Infrastructures and equipment improved (JC62)

PRIS had been introduced prior to the start of EUROL I, but the project spent considerable resources on analysing why it was not utilised/did not work. The EUROL I end-of-project report is specific in highlighting that the system is outdated and not fit for purpose: *“[...] the ICT judicial information strategy 2011 to 2014 managed by the Judicial Council ICT team [...] was not effectively implemented and there was inadequate oversight of activities by stakeholders resulting in wastage of valuable resources on an out of date PRIS (judicial information) system, as well as severely delaying an effective solution. The Ministry of Justice, with the assistance of UNDP and the Kingdom of Norway, recently took steps to remedy this situation by overseeing the development of a new and more integrated justice-wide ICT strategy involving all of the key partners. Effective management of this*

*strategy will require robust oversight and strong leadership if it is not to fail again.*" (EUROL I end-of-project report)

EUROL II is also reported to having an IT component, and is working on integrating it in a more systematic way than previous efforts. Overall, it is evident that EU interventions, including EUROL I, have tried to work with PRIS. EUROL I also engaged in developing a Case Weighting System (CWS) on the basis of 9 pilot courts in Montenegro. The EU 2018 Progress Report suggests that it is not being implemented (but should be).

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

In addition to the above mentioned work done by EUROL I on capacity building with the Ministry of Justice, support has also targeted the Judicial Academy of Montenegro, which was transformed, in 2016, into the Judicial Training Centre (JTC). The 2018 EU Progress Report finds that the JTC's budget is below the statutory minimum and that the Centre depends on donor support. The Report notes that *"the autonomous and self-sustainable functioning of the Judicial Training Centre needs to be guaranteed. Its administrative and managerial capacity, as well as cooperation with the Judicial and Prosecutorial Councils needs improvement without delay. The Centre also needs to play a more active role in identifying training needs on the basis of a training needs assessment, promoting training among the targeted audience, evaluating training activities, and producing training materials covered by copyright."*

Substantial assistance has been provided to the Academy as well as the JTC since 2006, i.e. preceding the evaluation period. It is not possible to come to a conclusive assessment of the role of the EU technical assistance on this JC, partly because the number of documents on file is limited, partly because of number of donors involved in the sector, in particular with regard to legal education and the role of the JTC. Overall, given the considerable needs remaining in the area of legal education, progress seems to have been rather limited overall.

### **3.2.5 Harmonisation of domestic law with international law (JC64)**

The 2018 EU Progress Report on Montenegro finds that its cooperation with the ECtHR is in general good, but that there is a need to increase knowledge and awareness of the institutions and the judiciary on the scope of the ECHR.

Under the CoE/EU Horizontal Facility, a project on *Fighting Ill-Treatment and Impunity and Enhancing the Application of ECtHR Case Law on the National Level* is ongoing. The project works towards *"enhancing the capacities of judges, prosecutors and lawyers to apply human rights standards in their daily work."* A separate programme, a project on *Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe – regional (JUFREX)* is underway. It aims to *"enhance the application of the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR) case-law in the field of freedom of expression in the daily work of the judiciary through the interpretation and implementation of the legislation in line with European standards"*.

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence / impartiality / accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence/impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of RoL institutions is enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

As reflected in the EU Progress Reports, independence and accountability of the judiciary and the justice sector institutions remain concerns. In this sense, it should be questioned what the return on investment has been on the technical assistance provided, given the scarcity of progress on disciplinary offences; the case allocation system, the overall susceptibility of the system to political influence; and the overall perception of widespread corruption in the judiciary.

There have been a multitude of technical assistance projects over the years, including by bilateral donors. The cumulative effect, then, of the lack of results overall might lend itself to separate analysis: while the needs of the sector have been well analysed and have been known for more than a decade, results appear incremental at best.

#### 3.3.2 Independence/impartiality of RoL institutions (JC71)

The 2018 EU Progress Report notes “some progress in meeting the recommendations on strengthening the independence, professionalism and accountability of the judiciary. The capacities of the Judicial and Prosecutorial Councils have improved, judges and prosecutors were recruited for the first time under the new system [...] However, the recruitment, professional appraisal and promotion system of judges has yet to be fully implemented. [...] Despite efforts of both councils to organise transparent and merit-based selections, challenges remain over the planning of recruitments and the transparency of selection procedures. Scepticism within the judiciary towards regular professional assessment, which is one of the reasons for delays, needs to be addressed.”

The end-of-project report of the EUROL I project (which ended in early 2017) suggests that progress has been very slow overall, in particular indicating that there is systemic reluctance to change. It describes “long standing orthodoxies, for instance the concept of judicial independence as it was interpreted in Montenegro. [...]” “Mechanisms to detect breaches of integrity rules and to enforce disciplinary penalties need to become more effective. Public awareness of existing complaint mechanisms should be further raised and the possibility of challenging the dismissal of complaints before the Judicial [...] Council should be introduced. Relevant decisions [...] need to be better motivated and a case-law has yet to be developed in this area.”

The Judicial Council is in charge of the management of the judicial system and the careers of judges. The Council’s composition is broadly in line with European standards. The 2018 EU Progress Report says that further strengthening of the administrative and professional capacity of the Council is needed, but that at this point in time, the Council can, in principle, implement recruitment, professional assessment and disciplinary systems. Transparency is highlighted as one issue of concern, and measures to be undertaken include the publication of decisions on promotions and appointments, as well as disciplinary proceedings.

“The principle of random allocation of cases is guaranteed by the law on courts and implemented automatically through PRIS, the judicial information system, although for very small courts there are certain limits. The practice of reallocating large numbers of cases between courts to reduce backlogs, risks undermining the right to a lawful judge in the absence of clear criteria.” (EU Progress Report 2018)

EUROL II, one of three components of the *Support to the Implementation of Chapter 23 and 24 Action Plans* under IPA 2014, has recently commenced and is addressing several of the indicators under this JC (career planning and advancement of judges; disciplinary measures; building the capacity of the Judicial Council and the Judicial Training Centre). However, the project is too new to allow for an assessment of results. Under the CoE/EU Horizontal Facility (for which there is a separate case study), a project on *Accountability in the Judicial System* is being implemented, working on secondary legislation relating to recruitment, promotion and assessment of judges and the Judicial Council’s capacities, as well as to implement disciplinary procedures in the judiciary, and to increase the Council’s capacities.

Other elements relevant to separation of powers and independence of the judiciary: The independence of the judiciary has been guaranteed by the 2006 Constitution of Montenegro, and has

been strengthened by amendments to the constitution in 2013, in particular through limiting the political influence over judicial appointments, and following an opinion of the Venice Commission,<sup>10</sup> which also highlighted the need to reform related legislation (on the Constitutional Court, the Supreme State Prosecutor, and the Judicial Council), on which it also provided opinions in 2012 and 2013. However, the 2018 EU Progress Report highlights political interference with the judiciary as an ongoing concern.

### 3.3.3 Accountability of RoL institutions (JC72)

See JC 53 regarding the improvement of the work of the Ombudsman's Office as attested in the 2018 EU Progress Report, as well as areas in need of improvement and the lack of resources for the Ombudsman.

There is a **code of ethics** for judges in place. The 2018 EU Progress Report finds that *"in 2017, the Commission for monitoring the implementation of the code of ethics for judges dealt with 18 cases (2016: 19 cases, 2 violations established) and did not find that any violations had occurred. [...]"*

With regard to EU contribution to the above – see JC 53 – there are currently two parallel technical assistance projects targeting the MHMR and the Ombudsman's Office (implemented by UNDP and CoE) respectively, both of which appear to have flaws with regard to effectively addressing capacity gaps in the two institutions.

In a recent development, the Judicial Council of Montenegro adopted an information-sharing strategy for 2018-2020, the main objective of which is to increase transparency and accessibility of the judiciary by the public. The strategy was developed in the framework of the *Accountability of the Judicial System* project under the Horizontal Facility.

The EU has, for many years, co-funded civil society projects on monitoring of key reforms (through, for example, the Civil Society Facility), including the RoL, in Montenegro (see above quotations from Human Rights Action, which has monitored the implementation of consecutive Judicial Reform Strategies). Civil society is particularly involved in monitoring chapter 23 progress, but according to EU stakeholders, there is a Concerns with regard to the genuine involvement of civil society have been discussed in section 2 of this report.

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<sup>10</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)024-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)024-e)

### 3.4 Broader effects on the RoL (EQ8)

<b>EQ8</b>	<b>To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?</b>
<b>JC81</b>	<b>Access to justice strengthened</b>
<b>JC82</b>	<b>Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened</b>
<b>JC83</b>	<b>Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved</b>

#### 3.4.1 Summary of key findings (EQ8)

EU support has contributed to the creation of a legislative and institutional framework to address human rights and democracy. Through EUROL I (and now EUROL II), it has indirectly worked to improve access to justice through support to strengthening the judiciary and human rights institutions (including the ombudsman institution). Moderate progress has been noted in the area of access to justice, where there have been better results on free legal aid compared to other IPA countries. However, the quality of and access to free legal aid is questionable, and the role of ADR declined during the evaluation period. With regard to respect for human rights, concerns remain with respect to the effective implementation of the legal framework and the lack of capacity of the institutions to fulfil their mandate to promote and protect human rights. EU support has sought to address areas of specific concern, such as LGBTI rights, Roma rights, and gender-based violence (through EIDHR/CBSS). At the political level, the EU has insisted on respect for human rights, including in the context of the protection of journalists.

#### 3.4.2 Access to justice (JC81)

EU support indirectly target access to justice, including through EUROL I (and now EUROL II), which worked to strengthening the judiciary and the efficiency of courts. EU support also targets the institution of the ombudsman, and EIDHR support has gone to raise awareness about the legal and policy framework on LGBTI issues. The 2018 EU Progress Report states that the role of ADR has been declining from the 2017 levels and posits that ADR needs to be better promoted in the judiciary. This finding is being echoed by an independent expert report assessing the results of the current Judicial Reform Strategy.<sup>11</sup> The same report also states that the system of free legal aid is functioning. Since 2009, the ECtHR has issued judgements in 47 cases (2116 cases were considered inadmissible), of which 34 were cases of the violation of the right to a fair trial.

#### 3.4.3 Respect for human rights (JC82)

The EU's 2017 Update on Human Rights attests some progress made in the area of anti-discrimination, specifically, with regards to the adoption of amendments to anti-discrimination legislation. The report also finds that overall, the implementation of the human rights legislation is weak, and confirms the lack of institutional capacity to deal with human and minority rights described elsewhere in this report. Specific concerns are noted with regard to gender-based violence and violence against children. Discrimination against the Roma minority is highlighted as a concern, too. The latter two issues have been subject of support under the EIDHR/CBSS.

A legal and policy framework for the protection of LGBTI rights exists, and the EU 2018 Progress Report described Montenegro as a regional leader. The report finds that *“despite an improvement in relations between the LGBTI community and the police, records of prosecution based on hate speech need to improve. Continued and proactive efforts are still needed to ensure full and effective implementation of the existing legal framework to protect the rights of LGBTI people and to tackle public attitudes towards them, including through anti-discrimination campaigns.”* Under the 2014 EIDHR/CBSS, specific support was provided to LGBTI civil society in Montenegro, through a project on *“Contributing to the Improvement LGBT People’s Quality of Life in Montenegro.”* The project worked on awareness raising among the stakeholders participating in the implementation of the legal and policy framework, with a specific emphasis on locations outside the capital of Podgorica. A clear link between the project results and the progress stated in the EU 2018 Progress Report is not possible, though it stands to argue that there has been a contribution.

<sup>11</sup> <http://www.hracion.org/wp-content/uploads/lzvjestaj-o-primjeni-Strategije-reforme-pravosudja-2014-2018-u-periodu-2014-2016-ENG.pdf>

Several projects have addressed pressing needs relative to juvenile justice and penitentiary reform using sustained and holistic/whole-system approaches, including legislative reform, diversion approaches and ADR, improvement of prison conditions, post-release support and public awareness-raising campaigns. Other parallel programmes may have provided indirect support to the overall RoL context. The *Strengthening Justice Reform* project sought *inter alia* to introduce a more effective administration to deal with juvenile offenders, and specifically to ensure a higher rate of application of alternative measures and sanctions for juveniles and a lower rate of prosecution of juveniles (so-called “*diversion approaches*”). This entailed the preparation of a comprehensive Juvenile Justice Code to better promote and protect the rights of children at risk and/or in conflict with the law, and concomitantly increasing capacity in the Administration of Juvenile Justice. The project further aimed to enhance the legislative and policy framework for juvenile justice, including the development of a juvenile justice data collection and information system. The institutional capacity for the implementation of the Juvenile Justice Law was also to be strengthened, and targeted the judiciary, public prosecutors’ offices, the social welfare system, the police, and juvenile justice institutions. A complementary action was to increase public awareness on juvenile justice matters.

The overall objective of the *Support to Penitentiary Reform* twinning project in Montenegro was to enhance functioning of the penitentiary sector in line with European standards and best practices, with the aim of improving prison conditions and reducing prison overcrowding. It intended to achieve this through strengthening the system of alternative sanctions, improving the system of execution of criminal sanctions, improving the conditions in prisons (details are not to hand at this stage), and supporting the re-socialization of convicted persons.

It is unknown whether there were any direct synergies with the *Support to anti-discrimination and gender equality policies* project; however, this would have at the last provided some form of transversal support of the main issues addressed.

The programmes demonstrate a holistic/systemic commitment to the human rights of highly vulnerable persons (detainees and children in conflict with the law), in that they addressed the entire criminal “*chain*” from laws and procedures, pre-arrest approaches through to post-release support, all whilst ensuring community “*buy-in*”.

Respect for freedom of expression and media freedom has become an issue in Montenegro, with a number of violent attacks on journalists, the most visible of which was the attack, in May 2018, on Olivera Lakić, a journalist who has been investigating organised crime and corruption, and who was shot and injured in front of her house.<sup>12</sup> The EU has been vocal in its statements to investigate the attack, and said that this “will be part of the assessment of the fulfilment of the interim benchmarks under chapter 23.”<sup>13</sup> The 2017 EU Update on Human Rights in Montenegro also highlights the fact that previous attacks against journalists have not been investigated. Since 2014, 33 attacks on journalists have been reported, most of which remained unresolved. The Council of Europe-implemented *Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe – regional (JUFREX)* is addressing relevant issues.

#### 3.4.4 Governance and democratic processes (JC83)

Numerous expert reports have highlighted ongoing concerns with regards to governance and democratic processes in Montenegro, and which echo the findings of successive EU Progress Reports, statements, and assessments. Among these are the politicisation of institutions in the country; the lack of regulation of the relations between the government and the parliament; the weakness of the parliament in the overall structure of the state; the questioning of the legitimacy of the elections, and which has led to a prolonged boycott of the work of the parliament by the majority of the opposition parties.<sup>14</sup> The boycott ultimately resulted in undermining the legitimacy of the government during the period.

Corruption remains a very serious concern in Montenegro, and, according to data collected by Freedom House for its 2017 report, almost no progress has been made on either high-level or administrative/petty corruption over the past years.<sup>15</sup> The EU has extensively supported anti-corruption reforms and measures to fight organised crime. The 2018 EU Progress Report finds that both on anti-corruption and on organised crime, a track record on financial investigations and prosecution of high-

<sup>12</sup> <https://www.theguardian.com/world/2018/may/08/investigative-journalist-olivera-lakic-shot-montenegro>

<sup>13</sup> [https://eeas.europa.eu/delegations/montenegro/49434/statement-spokesperson-investigation-attack-olivera-lakic\\_en](https://eeas.europa.eu/delegations/montenegro/49434/statement-spokesperson-investigation-attack-olivera-lakic_en)

<sup>14</sup> [http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI\\_2018\\_Montenegro.pdf](http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI_2018_Montenegro.pdf) and <http://www.balkaninsight.com/en/article/montenegro-opposition-ends-boycott-with-call-for-elections-06-14-2018>.

<sup>15</sup> [https://freedomhouse.org/sites/default/files/NIT2018\\_Montenegro.pdf](https://freedomhouse.org/sites/default/files/NIT2018_Montenegro.pdf)

level anti-corruption cases needs to be established, and that existing institutions need to be better shielded from political influence.

## 4 Annexes

### 4.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Policy Officer - European Integration / Negotiator	EU-DG NEAR, HQ
Policy Officer - European Integration	EU-EEAS, HQ
Team Member EUROL I	NI-CO

### 4.2 List of documents consulted

#### 4.2.1 EU strategy and programming

Council of the European Union (2007): Stabilisation and Association Agreement with Montenegro.

European Commission (2007, 2008, 2010, 2011): National Programme for Montenegro under the IPA transition assistance and institution building component.

European Commission (2007): Multi-annual Indicative Planning Document 2007-2009 for Montenegro.

European Commission (2008): Multi-annual Indicative Planning Document 2008-2010 for Montenegro.

European Commission (2009): Multi-annual Indicative Planning Document 2009-2011 for Montenegro.

European Commission (2011): Multi-annual Indicative Planning Document 2011-2013 for Montenegro.

European Commission (2014): Indicative Strategy Paper for Montenegro (2014-2020).

#### 4.2.2 EU reporting

EU (2011-2017): External Assistance Management Report (EAMR). Montenegro.

European Commission (2011-2016, 2018): IPA Progress Report.

#### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2007 Justice Reform
- 2007 Juvenile Justice System Reform
- 2007 Legal Harmonization
- 2011 Support Penitentiary Reform
- 2011 Justice for Children
- 2012 EUROL I
- 2014 EUROL II
- 2014 Support to the Implementation of Integrity Measures
- 2014 Support the adoption of the Schengen acquis
- 2015 Support to the anti-discrimination and gender equality policies
- 2015 PREDIM - Support to the National Institutions in Preventing Discrimination in Montenegro
- 2016 Result Oriented Review on Delivery of Justice

#### 4.2.4 Evaluation and studies

AETS (2017): Mid-term Evaluation of the Civil Society Facility for the Western Balkans and Turkey.

Berenschot/ Imagos (2013): Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organised Crime in the Western Balkans – Lot 3.

European Policy Institute (2016): Monitoring and Evaluation of the Rule of Law in Montenegro.

European Policy Institute (2016): Monitoring and Evaluation of the Rule of Law in the Western Balkans.

Particip (2017): External Evaluation of the Instrument for Pre-accession Assistance (IPA II) (2014–mid 2017).

#### 4.2.5 Other

TAIEX (2012): Justice Liberty and Security. Peer review mission in Montenegro.

World Bank (2018): Montenegro, Experiences and Perceptions of Judicial Performance

## Case study note – Serbia

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# 1 Introduction

## 1.1 Context

EU accession negotiations started once Serbia, then part of the Federal Republic of Yugoslavia with Montenegro, began a broad reform process after the fall of the Milošević government in 2000. The EU declaration that the Balkan states were potential candidates for membership was confirmed in 2003, and Serbia officially applied for EU membership in December 2009. In March 2012, Serbia received full candidate status and the European Council endorsed the Council of Ministers' conclusions and recommendations to open accession negotiations in June 2013. A Stabilisation and Association Agreement (SAA) between the EU and Serbia entered into force in September 2013.<sup>1</sup>

In the last decade, Serbia's trajectory on Rule of Law (RoL) reforms has been determined by successive governments' commitments to the EU accession process, the requirements of which continue to provide the framework for reforms. The country has, by and large, successfully dealt with the legal framework across all vectors of RoL, including accession to the key international treaties and legal instruments, and the transposition of their respective provisions into national legislation.

Implementation and institutional change, however, remain a concern across many areas, including rights of people belonging to minorities and disadvantaged groups (LGBTI, ethnic, persons with disabilities etc.). The situation on fundamental rights and freedoms, although guaranteed by the Constitution, has been, according to some civil society stakeholders, worsening since 2012. Freedom of expression and freedom of the media is of particular concern, as reflected, for example, in the *2018 EU Progress Report on Serbia which noted no progress on freedom of expression over the October 2016-February 2018 reporting period*. This was perceived by these stakeholders as a reflection of the tension between the official EU accession agenda and increasing anti-EU rhetoric by Serbian politicians; rhetoric which has been echoed in the wider Western Balkans region. This tension is also reflected in the decreasing role of independent state institutions in charge of oversight over key RoL and human rights aspects (e.g. ombudsman; the Commissioner for Information of Public Interest and Data Protection).

A number of key issues have remained considerable challenges since the early stages of the EU integration process. In addition to minority rights, mentioned above, these include limited progress in the areas of corruption and organised crime as well as independence and efficiency of the judiciary; areas in which the pace and results of reforms have been uneven at best.

## 1.2 Overview of the EU support to RoL

EU support to Serbia on RoL reforms dates back to the early 2000s, then provided in the framework of CARDS<sup>2</sup> assistance. The Multi-annual Indicative Plan for 2002-2004 covered the promotion of good governance and the strengthening of the RoL through support to the reform of justice institutions, and support to independent media and civil society.

The **2007-2009 Multi-annual Indicative Planning Document (MIPD)** identified the consolidation of the RoL by strengthening the wider judicial system through:

- the introduction of a standardised system for education and training;
- support to juvenile justice legislation;
- support to the independence of the judiciary;
- the introduction of effective case management and improvement of case proceedings;
- the development of a legal aid system to citizens;
- support to penitentiary reform;
- the fight against organised crime and corruption, human trafficking, money laundering;
- the introduction of witness protection, as well as asset confiscation and seizure policies.

The MIPD further highlighted the need to strengthen the Office of the Ombudsman. Support also targeted the promotion of human, including minority, rights – the latter with a specific emphasis on Roma – and support to the independent state bodies to monitor the implementation of the respective policies.

<sup>1</sup> See [https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia_en)

<sup>2</sup> The programme of Community Assistance for Reconstruction, Development and Stabilisation (CARDS) for the Western Balkan countries, replaced by the Instrument for Pre-accession Assistance (IPA) in 2007. [https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/cards\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/cards_en)

The **2008-2010 and 2009-2011 MIPDs** reflected the revised priorities of the 2007 European Partnership and the requirements of the SAA<sup>3</sup>. A clearer focus was placed on supporting Serbia in the achievement of the political criteria, through support to the development of *“democratic institutions [...], reform of the judiciary, fight against corruption, reform of the police, human rights and protection of minorities, gender equality, anti-discrimination, and media. [...] Civil society development will be given special attention of the promotion of dialogue through capacity-building and exchange projects; small grants will assist [...] anti-discrimination, gender equality.”*

In addition to the areas of support in the 2007-2009, support was also given to the *“strengthening of the democratic institutions and the separation of powers between Parliament, Judiciary and Government”* as well as to *“complete the reform on the legal framework on elections, ensuring transparency and accountability of political party financing.”*

Serbia applied for EU membership in 2009. The **2011-2013 MIPD** identified Justice and Home Affairs, *“an area where serious gaps remain,”* as one of the priority areas for support to Serbia, with a focus on the *“implementation and further development of the judiciary reform strategy, which aims at ensuring independent, efficiency, effectiveness and accountability of the judiciary system, and on the fight against corruption and organised crime.”* Support in this area is specifically aligned to government strategies (which themselves are guided by the EU accession requirements), including the National Judicial Reform Strategy; the Reform of the Correctional System; and the National Anti-Corruption Strategy.

The specific objectives of IPA assistance in this period centred on the reform of the justice sector and the judiciary; the penitentiary system; law enforcement; human rights; and the protection of minorities.

Assistance targeted:

- strengthening the independence, efficiency and accountability of the judiciary by establishing a transparent selection process and career development for judges and prosecutors;
- reducing the time required for court proceedings and the backlog of cases;
- strengthening the fight against corruption and organised crime;
- increasing alignment with European standards;
- reducing the prison population by developing a functioning probation system and improving prison conditions.

The **2014-2020 Indicative Strategy Paper** highlights weaknesses in the area of Judiciary and Fundamental Rights (chapter 23): *“Serbia faces a number of challenges in the judiciary and fundamental rights sub-sector, which is at the heart of Serbia’s accession process to the EU. [...] There are weaknesses regarding independence and efficiency of judiciary (judicial network, electronic case management capacities of the key stakeholders, procedural laws, prosecutorial investigation, availability of legislation and case law). The number of backlog cases has been increasing and processing time for proceedings still remains long. Capacity of the Judicial Academy also needs strengthening. The new judicial reform strategy and its action plan (2013-3018) widely address the identified weaknesses but will need to be enhanced to match requirements of the opening benchmark for Chapter 23.”*

The Strategy Paper reiterates the need for more progress in the fight against corruption. With regard to fundamental rights, the Strategy noted the existence of new anti-discrimination legislation, as well as Serbia being party to the main international human rights standards and treaties. *“However, consistent implementation throughout Serbia needs to be fully ensured, notably in the areas of education, use of language, and access to the media and religious services in minority languages. Further alignment will need to be achieved in areas such as access to justice, equal treatment and accommodation of people with disabilities. Homophobia, discrimination and hate crimes on the basis of sexual orientation and gender identity are still present.”* The Strategy Paper also noted ongoing concerns with *“poor living conditions and ill treatment of prisoners”*. Concerns also specifically addressed the areas of media freedom as an area where little progress had been made also the need for greater transparency of media ownership.

The main areas for review in this case study are the reform of the judiciary and the penal system; and the support to independent institutions overseeing the implementation of the legal and institutional framework on fundamental rights and freedoms. The table below presents an overview of the main RoL interventions financed through IPA.

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<sup>3</sup> [https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/saa\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/saa_en)

Table 1 Overview of IPA-financed interventions in the area of RoL in Serbia

Decision year	Title	Planned EU contributions (mEUR)	Main channels/ implementing partners
2007	Efficiency and transparency of judiciary system	3.0	Service
2007	Penalty system	5.0	Works and Service
2007	Standardised System for Judiciary Education	2.0	Supply and Service
2008	Improvement of Transparency and Efficiency (Prosecutors and Penal system)	4.5	Supply and Service
2010	Further Alignment of the Penal System of the Republic of Serbia with European standards and strengthening alternative sanction system	5.5	Supply and Service
2011	Strengthening the Rule of Law in Serbia	9.75	Administration Agreements
2012	Support to the Rule of Law System	13.4	Service, Supply, Delegation, Works and Administrative Agreements
2013	Support to Justice Sector Reform	9.72	Twinnings, Service, Works
2015	Support to Justice Sector	12.1	Service, Supply, Works
2016	Support to the Justice Sector	5.0	Service, Grant

Serbia was also covered by EU regional programmes focussing on RoL such as:

- The Horizontal Facility. Examples of CoE actions implemented in Serbia:
  - 2016 - Enhancing human rights protection for detained and sentenced persons;
  - 2016 - Strengthening legal guarantees for independent and impartial tribunals;
  - 2016 - Supporting effective remedies and mutual legal assistance.
- Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX), which aims to promote freedom of expression and freedom of the media in line with European standards and with a specific focus on the Judiciary in South-East Europe.
  - funded jointly by the CoE and the EU for 36 months (04/2016-03/2019);
  - targeting Albania, Bosnia and Herzegovina, Montenegro, Serbia, the Former Yugoslav Republic of Macedonia and Kosovo\*.

The EIDHR instrument was also used to finance interventions in areas such as minority rights (LGBTI; ethnic minorities). Examples of projects include:

- EIDHR CBSS 2014/15: Towards Safer Environment for LGBT;
- EIDHR CBSS 2014/2015: Improving the equality legal and policy framework in Serbia and monitoring implementation of equality norms and policies;
- EIDHR CBSS 2014/2015: Creating a New Public View on Women.

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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.

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

<b>EQ2</b>	<b>To what extent has EU support to RoL responded to the bilateral and regional contexts?</b>
<b>JC21</b>	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
<b>JC22</b>	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 Summary of key findings

EU support is shaped by the requirements stemming from the EU accession process, and which Serbia has translated into specific strategies and sub-strategies in various areas relating to the RoL, such as consecutive National Judicial Reform Strategies (the latest one covering 2013-2018); the 2016 Action Plans for chapters 23 and 24; the National Strategy for Gender Equality in Serbia (2016-2020), as well as the Action Plan for the Realisation of the Rights of National Minorities; and the Anti-Discrimination Strategy (2014-2018). As the national strategies emerged, EU assistance has been specifically aligned to assist their implementation, though particularly in the area of judicial reform, the broad objectives and priorities have not significantly shifted across the evaluated period. Serbia has, with the formal opening of accession negotiations, and in line with EU requirements for this process, put in place formal structures to successively assume ownership of all aspects of IPA programming. However, stakeholders in line ministries suggested that they would prefer a greater number of centralised technical assistance projects, which runs counter to the expectation that EU assistance will increasingly be administered in a decentralised way. The IPA coordinator at the Ministry for European Integration is the central coordination point for line ministries' programming input; the coordinator also oversees the work of sector working groups, including that on Rule of Law; and Civil Society, Culture, and Media.

Certain stakeholders, including beneficiaries and implementing partners, pointed out that the current structures are excessively formal and stiff, and that they leave little room for dynamic exchanges and discussions. This has resulted in the emergence of non-formal working formats between implementers and stakeholders from the international community, i.e. de facto a duplication to the formal "bottleneck meetings" on rule of law designed to discuss challenges in the implementation of projects.

A specific concern relates to the involvement of civil society in the EU accession process. The operating environment for civil society has noticeably deteriorated over the past two to three years, and this has affected the level and quality of input that civil society organisations, including professional organisations, can give to key rule of law reform discussions.

Overall, the design of specific rule of law interventions is aligned with reform needs and EU accession requirements to which national strategic frameworks are aligned. The Serbian government is nominally committed to EU accession. However, the political will to advance reforms has significantly slowed in recent years. While the EU annual Progress Reports were far from non-critical overall, they were considered too positive in their assessment by several persons interviewed in the country, notably within civil society. For their part, however, HQ emphasises the highly consultative nature of the process to prepare progress reports.

There is a perception by certain local interlocutors, in particular within civil society that the EU, at the political level, was reluctant to hold the Serbian government to account on its lack of progress, and its backsliding on human rights and fundamental freedoms. A few stakeholders, also within civil society, even perceived that highly political issues, such as the Belgrade-Pristina dialogue, appeared more important than some RoL reform issues. IPA assistance has responded to national policies and resulting strategies, for example in the area of penal reform. However, a number of stakeholders perceive that progress on rule of law overall has slowed, and that there is a lack of push for reforms. Overall, progress appears to have been greatest in legislative reform (alignment of legislation with European standards and requirements), but concerns remain over the effective implementation of legislation, as well as the overall quality and implementation of national strategies and policy frameworks.

#### 2.1.2 Alignment and participatory processes (JC21)

EU support has, throughout the evaluation period (and prior to that), been aligned with national strategic and policy frameworks. A 2008 government "Programme for the Integration into the

European Union” developed with consultation from civil society stakeholders guided the alignment of legislation with EU membership requirements—an area where progress has been greatest.

Since 2006, there have been consecutive Judicial Reform Strategies (the most recent one expiring in 2018); there is also a separate Chapter 23 Action Plan,<sup>4</sup> which is broadly aligned with the 2013-2018 National Judicial Reform Strategy (NJRS). EU assistance has been aligned to national strategies, though it is also clear that in particular in the area of judicial reform, the key objectives and reform needs have not substantially shifted over the years – while this is to an extent a function of the time it takes for the transition a fundamentally different judiciary inherited from Yugoslav times to a more democratic one, it also opens wider questions in terms of how the EU thinks about timeframes/horizons for reforms, and how this translates to the programme and project level, including the results frameworks.

EU support on RoL has been designed in a participatory way through dialogue between the EU and the government of Serbia. The Serbian Ministry of European Integration (MEI), and here specifically the Sector for Planning, Programming, Monitoring and Reporting on EU funds and Development Assistance, is in the lead on this process overall, through the IPA national coordinator. There are eight sectoral working groups. Here, relevant for the evaluation are the Rule of Law Sector Working Group and the Working Group on Culture, Civil Society, and Media, which are in charge of elaborating assistance needs and designing proposals for potential technical assistance projects.

The line ministries have specific responsibilities for their respective sectors; this includes the requirement to consult civil society organisations in the process of identifying, discussing and deciding on assistance needs. In the area of reform of the judiciary, the Ministry of Justice’s Department for Strategic Planning and European Integration Sector for European Integration and International Projects monitors progress in relation to EU accession commitments as laid out in various strategic documents. It also is in charge of indirect management and monitoring the implementation of EU assistance projects where they relate to the judiciary. Interviews with a broad cross-section of interlocutors, suggest that indirect management is embraced reluctantly; that the capacities of national authorities have proven to be weak for decentralised support; and that there is still a preference, by the national authorities, for projects to be directly managed by the EUD. Since 2015 the policy of the use of indirect management has been adapted. Since then indirect management has been used as implementation mode only for sectors precursors of structural funds, hence no longer for the RoL sector<sup>5</sup>.

An Action Plan on Chapter 23, adopted in 2016, outlines in its “Methodology” chapter that civil society had been involved in its drafting through a call for participation issued by the Ministry of Justice’s Office of Co-operation with Civil Society.<sup>6</sup> However, stakeholder interviews, and in particular those with civil society and cooperation partners, consistently suggest that opportunities for substantive civil society participation in consultative processes around the implementation of the Chapter 23 Action Plan have noticeably decreased over the past few years—reflecting a general deterioration in the official attitude to NGOs and civil society; in addition, recent years have seen the increased emergence of GONGOs. For example, according to participants in the initial stages of the process, the consultation process on amendments to the constitution relating to the judiciary in order to comply with requirements of Chapter 23, opened in 2017 by the Ministry of Justice, was abandoned by civil society organisations. The atmosphere during these consultations was openly hostile to civil society organisations and professional associations of lawyers, judges, and prosecutors. More importantly, the consultations were reportedly not open to key debates around the de-politicisation of the judiciary and therefore, according to participants, did not fulfil their objective.<sup>7</sup>

According to certain stakeholders participating in this process, while the formal structures are in place for the Serbian counterparts to assume more ownership and the lead on IPA programming, these structures are excessively stiff and formal, thus diminishing their effectiveness. As a result, a layer of

<sup>4</sup> Chapter 23 Action Plan at <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>

<sup>5</sup> This is reflected in the IPA 2015-2018 programmes, where all support to RoL has been planned in direct management by the EUD (including budget support).

<sup>6</sup> Republic of Serbia, Negotiation Group for Chapter 23, “Action Plan for Chapter 23, Draft, April 2015”, <https://www.mpravde.gov.rs/files/Action%20Plan%20Ch%2023%20Third%20draft%2020.04.2015.pdf>

<sup>7</sup> See, for example, the spring 2018 report on chapter 23 and 24 implementation by the NGO coalition PrEUgovor (co-funded by the EU), at <http://www.preugovor.org/Reports/1448/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml>, p. 6. The most recent opinion of the Venice Commission also highlighted the acrimonious atmosphere of the consultation process, see CDL-AC(2018)011-e, Serbia-Opinion on the draft amendments to the constitutional provisions on the judiciary, adopted by the Venice Commission at its 115 Plenary Session in Venice, 22-23 June 2018 ([http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)011-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)011-e))

informal formats has formed where stakeholders, including implementers, meet to discuss progress and how to resolve specific implementation challenges.

### 2.1.3 Needs, opportunities; and responsiveness (JC22)

In the case of Serbia, the needs in the RoL sector are clearly defined by the EU accession process, which also underpins national strategies, policies and EU support.

From the sample of main RoL interventions selected for closer analysis, alignment with key documents (such as the SAA which entered into force in 2013, the European Partnership, as well as the Action Plan on the Implementation of Chapter 23, adopted in 2016) in relation to the EU accession process is clear. There is overall continuity both in terms of the main areas that have been supported, as well as in the clarity of how assistance relates to EU obligations; national strategies; and progress already made. Over the evaluation period, progress was achieved with regard to aligning the Serbian legal, strategic and policy framework to European standards and requirements. Consequently, EU assistance has moved to focussing on building institutional capacities to implement legislation and policies. The EU IPA II 2015 and 2016 Action Documents for Justice Sector Reform both make specific reference to support the priorities of the Action Plan on the Implementation of Chapter 23. With regard to this JC, what is relevant is the tension between the Serbian government's nominal commitment to EU accession on the one hand, and the decreasing political will to advance reforms, which can be observed in recent years. Several stakeholders interviewed, in particular within civil society but also cooperation partners, suggested that better performance on key reforms was traded at the EU political level for even incremental progress on a final status of Kosovo. They also suggested that the EU, at the political level, was reluctant to point out a lack of progress and backsliding on human rights and fundamental freedoms to the Serbian government. While the EU annual Progress Reports were far from non-critical, overall, a number of civil society interlocutors considered these to be too positive in their assessment. For their part, DG NEAR emphasised the highly consultative nature of the process to prepare the annual progress reports, drawing on inputs from a full range of EU services, including those from EUD, as well as analyses from external institutions, including international and national civil society organisations.

IPA assistance has responded to a changed reform context, and where new strategies and policies have led to new programmes. However, progress overall on rule of law reforms has considerably slowed, and where there is a lack of champions to push for reforms. Stakeholders representing technical assistance projects suggested that while projects can propose technical solutions, where lack of political will hampered progress, projects were unable to intervene.

The May 2018 EU-Western Balkans Summit's Sofia Declaration highlighted that "the EU is determined to strengthen and intensify its engagement at all levels to support the region's political, economic and social transformation, **including through increased assistance based on tangible progress in the rule of law [...]**, by the Western Balkans partners."<sup>8</sup> A number of local stakeholders interviewed in the field, in particular civil society, have welcomed this declaration. At the same time, there has been disappointment that there is a lack of clarity on what is meant by "tangible progress", i.e. what benchmarks would apply to translate the declaration into practice.

## 2.2 Implementation / choice of modality (EQ3)

EQ3	To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?
JC31	High quality policy and political dialogue established: content (promotion of RoL and European standards and principles), frequency, synergies between operational (intervention-level) and high-level dialogue, etc.
JC32	Implementation strategies appropriately chosen and combined / complemented
JC33	Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)
JC34	Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into

<sup>8</sup> EU-Western Balkans Sofia Declaration, 17 May 2018, at [http://www.consilium.europa.eu/media/34776/sofia-declaration\\_en.pdf](http://www.consilium.europa.eu/media/34776/sofia-declaration_en.pdf)

<b>account.</b>
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### 2.2.1 Summary of key findings (EQ3)

Policy dialogue between the EU and the Government of Serbia is determined by the negotiation process around the EU-accession chapters, including Chapters 23 and 24. Certain stakeholders consulted as part of the in-country visit in Serbia, notably civil society representatives, considered the EU to be too positive in their assessment in this dialogue.

In 2013 IPA assistance began to move towards decentralised implementation, i.e. all aspects of programming, contracting and monitoring should be successively taken over by the Serbian institutions. Stakeholders on the Serbian side - both at coordination level and beneficiaries and their partners in previous IPA assistance - have suggested that at the time of the evaluation, they would still prefer centralised management by the EUD for most technical assistance projects. Some potential beneficiary institutions are in need of technical assistance projects, but will not pursue this through IPA funds, as it is felt that there are insufficient capacities and resources to implement IPA projects. An additional concern is that for some decentralised projects, there is an administrative vacuum, or inertia, as there appears to be a lack of clarity on who, inside the beneficiary institution, is in charge of implementation.

There is clear complementarity between funding instruments (IPA, EIDHR, regional funding through Horizontal Facility and JUFREX and regional support on media freedom).

### 2.2.2 Policy dialogue (JC31)

Policy dialogue between the EU and the Government of Serbia is determined by the negotiation process around the EU-accession chapters, including Chapters 23 and 24, both of which were opened at the EU-Serbia Intergovernmental Conference. An EU-Serbia Civil Society Joint Consultative Committee (JCC)<sup>9</sup> convenes annually in Brussels to provide civil society's perspective on the progress in the implementation of reforms under the EU accession process, including on Chapters 23 and 24. Also, the EUD in Belgrade has frequent and regular meetings with civil society organisations and is held in very high esteem by these. Certain stakeholders consulted as part of the in-country visit in Serbia, and notably civil society representatives, believe that there is a disconnect between the knowledge and assessment of the pace of reforms of the EUD on the ground on the one hand, and how this intelligence is processed at the political level of the EU on the other: there is a perceived considerable discrepancy in assessment between country-level and EC/EEAS level in Brussels. As described relative to reporting above, a number of civil society stakeholders expressed a firm and consistent view that progress on Chapter 35 (negotiations on the status of Kosovo) are overriding other accession chapters, including those on the rule of law. DG NEAR and EUD for their part are satisfied that the level of consultation and analysis is adequate, and faithfully reflects the situation on the ground, and maintains balance in the analysis of progress between the different Chapters.

### 2.2.3 Choice of implementation strategies (JC32)

As highlighted above, with the accession candidate status of Serbia, IPA assistance has started in 2013 to move towards decentralised implementation, i.e. all aspects of programming, contracting and monitoring should be successively taken over by the Serbian institutions. However, stakeholders on the Serbian side—both at coordination level and beneficiaries and their partners in previous IPA assistance - have suggested that at present they would still prefer centralised management by the EUD for most technical assistance projects.

Beneficiaries have pointed out that they struggled to fulfil the contractual requirements of IPA assistance and their partner institutions were clear that they were not interested in becoming beneficiary institutions themselves for IPA projects, as they lacked the resources and capacity to fulfil the contractual conditions. Two previous beneficiaries pointed out that while they needed external assistance, they would seek this from bilateral donor institutions, as this would be easier to implement.

Up until 2014, the EU participated in the World Bank-led Multi-Donor Trust Fund for Justice Sector Reform in Serbia - the Ministry of Justice was particularly appreciative of the fund; some beneficiaries and EU services suggested it was one of the few facilities that the Ministry had at its disposal to activate experts/ consultancy services at short notice and with little administrative involvement on its side. Some donor and civil society stakeholders, however, have posited that this is an indication of the lack of financial and intellectual resources of the Ministry of Justice. Interviewees at EUD level indicated that the EU may rejoin this Trust Fund. All Multi-Donor Trust Fund activities are being closely

<sup>9</sup> <https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-serbia-joint-consultative-committee>

coordinated with the European Commission to ensure that the activities complement the support provided by the European Commission

Ministry stakeholders expressed mixed feelings on twinning as one of the implementation modalities used across the rule of law portfolio, with the key criticism voiced in relation to the qualification of EU experts and their familiarity with the Serbian context, as well as the need to spend considerable resources on ensuring that the experts delivered expected results. Other issues raised with regards to Twinning include the need for strong administration on the side of the beneficiary, and which is not always ensured; Twinning also seems to require considerable involvement from the EUD so as to make sure that mandatory results are achieved.

Generally, most stakeholders interviewed during the field phase corroborated the findings from the 2017 EAMR which suggested that overall concerns exist with regard to “definition of indicators; baselines for indicators; targets for indicators.” This echoes weaknesses present in the national strategies and policy frameworks overall, and which some stakeholders, including national institutions, found to be poorly sequenced, lacking in indicators, as well as in costing of the various reform measures.

Rule of Law technical assistance projects are also implemented by international organisations present in Serbia, including the Council of Europe under the joint multi-beneficiary IPA Horizontal Facility (which is part of a separate case study). Some institutional stakeholders in Serbia, notably beneficiaries, have reported that they have found the regional aspect of some aspects of the facility to be of limited use; there were also suggestions that the actual budget for thematic activities was very low (for example on the protection of rights of national minorities and for human rights protection for detained and sentenced persons).

#### **2.2.4 Synergies and complementarity within the portfolio (JC33)**

There is obvious complementarity within the portfolio of interventions and across funding instruments. The evaluation has considered a small selection of EIDHR grants. These are complementary to the sample of the larger-scale interventions selected for closer examination for the evaluation. The EUD Serbia’s website makes an explicit link between civil society grants under EIDHR and progress on RoL reforms in the context of the EU accession process: “Civil society actors in enlargement countries can make substantial contributions by projects which are linked to chapters 23 and 24: projects with emphasis on areas directly linked to key challenges in Negotiation Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security).” Co-funding to EIDHR applications is provided by the Office for Cooperation with Civil Society.<sup>10</sup> EU funding also goes to finance monitoring, by PrEUgovor,<sup>11</sup> a coalition of 7 NGOs that monitor and publish reports on the progress in the implementation of chapters 23 and 24. The EU-CoE Horizontal Facility also complements IPA funding at country level in the area of rule of law. Other regional funding, too, is complementary to the rule of law portfolio. For example, Serbia participates in JUFREX, the regional project “Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe”. The aim of JUFREX is to promote freedom of expression and freedom of the media in line with European standards, and with a specific focus on the judiciary. The EC is also funding regional civil society efforts on media freedom, through a “Regional Platform for advocating media freedom and journalists safety, ”coordinated by the Serbian association of journalists.<sup>12</sup> Other regional initiatives include the Regional Cooperation Council for Roma Integration.<sup>13</sup>

Neither the Global Goods and Challenges nor the IcSP instruments apply to Serbia.

#### **2.2.5 Efficiency, monitoring and visibility (JC34)**

There were only three ROM reports available to the evaluator for the evaluation period; this is too narrow a sample to extrapolate information on efficiency. The in-country data collection phase did not examine efficiency at the level of the various projects. However, overall, a number of observations can be made.

With view to the slow progress of reform in particular in the area of judicial reform, the question is whether the funds spent since the beginning of the evaluation period (2010) and the overall progress of reform are in a sensible ratio. The short-term nature and lack of continuity of projects in prison reform was credibly considered, by the Council of Europe, to result in inefficiencies, as nascent results

<sup>10</sup> <http://civilnodrustvo.gov.rs/home/home.1.html>

<sup>11</sup> <http://preugovor.org/prEUgovor/1121/About-us.shtml>

<sup>12</sup> <http://safejournalists.net/about-us/>

<sup>13</sup> <https://www.rcc.int/romaintegration2020/docs/5/the-strategy-of-social-inclusion-of-roma-for-the-periodnfrom-2016-to-2025--serbia>

could never be consolidated and subsequent assistance efforts were less able to build on previous gains.

Some local stakeholders had specific questions on a number of EU-funded projects. For example, with regard to the backlog reduction component of a recently completed project implemented by the British Council (and which will see a follow-up project starting in autumn 2018), while the project achieved an impressive reduction in old enforcement cases clogging up the court system, a few stakeholders, including in national institutions and members of civil society, questioned whether EU taxpayer money should be spent on employing young people to physically tidy up Serbian courts. With regard to the Council of Europe Horizontal Facility, stakeholders involved in its implementation raised concerns about the heavy administrative structure, while at the same time pointing out that the actual activity funding available to work on specific thematic areas in the country was extremely limited. This is particularly an issue on those thematic strands of the Horizontal Facility where national institutions are seeking greater support, for example under the thematic area relating to the treatment of detainees and inmates.

Projects undergo regular ROM assessments. Staff of the EUD is also conducting frequent field visits to projects as well as numerous on-the-spot checks. However, the majority of external evaluations of IPA projects were conducted in the very beginning of the evaluation period, covering assistance provided prior to 2010/2011. This should be something to consider for the future - in terms of learning, as well as in terms of compiling an independently corroborated track record of results, or lack thereof. External evaluations could also counter the tendency of projects to report on outputs mainly, and less so on outcomes.

Most of the government reports on specific topics within the RoL sector make explicit reference to EU accession standards and requirements, which, by proxy, provides visibility to EU values and requirements in those sectors. Documentation on the specific projects viewed and overall stakeholder discussions suggest that EU visibility for technical assistance projects is not considered a concern in Serbia.

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination/ complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

During the evaluation period, donor coordination has undergone an evolution mainly determined by Serbia becoming an official candidate country and with accession negotiations officially open. Corresponding to this status, the Serbian Ministry for European Integration (previously the Serbian European Integration Office), and here specifically the Sector for Planning, Programming, Monitoring and Reporting on EU funds and Development Assistance, is formally in the lead on donor coordination, however, in practice, this coordination is problematic. There are eight specific sector working groups, including a RoL working group. However, informal donor coordination groups have not been replaced by this nationally-led framework, which is considered too formalistic and stiff to facilitate genuine and substantive debate and coordination. Despite the prerogative (as laid out in the OECD Paris Declaration) of the government formally leading on donor coordination, donors have reported spending a considerable amount of time on coordination in order to get issues resolved.

### 2.3.2 Partnerships established at global level (JC41)

This JC is examined in the overall analysis.

### 2.3.3 Coordination with EU MS other donors at country level (JC42)

During the evaluation period, donor coordination has undergone an evolution mainly determined by Serbia becoming an official candidate country. With accession negotiations officially open, there is an increased expectation that ownership for IPA funds would be assumed by the Serbian authorities. As described elsewhere in the report, the coordination structures for the EU accession process including IPA funds are complex and multi-layered. The Serbian Ministry for European Integration (previously the Serbian European Integration Office), and here specifically the Sector for Planning, Programming, Monitoring and Reporting on EU funds and Development Assistance, is in the lead on donor

coordination. There are eight specific sector working groups, also guided by the Ministry for European Integration; the working groups are also responsible for donor coordination. Line ministries are responsible for assistance needs in their respective sectors. This framework has been in place since 2014, and it was expected that it would replace informal donor coordination groups. However, the framework is considered too formalistic and stiff to facilitate genuine debate and coordination. Donors and international organisations interviewed have reported spending a considerable amount of time on coordination. As one stakeholder representing one of the main donors in the area of rule of law pointed out: “*Donor coordination is a job in itself.*”

### 3 Effects of the EU support to RoL

#### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy/ strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion / minority rights / gender) and democracy issues into partner countries' RoL policy</b>

##### 3.1.1 Summary of key findings (EQ5)

Since the early stages of the accession process, various EU strategic documents (as well as third party reports) have attested that the country's legal framework is broadly in line with international rule of law and human rights standards. However, ongoing concerns have been raised with regard to their implementation in practice, including in consecutive EU Progress Reports. Overall, EU supported interventions have considerably contributed to the alignment of the legal framework with European standards.

Rule of law reforms have been driven by the EU accession agenda, either through projects or through the accession requirements, in particular the provisions stipulated in Chapters 23 and 24, and which provide the framework for reform. The 2018 EU Progress report noted that Serbia had not yet introduced constitutional changes. This is reflected by the changes put forward by the Serbian government in April 2018 for opinion by the Council of Europe's Venice Commission, that were found, in June 2018, not to comply with European standards on the independence of the judiciary. As a reaction, the Venice Commission made a number of recommendations for Serbia to meet the objective of being in line with European standards.<sup>14</sup> The following government-sponsored draft (revised version) which was submitted to the Venice Commission in September 2018, was then found to fully comply with all the recommendations of the June Opinion.

The Serbian policy and strategic framework for rule of law is in place, with consecutive Justice Sector Reform Strategies in existence over the evaluation period, as well as a number of "satellite" strategies drafted in the second half of that period, for example, the gender equality strategy of 2016 and the Strategy for Social Inclusion of Roma 2016-2020.

In other areas, strategies have not been updated, including, for instance, the 2014-2018 Anti-Discrimination Strategy; the National Action Plan for Children; the Civil Society Development Strategy; as well as the National Strategy and Action Plan for Combating Violence against Women. In general, stakeholders, including national institutions, beneficiaries, and civil society, have raised concerns over the overall quality of the strategies, including their lack of cost estimates associated with reform measures, as well as a general lack of resources for implementation.

##### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)

Rule of law reforms have been driven by the EU accession agenda, either through projects or through the accession requirements, in particular the provisions stipulated in Chapters 23 and 24, and which provide the framework for reform. The 2018 EU Progress report noted that Serbia had not yet introduced constitutional changes.

In the action plan for Chapter 23, Serbia committed itself to review its Constitution in the light of European standards on the independence and accountability of the judiciary. In spring 2017, a public call for the submission of possible amendments to the Constitution was launched. 15 Civil Society Organisations (CSOs) submitted their contributions. The Ministry of Justice (MoJ) organised a series of 5 roundtables during the summer and autumn of 2017. Several organisations and professional associations withdrew from the debates, reasoning, *inter alia*, that they were not based on a draft text. In January 2018, after receiving expert assistance on previous Venice Commission (VC) Opinions provided by a former VC member, the MoJ published a first draft on its webpage. In March 2018 a number of stakeholder meetings were organised to discuss the draft text. In April 2018, the MoJ submitted a revised version of the constitutional amendments to the European Commission for

Democracy through Law (Venice Commission) of the Council of Europe following a public presentation and its adoption by the Government.

The changes put forward in April 2018 by the Serbian government for opinion by the Council of Europe's Venice Commission were found, in June 2018, not to comply with European standards on the independence of the judiciary, and the Venice Commission made a number of recommendations for Serbia to meet the objective of being in line with European standards.<sup>15</sup> The VC adopted its Opinion in June 2018. It made over 40 recommendations on 29 amendments including on the key provisions on the election of judges and prosecutors and the composition of the High Judicial Council (HJC) and the State Prosecutorial Council (SPC). On a number of draft amendments including on key provisions, the Opinion presented several options. In this light, relevant stakeholders requested to be closely involved in the further amendment process.

In early September 2018, the MoJ published a revised version of the draft constitutional amendments with the aim of taking into account all VC recommendations. On 18 September 2018, a public consultation took place with broad participation of the relevant associations and civil society and the VC Opinion as a reference document. Subsequently, the MoJ submitted an again revised version to the VC on 12 October 2018, also published on its website. The VC Secretariat issued a Memorandum on this revised version, concluding that "*the recommendations formulated by the Venice Commission in its [earlier] opinion were followed*". The VC plenary took note of this memorandum at its 19 October session. The 2018 EU Progress Report states that "*the legislative and institutional framework for upholding human rights is in place*". This includes the legal framework for respect for and protection of minorities and cultural rights, which is in line with the Framework Convention on National Minorities. However, there is room for improvement of the implementation of the legislation. Amendments to the Criminal Code adopted in November 2016 further improved the prohibition and punishment of racial and other discriminatory criminal acts. There have been efforts to draft and adopt a new Gender Equality Law, replacing the one from 2009. This has not, however, happened so far. The Criminal Code and the Law on Prevention of Domestic Violence are in line with the Istanbul Convention. A new Law on Juvenile Offenders and Protection of Minors in Criminal Proceedings has yet to be adopted. Serbia has ratified eight out of the nine core human rights treaties (excluding the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families). Serbia became an observer in the European Agency for Fundamental Rights in October 2018, which the EU considers to be an important step towards alignment with the *acquis* in the area of fundamental rights.

The 2007 project "Implementation in the area of Human Rights and Protection of Minority Groups" aimed to "implement European Partnership priorities in the field of human and minority rights; and to realise all obligations deriving from membership to the CoE, particularly with regard to the European Convention on Human Rights and Civic Freedoms and the Convention on the Prevention of Torture and Other Inhuman or Degrading Punishment or Treatment." As no implementation or end-of-project report is available for this action, it is not possible to ascertain what precisely was achieved. The IPA 2010 project "Strengthening Alternative Sanctions System in Serbia," implemented in 2011 – 2013," aimed to promote community safety, justice and the RoL with the purpose to strengthen the Alternative Sanction System. According to the 2015 Justice Sector action fiche, the project "has provided significant support to the Prison Administration", including an improvement of the legal framework on alternative sanctions. Under the 2013 Justice Sector action, a Twinning project on "Improving Capacities and Capabilities within the Prison System of Serbia" is underway and which makes specific references to the *acquis* as well as international standards pertaining to the prison system.

The Multi-Donor Trust Fund for Justice Sector Support, to which the EU stopped contributing in 2014, but with which the EU is still in close coordination, has as one of its main objectives the harmonisation of the Serbian legal system with the EU *acquis*. The 2015 Justice Sector action fiche mentions the IPA-funded "Policy and Legal Advice Centre (PLAC)", and the project's significance in contributing to legislative changes in line with European standards.

Legislative changes are still outstanding to regulate the treatment of persons detained in police custody and penalties for torture and ill-treatment remain inadequate. According to the 2018 EU Progress Report, "*a large number of recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment have yet to be applied. Proper legal safeguards to prevent torture and abuse in social institutions have yet to be adopted. No progress has been made towards de-institutionalisation, including of persons with mental disabilities and the*

<sup>15</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)011-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)011-e)

*elderly.*" The most recent June 2018 report by the CPT finds that ill-treatment by police officers is widespread.<sup>16</sup>

### 3.1.3 National RoL policy/strategic framework (JC52)

The Serbian policy and strategic framework for rule of law is in place. Since 2016, the overarching strategic framework for reforms are the Action Plans for Chapter 23<sup>17</sup> and Chapter 24,<sup>18</sup> respectively. These were drafted with assistance from donor technical assistance projects. For example, the Action Plan for Chapter 23 drew extensively on the findings of the first (2014) functional review of the Serbian judiciary conducted by the World Bank-led Multi-Donor Trust Fund for the Justice Sector Support, and of which the EU is a co-donor, through IPA 2011 funds. The Action Plan for Chapter 23 links the achievement of specific objectives to IPA projects, although overall, the costing of the various items in the plan is vague where funds are not coming from assistance projects.

Consecutive Justice Sector Reform Strategies have been in place over the evaluation period; the current strategy and a corresponding Action Plan cover the period from 2013 to 2018, and a new strategy is under development, with World Bank support – the World Bank is also going to conduct a repeat Functional Analysis; and the EU will support the revision of the Action Plan's chapter 23 for the forthcoming period. EU stakeholders have pointed out weaknesses in the quality of the current strategy and action plan, in particular in relation to the lack of indicators; the general nature of activities proposed (for example, various actions contain a general line on "implementation of law amendments", without clearly spelling out what this would entail); and the lack of any indication of costs for various activities.<sup>19</sup> The 2018 EU Progress Report states that "the commission overseeing the implementation of the **national judicial reform strategy** and its action plan (2013-2018) met infrequently in 2017, and the impact of the strategy's implementation is limited." The report also states that the strategy is in need of revision to take "*into account Serbia's new objectives and deadlines for the completion of accession negotiations and the resources available.*"

In the area of prison reform, there is a 2015 to 2020 Strategy for Further Development of [the] System of Enforcement of Criminal Sanctions in the Republic of Serbia. The implementation of other relevant strategies on fundamental rights has become part of the Chapter 23 and Chapter 24 Action Plans although they, in some cases, predate these. There is a 2014-2018 Anti-Discrimination Strategy,<sup>20</sup> which has expired, but there is no follow-up strategy in preparation. On the Action Plan for the Implementation of Rights of National Minorities,<sup>21</sup> the 2018 EU Progress Report notes that the implementation of this Action Plan must be sped up. A National Strategy and Action Plan for Combating Violence against Women expired in 2015 and thus far, has not been replaced by a new strategic framework. Similarly, the 2004 National Plan of Action for Children expired in 2015 and has not been replaced with a new plan; there is a National Council for Child Rights, the functioning of which has been problematic.

Serbia is party to the UN Convention on the Rights of Persons with Disabilities (CRPD) and was reviewed in April 2016 by the UN Committee on the Rights of Persons with Disabilities. The adoption of a strategic framework on disability is still pending. However, little progress has taken place on the rights of persons with disabilities, and concerns exist in particular as regards access to services, employment and education. Placement and treatment in social institutions of people with psychosocial and intellectual disabilities is still not regulated in accordance with international standards.

Roma rights have been a specific area of attention, and there is a Strategy and Action Plan for Social Inclusion of Roma 2016-2025. A National Strategy for an Enabling Environment for Civil Society Development 2015-2019 exists in draft form, but has not been adopted. There is a 2016-2020 Gender Equality Strategy,<sup>22</sup> one of the first in the Western Balkans region.

<sup>16</sup> <https://rm.coe.int/16808b5ee7>

<sup>17</sup> English version of the Chapter 23 Action Plan at <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>

<sup>18</sup> See English version of the Chapter 24 Action Plan at [http://www.bezbednost.org/upload/document/akcioni\\_plan\\_za\\_poglavlje\\_24\\_-\\_mart\\_2016\\_.pdf](http://www.bezbednost.org/upload/document/akcioni_plan_za_poglavlje_24_-_mart_2016_.pdf)

<sup>19</sup> See English version of the Justice Sector Reform Strategy's Action Plan 2013-2018 at [https://www.mpravde.gov.rs/files/NSRJ\\_2013%20to%202018\\_Action%20Plan\\_Eng%202.1.pdf](https://www.mpravde.gov.rs/files/NSRJ_2013%20to%202018_Action%20Plan_Eng%202.1.pdf) (accessed 25 August 2018)

<sup>20</sup> <http://www.ljudskaprava.gov.rs/sr/node/145>

<sup>21</sup> [http://www.ljudskaprava.gov.rs/sites/default/files/prilog\\_fajl/akcioni\\_plan\\_za\\_sprovođenje\\_prava\\_nacionalnih\\_manjina\\_-\\_sa\\_semaforum.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/prilog_fajl/akcioni_plan_za_sprovođenje_prava_nacionalnih_manjina_-_sa_semaforum.pdf)

<sup>22</sup> <http://socijalnoukljucivanje.gov.rs/en/the-national-strategy-for-gender-equality-until-2020-adopted/>

### 3.1.4 Integration of HR and democracy issues (JC53)

According to numerous expert reports, including the 2017 report of the Helsinki Committee for Human Rights in Serbia (see also JC82), there is a deterioration overall of human rights and democracy in Serbia. While the evaluation has been able to corroborate project results with beneficiaries and third-party stakeholders, the key question relates to their sustainability against an overall worsening climate for human rights institutions and civil society groups monitoring the adherence to fundamental rights and freedoms.

According to the 2018 EU Progress Report, *“the legal framework on fundamental rights is mostly in place but remains incomplete and its implementation inconsistent.”*

The project in support of the then Agency for Human Rights and Minority Rights (CRIS 2007/19322) aimed at “Implementation of Priorities in the area of Human Rights and Protection of National Minority Groups”. Its specific objectives were to implement European Partnership priorities in the field of human and minority rights; to assist the country to fulfil all obligations deriving from membership in the CoE and specifically those emanating from the ECHR and the CPT. Stakeholders from the Agency interviewed for the evaluation were able to corroborate capacity and institution-building results of the assistance received, and which they describe as pivotal. Outside stakeholders report that the capacity of the now Office for Human and Minority Rights to report on compliance with international obligations has considerably increased over the years. One of the project partners of the Agency in the twinning project was the Serbian Office of the Protector of Equality, but institutional memory in the agency appears to be more blurred as to the specific results for the institution.

A project “Strengthening of the Ombudsman’s Office” aimed at “creating the environment for further democratisation of society, promotion of the principles of the RoL, human rights and good governance through more efficient control of the legality in the work of public administrative bodies.” Specifically, the project helped to create an Ombudsman’s office in line with the standards of the European Ombudsman. While there is no end-of-project report on file for this project, information is available on the status of the Ombudsman’s Office, which does comply with the European standards. Stakeholders from the Ombudsman’s Office directly credit EU assistance for institution building, and described the support as pivotal. Lasting results, from the perspective of the direct beneficiaries of the action, include the establishment of organisational structures; capacity building on reporting on international commitments; capacity building on work with individual complainants; and public relations and communications assistance. As described elsewhere in the report, independent human rights institutions have seen a marginalisation in recent years. While visibility of the Ombudsman’s Office, for example, has been high in previous years (through discussions of the Office’s annual reports in parliament, and coverage in the media), local stakeholders have highlighted a change in this respect over the past years. There are also concerns with regards to the appointments to these offices (which include the Commissioner for the Protection of Equality; and the Ombudsman, which these stakeholders have reported to being determined by political party affiliations rather than being based on merit).

## 3.2 Quality / efficiency of justice systems (EQ6)

EQ6	To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?
JC61	Justice system planning and budgeting improved
JC62	Infrastructures and equipment (e.g. facilities, IT systems) improved
JC63	Capacities, skills and procedures in key RoL entities improved
JC64	Legality ensured, harmonisation of domestic law with international law and jurisprudence promoted, and enforcement of international judgments improved

### 3.2.1 Summary of key findings (EQ6)

There has been only modest progress across the areas covered by this EQ - not because of a lack of results of technical assistance projects, but because there is general reluctance at the political level as well as among stakeholders in the judiciary to advance fundamental reforms. In other words, while EU projects have provided Serbian counterparts with numerous technical solutions, the issues to be resolved are political and require decision-making at that level. This is currently missing.

With regard to justice system planning and budgeting, EU support has been provided through technical assistance projects, but this has not yet led to the High Judicial Council being able to assume budget responsibilities. While this is a provision in the Chapter 23 Action Plan (1.1.4.4.), there is as yet no constitutional basis for such responsibilities; however, the Venice Commission’s most

recent, June 2018, opinion made a strong suggestion to include such a provision. The Law on the Organisation of Courts foresaw that budget competences would be transferred from the Ministry of Justice to the HJC by 2017; however, this has been postponed three times and is now anticipated to happen at the beginning of 2019. While many stakeholders, including within the government itself, posited that there is insufficient capacity of the HJC to manage its own budget, others suggested that without transferring such responsibility to the institution, this capacity will not develop on its own.

Infrastructure and equipment support is a popular form of assistance in Serbia. For example, from the interventions in the portfolio, assistance for physical reconstruction was provided to the Judicial Academy and the basic court in Kraljevo. Several EU technical assistance projects have developed IT solutions aimed at increasing the efficiency of the court system, such as case management systems; however, uptake has been slow. A recently concluded British Council-led project developed a case assignment system - a weighting algorithm that would assign cases in accordance with the anticipated time to process them and take into account the existing workload of judges. Across the range of stakeholders consulted for the evaluation, there has been consensus that this solution will not be taken up by the courts. While potentially increasing accountability and efficiency of the courts, stakeholders from the system perceived it to interfere with the principle of judicial independence. While not an infrastructure project as such, the British Council-led project also contributed to the clearing of a very substantial backlog (around 1 Million cases at the time of writing this report) of enforcement cases that had clogged the civil court system in Serbia. This was a welcome project, but some local stakeholders, including beneficiaries and civil society, have questioned whether EU-funding should go to the physical tidying up of courts in Serbia; scepticism also related to the sustainability of the results.

IPA assistance contributed to building the capacities of key rule of law entities. These include the Ministry of Justice (including the Ministry's Administration for the Enforcement of Penal Sanctions), the High Judicial Council, the Judicial Academy, and the High Court of Cassation; as well as institutions concerned with the implementation of the legal and strategic human rights framework such as the Office for Human and Minority Rights and the Ombudsperson's Office. Pinpointing what capacities have improved as a specific result of EU support is complicated by several factors. The rule of law donor landscape in Serbia is dense, making attribution difficult. Also, there is currently a partial freeze on public sector employment (due to Serbia's standby arrangement with the IMF). This means that there is a shortage of staff in many institutions, and that EU technical assistance projects serve to fill gaps, so that, when projects close, it is not clear if that work will be taken forward by the institutions.

Projects funded through different instruments have assisted the harmonisation of domestic law with international law and jurisprudence. A recently completed project, implemented by the British Council, has worked through various activity strands on the the improvement and unification of case law among Serbian courts and a harmonisation of the case law with European standards, including through the development of methodologies and trainings and the creation of a case law database that should be available to judges and court staff, as well as the public. The Council of Europe's Horizontal Facility too is working to build capacities of the legal profession to apply ECtHR case law in Serbia.

### 3.2.2 Justice system planning and budgeting improved (JC61)

The latest CEPEJ evaluation report for Serbia is from 2013 and is likely outdated. It is therefore not possible to provide an adequate picture of trends at this stage. According to the EU 2018 Progress Report, the 2018 budget for the judiciary is EUR 254.7 million (0.73% of GDP), an increase on the 2017 budget (EUR 234.6 million and 0.67% of GDP). Most of the budget is spent on salaries, therefore there is insufficient funding for capital investments and judicial infrastructure. In 2017, the total budget for the courts was EUR 25 per inhabitant (2016: EUR 24) and the total budget for prosecution offices was EUR 5.4 per inhabitant (2016: EUR 5.3). The Multi-Donor Trust Fund for Justice Sector Support in Serbia (MDTFJSS) Functional Review in 2014 remarked that the judiciary lacked a performance management framework across the sector.

The 2018 EU Progress Report points out that Serbia needs to “ensure that the High Judicial Council and the State Prosecutorial Council can fully assume their role and achieve a coherent and efficient judicial administration in line with European standards, including regarding the management of the judicial budget” suggesting limited progress to date. A transfer of the budget responsibilities from the Ministry of Justice to the High Council of Justice is part of the Chapter 23 Action Plan (1.1.4.4.). EU support through IPA 2013 - a twinning on “Strengthening Capacities of the High Judicial and State Prosecutorial Council” - has worked to “strengthen the independence, efficiency, competence and accountability of the judicial system by building capacities of the High Judicial Council and State Prosecutorial Council in order to ensure efficient exercise of their jurisdiction.” The project has provided needs and gaps assessments for the HJC's assumption of functions in line with European standards and the requirements stemming from the accession process. Assessments and expertise were provided in, among other areas, strategic and capacity building of the HJC and budget planning and internal audit. A recommendation from the project concerned the need for the HJC to be in charge

of setting the budget for remuneration of judges and staff employed in the administration of justice, as well as the expenditures for the operation of the courts. Despite technical assistance efforts and the requirements under Chapter 23, the transfer of the responsibility for the judiciary budget, foreseen in the Law on the Organisation of Courts to be completed by 2017, has been postponed three times, and is now set for 1 January 2019. Arguments put forward against a transfer to the HJC include the lack of a constitutional basis for such an arrangement. However, the recent opinion of the Venice Commission has recommended that this be covered as part of the upcoming re-drafting of amendments to the Constitution. Other arguments claim that lack of HJC capacity to manage the budget as the main reason why there is a lack of progress. However, a few stakeholders, and notably civil society representatives, have pointed out that such capacity can only be built credibly if the HJC actually assumes this responsibility; in any case, the capacity will not emerge in the current set up.

### 3.2.3 Infrastructures and equipment improved (JC62)

The 2018 EU Progress Report notes that *“the judiciary continues to rely on unlinked information and communication technology (ICT) systems to process and manage cases and documents. Serbia is therefore not yet in a position to produce comprehensive statistical data that would facilitate measurement of the system’s performance and help improve management and policy decisions. An automatic case allocation system, based on objective and pre-determined criteria and with proper technological support, is not yet in place for all courts. [...] The ICT Council adopted general guidelines and a decision on the strategic orientation for the development of a case management system for the prosecution service and the prison administration. A roadmap of how to link the different systems was drafted. A better overall strategic vision and plan for ICT solutions in the judicial and prosecution networks is needed.”*

EU support to infrastructures and IT has been considerable. Even in the early stages of the pre-accession process, projects have supported the introduction, on a pilot basis to a very limited number of courts, 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 backlog of old cases, as well as by improving the access of the public to judicial proceedings and statistics.<sup>23</sup> There have, also since the early phases of the pre-accession process, been numerous projects 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). Such projects financed modernisation of court infrastructure and IT systems, including for the Belgrade District Court and five municipal courts in Belgrade; the five biggest provincial district courts and municipal courts in Nis, Novi Sad, Kragujevac and Sremska Mitrovica; as well as numerous provincial District Courts and municipal courts. EU support refurbished the biggest court room in the Belgrade District Court. Support also covered the development of a Legal Database containing all civil, criminal, and commercial legislation.

Under IPA 2007, EU technical assistance funded the development of a unified information system for the judiciary, SAPS, with the objective of increasing its efficiency and transparency. The 2013 end-of-project report finds that at the completion of the project, SAPS was being used to a very limited extent, also because it had not been introduced nation-wide, but rather on a pilot basis. A recently concluded British Council-led project developed a case weighting system - an algorithm that would assign cases in accordance with the time likely required to process them and taking into account the existing workload of judges. Other donors have reported similar attempts at developing such a system in previous years, without success. Across the range of stakeholders consulted for the evaluation, there has been consensus that the solution developed by the British Council would not be adopted by the courts. While potentially increasing accountability and efficiency of the courts, stakeholders from the system perceived it to interfere with the principle of judicial independence. There are, at present, unresolved problems with the roll out of the algorithm which is legally the responsibility of the HJC.

Several technical assistance projects have worked with the Ministry of Justice’s Administration for the Enforcement of Penal Sanctions. Under IPA 2007, a project in support of “Improving human rights protection and re-socialisation in institutions during the execution of penal sanctions in the Republic of Serbia” was implemented, and which provided infrastructure works to improve prison conditions for the inmates by constructing new and renovating existing accommodation facilities, according to European standards.

While not an infrastructure project as such, the British Council-led project also contributed to the clearing of a very substantial backlog (around 750,000+ cases) of old enforcement cases that has clogged the civil court system in Serbia. This was a project that was very welcome by stakeholders

<sup>23</sup> For example, the project “Improve Efficiency and Transparency of the Judicial system”, CRIS 2007/19322, which introduced SENA Case Management Software, and which does not seem to be in use.

from the judiciary. While the clearance rate for the project is impressive, many local stakeholders have questioned whether EU-funding should go to the physical tidying up of courts in Serbia. Some local stakeholders, and in particular members of civil society, have also argued that the popularity of this segment of the project's activities among judiciary stakeholders is, to a large extent, due to the fact that it has been non-political - it did not require any systemic reforms, nor did it threaten the status quo of any part of the existing system.

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

IPA assistance contributed to building the capacities of key rule of law entities. These include the Ministry of Justice (including the Ministry's Administration for the Enforcement of Penal Sanctions), the High Judicial Council, the Judicial Academy, and the High Court of Cassation; as well as institutions concerned with the implementation of the legal and strategic human rights framework, such as the Office for Human and Minority Rights; and the Ombudsman's Office.

Pinpointing what capacities have improved as a specific result of EU technical assistance is complicated by several factors - the rule of law donor landscape in Serbia is dense, making attribution difficult. Also, as part of Serbia's standby arrangement with the IMF, there is currently a partial freeze on public sector employment. This means that there is a shortage of staff in many institutions, and that EU technical assistance projects serve to fill gaps; as a result of which, when projects close, work may not be taken forward by the institutions.

As highlighted elsewhere in the report, the Office for Human and Minority Rights was able to pinpoint the importance of the capacity building provided through the IPA 2007 Programme "Implementation of Priorities in the Area of Human Rights and Protection of Minority Rights," which aimed at strengthening the Office's capacity to coordinate, implement, monitor and evaluate Serbia's human rights framework. The Office is in charge of reporting on the fulfilment of its obligations as part of its obligations under Council of Europe and UN treaties and instruments, and involved stakeholders have attested that the quality of the reporting has increased over the evaluation period. With regard to the Ombudsman's Office, and as also already highlighted previously, the institution has found the technical assistance provided through the programme "Support to Strengthening of the Ombudsman's Office" under IPA 2007 crucial for its institutional capacity building, including for its A-rated accreditation under the Paris Principles. The Ombudsman (its Serbian title translates as "Protector of Citizens") has, over the years, developed a recognisable public profile, and the report of his Office were formerly debated in Parliament. However, as already mentioned, since 2012, there has been a political marginalisation of independent human rights oversight bodies. Stakeholders from the Ombudsman's Office, as well as from the Equality Commissioner (another independent human rights institution which had partnered with the Office for Human and Minority Rights in the above-mentioned project) report that, while they have institutional capacity to operate, they have no budget to run project-type activities, such as for educational and awareness raising activities in the regions, that would fall under their mandate. The preference for both institutions is to seek funding from bilateral donors, given the resources required to administer IPA-funded activities. Several technical assistance projects have worked with the Judicial Academy throughout the evaluation period and prior to it. The 2018 EU Progress reports finds that *"the initial and continuous training programmes provided by the Judicial Academy need to be improved in terms of quality, and better respond to training needs by, for example, focusing on judicial skills. [...] There is a need to ensure the academy's capacity to become a proper entry point to the judicial profession."* (pp.15)

The IPA 2007/19322 project on a "Standardised System for Judiciary Education and Training" sought to strengthen the efficiency and transparency of courts and prosecutorial offices through appropriate training provided by the Judicial Academy for lawyers that are entering the judicial professions, based on European standards and criteria, as well as through establishment of continuous training for judges and prosecutors. No end-of-project reports are on file that could provide insight into results achieved and challenges faced. However, the above statement from the 2018 EU Progress Report suggests that results have been limited. Under the 2013 Justice Sector action, a separate project, "Enhancing Educational Activities and Improvement of Organisational Capacities of the Judicial Academy," implemented by a British Council-led consortium, was winding down at the time of the in-country work of the evaluation. This aimed at enhancing "educational activities of the judicial academy in order to improve efficiency and effectiveness of trainings" and improving the "functioning of the new structures within new competences of the Judicial Academy". The Council of Europe-led Horizontal Facility, too, is working with the Judicial Academy (see below, JC 64).

It is difficult to assess what the cumulative effect of the technical assistance to the Judicial Academy has been over the years due to the fact that the EU is one of many of its donors and in view of the needs for improvement stated in the EU Progress Report. An overarching concern is the existing dual system of recruitment and appointment of new judges and prosecutors, which affects the operation of the Academy regardless of the technical assistance it receives. While the Judicial Academy would like

to become the single entry point for judicial recruitment or appointment, such a model faces opposition from the legal profession, which maintains that judicial assistants in courts should also be eligible for appointment as judges, without having to pass Judicial Academy training. A briefing note from the above-mentioned British Council project quotes that between 2015 and 2017, only 10.7% of the newly appointed judges and deputy prosecutors at first instance level were Judicial Academy graduates. For the same period, 76% of Judicial Academy graduates had not yet received appointments. The recent opinion of the Venice Commission provides comments on the proposed amendments relating to the status of the Judicial Academy. While the VC does not object to the concept of the Academy becoming the single entry point for recruitment and appointment, there is need to ensure that the Academy is free of political interference - something that is not guaranteed with the current set up. In any case, considerable technical assistance has been provided for an institution whose status appears to be disputed at this point, the effectiveness of which is therefore limited until a more systemic solution, which requires political will, is found.

Several technical assistance projects have worked with the Ministry of Justice's Administration for the Enforcement of Penal Sanctions (AEPS). In addition to the above mentioned IPA 2007 infrastructure project, under IPA 2010, a project implemented by GIZ aimed at "Strengthening the Alternative Sanctions System," building on results achieved by previous technical assistance projects including by those financed by bilateral donors. With a view to capacity building, the project reports on the availability of an electronic monitoring system and the increase in the use of alternative sanctions in Serbia. By 2014, additional staff had been recruited to the AEPS, including to deal with the administration of alternative sanctions. A management training module had been developed to support the expansion of the alternative sanctions system, and there has been an emphasis on the promotion of Council of Europe Probation Rules. While the project undoubtedly increased the capacity of the AEPS, it also conceded, at the closure of the project activities, that there were insufficient resources available to fully take the recommendations stemming from the project forward. The number of staff working on alternative sanctions would have to rise to around 200 in order for the system to work properly - something that is unlikely given the above-mentioned freeze on staff recruitment across the public sector in Serbia. Under IPA 2013, a twinning project "Improving Capacities and Capabilities within the Prison Sector" is currently working with the Training Centre for Vocational Education and Training of Prison Staff. There is an emphasis on increasing knowledge and skills for prison staff to deal with the most vulnerable groups of prisoners. A project under the Council of Europe Horizontal Facility, too, is working with AEPS under the "Enhancing human rights protection for detained and sentenced persons" action, which aims to work on issues highlighted by consecutive CPT reports and ECtHR judgements. The amount of funding available to the CoE for this action is modest compared to the needs in the sector, and, to ensure sustainability, there would have to be a more substantial, longer-term project to ensure that the capacities built thus far are retained. Regarding capacity building to the HJC, see above under JC 62.

### **3.2.5 Harmonisation of domestic law with international law (JC64)**

The British Council-implemented 2013 IPA project on "Support to the Judicial Academy" contained a significant component to ensure that judiciary stakeholders, as well as the public, have easier access to the case law of the European Court of Human rights, which would lead to the improvement and unification of the case law among Serbian courts and harmonisation of case law with European standards. The project analysed numerous cases relevant for Serbian judiciary, developed an application on the website of the Justice Academy to allow for cross-referencing of national laws and legal standards with ECtHR judgments, developed guidelines for the interpretation of relevant ECtHR legal concepts as well as a comprehensive Practical Guide through the Case Law of the ECtHR, and delivered a number of trainings and seminars on ECtHR case law. As the project just wound down at the time of the in-country data collection, it is difficult to have a clear picture on the user statistics for the application on the JA website at this point. However, local institutional stakeholders have confirmed the need for efforts in this area. The most recent opinion of the Venice Commission has raised concerns about potential methods discussed in connection with the draft constitutional amendments where they relate to legal certainty and the uniform application of the law.

The Council of Europe-implemented Horizontal Facility's component on "Supporting effective remedies and mutual legal assistance" also worked with the JA on the development of the "capacity of the JA to support legal professionals in addressing systemic human rights violations" as well as on "developing the capacities of legal professionals, including judges, prosecutors, lawyers and legal assistants, to apply the provisions of the European Convention on Human Rights and the case law of the European Court of Human Rights."

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence/impartiality/accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence/impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of RoL institutions is enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

EU technical assistance has assisted the establishment and capacity building of the institution of the Ombudsman. Third party reports confirm that the institution has considerable capacities to carry out its mandate; however, numerous sources also suggest that its significance and impact has decreased in the past years in that there appears to be a tendency to marginalise the institution (as well as other independent oversight institutions reporting to parliament). With regard to the independence, impartiality and accountability of the judiciary, the cumulative effect of technical assistance efforts is uncertain, given the lack of profound systemic changes, and for which the ground would need to be laid by constitutional reforms first, which would need strong political support and will for reform in the judiciary itself. Technical assistance projects' remit of influence is ring-fenced—they cannot be held responsible for the lack of political will to advance reforms.

#### 3.3.2 Independence / impartiality of RoL institutions (JC71)

EU technical assistance has supported the establishment and the capacity building of the institution of the Ombudsman. Stakeholders from within the institution and third party reports confirm that the institution has considerable capacities to carry out its mandate; however, numerous sources also suggest that its significance and impact has decreased in the past years, in that there appears to be a tendency to marginalise the institution (as well as other independent oversight institutions reporting to parliament). Other concerns relate to the appointment of a new Ombudsman on party political lines, and which would seem to further decrease the independence of the institution.

Serbia has had consecutive justice sector reforms. The main results of the 2006-2011 National Judicial Reform Strategy were the adoption of a package of legislation governing the justice sector; the establishment of a High Judicial Council and its authorities to safeguard the independence of the judiciary. The current Judicial Reform Strategy covers the period from 2013 to 2018. The Strategy and an Action Plan on implementation of chapter 23 are broadly aligned, but the Strategy's impact is limited, according to the 2018 EU Progress Report, which also suggest that the country make *“significant progress on strengthening the independence of the judiciary [...] through amendments to constitutional and legislative provisions related to appointment, career management and disciplinary proceedings of judges and prosecutors”*.

According to the 2018 EU Progress Report, *“little progress has been made in establishing a fully objective, transparent and merit-based system for the appointment of judges and prosecutors. Any future constitutional or legislative changes in this regard should be designed and implemented on the basis of European standards, and the current two-track system of access to the judicial professions should be gradually streamlined. In addition, the broad discretionary powers of court presidents and heads of prosecution offices over the work of individual judges and deputy prosecutors, respectively could affect their independence and impartiality.”*

The capacity of the HJC has increased (see also above at JC 61), but the transfer of budgetary responsibilities to the institution has been delayed repeatedly, as discussed above. Overall, given the concerns raised in the most recent opinion by the Venice Commission, there seems to be a considerable road ahead to establish the constitutional and legal framework that ensures independence and impartiality of the judiciary institutions. See also the above section summarising the opinion of the VC. Appropriate constitutional amendments will, however, be only the first step, and further reforms will have to follow, which require political will and support from inside the judiciary.

#### 3.3.3 Accountability of RoL institutions (JC72)

The 2018 EU Progress Reports notes the limited *“track records in the enforcement of disciplinary accountability and of the codes of ethics for judges and prosecutors [...] While the State Prosecutorial Council's Ethics Committee reviewed the code in the light of European standards, the High Judicial Council has yet to do this. Disciplinary procedures are in place for both judges and prosecutors. An analysis of the legal framework and practice regarding disciplinary matters is ongoing. [...] Judges and prosecutors have an obligation to declare their assets on an annual basis and to report possible conflicts of interest. Mechanisms to detect breaches of integrity rules and to enforce disciplinary*

*penalties need to become effective. Public awareness of existing complaint mechanisms should be further raised and it should be made possible to challenge the dismissal of complaints before the two Councils. Relevant decisions by Councils need to be justified better, and a case-law developed.”* (EU Progress Report 2018)

As described elsewhere in this report, technical assistance projects have worked on transparency and accountability aspects in the judiciary, such as the the introduction of a weighted case-load analysis and allocation system (British Council project), or the introduction of IT solutions to manage court data through an IPA 2007 project which remain, however, not implemented.

As highlighted elsewhere in this report, the legal framework underpinning human rights in Serbia has been in compliance with international standards since the early stages of the pre-accession process. At the institutional level, there are a number of independent state bodies reporting, at least in principle, to the National Assembly/Parliament, in charge of different aspects of human rights. These institutions have, according to the 2016 report by the Serbian Helsinki Committee for Human Rights, achieved a very high level of effectiveness and visibility. However, the report also notes—an observation shared by consecutive EU Progress Reports - that these institutions are becoming increasingly marginalised. For example, the National Assembly has not heard in plenary session any report from any of the state bodies since 2014. Media coverage of the reports and opinions issued by these bodies was intense between 2011 and 2014, but this has declined steadily since. When there are high level vacancies, there is often no urgency in finding replacements for these positions. And in the case of the Republic Election Commission, there have been widespread reports of political bias of the Commissioner, specifically in the context of the 2017 parliamentary elections.

The Ombudsman’s Office serves as the national preventive mechanism for the prevention of torture and ill-treatment. There is an official methodology for investigations into allegations of torture and other forms of ill-treatment. However, the most recent CPT report finds that ill-treatment by police officers is widespread, and that there needs to be systematic investigations on any reports of ill-treatment received in order to address this practice.

EU support, even in the early stages of the pre-accession process, has sought to increase the capacity of consecutive national human rights institutions (the Agency for Human and Minority Rights and the Ombudsman office). Reports (see above) suggest a considerable level of capacity and professionalism of these institutions, yet their performance is being undermined by an increasing lack of political support, as well as decreasing budgets, something that is corroborated by numerous reports, including the latest 2018 EU Progress Report.

### 3.4 Broader effects on the RoL (EQ8)

EQ8	To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?
JC81	Access to justice strengthened
JC82	Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened
JC83	Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved

#### 3.4.1 Summary of key findings (EQ8)

A contribution has been made by IPA funding through the British Council-led “Judicial Efficiency” project, to the clearing of a very substantial number of court cases related to utility bills. For other JC’s under this EQ, it is more difficult to ascertain the specific contributions made by EU support as represented in the portfolio of projects assessed, and with view to the fact that third party reports consistently point to a downward trajectory with regards to many of the parameters in the JCs.

#### 3.4.2 Access to justice strengthened (JC81)

The Multi-Donor Trust Fund for Justice Sector Support in Serbia (MDTFJSS), of which the EU is a member, conducted a Judicial Functional Review in 2014.<sup>24</sup> The findings of the review were to inform the roadmap for justice sector reform in relation to chapters 23 and 24 of the accession negotiations. The review found that overall, the system suffered from considerable shortcomings on various vectors, and that, overall, the system performed worse than it should have, given the reform steps undertaken

<sup>24</sup> [http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review#.Wt3QQ7GZM\\_U](http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review#.Wt3QQ7GZM_U)

up to that point (see above): “*in recent years, one could reasonably have expected the judicial system to have performed much better than it has [...]*”.

However, some aspects of judicial performance had improved by the time of the 2014 review. This concerned the first instance processing of civil and commercial cases. The case disposition in civil and commercial litigation was considered “reasonable” and in line with EU averages (Functional Review, pp. 16). The time to disposition resolved cases depends on the court type – cases in the Higher Court take 98 days on average, but in Basic Courts, the time is 736 days.

There is excessive variation across courts in terms of service delivery, undermining access to justice and uniformity in the application of law (Functional Review, pp. 4). The review found court and attorney fees too high, representing the single biggest barrier to access to justice services and also negatively affected the business climate, as in particular small enterprises struggled to access courts because of the high court and attorney fees. There is a possibility for court fee waivers for the poor, however, there is no uniform implementation, with clear impact on the poor’s access to justice.

**Legal aid programmes** are available, but there is an incomplete network of services covering all of Serbia. The main providers of legal aid are the Municipal Legal Aid Centers (covering around one third of Serbia geographically, and around half the population). In 2014, reforms were conducted to bring the legal aid system in line with European standards, both in terms of the provision of primary and secondary legal aid for the poor and vulnerable groups. The MDTFJSS assessed in 2014 that the reforms risked being unsuccessful if the budgetary implications were not more seriously considered. It also assessed that there was a lack of focus on primary legal aid in favour of secondary legal aid (representation) to be provided by attorneys. Information delivered by Serbia to CEPEJ in 2014 indicates that the Ministry of Justice is not able to provide information on the budget for legal aid in the country. In the same report, the Ministry of Justice was not able to present any data on the number of instances in which legal aid had been granted. Local stakeholders interviewed for the purposes of the evaluation in June 2018, and in particular members of civil society, have highlighted threats posed by recent attempts to change the legislation that governs free legal aid, and which would considerably limit the range of stakeholders that can provide free primary legal aid (under the draft, only advocates would be allowed to provide such aid). NGOs that have been involved in the provision of free legal aid so far report having received threatening letters from the Chamber of Advocates demanding that they suspend such activities.<sup>25</sup> A free legal aid law was adopted in November 2018.

**Alternative Dispute Resolution:** According to all stakeholders consulted related to this topic, including beneficiary institutions and civil society, ADR has not been a success story, and there is little awareness on mediation among the legal profession and service users. MDTFJSS suggested that there be a significant outreach to potential court users as well as intensive training for the legal profession. The 2018 EU Progress Report states that very little progress had been made on ADR, although awareness raising work had increased somewhat. A follow up project to the British Council-led “Judicial Efficiency” project will focus on ADR, and one of the new project’s main stakeholders, the High Cassation Court indicated that there is greater prospect for reform on ADR now.

**Backlogs:** The 2014 MDTFJSS review considered the backlog of cases was too high, in particular as the system was choked with enforcement cases, which represented, in 2014, a specific problem. Unpaid utility bills represented 80% of the entire backlog. By 2018 (EU Progress Report), significant progress had been made in the clearing of the cases backlog. The 2018 EU Progress Report states that “With significant EU assistance” (by the British Council-led “Judicial Efficiency” project), the total backlog of all cases was cut sharply in 2016 as 1,068,063 cases were resolved: 895,184 enforcement cases, most of them (878,576) basic courts cases. However, in 2017, in the absence of follow-up systematic measures, significantly fewer old cases were resolved – 495,708, out of which 310,990 were enforcement cases. At the end of 2017, the number of all pending court cases in Serbia was 1,911,086, out of which 1,118,201 were regular cases and 792,885 enforcement cases, mostly under the jurisdiction of Belgrade’s basic and misdemeanour courts. During 2017, all courts in Serbia completed 2,335,760 cases. In comparison with 2016, the total number of cases disposed in 2017 dropped. Although the overall clearance rate in 2017 dropped to 106.04% compared to 139.87% in 2016 the judicial system was still able to resolve more cases than received, even with less judges working in 2017.

In the framework of the 2014 MDTFJSS Functional Review of the Judiciary, a repeat survey was conducted on the “Perception of Judiciary Performance in Serbia 2009-2013”.<sup>26</sup> On most vectors captured in the survey, the perception of service providers and service users diverged – in general, representatives of the justice system perceived it to be more positive than those using it, with the

<sup>25</sup> <http://preugovor.org/Amandmani/1454/Komentari-i-predlozi-amandmana-na-Nacrt-zakona-o.shtml>

<sup>26</sup> <https://openknowledge.worldbank.org/bitstream/handle/10986/21711/94519.pdf?sequence=2&isAllowed=y>

exception of efficiency, which was mutually rated problematic. However, there was a generally positive trend with regard to the perceived quality of court services between 2009 and 2013, and service users perceived the justice system to have become more independent. Fairness and accessibility of the justice system was perceived as positive among the general public, however, this perception changed dramatically where respondents had actually had recent experience with courts.

### 3.4.3 Respect for human rights (JC82)

The 2009 Law on **Anti-Discrimination** was adopted in line with Directive 2000/43 EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and subsequently, the office of the Commissioner for the Protection of Equality (*Poverenik za Zastitu Ravnopravnosti*) was established. The Commissioner, who is chosen by the National Assembly, is an autonomous and independent state body, dealing with all types of discrimination. Several sources, including the most recent 2018 EU Progress Report on Serbia, as well as a 2017 report of the Helsinki Committee for Human Rights in Serbia highlight the marginalisation of independent bodies, including that of the Commissioner for the Protection of Equality, as well as the Commissioner for Information of Public Importance and the Protection of Data, the Ombudsman and others: regular reports of these bodies are not debated in plenary session of the National Assembly, and the reports are less likely to be covered in the media than a few years ago, when these then new bodies enjoyed a considerable level of visibility and effectiveness.<sup>27</sup>

There are three specific anti-discrimination laws: the Law on the Protection of Rights and Freedoms of National Minorities; the Law on Prevention of Discrimination against Persons with Disabilities; and the Law on Gender Equality. Anti-discrimination provisions can also be found in other legislation, including the Labour Law; the Law on Primary Education; etc. The Penal Code of Serbia stipulates offences relating to discrimination, including racial or religious hatred; offences committed on the basis of national or ethnic origin, gender, sexual orientation or gender identity.

**Gender policy and legislative framework:** Gender equality is guaranteed by the Serbian Constitution (Articles 21/3); the Constitution also allows for positive action to advance equality, including gender equality (Article 21/4). Serbia adopted a Gender Equality Law in 2009 (*Zakon o ravnopravnosti polova*). Gender equality is also part of other legal acts (see above); there is also a law on the Prevention of Domestic Violence (2009), set out to support and protect victims of such violence. In February 2018, a 3-year Victim Witness Support project under IPA 2016 started, and which has an overall financial envelop of EUR 1.5 million; the project is being implemented by OSCE. The project aims at all victims, including victims of domestic violence. It is anticipated that the project will help the national Working Group to draft a National Strategy on Victim support and an accompanying action plan. The design of the project has been informed by the WB MDTF JSS.

Serbia issued its first **Gender Equality** Index in 2016 (reflecting the situation as of 2014). In the report, which was published by the Serbian government's Coordination Body for Gender Equality and the Social Inclusion and Poverty Reduction Unit, the government's commitment to principles in key international frameworks is stressed, including the Beijing Declaration and Platform for Action; Convention on Elimination of All form of Discrimination Against Women (CEDAW); The UN Convention on the Political Rights of Women (1953); the International Covenant on Civil and Political Rights (1966) (articles 20 and 26); the International Covenant on Economic, Social and Cultural Rights (1966) (article 2); UN Resolution 1325 'Women, Peace and Security' (2000); The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

Over the evaluation period, two consecutive relevant government strategies have been or are in place. The National Strategy for Improvement of the Position of Women and Promotion of Gender Equality (2010-2015), which was considered to have been largely ineffective, has been followed by the National Strategy for Gender Equality 2016-2020, including an Action Plan. The current Strategy sets out three main objectives: change of gender patterns and improved culture of gender equality; increased gender equality between women and men through implementation of policies and measures of equal opportunities; gender mainstreaming of drafting, implementation and monitoring public policies.

Women representation on party candidates' lists has to be at least 33% in accordance with electoral legislation. However, Freedom House (2017) cites persisting problems with regards to women's position in the job market, as well as highlighting persistent concerns over the levels of domestic violence.

<sup>27</sup> <http://www.helsinki.org.rs/serbian/doc/izvestaj2016.pdf> (pp.17)

In terms of **LGBTI**, the 2009 Anti-Discrimination Law prohibits discrimination on the grounds of sexual orientation and gender identity. A 2012 change to the Penal Code introduced the concept of “hate crime”, including on the basis of sexual orientation and identity. However, attacks and threats against the LGBTI community are reported to often go unsolved (Freedom House 2017 Report; ILGA Europe – 2016 Annual Review of the Human Rights Situation of the LGBTI Community in Europe, pp. 146). A 2015 public opinion poll conducted by the National Democratic Institute (NDI) in partnership with other international NGOs found that 51% of members of the LGBTI community covered by the poll had experienced discrimination because of their sexual orientation (NDI 2015). But there are also reports of the government appearing to show more tolerant attitudes, which, in turn, has an influence on Serbian society as a whole (Freedom House 2017 Report; ILGA Europe). The 2010 Gay Pride saw violence from anti-gay rioters, leading to numerous injuries and over 100 arrests, and the 2011, 2012, 2013 and 2014 events were cancelled by the authorities citing security concerns. However, the event has been held without major incidents since 2014, and with police providing the necessary protection for demonstrators. In 2015, members of parliament attended the Gay Pride parade, and 2017, the Prime Minister - herself a member of the LGBTI community - attended the event.

**National minorities:** The 2018 EU Progress report repeated, as in previous years, that Roma belong to the most discriminated group in society.

**Freedom of expression:** The 2018 EU Progress report noted that “no progress was made on freedom of expression, a matter of increasing concern.” A 2016 report by the Serbian Helsinki Committee for Human Rights describes a downwards trend in media independence and deteriorating professionalism of journalists and media outlets. A considerable part of the media is considered to be politically controlled by the ruling party, and media is reported to being a key player in the public ostracisation of perceived political opponents. Freedom House (2017) reports the dismissal of several journalists from the public broadcaster in the Autonomous Region of Vojvodina, as a result of critical reporting on the 2017 parliamentary elections.

**Media freedom:** The 2018 EU Progress Report finds that there is a need for greater transparency of ownership and funding of media outlets. Political and economic influence over the media is a source of concern, confirmed by various sources (national and international). Freedom of assembly and association are guaranteed by the Constitution and generally respected. Legislation is also generally in line with European standards, but has yet to be aligned with the Guidelines on Freedom of Peaceful Assembly of ODIHR. Secondary legislation necessary for full implementation of the law on freedom of assembly has not been adopted. However, local civil society stakeholders have reported that there have been increased threats towards journalists in the recent past.<sup>28</sup>

#### 3.4.4 Governance and democratic processes (JC83)

The situation for **civil society** has deteriorated in recent years. USAID’s Civil Society Sustainability Index (2016) as well as a report of the Serbian Helsinki Committee for Human Rights (2016) state increasing hostility towards civil society (often accompanied by physical, including death threats to representatives of CSOs), primarily from the side of mass media outlets with strong ties to political parties. CSOs are increasingly portrayed as running an outside/foreign agenda with the aim of destabilising Serbia. In legal terms, registration is not difficult for associations; however, requirements on foundations, endowments and CSO networks are reported to be increasingly complex. The 2018 EU Progress report highlights the lack of progress to create an enabling environment for the development and financing of NGOs. Plans for a respective national strategy and action plan have not yielded any results (a strategy, drafted in 2014 and which was to cover the period from 2015 to 2019 was never adopted), neither has the establishment of a civil society council at national level.

<sup>28</sup> <http://rs.n1info.com/a376076/Vesti/NUNS-osudio-Seseljeve-pretnje-novinarki-Danasa.html>

## 4 Annexes

### 4.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Director	Belgrade Centre for Security Policy
Researcher	Belgrade Centre for Security Policy
Project Manager	British Council, Serbia office
Team Leader, EU Support to the Judicial Academy	British Council-led consortium
Acting TL on Judicial Academy Project	British Council, Serbia office
Programme director	Civic Initiatives/Gradjanske Inicijative
Assistant to the Commissioner	Commissioner for the Protection of Equality
Chief of Cabinet	Commissioner for the Protection of Equality
Commissioner	Commissioner for the Protection of Equality in Serbia
Head of the Group for Legislative Affairs	Commissioner for the Protection of Equality
President of the Coordination Body	Coordination Body for Gender Equality Serbia
Horizontal Facility Co-ordinator	CoE Office in Belgrade
Project Coordinator	CoE Office Serbia
Regional Project Coordinator	CoE Office Serbia
Attaché, Programme Manager for the Justice Sector	EU-EEAS, EUD Belgrade
Democracy Officer	EU-EEAS, EUD Belgrade
Programming	EU-EEAS, EUD Belgrade
Programme Manager	EU-EEAS, EUD Belgrade
Head of the Group for International Cooperation and European Integration	Government of the Republic of Serbia Office for cooperation with Civil Society
Director	Judicial Academy
International cooperation	Judicial Academy
Department for Strategic Planning and European Integration; Sector for European Integration and International Projects	Ministry of Justice
Head of the Group for Implementing and Monitoring of EU Funded Projects	Office for Human and Minority Rights
Deputy Director	Office for Human and Minority Rights, Serbia
Director	Office for Human and Minority Rights, Serbia
Senior Advisor	Office for Human and Minority Rights, Serbia
Advisor	Ombudsman's Office
Advisor in Cabinet	Ombudsman's Office
Senior Advisor	Ombudsman's Office
Senior Legal Advisor for European Integration and International Projects	Supreme Court of Cassation Republic of Serbia
Team member	TA project under IPA 2015- "Support to MoJ for Chapter 23 implementation"
Project manager	USAID Serbia
Justice Reform expert, consultant for WB	World Bank, Serbia office
Senior Public Sector Specialist	World Bank, Serbia Office

### 4.2 List of documents

#### 4.2.1 EU strategy and programming

European Commission (2007): Multi-annual Indicative Planning Document 2007-2009

European Commission (2008): Multi-annual Indicative Planning Document 2008-2010

European Commission (2009): Multi-annual Indicative Planning Document 2009-2011

European Commission (2011): Multi-annual Indicative Planning Document 2011-2013

European Commission (2014): Indicative Strategy Paper for Serbia (2014-2020)

Government of Serbia (2013): National Plan for the Adoption of the Acquis (2013-2016)

Government of Serbia (2013): Action Plan for the Implementation of the National Judicial Reform Strategy for the Period 2013-2018

Government of Serbia (2013): National Judicial Reform Strategy

#### 4.2.2 EU reporting

EU (2011-2017): External Assistance Management Report (EAMR) – Serbia.

European Commission (2010, 2012, 2013, 2014, 2015, 2018): IPA Progress Report.

#### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2007 Efficiency and Transparency of Judiciary System
- 2007 Penalty System
- 2007 Standardised System for Judiciary Education
- 2008 Improvement of Transparency and Efficiency (Prosecutors and Penal system)
- 2010 Further Alignment of the Penal System of the Republic of Serbia with European standards and strengthening alternative sanction system
- 2011 Strengthening of the Rule of Law in Serbia
- 2012 Support to the Rule of Law System
- 2013 Support to Justice Sector Reform
- 2015 Support to the Justice Sector
- 2016 Support to the Justice Sector

#### 4.2.4 Evaluations and studies

AETS (2017): Mid-term Evaluation of the Civil Society Facility for the Western Balkans and Turkey.

Berenschot/ Imagos (2013): Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organised Crime in the Western Balkans – Lot 3.

European Policy Institute (2016): Monitoring and Evaluation of the Rule of Law in the Western Balkans.

Particip (2017): External Evaluation of the Instrument for Pre-accession Assistance (IPA II) (2014–mid 2017).

#### 4.2.5 Other

World Bank (2014): Serbia Judicial Functional Review, Executive Summary with Recommendations.

#### 4.2.6 Web links

[https://www.ilga-europe.org/sites/default/files/Attachments/annual\\_review\\_2016-for\\_web.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2016-for_web.pdf)

[https://www.ndi.org/LGBTI\\_Balkans\\_poll](https://www.ndi.org/LGBTI_Balkans_poll)

[http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review#.Wt3QQ7GZM\\_U](http://www.mdtfjss.org.rs/en/serbia-judicial-functional-review#.Wt3QQ7GZM_U)

## Case study note – Turkey

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## 1 Introduction/Context

The European Council granted the status of candidate country to Turkey in December 1999 and accession negotiations were opened in October 2005. Turkey adopted its National Programme for the Adoption of the *acquis* (NPAA), which outlines Turkey's planning in its EU alignment process and in the fulfilment of the Copenhagen political criteria, in December 2008. The priorities under the NPAA relate to areas such as judiciary reform, prevention of torture and ill treatment, access to justice, freedom of expression, fundamental rights, women, children and trade union rights. These priorities reflect those listed in the Accession Partnership and key issues identified in the EU's Enlargement Strategies and Progress Reports. They are also in line with the Europe 2020 strategy.

The financial assistance allocated between 2000 and 2009 to Turkey by the EU for meeting the political criteria and carrying out judiciary and public administration reforms has amounted to around EUR 500 million. Under the political criteria, democratisation, the RoL, the promotion of human rights (including the protection and rights of disadvantaged and vulnerable groups), women's rights, capacity building of the justice and penitentiary sector as well as good governance, had been addressed through a number of projects aimed at the Judiciary and civil society. The Multi-Annual Indicative Planning Document (MIPD) 2009-2011 contained four priority axes for assistance: progress towards fully meeting the Copenhagen political criteria, adoption and implementation of the EU *acquis*, promotion of an EU-Turkey Civil Society Dialogue and supporting activities.

In 2010, the Turkish constitutional amendments introducing key political and legal reforms priorities in the areas of judiciary and fundamental rights needed to be significantly stepped up to allow for further progress in the opening of chapters 23 and 24 and meet relevant conditions for EU accession in a number of areas, including freedom of expression, freedom of the press, freedom of religion, trade union rights, women's rights and gender equality as well as the prevention of torture and ill-treatment. The EU therefore continued to provide assistance to Turkey through the Instrument for Pre-accession Assistance (IPA) I, emphasizing state building, good governance, the RoL, and civil society development. In March 2010, the Secretariat General for EU Affairs adopted an "EU Strategy for Turkey's Accession process – 2010-2011 Action Plan". Building on the 2011 Strategy Paper for Enlargement and the Council conclusions of December 2011, a positive agenda for EU-Turkey relations was launched in May 2012 with the aim of supporting the accession negotiation process. The agenda covered a broad range of areas of common interest including political reforms, foreign policy dialogue and alignment with the EU *acquis*. In line with the renewed consensus on enlargement, endorsed by the European Council in December 2011, judicial reform, democratisation and RoL became key priorities of reforms that needed to be tackled by candidate countries. The MIPD for 2011-2013 for Turkey directly derived its priorities from these strategy documents and identified the Judiciary and fundamental rights as critical areas for progress, with a financial allocation of EUR 439 million<sup>1</sup>. Within the MIPD, horizontal priorities related to RoL and three cross-cutting themes were highlighted: participation of civil society, equal opportunities for men and women, support to disadvantaged and vulnerable groups as well as the development of good neighbour relations.

For the period 2014-2020, financial assistance under IPA II is provided to support political reforms, in particular reforms in preparation for membership to the European Union and related institution- and capacity-building. Following the European Commission's Enlargement Strategy 2013-2014 that emphasised the need to address fundamental reforms first, a stronger focus for Turkey has been set on democracy and governance, the RoL and fundamental rights in line with the country's specific needs.

Objectives under the sub-sector Judiciary and Fundamental Rights, in the Indicative Strategy Paper (ISP) for 2014-2020, are to further increase the independence and impartiality of the Judiciary, improve judicial efficiency and administration, as well as "to enhance respect for fundamental rights and freedoms in the key areas of freedoms of expression (including freedom of the media), conscience and religion, assembly and freedom of association; prevention of torture and ill-treatment; women's rights and gender equality; and protection of vulnerable groups including children, LGBTI people, and rights of persons belonging to minorities, including social inclusion and Roma integration".

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<sup>1</sup> Sources for all chapters above: National Programme Part 1, 2010, National Programme Part 1, 2011 and MIPD 2011-2013

The development of Civil Society through more active democratic participation in policy and decision-making processes and improvement of its legislative environment to monitor transparency and accountability of public reforms is also prioritised as a sub-sector of the ISP.<sup>2</sup>

Since 2015, the security situation seriously deteriorated with the collapse of the Kurdish settlement process in July 2015 and a series of large-scale deadly terrorist attacks attributed to PKK and Da'esh. The violent coup attempt in Turkey of 15 July 2016 further aggravated the situation with democratic institutions, media, CSOs, human rights defenders, artists, politicians and minority groups (including LGBTI persons) seriously affected by widespread dismissals, arrests and detentions. In 2016, the Council of the EU decided to halt the opening of any new chapters to the accession process, including chapters 23 and 24. Constitutional amendments of 2017, approved by referendum, conferred to the President extended powers, increasing his control over the Judiciary and curtailing the Parliament's legislative functions. Following the opinion of the Venice Commission in March 2017 that the new reforms would not sufficiently ensure the separation of powers and the independence of the judicial power, the European Commission decided to suspend six projects supporting the judiciary and the penitentiary sectors; however a number of RoL projects are still on-going, or anticipated, and several projects related to fundamental rights continue to be implemented.

*Table 1 Overview of relevant IPA-financed interventions and programmes in the area of RoL in Turkey*

<i>Year<sup>3</sup></i>	<i>Intervention title</i>	<i>Planned EU contributions (mEUR)</i>	<i>Implementation methods/ channels</i>
2007	Dissemination of Model Prison Practices & Promotion of Prison Reform	8.2	Grant, Supply
2008	Strengthening the Court Management System	5.5	Grant
2008	Enhancing the role of Supreme Judicial Authorities in respect of European Standards	3.7	Grant
2009	Improved Efficiency of Turkish Criminal Justice System	3.2	Contribution Agreement
2009	Improved capacity of Civil Enforcement Offices	1.8	Twinning
2010	Improvement of Enforcement Services in Prisons	5.3	Twinning, Service, Supply
	<i>Twinning</i>	1.9	
	<i>Service</i>	1.7	
	<i>Supply</i>	1.7	
2010	Effective and professional Justice Academy	1.5	Twinning, Supply
	<i>Twinning</i>	1.1	
	<i>Supply</i>	0.4	
2010	Improved Relations - Mass Media & Judiciary	1.6	Twinning
2011	Support to establishment of the Ombudsman Institution	1.5	Twinning, Service
2012	Justice and Home Affairs component of 2012 national programme	7.1	Contribution Agreement, Service, Grant, Twinning, Supply
2013	Judiciary and Fundamental Rights	22.6	Grant, Twinning, Supply, Works
2014	Fundamental Rights	13.6	Grant, Twinning, Technical Assistance
2014	Judiciary	28.7	Grant, Twinning, Technical Assistance
2015	Fundamental Rights	18.9	Grant, Twinning, Service, Supply
2015	Judiciary	17.9	Grant, Twinning

<sup>2</sup> Information for chapters on the 2014-2020 withdrawn from the Indicative Strategy Paper 2014-2020.

<sup>3</sup> Decision year unless otherwise specified.

Further, the EIDHR instrument is used to finance interventions in areas related to the protection of human rights, anti-discrimination and democracy.

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

EQ2	To what extent has EU support to RoL responded to the bilateral and regional contexts?
JC21	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
JC22	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 Summary of key findings

The EU has aligned its strategic and national assistance programmes based on the priorities of the National Programme for Adoption of Acquis (NPAA), the national development plan, the strategic plan of the Ministry of Justice (2015-2019) and other institutions' strategic plans, with a more sector-based approach from 2014. These priorities also corresponded to the enlargement strategies and the NPAA. This approach left place to further ownership of the authorities on the selection of the programme priorities. The formulation of programmes has been conducted in a participatory manner with authorities, local CSOs, and EU member states, which were regularly consulted on the different programming processes. The needs of national institutions were assessed until 2014 by thematic peer missions and were discussed with the government and the Judiciary. Experience has been built throughout the successive EU funded projects, which linked to each other and demonstrated continuity in the support provided to the justice institutions, mainly through technical expertise and twinning cooperation. However, negative developments arising after the attempted military coup led to the EU decision to halt certain projects supporting the judiciary and the penitentiary sector. This is considered by certain stakeholders on the ground to have considerably deteriorated the relationship between the EUD and the judicial authorities and institutions sanctioned by the decision, and is perceived as unfair and counterproductive. Whilst this decision has certainly strained EU-Turkish relations, and specifically in the RoL sector, a careful consideration of the reasoning for these suspensions, and in-depth discussions with DG NEAR demonstrate that this decision was wholly justified, in line with the political and technical assessments, and with the request by the European Court of Auditors to apply stricter conditionality in the country.

#### 2.1.2 Alignment and participatory processes (JC21)

Strengthening the RoL has been identified as a continuing major challenge and a crucial condition for Turkey to move towards EU membership and fully meet the political and economic Copenhagen criteria.

The Multi-Annual Indicative Planning Document (MIPD) setting EU's priorities for assistance to Turkey for the programming period 2011-2013 was based on the needs identified in the Accession Partnership of the country, the latest progress report of 2010 and with the country's own strategies in the EU accession negotiation process. Contrary to the project approach previously implemented, the MIPD 2011-2013 placed emphasis on national ownership and a more sector-based approach for assistance, in order to increase the impact of IPA and further involve the Turkish authorities in the selection of their priorities, with a closer link to political reforms in the different fields and a better alignment with existing national sector strategies. Three objectives retained, directly derived from Turkey's NPAA Partnership as well as from the relevant strategies and action plans in this sector, and are related to : 1) the strengthening of an independent, impartial and efficient judiciary 2) the full enjoyment of all fundamental rights and freedoms by all individuals without discrimination, 3) strong democratic institutions and civil society promoting pluralism and the values of European integration.

RoL, democracy, and human rights have been given more priority during the period 2014-2017, following the EC's 2013/14 Enlargement Strategy emphasis on the need to address fundamental reforms first. Priority reforms under the democracy and Rule of Law pillar of IPA II were inspired from Turkey's 10th National Development Plan (NDP).

The Government of Turkey, local stakeholders, EU Member States and other donors have all been consulted in the design of this MIPD 2011-2013, through the organisation by the National IPA Coordinator (NIPAC) at the Secretariat General for European Union affairs (EUSG) of working groups discussing a preliminary mapping of existing national sector strategies and defining indicative priorities

for assistance. Conclusions from the working groups were shared with potential beneficiaries and other stakeholders, including civil society representatives. The first priority for Turkey was to make progress in the areas of RoL in order to tackle key reforms of the Judiciary and fundamental rights and to meet the opening and closing benchmarks of chapters under accession negotiations.

The ISP 2014-2020 was also developed in partnership with the relevant Turkish authorities, including the Ministry of EU Affairs- MEUA- (represented by the NIPAC), the Ministry of Development and other designated line ministries. The EAMR for 2016 indicates that the EUD also launched a consultation with national institutions via the NIPAC in the context of the mid-term review of the IPA II Strategy Paper for Turkey. It was, however, problematic to align with Turkey's strategies and action plans as implementation of the EU funded programmes by the Turkish counterparts started with a delay of 3 to 5 years from the initial planning. In addition, many actors have been reluctant to change to a sector approach and keep operating as under the previous IPA I project approach. NIPAC was also not fully effective in enforcing the shift to sector approaches.

Since 2010, all EAMR has confirmed that the EU Delegation held broad-based consultations with CSOs, namely in 2011 by focusing on the design of a new multi-annual Facility, funded by IPA and implemented in a de-concentrated mode, to provide direct support for Civil Society development in Turkey. Thereafter, civil society has been increasingly involved by the EUD as a stakeholder in the IPA programming process, but also in CSO support programmes, consultations on the European Instrument for Democracy and Human Rights (EIDHR), human rights defenders' meetings, etc. The EU flagship programmes "TACSO" and "Sivil Dusun" have been reaching out to a wide range of organisations, including grass-roots, with communication campaigns, advisory meetings and the CSO Forum.

However, the European Court of Auditors (ECA), in a special report published in 2018 on EU pre-accession assistance to Turkey<sup>4</sup>, concluded that despite relevant and needs-based programme design aligned with the *acquis*, funds granted under IPA I objectives had limited effectiveness as "*they insufficiently addressed some fundamental needs in the RoL and governance sectors,*" where there was a backsliding on critical reforms. The Council of the European Union also noted in its conclusions of the ECA Report that of the ECA that "*the Commission notes that progress in such sensitive areas is not only dependent on IPA funding allocated but more importantly on the political will of the Turkish authorities*"<sup>5</sup>.

### 2.1.3 Needs, opportunities, and responsiveness (JC22)

Needs assessments were conducted by peer missions on specific thematic issues until February 2014, then were halted by the Turkish government without any clear reason. All projects proposals addressed the areas defined in the revised accession partnership of the NPAA for Turkey's accession to the EU, MIPD, national action plans or were designed as follow up of previous implemented projects supporting the Judiciary or human rights institutions.

As a result of the collective dismissals after the attempted military coup, EU projects have been affected by major staff changes, specifically in the field of RoL and fundamental rights. This has caused delays in project implementation and several extension requests were submitted.

EU experienced significant challenges to re-orient assistance in line with the General Affairs Council Presidency Conclusions of 13 December 2016, which stated that under the currently prevailing circumstances in Turkey, no new chapters were considered for opening. It also noted the Commission's intention to intensify efforts to redirect IPA funds to support activities in the sectors of RoL, human rights and freedom of expression, with a particular focus on civil society, without undermining ongoing efforts aimed at improving the State's capacity to deliver justice. The European Commission has therefore launched a new approach for 2017 and redirected the funds for the civil society under direct management<sup>6</sup>.

The external evaluation of the IPA II (2014 to mid-2017) specifies that, in the aftermath of the failed coup and introduction of a State of Emergency, many donors, including the EU, decided to wait for the return of a normal situation prior to further financing issues linked to political reforms, judging that

<sup>4</sup> The ECA examined 15 projects under IPAI focused on the priority sectors of the rule of law, governance and human resources.

<sup>5</sup> Council Conclusions on the Special Report No 7/2018 by the Court of Auditors: "EU pre-accession assistance to Turkey: Only limited results so far", p.3

<sup>6</sup> Commission implementing decision of 30 November 2017 amending Commission implementing decision C(2016) 4889 final of 20 July 2016 adopting a Civil Society Facility and Media Programme for the years 2016-2017 under IPA II

committing further funds in these areas would have exacerbated existing efficiency and absorption problems. The Commission for European Neighbourhood Policy and Enlargement Decisions decided to suspend some projects supporting the Judiciary, those in particular implemented by the Council of Judges and Prosecutors, and the penitentiary sector (see further details under EQ 3). The Turkish Ministry of Justice and targeted justice institutions openly criticised this decision during an official meeting organised by the Turkish Directorate of EU Affairs during the field mission of the evaluator, considering that the IPA process is based on technical grounds and should be protected from political intervention. As a result of the decisions made by the Commission, cooperation between the Government of Turkey and the EU has been very constrained, since various stakeholders, including the Turkish authorities, consider that this decision was not justified or balanced.

Moreover, the EUD declared that they no longer have leverage in influencing improvements or changes in these sectors. Based on the various opinions received in Turkey, this partial suspension therefore appears at the local level to be counterproductive and limiting any chance to continue a positive cooperation process on RoL.

## 2.2 Implementation / choice of modality (EQ3)

EQ3	To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?
JC31	<b>High quality policy dialogue established: content (promotion of RoL and European standards and principles), frequency, synergies between operational (intervention-level) and high-level dialogue, etc.</b>
JC32	<b>Implementation strategies appropriately chosen and combined / complemented</b>
JC33	<b>Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)</b>
JC34	<b>Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into account.</b>

### 2.2.1 Summary of key findings (EQ3)

Progress reports and EAMR reports have outlined an “enhanced political dialogue” between EU with the Turkish authorities in general, although negotiations on Chapter 23 have always been a source of tension. Policy dialogue in the RoL sector has come to a deadlock with minimum technical interactions between the EUD and the justice institutions, since the suspension of projects supporting the Judiciary and the penitentiary sector. In October 2018, budget cuts were applied by the European institutions as a consequence of Turkey’s persistent breach of EU’s core principles of democracy, human rights and rule of law and lack of significant reforms. The Turkish government is now meeting regularly to continue its efforts to align with the EU standards and to announce progress made on the judicial reforms. As regards implementation modalities, indirect management was chosen for the majority of the RoL projects, but has been a source of considerable problems resulting in major delays in implementation of projects, which despite the EU’s various initiatives to support NIPAC, CFCU and line ministries in improving and accelerating the management procedures, did not yield any reduction in the contracting backlog, and in the delayed implementation of projects. Moreover, monitoring mechanisms implemented by contracting authorities and the ministry of Justice at programme, sectoral and activity levels, have not been effective. The complementarity of assistance provided by other instruments, has been crucial in supporting advancement towards EU accession, namely in regards of the support granted to Civil Society, which has been re-centralised and further increased since 2017, in particular for interventions enhancing human rights. However, after the attempted coup and until September 2018, the twinning modality had been neglected by EU MS, which were less likely to support Turkish institutions in all sectors.

### 2.2.2 Policy dialogue (JC31)

In 2011, the Turkish government decided to establish a MEUA, responsible for the accession negotiations as Chief Negotiator and Head of the Negotiation Delegation. Moreover, a deputy governor responsible for EU affairs was designated in each province.<sup>7</sup> After the last elections of June 2018 and the restructuring of the government, the MEUA has been transferred to the Ministry of Foreign Affairs under a Directorate for EU Affairs (DEUA). The authorities justify this change of status for economic reasons, but do not consider it alters the structure of the NIPAC and its relations with the EU.

From 2011 to 2016, all progress reports indicated the continuation of an “enhanced political dialogue” between the EU and Turkey, with the organisation of high-level political dialogue meetings once or twice a year. These meetings have focused on, among other issues, the main challenges faced by Turkey under the Copenhagen political criteria and reviewed the progress made towards fulfilling Accession Partnership priorities. The Association Council met for the last time in 2015 and the Association Committee in November 2018. EU-Turkey summits started to take place more regularly from 2015, namely on foreign and security policy, migration and visa liberalization.<sup>8</sup> The subcommittee meetings on Chapter 23 (Judiciary and Fundamental Rights) are announced as taking place every year since 2012 on the website of the Turkish Directorate of EU Affairs, but their conclusions are not published.

Since 2011, negotiations on Chapter 23 have always been challenging. 5 December 2011, the Council had invited the Commission to establish a broader dialogue and cooperation framework between the EU and Turkey, namely to address the full range of Justice and Home Affairs policy fields. The positive agenda launched by the Commission in May 2012 aimed to revive the relations with Turkey and the accession process after a period of stagnation.<sup>9</sup>

In 2013, the Ministry of EU Affairs, in its report on the accession process, complained that screening reports on chapter 23 had not yet been approved by the Council of the EU and found the criticism in various EU reports and platforms against Turkey on chapter 23 unfounded.

In 2016, the progress report of the Commission mentions that preparatory documents for chapters 23 on judiciary and fundamental rights and 24 on justice, freedom and security were in the process of being finalised. This possibility was nonetheless abandoned following Turkey's actions after the July 2016 coup attempt. Although the EU Parliament asked to freeze the accession process in its resolutions of 24 November 2016 and 6 July 2017, the EU Council – while raising concerns that “*the methods used undermine fundamental freedoms and the rule of law in Turkey*” – decided to pursue consultations and cooperation on key priorities of EU-Turkey relations in the areas of foreign policy, migration, counter-terrorism, transport and economic cooperation<sup>10</sup>. The Commission annual report on Turkey published in April 2018, concluded that “Turkey has been significantly moving away from the European Union, in particular in the areas of the rule of law and fundamental rights and through the weakening of effective checks and balances in the political system”.

In its conclusions on Enlargement and Stabilisation and Association Process adopted on 26 June 2018, the EU Council continued raising concerns on the backsliding on the RoL and fundamental rights, in particular on the independence of the Judiciary and the restrictive measures taken against individuals exercising their fundamental freedoms. The Council stated that “Turkey remains a candidate country and a key partner in many areas”, although “*Turkey's accession negotiations have therefore effectively come to a standstill*”, with “*no further chapters considered for opening or closing*”. The ECA also found that the Commission did not sufficiently use the IPA conditionality to support reforms in the RoL and governance sectors although Turkey's progress reports did not judge those satisfactory and that corrective measures should be taken if principles of democracy and RoL are not met, by cancelling projects or reducing their scope and funding<sup>11</sup>.

Following the decision of the European Commission to suspend some projects supporting the judiciary and the penitentiary sectors, policy dialogue between the EUD, the Turkish Ministry of Justice and

<sup>7</sup> European Commission, Turkey 2011 Progress report, SEC(2011) 1201 final

<sup>8</sup> See <https://www.ab.gov.tr/> and <https://www.consilium.europa.eu/en/policies/enlargement/turkey/>

<sup>9</sup> Press release 16 May 2012: EU-Turkey: Commissioner Štefan Füle to launch positive agenda [http://europa.eu/rapid/press-release\\_MEMO-12-358\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-358_en.htm?locale=en)

<sup>10</sup> Council of the EU, Presse release, 26 March 2018 – “Remarks by president Donald Tusk following the EU-Turkey leaders' meeting in Varna.”

<sup>11</sup> Based on Article 21 of Council Regulation (EC) No 1085/2006 on suspension of assistance.

judicial institutions, had not formally take place in the judicial sector for the last year<sup>12</sup>. No technical meetings were organised and few emails were exchanged with justice advisers of the Ministry on family justice issues (in relation to the 100-day action plan related to women's rights and gender equality).

Coordination and discussion of EU-funded projects only takes place at programming level through sector monitoring subcommittees regularly organised and implementation review meetings (every month), during which the EUD raises political questions or discusses the implementation of laws. However, the EUD declares it is no longer in a position to further monitor the situation in prisons or to follow up on the capacity building interventions provided to judicial and penitentiary staff through previous projects.

In reaction to these tensions, the Turkish government has recently reiterated its intention to continue the EU accession process through the press statement of the 4<sup>th</sup> meeting of the Reform Action Group (RAG) held on 29 August 2018, declaring its continuous commitment towards the EU and the CoE and will to accelerate the political reform process in line with their EU membership objective. The government's undertakings in this regard are namely to improve reforms in the areas of judiciary and fundamental rights in compliance with the EU principles and the case law of the ECtHR, especially through an update of the Judicial Reform Strategy and the ongoing implementation of the Action Plan on Prevention of ECHR Violations<sup>13</sup>. New commitments regarding progress on judicial reforms were reiterated in the 5<sup>th</sup> RAG meeting on 11 December 2018. It is noted however that, despite these specific commitments, the justice sector context has not substantially improved since the original decision to suspend the projects referred to above.

### 2.2.3 Choice of implementation strategies (JC32)<sup>14</sup>

RoL projects (supporting the Judiciary and Fundamental Rights) have mostly been implemented in a decentralised manner (indirect management) by the Central Finance and Contracting Unit (CFCU), including assistance to Civil Society (until 2017); service contracts for technical assistance components, supply of equipment, work contracts, and also by means of direct grants contracted with the Council of Europe or UNICEF. The twinning instrument, preferred by national institutions, has also been used for several projects with technical aspects and where peer-to-peer cooperation was required (see Table 1).

However, the Turkish Indirect Management Beneficiary Country (IBMC) modality has led to persistent managerial issues and considerable delays in the contracting of projects, which mostly affected the quality of the projects of the Judiciary portfolio. The external evaluation report of IPA II (June 2017) highlighted the poor contracting performance and long delays of implementation with the indirect management modality in Turkey.

Although sector budget support could have applied in Turkey under its Public Financial Management system and the current sector approach in the Judiciary sector, Turkish authorities have always rejected this modality, even where cuts were applied. The EUD stated that they did not envisage budget support until the contracting backlog and other structural problems were solved. This idea has now been completely abandoned due to the fundamental changes which have occurred in the last two years, namely the major constitutional changes that had a negative impact on the sector of concern.

The CSO-related projects indirectly managed by the Turkish MEUA<sup>15</sup> under IPA funding allowed authorities to mainstream civil society participation and institutional support for activities such as mapping of CSOs, strategies of participatory policy-making according to the ministry/public body, linkages between Europe-based associations and local NGOs, and dialogue between the government and civil society. However, this dialogue is no longer existing.

Direct management in the framework of the regional Civil Society Facility (CSF) has been mainly applied for other parts of the support to civil society, with the Turkey project managed in deconcentrated mode by the Delegation and the thematic EIDHR with Country-Based Support Schemes (see chapter below).

<sup>12</sup> Information provided by the EUD during the field mission in September 2018

<sup>13</sup> The government had formed the RAG in November 2014 to monitor the political reform process of the EU accession process, and engage in preparation of reform drafts, enactment of legislation and their implementation in alignment with the Copenhagen political criteria and the standards of chapters 23 and 24. The previous meetings of the RAG were held in 2015.

<sup>14</sup> Main sources from EAMR 2015 to 2017 and information provided by the EUD and beneficiaries except if otherwise indicated

<sup>15</sup> The department of associations under the Ministry of the Interior is responsible for the registration, monitoring and audit of associations and acts as an inspection body.

The TAIEX instrument has been promoted on an ad hoc basis, both in the context of policy dialogue and programming discussions, notably to mobilise Member States' expertise on specific issues or preparatory activities (e.g., linked to the preparation of new draft legislation on specific topics).

Twinning projects have generally created a positive dynamic of high institutional ownership, strong interest, and participation in the trainings. However, after the coup, twinning calls of interest did not attract experts from EU Member States (MS), particularly on RoL and human rights, due to security concerns. A progressive withdrawal of MS was observed for twinning projects in all sectors, not only in the RoL sector. According to the CFCU, 80% of twinning project fiches had to be relaunched in 2016.

Regional multi-country instruments contracted under the Horizontal Facility have only recently started in Turkey and the delegation is exploring how these programmes can help the country.

#### **2.2.4 Synergies and complementarity within the portfolio (JC33)<sup>16</sup>**

The three main sources of funding for civil society organisations are: IPA bilateral funds, the CSF financed by the IPA multi beneficiary programme and the EIDHR.

The CSF allowed the development of the Technical Assistance for Civil Society Organisations "TACSO" and the "Sivil Düşün" programmes supporting empowerment of CSOs, including grassroots organisations, through technical assistance, a few large support grants to CSO platforms and networks, and ad hoc / small funding in the form of in-kind support (see section 3).

The EIDHR assists CSOs and Human Rights Organisations to promote democracy and human rights and is used by the EU to support CS work on a broad range of Human Rights issues including freedom of expression and independent media, improved access to justice, fight against torture and impunity, protection and respect of cultural diversity, vulnerable and minorities rights, human rights education and training programmes, enhancing political representation and participation in organised society, particularly for underrepresented groups (including women, LGBTI, Roma and youth). The EIDHR is also key to assist human rights defenders and to support the local strategy developed in Turkey to advocate for their rights. This assistance to HRDs has been more important in 2017 and continued supporting some Human Rights NGOs that had been closed in 2016 (1200 CSOs in total were closed). Moreover, the EIDHR remains a key instrument in the context of the enlargement process and for fulfilling the political criteria for accession, allowing the EUD to make flexible and autonomous decisions on sensitive matters. Since 2017, the support for CSOs started to be implemented under direct management by the EU Delegation, given the radical measures taken by the government against CSOs and the backlog in the use of previous funding under decentralized management for the years 2014, 2015 and 2016. The centralisation of funds for CSOs has provided them positive incentives and exponentially increased the support to Human Rights CSOs and Human Rights Defenders, by further legitimising their role and raising their visibility. This support is considered crucial for the existence of core human rights CSOs, as the cooperation between CSOs and public institutions has become difficult and access to prisons and confinement places is now denied to almost all NGOs except those considered neutral and dealing with refugees and migrants that have access to refugee centres.

The Instrument contributing to Stability and Peace (IcSP) added value, from 2015, to the overall EU response to the migration and refugee crisis in Turkey. The Commission established two Exceptional Assistance Measures (EAM) under the IcSP in favour of Turkey in 2016 added up to the first IcSP funds allocated in late 2014, which translated into four projects in response to the Syrian refugee crisis in Turkey and were contracted throughout 2015.

#### **2.2.5 Efficiency, monitoring and visibility (JC34)**

As referred to above, the IMBC system contains many shortcomings related to the quality of programming and delays in procurement. The National Authority Officer and the NIPAC lacked overall leadership of the system and demonstrated critical weaknesses in management supervision, quality review and ex-post verifications. The time between programming and contracting for IPA I annual programmes was not reduced under IPA II as there are still 2 years pending between the signature of the financing agreement and the entry into force of the project, plus another year before it starts being implemented. The ECA found, in 2017, that the Turkish authorities still had to contract more than 93 % of the 2014 IPA Financing Agreement.

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<sup>16</sup> All references for this chapter are drawn from EAMR reports from 2010 to 2017, except if otherwise indicated.

From 2015, the EUD has actively engaged with the NIPAC, the CFCU, and NAO through regular implementation review meetings to identify most critical cases and developed a more systematic monitoring and follow-up process. In this context, the EUD launched several technical assistance contracts to strengthen the institutional capacities of the MEUA in strategic planning, coordination of programming, implementation, monitoring, evaluation and reporting of IPA II assistance. Line ministries were supported in the preparation of procurement tenders with the aim to tackle the accumulated delays and contracting backlog, and the CFCU was also supported to speed up procurements and improve the management of funds and projects implemented under IPA II. Despite these initiatives, concrete reduction in contracting backlog and in implementation delays under IPA I and II have not happened.

These issues were discussed in 2017 at two high-level EU-Turkey chaired Implementation Review Meetings (IRMs) on IPA I and IPA II, which recommended that Turkey set up a proper performance monitoring system with key performance indicators. During the field mission of this evaluation, the Ministry of Justice made a presentation in which they emphasised on the monitoring system that has been set up for the different levels at programme, sectoral and activity levels.

After July 2016, the implementation of the assistance programme slowed down given developments resulting from the attempted coup and the deteriorated security situation. These were mostly due to the widespread dismissals of public servants in the line ministries.

EAMR and progress reports are submitted yearly. EAMRs provide general information on the context and management/ financial questions but do not deal with sectoral matters, except since 2017. The Commission annual progress reports inform extensively on Rule of Law and Fundamental Rights.

Monitoring and evaluation reports have not been regularly taken place in the fields of judiciary and fundamental rights. Only one thematic evaluation report on judiciary and fundamental rights dated October 2012, relates to the period covered under this assessment, and covers 2 projects examined. An additional overview of the ROMs conducted in 2015 over IPA I Transition Assistance and Institution Building (TAIB) projects under the Judiciary and Human Rights sector provides general information on the management performance of 20 projects, of which only 5 relate to this assignment. Several more monitoring reports relating to six other projects listed in Table 1 were made available, but most are very brief and, except for three ex-post ROM, do not provide analysis on the impact of the projects. The thematic evaluation report of 2012 outlined “that no thorough impact assessment” of project results “is conducted” by line ministries and contracting authorities, and that the lack of SMART indicators and access to data hinders the monitoring of change. Following identification of shortcomings in the monitoring of project performance, the ECA recommended to the Commission to widen its coverage of ROM reports and to improve the relevance and reliability of its project indicators by including baseline data and values, when applicable. However, the EU delegation explained the shortage of monitoring and evaluation missions by the fact that their Turkish counterparts are not willing to have project-based evaluation and monitoring missions. The ECA also considers that, even if the projects had delivered the intended outputs, their sustainability was at risk because of “the lack of political will” of the Turkish authorities and the worsening of the situation following the large-scale dismissals, suspensions of public officials and restrictions on civil society.

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination / complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

The coordination with EU members states and other donors has been important in the realisation of programmes supporting the exercise of fundamental freedoms and gender equality.

### 2.3.2 Partnerships established at global level (JC41)

This JC is examined in the overall analysis in Volume I, the main report.

The EU is cooperating with the Council of Europe, UNDP and UNICEF, which were or are implementing EU funded projects in the judiciary and human rights sectors. The CoE have established a project office in Turkey since MEDA. Most projects suspended or put on hold by the EU were or ought to be implemented by the CoE (those supporting the council of judges and prosecutors or the

public prosecution offices). Only two country specific EU/CoE joint programmes are currently being implemented in the Fundamental Rights portfolio (“Supporting the Individual Application to the Constitutional Court in Turkey” and “Strengthening the Capacity of Bar Associations and Lawyers on European Human Rights Standards”).

Two other 2015 projects “Strengthening the institutional Court of Cassation” and “Strengthening the criminal justice and the capacity of justice professionals on prevention of the European convention on Human rights violations in Turkey” are under negotiations to be signed and launched. In addition, the CoE is implemented human rights projects funded through other resources.

In November 2017, Turkey decided to end being one of the major contributors to the Council of Europe.

### 2.3.3 Coordination with EU MS / other donors at country level (JC42)

EU is the main donor and major player, with Germany, the Netherlands and the UK in the RoL sector, and is organising regular coordination meetings with Member States on IPA assistance to present draft Action Programmes to representatives of MS embassies and also additional information sessions on sectoral level. These meetings include an exchange about complementary bilateral funding of Member States, even though bilateral grant financing is very limited compared to the IPA allocations. The EU member states have decreased their budgetary assistance to Turkey since 2016 and are complementing EU funding on some programmes (ex: SIDA on the project supporting legal aid) or supporting relatively small programmes (ex: UK on arbitration). Additionally, there are monthly Deputy Head of Missions meetings to discuss about IPA implementation.

In the RoL sector, technical coordination meetings are held with EU Member States in relation to the Human Rights Defenders (HRD) strategy, to ensure attendance of HRDs’ trials, to coordinate closely and share information on HRDs and provide visible recognition for HRDs work through statements.

The EUD also launched an exercise with the EU MS to gather information on their current programmes in the three thematic objectives selected for Turkey under the Gender Action Plan II and lead to a more in-depth discussion on division of labour in this area.

## 3 Effects of the EU support to RoL

### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy / strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion / minority rights / gender) and democracy issues into partner countries’ RoL policy</b>

#### 3.1.1 Summary of key findings (EQ5)

The Turkish legal framework includes general guarantees of respect for human and fundamental rights. Since 2005, Turkey has undergone considerable reforms in the field of the Judiciary including constitutional amendments and legislative changes strengthening the independence, impartiality and efficiency of the justice system. However, despite these progressive improvements addressing EU requirements for progress to accession, the situation regarding the respect of RoL and fundamental rights has always been a source of preoccupation. The EU support to the RoL became further challenged and undermined by the State of Emergency introduced after the 2016 coup that has deeply affected Turkey’s already fragile democratic institutions and governance structures. Backsliding on the independence of the Judiciary and fundamental rights is reversing positive results and impact achieved in these fields until now.

### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)

Constitutional reforms amending the 1982 Constitution adopted following the 1980 military coup were approved in a referendum of 12 September 2010. These addressed priorities of Turkey's accession process and created conditions for progress in a number of areas such as the Judiciary's reform, the establishment of an ombudsman, the protection of the rights of women and children, and the right of protection of personal data, among others<sup>17</sup>. However, the drafting and adoption of the constitutional reforms was not preceded by a consultation process involving political parties and civil society at large<sup>18</sup>.

Consequently, the governing party and the Parliament engaged in a democratic and participatory process for the drafting of a new constitution, with broad public consultations between November 2011 and 2012 with lawyers, political parties not represented in Parliament, state bodies, professional associations, trade unions, NGOs, and representatives of non-Muslim minorities. A website was launched to serve as a forum for public contributions and members of the committee attended public events and debates organised by civil society platforms or the media.

The government consulted the Venice Commission of the Council of Europe prior to elaborating the constitutional amendments approved by referendum on 12 September 2010. It did so, as well, in drafting the law on the Constitutional Court of March 2011, which entered into force in September 2012 and restructured the Constitutional Court providing more impartiality. The members of the Court included more representatives from the legal community and society at large and were no longer selected and appointed by the President of the Republic, but by the Turkish Grand National Assembly. Despite progress, the selection process still did not fully guarantee the Court's political impartiality.

Moreover, the powers of the Constitutional Court have been extended by introducing the individual application procedure, which allows everyone to claim that his or her fundamental rights and freedoms have been violated by the public authorities, provided all ordinary legal remedies are exhausted.

As regards the functioning of Parliament:

- There has been no progress on improving parliamentary rules of procedure to improve the inclusivity, transparency and quality of law-making and the effective oversight of the executive.
- Laws concerning financing of political parties and election campaigns, closure of political parties and parliamentary immunities still need to be aligned with European standards.
- Structured civil society consultation arrangements are not developed as part of the legislative and policy-making processes.
- Regarding the electoral system: the requirement that a party must obtain 10% of valid votes to be represented in Parliament is the highest among Council of Europe member states.
- Drafts laws with significant impact on fundamental freedoms are not systematically referred to the parliamentary committee on human rights or to the committee for EU harmonisation.

However, some progress was observed through the following changes in the legal framework related to elections and political parties:

- A law adopted in January 2012 on Presidential elections provided for direct elections of the president from 2014 and reduced the president's term from seven years to five years, renewable for one additional term.
- In 2012, a law facilitated out-of-country voting for around 2.5 million Turkish voters residing mainly in the EU.
- In March 2014, a law permitted political campaigning in languages other than Turkish, legalised party co-chairmanship and eased the rules governing the local organisation of political parties. It also expanded the scope of funding to political parties that attained more than 3% of votes in parliamentary elections. However, the new rules did not apply where independent elected MPs form a political group in parliament, such as the case of the pro-Kurdish BDP/HDP.

Following the attempted coup of 15 July 2016 and the declaration of the State of Emergency on 20 July, Turkey announced that it was invoking Article 15 of the ECHR, which gives governments the possibility to derogate in a temporary, limited and supervised manner from their obligation to secure

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17 MIPD 2011-2013

18 Enlargement strategy 2010-2011

certain rights and freedoms under the Convention in times of emergency. Under the State of Emergency and until early March 2018, the Council of Ministers issued a total of 31 decrees which have the force of law according to the Constitution and curtail Parliament's key legislative power and functions: 360 pieces of legislation were amended by circumventing the ordinary legislative process, including a law amending the Parliament's rules and procedures in July 2017. These emergency decrees limit certain civil and political rights, including freedom of expression, freedom of assembly. They have also not been opened to judicial review so none of them has yet been subject to a decision by the Constitutional Court.

Constitutional amendments introducing a presidential system were approved by the Parliament (with procedural shortcomings) and by referendum, respectively in January and April 2017.

In January 2017, some improvements were made to the measures taken under the State of Emergency in response to an examination conducted by the CoE and recommendations provided by its Secretary-General including the establishment of a State of Emergency Appeal Commission.

Constitutional amendments implemented in May 2017 after the referendum, related to the reform of the Council of Judges and Prosecutors (see under 3.3); the right for the President to chair a political party; and the abolition of high military courts.

The State of Emergency has been lifted after the elections on 19 July 2018, but the Parliament passed security laws giving local governors broad counter-terrorism powers including the ability to ban public gatherings, extend detention periods and allow public servants' dismissals if there are linked to terrorist organizations or other perceived threats to national security.

The legal framework guaranteeing women's rights and gender equality is broadly in place through provisions in the Constitution. However, discrimination against women and gender-based violence are not sufficiently addressed due to weak implementation of legislation and the low quality of support services available. Moreover, while it was the first country to ratify, on 14 March 2012, the Council of Europe's Istanbul Convention on preventing and combating violence against women and adopted an action plan for 2016-2020, Turkey has still not adapted its legislation into line with the CoE Convention.

There has been progress with regard to children's rights, as Turkey aligned its legal framework on juvenile justice with international standards, by ratifying the Optional Protocol to the Convention on the Rights of the Child in 2013.

A new Civil Procedure Code came into force on 1<sup>st</sup> October 2011. The Criminal Procedure Code was amended in January 2013, and at the same time the Code on Enforcement of Sentences was also amended to extend the scope of probation to those who will not yet have served six months of their sentence by 1 January 2016.

The EU contributed to supporting the study and analysis of the provisions of the new civil procedure code and their application in pilot courts, using and adapting best European practices for civil proceedings under the 2008 IPA project "Strengthening the Court Management System". The project promoted the use of settlements in pilot courts to accelerate judicial procedures. The EU also supported the Constitutional Court on establishing the individual application system through the Project on "Enhancing the Role of the Supreme Judicial Authorities in respect of European Standards" (08-2010 -10-2013). The project supported the capacity development of the higher courts, first instance courts and bar association in the functioning of the individual application mechanism to the Constitutional Court in line with the *acquis* and implementation of the fundamental rights guaranteed under the ECHR. It is considered as having positively influenced the Constitutional Court and other higher courts, in continuing to follow the case law of the EctHR in their rulings in areas relating to fundamental freedoms. The project performance is rated as good in the 2015 ROM overview findings<sup>19</sup>.

The EU continues to support the individual application to the Constitutional Court in Turkey through a direct grant to the Council of Europe (12.2015-12.2018). The objective is to further disseminate information on the right of petition and to improve access to the application mechanism. This support has contributed to an increased use of the individual application and to an improved quality of the application. In terms of caseload, from the start of the procedure in 2014 until mid-2016, the Court took

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<sup>19</sup> Report related to the performance of IPA I – Component I – TAIB projects on the Judiciary and fundamental rights sector

decisions in 1,417 cases, rejected 19,582 cases and declared 22,713 inadmissible (out of the 20,000 to 40,000 applications received per year). Decisions are published on their website.

However, the Constitutional Court is considered less independent than before in cases concerning violation of political rights.

### 3.1.3 National RoL policy / strategic framework (JC52)

IPA support to national strategies and development plans in the Judiciary and fundamental rights sector have been put into place so as to align the standards of Turkey with EU and international standards, according to the NPAA.

The implementation of the 2010 Constitutional reforms was progressively followed by the adoption of successive laws, some deriving from judicial reform packages. The most important are as follows:

- A law of December 2010 widened the composition, roles and responsibilities of the High Council of Judges and Prosecutors .
- A law dated 14 February 2011 increased by 40 % the number of members in the Court of cassation and the Council of State.
- The code on Probation Services adopted in July 2005, was amended on 11 April 2012.
- A third judicial reform package, adopted in July 2012, included amendments to a number of laws aimed at accelerating judicial procedures and improving the criminal justice system. However, there were no revisions related to the administration of justice and protection of fundamental rights; and there were issues related to definitions of criminal offences under the Criminal Code.
- A fourth judicial reform package, entered into force on 30 April 2013, provided judicial remedies for issues for which Turkey had been condemned by the ECHR. It introduced amendments to a total of eight laws namely the Anti-Terror Law, Turkish Criminal Code, Criminal Procedure Code, Law on the Execution of Penalties and Security Measures, Law on High Military Administrative Court, Civil Procedure Code, Law on Expropriation, and Administrative Procedure Code. With this Package, significant amendments were introduced to further strengthen the right to a fair trial and fundamental rights, particularly the freedom of expression and freedom of the press.
- The 2014 law abolished the specially authorised courts. The law abrogated article 10 of the Anti-Terror Law and suppressed the regional serious crimes courts, their special powers and reduced the maximum period of detention on remand from ten to five years.
- The Judiciary reform law of 2014, increased the influence of the Ministry of Justice in appointing judges and amending the structure of the Justice Academy.

A National Strategy and Action Plan on the Rights of the Child (2013-2017) have been prepared under the coordination of the Ministry of Family and Social Policies and included among others: the promotion of children's rights; the participation of children in decisions pertaining to their rights; the development of support and special protection measures targeting the family and the child; the improvement of the justice system for children; the establishment of an effective control, monitoring and evaluation system.<sup>20</sup>

The adoption in March 2014 of the Action Plan on Prevention of ECHR Violations also represented a significant step towards aligning Turkey's legal framework with ECHR case-law as it addressed issues where Turkey was found to have violated provisions of the ECHR. However, the EU recommended the revision of this plan due to its general nature, lack of robust monitoring mechanisms, and because it did not encompass all areas identified as violating the ECHR.

A revised judicial reform strategy, adopted in April 2015 for the period 2015-2019, provided only general planning, broad timelines, limited details on envisaged steps and actions and no assessment of budgetary implications. Despite addressing the strengthening of the protection of fundamental rights, including freedom of expression and the fight against impunity for cases of torture and ill-treatment, it did not deliver a detailed assessment of the implementation of the previous strategy and remaining gaps. This strategy is currently revised given the substantial changes occurred within the Judiciary, and the Ministry of Justice announced that they would share and submit the revisions to the EUD for their review.

The 2015 ROM overview of the projects implemented under IPA I in the Judiciary and human rights sector indicates that the reform process of the Judiciary was more challenging than anticipated and

<sup>20</sup> See IPA 2017 in support of fundamental rights

largely dependent on the adoption of the corresponding legislative framework. However, the EUD informed the current evaluation mission that many objectives of the Judicial Strategy are either inspired and materialised through the outputs of the previous and ongoing EU projects, with 40 out of 68 objectives of the Judicial Reform Strategy being supported by the EU financial assistance. With the latest reform packages and the effects of the July failed coup attempt, major step backs were observed, especially concerning the independence of the Judiciary.

There were a few positive steps in the field of mediation with the 2012 Law on Mediation in Legal Disputes that aimed to increase the use of various alternative dispute resolution mechanisms and shorten the trial process. This was followed by the creation of two new departments in the Ministry of Justice, for mediation and alternative dispute resolution, and another law adopted in December 2016 expanding the scope of offences falling under plea bargaining, settlement or conciliation.

The promotion and increase of alternative dispute resolution methods started to reduce the burden on the courts, with 223 000 cases resolved with conciliation in 2017.

### 3.1.4 Integration of HR and democracy issues (JC53)<sup>21</sup>

Some minor progress has been made in integrating the protection of minorities, gender and women's rights, as well as children's and cultural rights in the Turkish RoL policy framework.

#### Gender equality

The legal framework guaranteeing women's rights and gender equality has been strengthened through the constitutional amendment permitting the adoption of positive discrimination measures for women. However, ensuring women's rights and gender equality has remained a key challenge in practice for Turkey as stereotypes and traditional gender roles persist, and continue to seriously limit the ability of women to assert their rights. Honour killings, early and forced marriages and domestic violence remain serious problems. The 2015 ROM overview of the projects funded under IPA I in the Judiciary and human rights sector found that the socio-cultural atmosphere was not supportive in ensuring the rights of vulnerable groups, particularly in the case of projects that aimed at realising women's rights, as there was a tendency to identify women as members of a disadvantaged group in need of protection, instead of highlighting the status of women as equal citizens. Moreover, as noted in the IPA 2016 Project Fiche supporting fundamental rights, there is a lack of strong political commitment to gender equality and the Turkish public administrations lack expertise in addressing gender gaps and incorporating a gender perspective in planning and budgeting frameworks.

The EU supported a framework contract for a Technical Assistance to assist Turkey in mainstreaming gender equality in the actions funded under IPA II through capacity building of the staff of MEUA, the operating structures and public institutions. This programme (October 2014 -June 2015) included training components based on the use of the toolkit on Mainstreaming Gender Equality in EC Development Cooperation. The EUD has also initiated work with the MEUA to use the checklists for gender mainstreaming in the next programming rounds in line with the Gender Action Plan (GAP) 2016-2020. The gender issue was also addressed at policy level in the discussions in the field of civil society, human rights and fundamental rights and the EUD engaged in discussions on the Istanbul Convention and the work on combatting violence against women with institutions such as the Ministry of Family and Social Policy and the Ministry of EU Affairs in the context of IPA programming.

The EU funded numerous projects related to women's rights awareness, gender equality and prevention of domestic violence since 2010, in the context of the RoL sector. As a good example, the ongoing 2013 IPA project "Enhancement of participatory democracy in Turkey: monitoring Gender equality" (03.2017-02.2019), implemented by an NGO and managed by the DEUA of the Ministry of Foreign Affairs, is supporting the capacity building and establishment of gender equality monitoring infrastructure. The project is conducted in 7 municipalities, assessed as women-friendly oriented cities and is targeting all relevant public institutions, local governorates, municipalities and rights-based gender CSOs. After the conduct of thematic area mapping reports relevant to women's political, economic and social needs, concerns and rights, the project delivered suitable indicators for public institutions and CSOs to develop monitoring action plans on the situation in each targeted province. The project is raising awareness and interest in gender equity monitoring. It empowers agencies to develop gender-disaggregated data and to better understand and integrate gender language. Additionally, it generates good cooperation between local institutions and CSOs through the

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<sup>21</sup> All information and references provided in this chapter are taken from progress reports from 2011 to 2018, project fiches and reports implemented under IPA I and II, if not otherwise indicated.

establishment of local gender monitoring platforms, over which municipalities started to take ownership.

**Concerning the rights of prisoners**, the 2015 ROM overview of projects implemented under IPA I in the Judiciary and human rights sector indicated that the Turkish penitentiary system needed to be improved with regard to the following issues: prison overcrowding; understaffing and lack of specialisation of psycho-social workers; strengthened civil society involvement; inefficient mode of civil monitoring board and insufficiency of an integral physical/mental health system. Following the Law amending the Criminal Procedures Code and Law on Execution of Sentences and Security Measures, of 31 January 2013, new models of implementation were put into force, such as suspending the sentences of convicts and detainees who are gravely ill, allowing conjugal visits for convicts and detainees, and permitting juvenile convicts to spend more time with their parents. Reform of the prison system has evolved with improved detention conditions and efforts to combat overcrowding by increasing prison capacity and the use of probation. The third judicial reform package also led to the release of a significant number of detainees: the ratio of the detainees in prisons went from 48.9% in 2006 to 20.2% as of 7 October 2013 according to the 2013 Turkey Progress report.

However, following the attempt coup, 150 000 people were taken into custody. Based on data provided by an NGO, the number of prisoners increased from 55.000 in 2005 to 228.993 in 2017 (234.673 in the 2018 EU progress report). There are many allegations of human rights violations in Turkey's prisons, including arbitrary restrictions on the rights of detainees and the use of torture, mistreatment and solitary confinement as disciplinary measures.

The EU has supported the improvement of the penitentiary system in Turkey, in line with European Prison Rules and international standards, through different projects. Among them the 2008 IPA project "Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey" (01.2009-9.2012) supported the provision of a full range of services to prisoners for rehabilitation and vocational training in 90 prisons and the development of six offending behaviour programmes. After this project, the prison administration continued to develop rehabilitation programmes in 31 rehabilitation centres and established the liaison between 50 NGOs and prisons. The model has been disseminated and would be now applied in 270 to 300 prisons. The CoE, in the final report of this project (March 2013), revealed that this intervention had positive impacts on most problematic fields of the Turkish penitentiary system. Based on an independent research field survey conducted among the penitentiary staff and the inmates, the CoE concluded that major achievements of the project resulted in a positive change of inmates' approach towards social activities, an improvement of the inmate-staff relations, of detention conditions and the creation of more employment opportunities after release. Another 2012 IPA twinning project "Strengthening of Probation Services' Institutional Capacity in Transition to Electronic Monitoring System" (08.2015-08.2017) supported an effective and functional electronic monitoring system in Turkey through pilot implementation of the electronic bracelet in line with European standards. This project followed the adoption of the new penal code and the new code of criminal procedures in 2004 which, together with the Code on Enforcement of Sentences, which provided the statutory framework for electronic monitoring to apply for non-custodial sanctions, measures for pre-trial, post-sentence and post-release supervision of offenders. A monitoring centre has been established in the headquarters of the probation department in Ankara, with the capacity of monitoring 5000 offenders at a same time. The majority of crimes targeted are theft, bodily harm, drugs and sexual offences.

Despite the positive results achieved under all these projects, their sustainability is now placed in jeopardy by the overcrowding of prisons. Three projects supporting the penitentiary sector and related to the prosecution service were put on hold by the EU: "Strengthening the penitentiary regime and improving the conditional release implementation in Turkey's penitentiary system to prevent recidivism", "improving the disciplinary and award procedures for inmates and enhancing the effectiveness of civil monitoring boards" and "improving investigation techniques and enhancing effectiveness of the Public Prosecution offices". According to the EUD, the suspension of funding to these projects may seriously impair the important EU investment made in the prisons so far, is preventing the EUD from evaluating the impact of previous projects and to continue monitoring the prisons' conditions. After a careful consideration of the decisions for the suspensions, and in-depth discussion with DG-NEAR, it is nevertheless considered that this decision was well-considered and justified, and any on-going impacts on other projects and stakeholders is a most unfortunate consequence of the failure of the Turkish authorities to correct the deficiencies highlighted in the ECA and other reports.

### **Juvenile justice and children's right**

The average duration of trials in the juvenile courts decreased. However, juvenile courts have not been established in all provinces and more than half of juvenile offenders continue to be tried in non-specialised courts. Also, the number of children in pre-trial detention increased. An NGO reports 700

children imprisoned with their mothers and 3085 juveniles (from 12 to 18 years old) detained. 50% of juveniles are kept in specific prisons, the others are mixed with adults.

The EU has financially supported a large number of activities on children's rights including grants to civil society organisations under the EIDHR and the CSF. Among these projects, an IPA 2010 direct grant to UNICEF "Justice for Children" (02.2012-12.2014) aimed to ensure the effective implementation of protective and supportive measures for children through protecting their rights to a fair trial, strengthening the inter-sectoral collaboration in the juvenile justice system and implementing high standards services for children deprived of liberty. In addition, under ESEI 2012, the Directorate General for Prisons and Detention Houses has been supported under project on the "Development of an Effective Risk Evaluation System for Children in Turkish Probation Services" implemented by UNICEF, which facilitated the development of new methodological approaches to probation services for juveniles, including a risk assessment tool developed in accordance with European standards for reintegration of juveniles under probation. These projects were not selected for examination and no conclusions can be drawn on the results achieved.

### **Elections**

The electoral process of 12 June 2011 was considered free and fair and was generally marked by pluralism and a vibrant civil society. Voting and counting on election day were mostly calm and professionally managed. Regarding the first direct presidential elections in August 2014, the report of the joint international observation mission of the OSCE and the Parliamentary Assembly of the Council of Europe found the campaign was conducted freely and that the right to freedom of assembly and association was respected. The mission noted that the legal framework was generally conducive to the conduct of democratic elections, although there were few elements that limited the transparency and accountability of the process. It also raised concerns over the "distinct advantage" of the presidential candidate, given his official position of prime minister, and media coverage biased in his favour. The local elections were well-organised and held in broadly peaceful circumstances, including across the southeast.

### **Other rights**

Turkey's approach to minority and cultural rights remains restrictive and is not aligned with European standards. Some positive steps in relation to Turkey's policy regarding broadcasting in languages other than Turkish were undertaken. However, restrictions remain on the use of other languages in political life, education and contacts with public services.

In April 2016, the government adopted a 2016-2021 national strategy and 2016-2018 action plan for Roma in order to address key obstacles to the social inclusion of Roma and introduce measures in the fields of housing, education, employment and health.

Homophobia, discrimination and hate crimes on the basis of sexual orientation and gender identity are still widespread phenomena in Turkey. There is no specific legislation against hate crimes and attacks on LGBTI persons and activists. Only 157 LGBTI persons are reported to be imprisoned. They are placed in 20 prisons to ensure their security, but sometimes placed in isolation cells to separate them from heterosexual.

The new Law on the Human Rights and Equality Institution of Turkey, adopted on 20 April 2016, contains provisions prohibiting discrimination on a large number of grounds. Despite this progress, there is still a need to adopt a fully comprehensive dedicated law on combating discrimination in line with the European Charter of Fundamental Rights, including with regards to sexual orientation. The new Law does not explicitly include sexual identity and sexual orientation among grounds for discrimination.

## 3.2 Quality / efficiency of justice systems (EQ6)

EQ6	To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?
JC61	Justice system planning and budgeting improved
JC62	Infrastructures and equipment (e.g. court facilities, IT systems) improved
JC63	Capacities, skills and procedures in key RoL entities improved
JC64	Legality ensured, harmonisation of domestic law with international law / jurisprudence promoted, and enforcement of international judgments improved

### 3.2.1 Summary of key findings (EQ6)

Turkey has worked towards making the Judiciary and judicial administrations more efficient and achieved some real successes such as institutional reorganisation and rationalisation as well as wider use of information and communication methods and technologies. EU assistance has mostly contributed in the form of expertise and capacity building of justice professionals from the Judiciary and the penitentiary systems, as well as from bar associations. It also encouraged a reinforced application of human rights by the national courts. However, sustainability of these restructuring and capacity building efforts remains questionable following the numerous dismissals of magistrates and civil servants, and continuous application of previous project achievements remains to be monitored.

### 3.2.2 Justice system planning and budgeting improved (JC61)

The 2010 budget for the Judiciary represented 0.55% of GDP. Following an increase in 2011, it decreased and stagnated from 2012 until 2017, representing 0.45% to 0,5% of Turkey's GDP, reaching TL 14 billion in 2017 (around EUR 3 billion), which represents EUR 38 per inhabitant. The financial resources allocated to the justice system are therefore insufficient in comparison with the challenges faced by the Judiciary.

According to comparative data of 2014 made by CEPEJ (Report 2016 on the efficiency and quality of justice), Turkey belongs to a group of seven European countries which dedicate the least per capita to their judicial system, as the average for Council of Europe states is at EUR 60 per capita. According to the same document the gross salaries of judges vary between EUR 21 100 and EUR 42 800, which is below the average of the country members, between EUR 36 700 and EUR 65 700.

The High Council for judges and prosecutors independently administered a budget of EUR 12.5 million and was supported by a well-staffed office led by a Secretary-General. However, since the recent legislative changes and the restructuring of the government, the independence of the Council has been affected.

### 3.2.3 Infrastructures and equipment improved (JC62)

In 2014, the government had completed the construction of 10 new prisons; however, overcrowding remained a concern in many of them. There were reports on significant number of transfers of inmates, mainly from the east and south-east of Turkey to other provinces. This had an impact on the inmates' capacity to access justice and on their family contacts.

Courts across the country have modern ICT equipment and cases are assigned to the courts and judges through an automated IT system. This system allows lawyers and parties to have access to important information about judicial proceedings and is used for the purpose of statistical reporting. However, Courts do not issue regular activity reports. There are numerous reports of selective justice and political interference in court cases.

The EU does not finance infrastructure projects in this regard but mostly focuses on the provision of technical assistance and supplies. Concrete results of EU assistance in relation to infrastructures and equipment included for the most important: the equipment of 225 penal courts with sound and visual recording systems, the construction of four forensic laboratories and the restructuring of 26 pilot courts. The re-design of court houses supported by the project on "Strengthening the court management system" (May 2011- October 2013), implemented by the CoE, increased accessibility of court users and effectiveness of work practices. The project contributed to improving case flow management and the quality of judicial services delivered to the public, with the installation of information desks and front offices. It also improved the working environment of the judges, prosecutors, court staff, as well as lawyers and bar associations who all benefitted from separate working areas.

The 2009 IPA project “Improved capacity of Civil Enforcement Offices” supported the establishment of a new model for civil court enforcement offices operating in 7 cities in Turkey. This model has reorganised the previous fragmented system by putting in place specialised units covering administrative and procedural support separately as well as the creation of a centralised unit in the MoJ, leading to a uniform, harmonised and integrated system between all enforcement units, which facilitated and accelerated the timely treatment of requests with more impartiality.

The EU is currently supporting a twinning programme “Strengthening the Victim Rights in Criminal Justice System” (March 2017-April 2019), with the victim protection unit (established in 2013) as main beneficiary. This project follows another project that had supported the design of interview rooms for children. This new project allows to increase the capacity of specific rooms in 7 pilot courts with the support of the legal unit. A strategic plan has been developed for the protection of victims and will be executed soon, then rolled out in other courts.

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

The HCJP, in cooperation with the Turkish Justice Academy and other judicial bodies, provided training to a large number of judges and prosecutors all over the country, including on new legislation, human rights and judicial ethics. Pre-service and in-service training of candidate judges and prosecutors was delivered by the Justice Academy established in 2003. According to the law establishing the academy, this institution has administrative, academic and financial autonomy. However, since the legislative changes of February 2014, this autonomy has been limited by new appointment procedures as the president, vice-presidents, heads of departments, seconded judges and prosecutors, as well as administrative staff, are appointed by the executive. Moreover, the Academy has been replaced by a training centre placed under the Ministry of Justice, which reduces its autonomy of decision.

The EU largely contributed to the capacity development of magistrates, judicial /penitentiary staff and lawyers through various projects since 2010. This assistance is considered to have brought positive achievements. Under the IPA 2010, the project “Supporting the Justice Academy” assisted the Academy to provide more efficient and effective pre- and in-service training for judges and prosecutors, in particular a specific training on human rights and the establishment of a human rights unit for the organisation of trainings and symposiums on human rights and ECHR decisions . The project enabled the revision of the Academy training strategy and curriculum in line with EU best practices and updated the training . An impact assessment unit was established to improve the quality of judicial training.

With regard to Prison Staff Training Centres, EU assistance has been provided for the establishment of a distance learning system to enable continuous training to the prison staff in 37 prisons of Turkey. However, there was still a need for the delivery of a face-to-face training for prison staff. The 2008 “Model Prisons Project” (2009 -2012), facilitated the development of a training strategy and strengthened the training capacity of the Training schools in Turkey, training 18 000 prison staff on European and international standards and other professionals (teachers, health care staff, and prison managers) on specific related matters. The 2010 “Improvement of enforcement services in Prisons” (December 2012-June 2015) contributed to develop quality human resource and development materials, outlining the performance of roles and responsibilities of prison staff, bringing a standardisation of practices for the treatment of prisoners in line with European standards, including the provision of training to line prison staff responsible for vulnerable groups. The 2009 project “Improving the Capacity of Civil Enforcement Offices,” has also supported the development of a training plan to be implemented by the new central unit of the ministry of Justice in coordination with the training department for newly recruited CEOs and enforcement clerks. The ongoing IPA 2014 project strengthening the capacity of bar association and lawyers on European human rights standards, implemented by the CoE, focuses on strengthening the capacity of the Human Rights Centres of the bar associations established in 7 pilot provinces, by enhancing the knowledge and skills of the lawyers engaged in these centres and improving the communication and coordination between these Centres, the bar associations and the Turkish Union of Bar Associations.

### **3.2.5 Harmonisation of domestic law with international law (JC64)**

In 2011, a Department of Human Rights was established within the Ministry of Justice to follow up ongoing cases before the ECtHR and the execution of judgements. Although Turkey had abided by the majority of rulings, some had not been followed up by the authorities for several years and the number of applications to the ECtHR continued to rise. The EU had therefore called on Turkey to enhance its efforts to implement all the judgements of the ECtHR.

Until 2012, judges and prosecutors had failed to apply international human rights agreements when they conflicted with domestic law, even though the Constitution clearly stated that such agreements

had precedence. In response, the High Council established new criteria for assessing judges and prosecutors which paid respect to the provisions of the European Convention on Human Rights (ECHR) and the ECtHR judgments.

Turkey adopted measures on the promotion and enforcement of human rights that were set out in the 30 September 2013 democratisation package by enhancing training of public officials, judges, public prosecutors and police officers regarding promotion and enforcement of human rights, by creating a Turkish version of the ECtHR judgments database and by publishing translations of relevant ECtHR judgments on the website of the Ministry of Justice.

The 2013 Turkey progress report emphasizes the decision the Constitutional Court, of 4 July 2013, which aligned with ECtHR case law by annulling the article set forth under the Anti-terror Law (included in the Third Judicial Reform Package) that allowed for the doubling of the detention on remand period provided under the Criminal Procedures Code (10 years) regarding the exploitation of state secrets, spying and offences committed against the security of state, constitutional order and national defence.

Based on the 2011 Law allowing introduction of individual claims to the Constitutional Court for violations of human rights, the Court ruled in 2014 on a number of important cases and took decisions that protected freedom of expression and of the internet, safeguarded the right to liberty and security, the right to a fair trial and for re-trials in a number of high-profile criminal cases. It also recognised hate speech on the grounds of sexual orientation as a criminal offence. The court also overturned the number of amendments to the Law on the HCJP.

Improvements were made to the measures taken under the State of Emergency in response to scrutiny by the CoE and the recommendations made by its Secretary General in December 2016, including the reduction of the maximum length of police detention from 30 days to a maximum of 7 days, possibly prolonged by another 7 days, and a limit of 24 hours without access to a lawyer was introduced.

The 2008 IPA project “Enhancing the role of the Supreme Judicial Authorities in respect of European Standards” aimed to enhance the commitment of the HCJP and of the higher courts to the EU accession criteria by raising awareness on human rights protection standards and establishing stronger relations with the EU judicial institutions and EU member states in order to benefit from their experience in the harmonisation of legislation and judicial practices. According to the EUD and CoE, the project achieved tangible results by introducing the Turkish superior judiciary to the EU *acquis*, fundamental rights and freedoms guaranteed by the ECtHR, provisions of the EU social charter and other European standards shared by EU and CoE. The project provided a favourable environment for a fruitful and substantive professional exchange of experience with peer counterparts in other European judicial institutions. Turkish judges increased their knowledge and became more familiar with the case law of the ECtHR. Several judgements of the beneficiary courts were changed in line with the ECHR principles and standards. The inter-institutional communication of judgments was improved between the Turkish courts and the ECtHR following clarification of interpretation of the case law and resulted in the decrease of the number of pending cases before the ECtHR. Major outcomes of the support 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.

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence / impartiality / accountability of the Judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence / impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of RoL institutions enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

Between 2007 and 2013, the judicial system had achieved significant improvements towards implementing European standards of effectiveness, independence and impartiality. However, there has been no progress since early 2014. The independence of the Judiciary and respect of the principle of separation of powers have been seriously challenged by an emergency decree law which granted the power to the supreme judicial instances and the HCJP to proceed with massive revocation of judges and prosecutors. Other RoL institutions are also not considered independent. The drastic measures taken by the Turkish government have led the EU to halt the projects supporting the Council of Judges and Prosecutors and aimed at strengthening the independence of the Judiciary. The EU's decision to partly suspend this assistance is severely criticized by the Turkish Ministry of Justice and the targeted judicial institutions, as according to their statement, it is perceived as sanctioning the wrong target groups and producing adverse effects on the independence of the judiciary since technical expertise provided to entities and individuals promoting this independence is now compromised.

#### 3.3.2 Independence / impartiality of RoL institutions (JC71)

Judicial independence and impartiality are enshrined in the Constitution and the law, even after the recent constitutional amendments of 2017.

The Law on the High Council of Judges and Prosecutors (HCJP), adopted in December 2010, brought some positive change for the independence of the Judiciary, by increasing the representation of judicial members from five to twenty-two in the composition of the High Council, with twelve substitutes elected directly by judicial bodies. This law also reduced the influence of the Ministry of Justice (MoJ) which represented less than 10% of the total membership. However, the MoJ remained President of the HCJP, and was able to veto the launching of disciplinary investigations against judges and prosecutors by the HCJP. He also had the power to appoint the personnel of the Council secretariat.

With the exception of dismissals, the High Council decisions, such as transfers of judges against their will, have not been opened to judicial review. Despite the permission to appeal against decisions concerning dismissal of judges and prosecutors, first instance decisions concerning promotions, transfers to another location and disciplinary sanctions have not been covered by a judicial review. Moreover, rules on dismissal have lacked clarity and precision. Assessment of the professional performance of judges and prosecutors was too centralised and assessment criteria applied by the inspectors did not fully guarantee judicial independence in practice.

There have been clear interferences of the executive into the independence and impartiality of the Judiciary at several periods. In 2012, a trade union of judges and prosecutors was closed in a case launched by the Governorate of Ankara on the grounds that the union contravened domestic legislation. In December 2013, ten out of twenty-five ministers (including the first minister) were replaced following corruption allegations. The government alleged that there had been an attempted judicial coup by a "parallel structure" within the state, controlled by the Gülen Movement, and lodged a complaint against prosecutors and police officers in charge of the original investigations. In 2015, there were important limitations to the principle of immovability of judges as accusations of conspiracy by the executive in the fight against the "parallel structure" led to a high number of judges being transferred against their will. A number of disciplinary and criminal cases against judges and prosecutors have also lacked due process.

A recent law, adopted in July 2016, changed the structure and composition of the Court of Cassation (CoC) and the Council of State (CoS), and kept undermining the independence of the Judiciary and the principle of immovability. The law provides for a complete overhaul of the two institutions, with the term of office of all sitting CoC and CoS members expiring automatically after 12 years and the number of chambers and their members decreased.

The dismissal and forced removal of 30% of the judges and prosecutors following the July 2016 coup attempt represented a significant challenge to the overall quality and efficiency of the Judiciary.

There has been further serious backsliding with the entry into force in May 2017 of Constitutional amendments which have further undercut the independence of the HCJP (now denominated Council of Judges and Prosecutors - CJP) from the executive. The CJP proceeded with large-scale suspensions and transfers of judges and prosecutors without their consent and without justifying new recruitments and promotions on merit-based, uniform and pre-established criteria. Out of the 4,399 judges and prosecutors dismissed from their positions, only 454 were later reinstated to their positions by the CJP. Judges and prosecutors who were in pre-trial detention remained without an indictment for more than a year on average. Under the State of Emergency, two important associations: the Association of Judges and Prosecutors and the Judges Union were closed by the government. The capacity of Turkey to ensure an effective domestic legal remedy has been further undermined as several court rulings favourable to prominent defendants, including human rights defenders, were reversed by another or even by the same court, in some cases following the interference of the executive.

In December 2016, the European Network of Councils for the Judiciary (ENCJ) decided to suspend the CJP's observer status and to exclude it from participation in ENCJ activities, due to its lack of independence from the executive and legislative powers. In its December 2016 opinion "On emergency decree laws adopted following the failed coup of 15 July 2016" (No. 865/2016), the Venice Commission criticised the collective dismissals of public servants, namely of judges, stating that the procedures before the CJP had to respect minimal standards of due process and that appeal against disciplinary measures should have been granted to dismissed judges.

In light of the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017, the 13 March 2017 opinion of the Venice Commission (No. 875/2017) raised concerns on the new appointment procedures for the members of the CJP, assessed as lacking sufficient checks and balances, and endangering the separation of powers between the executive and the Judiciary. Following this opinion, the Commission suspended three projects aiming at supporting the independence of the judiciary and a fair and transparent inspection system for judges and prosecutors ("Strengthening judicial ethics in TK"; "Developing Inspection Standards for impartial and independent judiciary" and "Strengthening the efficiency of the High Council of judges and prosecutors".)

As a consequence of the increase role of the President in the executive, the presidential system abolishes the office of Prime Minister, and weakens the Parliament's oversight role of the executive. The President has the power to issue presidential decrees on executive matters outside the scope of the law; and to dissolve Parliament by calling for new Parliamentary and Presidential elections. The principle of precedence of laws over presidential decrees remains enshrined in the new system and the President may not issue decrees in areas reserved to the legislature by the Constitution. However, the President has the power to veto any law, which Parliament can override if an absolute majority agrees. Parliament can only apply to the Constitutional Court to annul presidential decrees. Therefore, there has been no improvement in the scrutiny of government work by parliamentary work or inquiry committees. The threshold to launch a parliamentary investigation into alleged criminal actions by the executive related to their functions has been brought to three fifth of the members.

### **3.3.3 Accountability of RoL institutions (JC72)**

The Law on the Turkish Court of Accounts (TCA) adopted in December 2010 authorised the Court to audit public expenditure on behalf of Parliament, thus strengthening parliamentary oversight. In order to raise awareness on accountability and enhance transparency, TCA reports are made public and easily available, with minimum exceptions on grounds of national security. There was no progress in improving the parliament's capacity to monitor performance and audit public expenditure, including defence expenditure, despite the entry into force of the new Law on TCA. In July 2012 amendments to the law on the TCA weakened its legal mandate and working procedures, including parliamentary oversight, and jeopardised the independence and effectiveness of the TCA audit and control. This amendment was repealed by the Constitutional Court in December 2012 and a subsequent draft law was submitted to parliament in April 2013 mandating the TCA to carry out all types of government auditing.

The 2010 amendments to the Constitution introduced access to information as a constitutional right and led to the establishment of an Ombudsman institution in June 2012. Overall, the work of the Ombudsman Institution contributed to raising awareness of citizens' fundamental rights and the institution delivered recommendations in line with ECtHR rulings on key issues, such as freedom of assembly and the prevention of disproportionate use of force by law enforcement officers. The EU has supported the Ombudsman institution through a twinning programme implemented for two years (March 2014-March 2016), and a technical assistance project supporting the communication and visibility of the institution. The project mostly supported the establishment of the institution at its inception phase (which started receiving complaints in March 2013) and, according to the final report and last 2016 ROM report, achieved to build the capacity of human resources and to incorporate the

necessary organisational structure and competences to assure an efficient protection of citizen's rights in line with EU standards. The legal framework of the Ombudsman was reviewed and the legal needs analysis identified the absence of ex officio powers for the institution to initiate investigations and to intervene in cases with legal remedies, including appeal to the constitutional court. A proposal for amendment in the legislation is under preparation. The number of complaints submitted to the Ombudsman has more than doubled since its commencement. The institution claims that other administrations are following their recommendations and that the compliance has increased from 20% in 2013 to 67% in 2017. However, the limited powers of the Ombudsman reduce the effectiveness of his contribution to the fields of human rights and good governance. Moreover the 90 days complaint submission procedure to the Ombudsman is short compared with practice at EU level. For most human rights observers, the Ombudsman is not seen as an independent institution.

The National Human Rights Institution (NHRI), also established in 2012, was replaced by a National Human Rights and Equality Institution (NHREI) in April 2016. The NHRI was determined as the National Preventive Mechanism (NPM) under the Optional Protocol to the United Nations Convention on Prevention of Torture on 28 January 2015. However, this institution was not aligning with Paris principles and was not seen as an independent institution. Under the law of 2016, the new institution's functional, structural and financial status is still not complying with the Paris Principles and the EU *acquis*. Its board members are not yet elected, so cases of alleged violations are currently not being followed up. While this new institution has the power to launch investigations of its own initiative into potential human rights violations, it can no longer accept applications over human rights violations that are in the remit of the Ombudsman. Given the continued weakness of the Ombudsman's office in this field, the effectiveness of redress for potential victims of human rights violations might be affected.

### **Media access to judicial proceedings**

Through the 2010 IPA project improving relations between mass media and judiciary (May 2013-October 2015), the EU contributed to institutionalise relationships between the Judiciary and independent media through the establishment of a system of 303 judicial spokespersons appointed in 155 courthouses. Five pilot "press offices" were established to issue press releases and information to the various journalist judicial correspondents. The project also aimed at improving the confidence of the citizens in the Judiciary, to provide them with accurate and prompt information on judicial matters. There has not been an evaluation of this project, nor a survey launched by the Ministry of Justice to monitor its impact, however the ex-post ROM report of August 2016 concludes that the project has achieved its planned results, as it established sound and effective judicial outreach and contributed significantly to the improvement of communication between media and judiciary authorities. Moreover, ownership displayed by the Ministry of Justice has been very high and training programmes were taken over.

### **Ethics**

The Office of Judicial Ethics was founded in February 2016. A Law on Code of Ethics for judges and prosecutors is still pending adoption. The Court of Cassation adopted codes of conduct in the last quarter of 2017. Disciplinary procedures are in place for both judges and prosecutors but the system is not perceived as guaranteeing the independence of the Judiciary. Mechanisms to detect breaches of the integrity rules and to enforce disciplinary penalties are not free from political interference. All judges/judges of High Courts, including members of the CJP have to declare their assets. Lawyers have to abide by the professional principles of the Union of Turkish Bar Associations. Integrity training is part of the curriculum for initial training but is not a criterion in the initial selection and nomination process, or in the appointments to senior positions.

In December 2015, the EU started to support the High Council of Judges and Prosecutors through a direct grant to the CoE, aiming to promote judicial ethics in Turkey and to ensure effective implementation of the Code of Judicial Ethics, as well as to raise awareness among judges, public prosecutors, lawyers and members of the public. The project was halted 6 months before its termination (foreseen end 2017), as the Code of Judicial Ethics had not been adopted and the training could therefore not continue.

### 3.4 Broader effects on the RoL (EQ8)

<b>EQ8</b>	<b>To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?</b>
<b>JC81</b>	<b>Access to justice strengthened</b>
<b>JC82</b>	<b>Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened</b>
<b>JC83</b>	<b>Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved</b>

#### 3.4.1 Summary of key findings (EQ8)

Between 2010 and 2013, Turkey had achieved significant improvements related to the quality of trials, juvenile justice, a substantial reduction in use of police custody, more limited use of pre-trial detention, and respect for human and fundamental rights, including abiding by the case law of the European Court of Human Rights (ECtHR). However, from 2014 and mostly since 2016, further backsliding continued with regard to the respect of fundamental rights in the country, notably on freedom of expression, freedom of assembly and association, right to fair trial, right to an effective remedy, property rights and protection of human rights defenders.

#### 3.4.2 Access to justice (JC81)

Backlog of judicial cases: In 2010, Turkey had a large backlog of criminal and civil cases pending in first instance courts and high courts courts (more than 1 million). After the judicial reform of 2010, the Laws on the Court of Cassation and the Council of State were amended in order to tackle this issue: more chambers were established and a large number of judges and prosecutors appointed. A legislation was also adopted in March 2011 to reduce the workload of first-instance courts. The number of pending cases started to reduce from 2013 for the majority of tribunal and courts, partly due to the creation in 2016 of nine regional courts of appeal. By 2017, the backlog of both first instance courts and high courts had decreased by half but the excessive length of some trials had not been resolved.

Limited progress has been made on access to justice. The 4th Judicial Reform Package loosened the conditions for granting legal aid and allowed hearings to be held to decide on the granting of such aid. However, there is no separate legislation which regulates all free legal aid practices. Legal aid systems in criminal and civil / administrative cases differ in terms of procedure, budget and competent implementation bodies, rendering the system ineffective and complex. Moreover, the level of fees paid to lawyers is low and delays in payment pose impediments for due recourse of citizens.

The Ministry of Justice website provides information on legal matters and publishes brochures providing information on procedures. The total allocated budget to legal aid in Turkey has increased by 45% between 2013 and 2017. Civil society organisations and bar associations contributed to raising awareness of citizens' rights as regards access to justice. However, there is lack of public awareness on legal aid in rural areas and limited access to justice among disadvantaged groups. According to a 2016 CEPEJ report, even if a substantial amount is provided per legal aid case (EUR 780), only a limited number of cases are eligible for legal aid, representing only EUR 1.33 per capita.

The EU has financed a measure "Strengthening the Legal Aid Service in Turkey" (IPA 2013 - June 2016- June 2018) through a twinning programme. The purpose of the action was to establish a more effective, sustainable and satisfactory legal aid system in order to strengthen the right to a fair trial and access to justice in line with fundamental rights. The project supported the development of a strategy and action plan to restructure and simplify the legal aid system aiming for the provision of more effective, accountable and transparent services to people who are entitled to use legal aid services. Mechanisms are established to determine the legal aid policy, monitor the delivery of legal aid services and to ensure consistency of practices by courts and bar associations for improving the quality of legal aid services. Criteria for determining eligibility for free legal aid were reconsidered based on EU member state practices and needs for legislative amendments were identified. Beyond these achievements, the project has established good cooperation ties between the Ministry of Justice and the Union of the Turkish Bar Associations, despite their political differences, and managed to enhance their partnership to further revise the current system to increase the scope and the quality of legal aid services. The Ministry of Justice has made the commitment to include the provisions of the strategic plan into the revised Judicial Reform Strategy document (under preparation).

The Criminal Procedure Code was amended in January 2013 to allow defendants to conduct their defence in a language of their preference other than Turkish at certain stages of the judicial process, even if they can express themselves adequately in Turkish. A Human Rights Compensation Commission started working in February 2013 following adoption of the relevant legislation. This mechanism was requested to put in place following a ECtHR judgement as a domestic remedy for length of judicial proceedings and non-enforcement or delayed enforcement of judicial decisions.

However, measures adopted under the State of Emergency removed crucial safeguards protecting detainees from abuse as emergency decrees imposed additional restrictions to procedural rights including on the rights of defence. The government has established a State of Emergency Appeal Commission in July 2017 to deal with individual complaints of dismissed public staff. Its decisions are open to judicial review before a designated administrative court in Ankara and then before the Constitutional Court. This Commission had by March 2018 rejected 96% of the appeals requests examined and is not considered as an effective and transparent remedy.

In August 2017, the Constitutional Court ruled some 70 000 individual applications were inadmissible as they had not exhausted all earlier domestic remedies, directing applicants to the Appeal Commission and/or to administrative courts. The ECtHR also re-directed about 28 000 applications for the same reason.

### 3.4.3 Respect for human rights (JC82)

In 2010, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in its fifth periodic visit to Turkey, noted a downward trend in both the incidence and severity of ill-treatment by law enforcement officials. Despite ratification of the OPCAT in 2011, disproportionate use of force by law enforcement officials has continued to be a concern, particularly outside official places of detention. Reports of torture or ill-treatment in prisons increased, especially in south-eastern provinces. Despite an improvement of the situation, the EU progress report of 2015, noted "the frequent reports of use of excessive force against demonstrators and cases of ill-treatment in prisons". This progress utterly degenerated following the attempted coup, as serious human rights violations, widespread ill treatment and torture of detainees, arbitrary arrests, breaches of procedural rights and death of civilians occurred on a broad scale namely during security operations that took place during curfews imposed by province governorates in the South East in 2015 and 2016<sup>22</sup>.

Human rights NGOs no longer have access to detention centres and confinement spaces and cannot anymore directly monitor cases of torture or ill treatment. However, based on EU and other bilateral donors' support, they continue collecting data through interviews with lawyers and families, who have access to the accused, or directly from prisoners (through letters).

Under the EIDHR programme, the EU supports rights-based NGOs:

- to accomplish their advocacy work on the situation of prisoners, especially prisoners with special needs
- to mobilise civil society to bring Turkey's prisons, detention centres and confinement spaces in line with international standards through campaigns and networks
- to research and report on abuse of human rights or situations of impunity through publications, studies, shadow reports, media coverage, and web articles
- to rehabilitate victims of torture and support them with health care and legal assistance
- to increase awareness on the prevalence of discrimination based on race, ethnicity, religion or belief, social or gender background, etc.
- to empower victims of discrimination with regard to their rights and legal remedies.

EU also support Human Rights Defenders, through its local strategy for Human Rights Defenders (HRDs), and organise meetings with Member States and HRDs, NGOs, lawyers, journalists and other human rights activists to discuss the latest developments of the situation of HRDs and address the issues reported to the relevant authorities.

## Media

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<sup>22</sup> European Parliament resolution of 8 February 2018 on the current human rights situation in Turkey (2018/2527(RS)); Report of the UN commissioner

Turkey ranks 157 out of 180 countries in the 2018 Media Freedom Index. In 2010, Turkey was already positioned quite low: 138 out of 178 countries. And the trend always went downwards over the years.

In its enlargement strategies and other progress reports, the EU has always raised concerns about the violations of freedom of expression, the restrictions and undue pressure imposed on media, and about the high number of legal cases and investigations against journalists. The current Turkish legislation does not sufficiently guarantee freedom of expression in line with the ECHR and ECtHR case law and permits restrictive interpretation by the Judiciary. Attempts to ban social media have, however, been overturned by the Constitutional Court.

The legal framework related to the fight against organised crime and terrorism, and its interpretation by the courts, has led to many abuses. Indeed, legislation on internal security has granted broad discretionary powers to the law enforcement agencies in cases against journalists, writers or social media users without adequate oversight. Moreover, the legislation on the internet increased the government's prerogatives to block content without a court order on a wide range of grounds.

Since the attempted coup of 2016, the situation has further deteriorated, in particular through arrests, detention and prosecution of journalists on terrorism charges, closure of a wide range of media outlets, and increased censorship of websites and online social media.

The EU supported a project on freedom of expression implemented by the CoE from September 2014 to March 2017, with the Justice Academy as main beneficiary, aiming to achieve full respect for freedom of expression in the Judiciary in line through ECHR and ECtHR case-law. The government considers this project very successful, given the materials and methods that it generated, and emphasised its impact in relation to the coordination built between the higher courts and NGOs. Despite the tense climate of the attacks and the coup, the project continued to train judges and prosecutors about freedom of expression, terrorist related issues, and hate speech. The CoE estimates that the Justice Academy addressed sensitive thematic issues on the freedom of expression through a technically sound approach and organised interesting roundtables. However, based on the backsliding in media freedom and judicial independence, the impact and sustainability of the project results appear now very reduced.

#### **Anti-discrimination**

The National Human Rights and Equality Institution is also responsible for non-discrimination policy as seen above. Regarding implementation of anti-discrimination laws, the NHREI is not yet operational as its members were appointed in March 2017, and secondary legislation regarding its mandate on discrimination cases was only adopted in November 2017. As a result, the NHREI has not yet delivered any decision on applications received and processed.

It is however worth to note that in May 2014, the Constitutional Court found for the first time that hate speech on the ground of sexual orientation constituted a criminal offence. On the contrary, on 19 November 2017, the Ankara Governor's Office decided to impose an indefinite ban on any event organised by LGBTI organisations.

#### **Gender equality**

In 2018, Turkey ranks 69 out of 188 countries on gender equality, with a score of 0.328. This score has only slightly progressed as Turkey ranked at the same position in 2013 with a score 0,360 in the 2013 UNDP Gender Inequality Index. The inclusion and participation of women at all levels of society remains a key challenge, and gender-based violence and child marriage remain issues of concern (See 3.1.5).

#### **3.4.4 Governance and democratic processes (JC83)**

Corruption: Turkey ranks 81 out of 180 countries with a score of 40 on the Corruption Perception Index 2017, while it was positioned 54 with a score of 49 in 2012.

In 2010, Turkey developed a comprehensive anti-corruption Strategy and Action Plan for the period 2010-2014. Overall, little progress has been made on implementing the strategy and the action plan to combat corruption, whose scope focuses mainly on preventive and awareness-raising measures. The legal and institutional framework continues to allow undue influence by the executive in the investigation and prosecution of high-profile corruption cases. Anti-corruption legislation is inadequate for effectively preventing, prosecuting and penalising conflicts of interest and bribery, since existing offences are not deterrent and enforcement remains weak. The lack of a specialised court also prevents effective investigations, indictments and convictions of corruption cases. There were some positive developments on incrimination and transparency in the financing of political parties in 2012. However, the broad scope of parliamentary immunity remained an issue, even when it was lifted following the coup as it led to the arrest of ten members of the opposition HDP party.

In April 2016, Turkey adopted a new action plan for increasing transparency and strengthening the fight against corruption covering the period 2016-2019, but this fails to include impact indicators..

Turkey also needs to follow up on nearly all recommendations of the Council of Europe's Assembly of the Group of States against Corruption (GRECO).

The EU has supported an anti-corruption programme under the Multi-beneficiary Programme, IPA 2013/024-091, entitled "Strengthening National Integrity Systems in the Western Balkans and Turkey" and tracking developments of anti-corruption efforts, through implementation of a Grant Agreement with Transparency International from May 2014 to October 2017. TI carried out an institutional assessment of how countries in the Western Balkans and Turkey were addressing corruption threats and project partners were meant to develop and implement advocacy strategies aiming at tackling corruption in selected areas and a monitoring mechanism to track developments in their fight against corruption. The tracking reports have not yet been published.

Freedom of assembly and association continues to be overly restricted, in law and practice. The legal framework on freedom of association and freedom of assembly is broadly in line with European standards. However, the authorities exercise excessive controls over associations and a high number of CSOs have seen their regular operations challenged through court closure cases, penalties, restrictions or discriminatory practices by public authorities. The government is also imposing some administrative obstacles to restrict CSOs in the conduct of their operations (for example, the VAT exemption is sometimes difficult to obtain for organisations funded by the EU). In some cases, the activities of human rights defenders were also subject to penalties, investigations and court cases. Local and international non-governmental organisations' activities are hampered by administrative burdens.

Civil society continues to face increasing pressure, in particular following the high number of detentions and arrests of civil society activists and human rights defenders following the coup. 1,419 Associations (out of around 110.000) and 145 Foundations (out of a total of around 5500) were closed down as of 24 December 2017. Ten beneficiaries of EU funded programmes in the civil society sector have been closed and their grant contracts terminated. 358 were allowed to reopen following a re-examination of their case. However, many rights-based organisations remained closed under the State of Emergency and they have not been offered any legal remedy in relation to confiscations. It is not yet clear if the State of Emergency Appeal Commission will be competent in this case.

The EU has been considerably supporting the establishment of an enabling environment for the civil society through different programmes. Among the most important, TACSO was implemented during eight years (2009-2017), strengthening the capacity of CSOs to contribute to their enabling environment, improve their legal and institutional framework, increase their democratic role, their visibility and sustainability in order to participate in public debate and influence policy and decision making processes. "Sivil Düşün" (launched in 2013) is an innovative, inclusive and participatory programme responding to the needs and concerns of CSOs, activists, civil initiatives, networks and platforms, to engage in joint activities, and facilitate the access to civil society assistance mechanisms. The evaluation of the "Sivil Düşün" programme, which started in May 2017, confirmed that the CSF was the right tool to support civil society in a challenging context such as Turkey, as it did not require signature of a financial agreement from the authorities and targeted flexible support to rights-based initiatives in Turkey. A new EU-funded project is supporting the institutional capacity of CSOs through the Civil Society Development Centre – STGM- a resource centre established under TACSO providing free services and support CSO to enhance their capacities, provide information through a help desk on EU funds available, legislation on associations, financial and technical problems faced during grant application and implementation, and provide them with access to reference documents and manuals.

## 4 Annexes

### 4.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Internal Auditor CGAP	CFCU - Central Finance and Contracts Unit
Team leader, Acting Coordinator, Contract manager	CFCU - Central Finance and Contracts Unit
Head of Office	CoE, Office Ankara
Head of Operations	CoE, Office Ankara
Senior Project Manager - Improvement of court management	CoE, Office Ankara
Coordination Officer	EU-EEAS, EUD Ankara
Deputy Head of Cooperation	EU-EEAS, EUD Ankara
Deputy Head of Section Civil Society, Fundamental Rights, Judiciary and Home Affairs Section	EU-EEAS, EUD Ankara
EIDHR responsible	EU-EEAS, EUD Ankara
Minister Counsellor, Head of Cooperation	EU-EEAS, EUD Ankara
Sector Manager Justice Freedom and Security, Institution Building and Civil Society Section	EU-EEAS, EUD Ankara
Political Officer, Turkey Division – EURCA.WEST.3	EU-EEAS, HQ
Political Officer - Legal issues	EU-EEAS, EUD Ankara
Programme Manager Civil Society, Fundamental Rights, Judiciary and Home Affairs	EU-EEAS, EUD Ankara
Project experts, Judges, Social Worker	Government of Turkey, Ministry of Justice
Judge	Government of Turkey, Court of Cassation (CoC)
Several representatives	Government of Turkey, Department of Training (EDB)
Several representatives	Government of Turkey, HSEM
Several representatives	Government of Turkey, Directorate of Strategic Development (SDB)
Several representatives	Government of Turkey, Directorate General For Personnel (PGM)
Several representatives	Government of Turkey, Directorate General For Prisons And Detention Houses
Coordinator Monitoring & Financial Cooperation Directorate	Government of Turkey Directorate of EU Affairs under the Ministry of Foreign Affairs
Head of EU and Foreign Relations Department	Ombudsman Institution
Director	Union of Turkish Bar Associations

### 4.2 List of documents consulted

#### 4.2.1 EU strategy and programming

European Commission (2007-2013): National programme for Turkey under the IPA-Transition Assistance and Institution Building Component.

European Commission (2007): Multi-annual Indicative Planning Document 2007-2009 for Turkey.

European Commission (2008): Multi-annual Indicative Planning Document 2008-2010 for Turkey.

European Commission (2009): Multi-annual Indicative Planning Document 2009-2011 for Turkey.

European Commission (2011): Multi-annual Indicative Planning Document 2011-2013 for Turkey.

European Commission (2014): Indicative Strategy Paper for Turkey (2014-2020).

EU local Strategy to support and defend Human Rights Defenders in Turkey (2010 and 2016) and Press releases on Human Rights Defenders

European Commission Communication on EU Enlargement Policy (2016), 9.11.2016, COM(2016) 715 final

European Council Conclusions on Enlargement and Stabilization and Association Process as adopted on 26 June 2018 (10555/18)

European Commission, 10.7.2018. Draft amending budget n. 5 to the general budget 2018.

Cancellation of the reserve related to the support to Turkey from the Instrument for Pre-Accession (IPA II), reinforcement of the European Neighborhood Instrument (ENI) and of the Humanitarian Aid for other urgent actions and modification of the establishment plan of the Innovation & Networks Executive Agency (INEA) in the context of the WiFi4EU initiative. COM(2018) 537 final

#### 4.2.2 EU reporting

EuropeAid (2011-2017): External Assistance Management Report (EAMR). Turkey.

European Commission (2011-2016, 2018): IPA Progress Report.

European Court of Auditors (2018): EU pre-accession assistance to Turkey: Only limited results so far. Special report on Turkey. 2018/07.

European Parliament resolution of 8 February 2018 on the current human rights situation in Turkey (2018/2527(RSP))

#### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions and programmes (see also details in the list presented in Table 1):

- 2007 Dissemination of Model Prison Practices & Promotion of Prison Reform
- 2008 Strengthening the Court Management System
- 2008 Enhancing the role of Supreme Judicial Authorities in respect of European Standards
- 2009 Improved capacity of Civil Enforcement Offices
- 2010 Improvement of Enforcement Services in Prisons
- 2010 Effective and professional Justice Academy
- 2010 Improved Relations - Mass Media & Judiciary
- 2011 Support to establishment of the Ombudsman Institution
- 2012 Justice and Home Affairs component of 2012 national programme
- 2013 Judiciary and Fundamental Rights
- 2015 Fundamental Rights
- 2014 and 2015 Judiciary

#### 4.2.4 Evaluation and studies

AETS (2017): Mid-term Evaluation of the Civil Society Facility for the Western Balkans and Turkey.

IBF (2012): Thematic evaluation on judiciary and fundamental rights in Turkey.

Particip (2017): External Evaluation of the Instrument for Pre-accession Assistance (IPA II) (2014–mid 2017).

Thematic report on the Judiciary and fundamental rights sector. Technical assistance for Result Oriented Monitoring in Turkey – phase II. Performance of IPA component I (TAIB projects). Review of ROM monitoring findings in 2015.

#### 4.2.5 Other

Council of Europe, Venice Commission, 13 March 2017, Opinion 875/2017. “ Turkey - Opinion on the amendments to the constitution adopted by the grand national assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017”

Council of Europe, Parliamentary Assembly, 27 February 2018. Report of the Committee on Legal Affairs and Human Rights: “State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights”

Nielsen (2018). Rights watchdog to visit Turkey over rule of law.

Konings (2018). Revising the Turkey- EU narrative: an historical institutional approach to Turkey's EU accession (1963-2017).

## Case study note – Horizontal Facility

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## 1 Introduction

The IPA II Multi-Country Indicative Strategy Paper 2014-2020<sup>1</sup> and the Indicative Strategy Papers<sup>2</sup> referred to continuing challenges in the Western Balkans and Turkey in the area of democracy and the Rule of Law (RoL). They include the functioning and independence of institutions guaranteeing democracy, fighting organised crime and corruption, ensuring independent, impartial, efficient and accountable judicial systems, as well as safeguarding fundamental rights such as freedom of expression and rights of persons belonging to minorities as well as vulnerable groups, notably Roma.

In 2012 an evaluation was conducted to review the EU cooperation with the CoE for the period 2000-2010. One of the key recommendations proposed was a more sustainable, long-term funding arrangement for programmatic support, to ensure that reforms would be addressed in a more strategic, results-oriented manner, at the same allowing the then-current fragmented project portfolio to be streamlined.

In 2014, the EU and the CoE signed a Statement of Intent to strengthen strategic and programmatic cooperation in the enlargement region (and in other regions) in key areas of joint interest, and established the *EU/CoE Horizontal Facility for the Western Balkans and Turkey* (the Horizontal Facility/ HF), a cooperation framework between the two institutions for an initial period of three years (2016 - 2019), with an overall budget of EUR 20 million, to which the CoE contributed EUR 5 million. It aimed to ensure a long-term flexible and predictable engagement in particular in the following areas:

- Efficient and independent judiciary, including justice reform, prisons and police;
- Fighting corruption, economic crime and organised crime;
- Promoting freedom of expression and information and freedom of the media;
- Promoting anti-discrimination and protection of the rights of vulnerable groups (including the rights of LGBTI and protection of minorities, in particular Roma).

The HF provides support to selected IPA II beneficiaries (Albania, Bosnia and Herzegovina, “the former Yugoslav Republic of Macedonia”, Kosovo\*, Montenegro, Serbia and Turkey) to address challenges in three main themes:

1. Ensuring justice;
2. Fighting economic crime; and
3. Promoting anti-discrimination and protection of the rights of vulnerable groups.

In line with the thematic scope of the current Evaluation, this case-study focussed primarily on the theme of ensuring justice. However, some examination is made of the other two main themes where they are relevant or complementary to the former.

Support under the HF is developed on the basis of monitoring recommendations and advisory opinions of the CoE, and prioritised in accordance with the needs of EU enlargement negotiations, and aims to assist beneficiaries to comply with CoE standards and EU acquis in the framework of the enlargement process.

The HF is structured around two instruments for provision of support (primarily technical assistance).

- The larger instrument comprises the Tri-Annual Plans of Action (TAPA).
  - The HF relies on the CoE’s working methods, whereby tailor-made technical co-operation activities are based on conclusions and recommendations of the CoE’s monitoring bodies<sup>3</sup> highlighting areas where improvements are needed in legislation and policies of the beneficiaries to comply with the Council’s treaties and other standards. These monitoring bodies include among others the Group of States against Corruption (GRECO), Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Venice Commission, and the European Court of Human Rights (ECtHR).

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1 C(2014) 4293, 30.06.2014

2 C(2014) 5770, 18.08.2014-Albania; C(2014) 9495-Bosnia and Herzegovina,15.12.2014; C(2014) 5861, 19.08.2014-“the former Yugoslav Republic of Macedonia”; C(2014) 5771, 18.08.2014-Montenegro; C(2014) 5772, 20.08.2014-Kosovo;

C(2014) 5872, 19.08.2014-Serbia; and C(2014) 5998, 26.08.2014-Turkey

3 <https://pjp-eu.coe.int/web/horizontal-facility/standards>

- o There are 36 HF Actions running with a total value of EUR 25 million. According to the contractual budget, the number of Actions and financial allocations for each beneficiary are: Albania – 7 Actions (EUR 4.65 million or 18.6 % of overall HF budget), Bosnia and Herzegovina – 5 Actions (EUR 2.77 million / 11.08 %), Kosovo - 5 Actions (EUR 2.67 million / 10.68 %), Montenegro - 6 Actions (EUR 4.08 million / 16.32 %), Serbia – 7 Actions (EUR 3.79 million / 15.16 %) and “the former Yugoslav Republic of Macedonia – 6 Actions (EUR 3.92 million / 15.68 %) HF Actions provide primarily technical assistance from CoE experts towards national authorities and other stakeholders that are responsible for the targeted sectors and vary in length of duration from 6 to 36 months, with an average duration of just under 24 months.
- The smaller Expertise Co-ordination Mechanism (ECM) provides legal expert advice linked to priority related reforms, which is based on requests from beneficiary countries. The original budget allocation for this was EUR 1.8 million and it is available to all beneficiary countries.

The third thematic area of the Statement of Intent (above), promoting freedom of expression and information, and freedom of the media, has to date been addressed through a separate EU/CoE Joint Programme, *Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX)*, with a budget of EUR 2.5 million, to which the CoE contributed EUR 600,000.

The HF is implemented by the CoE through its field offices in each beneficiary country (with TAPAs coordinators in each), under the overall coordination of the regional office in Belgrade and CoE headquarters in Strasbourg. Each beneficiary country has its own appointed HF Coordinator responsible for coordinating programming and implementation. DG NEAR is the contracting authority, with the EUD engaged in programming and implementation at the national level.

The overall objective of the HF as stated in the Description of Action (DoA) is “*to support country-tailored reform processes in the areas of rule of law, democracy and human rights with the aim for the Council of Europe South East Europe (SEE) member States/IPA II Beneficiaries to comply with European standards.*”

The expected results of the HF are as follows:

- ER1: Increased level of implementation of key CoE recommendations by SEE governments/IPA II Beneficiaries; and through this, increased compliance with CoE standards;
- ER2: Strengthened institutional capacities of the relevant HF institutions to implement CoE recommendations and standards and to embark on targeted reforms in areas covered by the HF.

The main activities of the HF are as follows:

ER1: Provision of legal and technical reviews/ opinions on legislation and policies aimed at addressing implementation and execution of specific targeted recommendations and advisory opinions of CoE monitoring and advisory bodies, as detailed in the TAPAs;

Raising awareness of CoE standard-driven reforms and the level of expected compliance with recommendations/ opinions from the relevant bodies;

Provision of ad hoc legal advice/ expert opinion(s) when linked to priority related reform actions channelled through the CoE ECM.

ER2: Provision of tailored capacity building assistance in the form of advice, training activities and other forms of technical support aimed at implementing CoE’s recommendation linked reforms; provision of tools and methodologies in implementing priority related reforms while developing new capacities and skills.”

Building on the recommendations of a Results-Oriented Monitoring (ROM) mission conducted in 2017 and the progress achieved in the first phase of the HF (and JUFREX), the European Commission is planning to continue the co-operation with the CoE for the region, through a second phase of the HF covering an additional three-year period (2019-2021) and allocating EUR 35 million (in addition to the CoE’s own contribution ) for its implementation. It is planned that the second phase of the Facility will implement actions under all four existing thematic areas of the Statement of Intent that is, including actions promoting freedom of expression and information, and freedom of the media, which are currently covered by JUFREX.

The individual interventions that have been or are currently being implemented under the theme “Ensuring Justice” for the first phase of the HF are as follows:

**Table 1** Overview of IPA financed interventions relevant to RoL in the framework of the EU/CoE Horizontal Facility

<b>Decision year</b>	<b>Country</b>	<b>Title</b>	<b>EU contributions (mEUR)</b>	<b>Implementation methods/channels</b>
2014	Albania	EU-CoE Project to increase the efficiency of the Albanian justice system, in line with European standards - Support to the implementation of the Justice Reform Strategy	1.2	Service
2016		Enhancing the protection of human rights of prisoners in Albania	0.7	Service
2016		Supporting effective domestic remedies and facilitating the execution of ECtHR judgments	0.7	Service
2016	Bosnia and Herzegovina	Enhancing human rights protection for detained and sentenced persons	1.1	Service
2016		Strengthening the Human Rights Ombudsman to fight discrimination	0.8	Service
2016	Kosovo	Strengthening the Quality and Efficiency of Justice in Kosovo	0.9	Service
2016		Enhancing the Protection of Human Rights of Prisoners in Kosovo	0.6	Service
		Enhancing human rights policing	0.6	
2016	Macedonia	Enhancing human rights policing	0.6	Service
2016		Increasing capacity of the judiciary to safeguard human rights and combat ill-treatment and impunity	0.7	Service
2016		Strengthening the protection of the rights of sentenced persons	1.0	Service
		Support to legal aid reforms in "the former Yugoslav republic of Macedonia"	0.3	
2016	Montenegro	Accountability of the Judicial System in Montenegro	0.8	Service
2016		Enhancing human rights protection for detained and sentenced persons in Montenegro	0.8	Service
2016		Fighting ill-treatment and impunity and enhancing the application of ECtHR case law on the national level	0.8	Service
2016	Serbia	Enhancing human rights protection for detained and sentenced persons in Serbia	0.9	Service
2016		Supporting effective remedies and mutual legal assistance	0.7	Service
2016		Strengthening legal guarantees for independent and impartial tribunals	0.4	Service

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

<b>EQ2</b>	<b>To what extent has EU support to RoL responded to the bilateral and regional contexts?</b>
<b>JC21</b>	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
<b>JC22</b>	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 Summary of key findings

The actions undertaken under the HF were designed based on recommendations emanating from CoE monitoring and opinion/advisory bodies as well as based on the case-law of the ECtHR, and in view of national and sector policies and strategies. Individual interventions were prepared in a collaborative manner that included a broad range of national stakeholders from all main RoL institutions. Responsiveness to identified needs has been demonstrated in several projects, and the flexible and tailor-made nature of HF interventions has allowed considerable fine-tuning, which, while having increased relevance, has also reduced available implementation times.

While CSOs were actively consulted or involved in the implementation of interventions, their involvement in the design of the HF and individual interventions was somewhat limited. The degree of national and institutional ownership has been highly variable, particularly where sensitive issues are being addressed; it was considered by CoE interviewees that this may be mitigated through timely and more effective communication of the HF's role.

#### 2.1.2 Alignment and participatory processes (JC21)

In preparation of the HF, the CoE drafted Scoping Papers for each IPA II beneficiary, which provided a snapshot of the situation for the identified key priority areas for cooperation. The findings were based on the CoE's mechanisms and tools, including relevant CoE standards and recommendations of the CoE monitoring bodies. The Scoping Papers served as a baseline and formed the backbone of the EU/CoE Horizontal facility against which the progress was to be measured.

The actions undertaken in the HF Beneficiaries were individually designed based on recommendations emanating from CoE monitoring and opinion/ advisory bodies, and in view of national and sector policies and strategies, and in response to the case-law of the European Court of Human Rights. These were then prioritised in each individual beneficiary according to the needs that had been identified within the enlargement negotiations of the European Union. In terms of alignment at the overall regional level, stakeholders interviewed also note that the 2017 Strategy for the Western Balkans<sup>4</sup> is already being incorporated into interventions in the current Phase, and is fully taken into account in the design of Phase 2.

With CoE monitoring body recommendations as a starting point, the TAPAs were then prepared in a collaborative manner that included all the main institutional stakeholders. The 2017 ROM Report indicated that: "*beneficiary institutions confirmed that they had been closely involved in the actions' design and that they (largely) met their specific needs*" (p.4). Stakeholders interviewed highly praised this approach, noting that this has resulted in the interventions being "*highly demand driven, and a living process*".

It was also noted however that the involvement of CSOs in the design of the HF has been limited to some engagement between CoE in Strasbourg with its CSO interlocutors. Further, there was no sign of their involvement in the development of interventions in beneficiary countries. While civil society is consulted and actively involved in the implementation of activities (see below), CoE staff interviewed confirmed that involving civil society directly in the design phase of projects is clearly "*an area in which the HF can do better*" to increase alignment and participatory processes.

The main partners in the definition and implementation of this programme include ministries of justice, interior, health, human rights and foreign affairs; courts, prosecutorial services and judicial supervisory bodies; ombudspersons; penitentiary institutions; legal professionals; and civil society organisations. Ministries of Foreign Affairs and/ or institutions for European Integration are key partners in the co-ordination of the HF.

<sup>4</sup> [https://ec.europa.eu/commission/news/strategy-western-balkans-2018-feb-06\\_en](https://ec.europa.eu/commission/news/strategy-western-balkans-2018-feb-06_en)

The 2017 ROM Report noted that the “*flexible design approach, combined with the actions’ strong alignment with beneficiary national priorities, CoE commitments and accession obligations, has resulted in generally strong ownership among beneficiaries towards the HF actions*” (p.4); this aspect has been largely confirmed in the field phase, however it is observed that the degree of ownership is highly variable according to the specific country, or even the individual institution.

As a first example, ownership in Macedonia has been relatively high, with national ownership accepted as an essential element in ensuring both the effectiveness and sustainability of the interventions. This has been particularly evident in training initiatives undertaken within HF interventions, where a particular emphasis has been given to training-of-trainers and cascade training, with high levels of uptake and institutionalisation of these inputs reported by EUD, CoE and national authorities.

To give a second example, national ownership has also developed relatively strongly in Serbia. Stakeholders reported that institutions demonstrate genuine commitment to the interventions and their results, which are rightly considered ‘theirs’; in this regard, the CoE has been “*bombarded with requests from the Ministry of Justice*”, which is a strong indicator of their enthusiasm and the high level demand for the CoE’s contributions.

Third, ownership in Bosnia and Herzegovina was deemed highest relative to training activities, with local trainers delivering human rights training in prisons, and these activities “*now living their own life*”. The interventions in general have provided momentum and incentives for institutions from different areas of the country to meet together for the first time to discuss issues of common concerns; this is in stark contrast to the highly politicised and fraught relationships between different jurisdictions.

There has been some indication that ownership is more problematic in Kosovo, with some interlocutors stating that national counterparts have required some convincing that the HF is “*not there to do the job for them*”. It was also reported that passivity and dependence demonstrated, some misunderstanding of the HF’s role, difficulties of coordination on the national side, and a sense that authorities required “*pushing*” to obtain the necessary cooperation. It was further reported that content was considered overly sensitive, as it was the case for integrity training,. In this case however, beneficiaries were ultimately reassured that interventions were aimed at prevention rather than accountability for individuals. It was considered that communication with authorities and the “*packaging*” of activities are necessary prerequisites to facilitate institutional buy-in. These observations were however disputed by CoE representatives, who accept that there was sensitivity about acceptance of the Strengthening Integrity in Higher Education project by only a single University (out of seven public universities), which was resolved through active engagement and dialogue. They also strongly consider that Kosovo authorities do cooperate in the framework of HF actions

### **2.1.3 Needs, opportunities; and responsiveness (JC22)**

As indicated at JC 21 above, actions undertaken under the HF Beneficiaries are individually identified and prioritised in each beneficiary according to needs that are identified within the enlargement negotiations of the European Union (specifically under Chapters 23 and 24) and which are directly linked to the recommendations of CoE monitoring bodies.

Responsiveness to identified needs and priorities is therefore strong in all projects. To give an example, the Albanian intervention *Enhancing the protection of human rights of prisoners in Albania* was based on the case law of the ECtHR and the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) during country visits, which revealed the necessity of the Prison Administration and other institutions increasing efforts to improve the protection of prisoners’ human rights and support the rehabilitation of prisoners.

The flexible and tailor-made nature of HF interventions has allowed the fine-tuning of the focus of TAPAs’ activities and outputs, however the 2017 ROM report noted that, while this increased their relevance, it is also relatively time-consuming (given that adjustment can occur at any time during the project cycle), which has in some cases significantly reduced available implementation times.

It is noted in several contexts that the HF has built on existing relationships with the CoE, for example in Bosnia and Herzegovina where the CoE had already worked on prison reform for more than 14 years, which has substantially contributed to project effectiveness and overall cooperation.

## 2.2 Implementation / choice of modality (EQ3)

EQ3	To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?
JC31	High quality policy dialogue established: content (promotion of RoL and European standards and principles), frequency, synergies between operational (intervention-level) and high-level dialogue, etc.
JC32	Implementation strategies appropriately chosen and combined / complemented
JC33	Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)
JC34	Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into account.

### 2.2.1 Summary of key findings (EQ3)

All HF interventions are closely linked to the EU's high level dialogues, working groups and actions plans for Chapter 23 and 24 with regards to candidate and potential candidate countries. Policy dialogue at the country level has contributed to the effectiveness of individual interventions, and the interventions have inversely supported broader dialogue on cross-cutting issues as, for example, human rights.

HF follows a two-fold approach, including technical assistance and legal and policy advice. However, the Expertise Co-ordination Mechanism (ECM) experienced low levels of uptake by beneficiaries, and demand for it was initially very weak, however this appears to have been corrected in recent months. In addition, despite being a regional facility, the HF initially lacked a genuinely regional dimension. Nevertheless, considerable effort has since been made to develop this aspect in a strategic manner.

The large number of interventions necessitated substantial preparatory efforts to minimise overlap and strengthen complementarity. On this end, significant complementarities and synergies with EU and other donors' initiatives are observed.

An element of efficiency is the CoE's specific expertise, its ability to link support directly to its monitoring mechanisms, and its status as an international organisation with membership of many HF countries. The implementation mechanism is elaborate, with a triple-layer of CoE management, but is nevertheless considered to have been efficient and effective to date.

The HF has a three-level steering committee structure. National-level meetings are well attended and generate specific recommendations on improving performance. A complex monitoring and reporting mechanism allows for a bi-monthly collection of performance data. However, this is considered to be time-consuming and reports are overly activity-oriented. Visibility was an aspect that required urgent attention: Considerable efforts have been made to strengthen and implement the HF's visibility and communication strategy.

### 2.2.2 Policy dialogue (JC31)

Pursuant to the HF's original Action Document, all interventions are closely linked to the EU's high level dialogues, working groups and actions plans for Chapter 23 and 24 with regards to candidate and potential candidate countries, in order to ensure that the CoE's core expertise is well used to support the countries in their reform processes. The interventions are also in line with national sector strategies where these are in place. Furthermore, the results of technical assistance provided feed into Progress Reports prepared by the European Commission, targeted accession negotiations (fulfilment of overall results and impact indicators in Action Plans for Chapters 23 and 24) and the CoE monitoring mechanisms.

Given that the interventions have been designed in line with clearly identified needs and in close collaboration with the EUD, policy dialogue undertaken at the country level has been in support of their objectives. Indeed, stakeholders interviewed consider that the implication of EU Delegations is considered critical to the HF's effectiveness, and helps support bilateral partnership and foster national ownership through their presence in Steering Committees; they provide, political leverage and a broader strategic vision, and to date have been highly responsive. In Bosnia and Herzegovina, as a specific example, policy dialogue was able to provide positive contributions to the political debate

relative to the electoral law. Importantly, all topics of relevance for the HF were included in yearly subcommittees on Justice, Freedom and Security under the Stabilisation and Association Agreement.

### 2.2.3 Choice of implementation strategies (JC32)

As indicated above, the HF follows a two-fold approach, including technical assistance and legal and policy advice. It is uniformly considered by all stakeholders interviewed and the Evaluator that the HF's strongest element of added value consists of its flexibility and "bespoke" response to beneficiary and institutional needs.

Technical assistance under the HF is based on the CoE "triangle" of standard setting, monitoring, and co-operation, which represents the CoE's own specific advantageous treat. Under the CoE "triangle", the interventions address identified shortcomings with a view to supporting beneficiaries in complying with CoE standards and facilitating accession progress regarding the implementation of Chapters 23 and 24. As indicated above, this was to be achieved through a range of activities, including training seminars, assessments (e.g. implementation of legislation and policy documents, institutional arrangements, and institutional capacities); support to drafting of legislation, policy documents, methodologies, guidelines and handbooks (etc.); and exchanges of good practice.

The Expertise Co-ordination Mechanism (ECM) was intended to provide expertise sourced from within the CoE system to respond to requests for legislative expertise and policy advice, and on constitutional issues falling within the mandate of the Venice Commission.

The creation of the ECM was intended as a flexibility instrument to complement the more structured TAPAs with ad-hoc, demand-driven, smaller-scale support to meet specific beneficiary requests. The 2017 ROM Report noted that, while CoE and EUDs see it a valuable tool with real potential, in reality *"it has hardly been used by beneficiaries and demand for it remains weak"*. The reasons cited for this were the lack of awareness of the ECM among beneficiaries (EUDs and local CoE staff), the narrow range of potential users and actions, and that TAPA's flexibility means ECM requests are often addressed within existing interventions.

It was also noted that, despite being a regional facility, the HF does not have a genuinely regional dimension. It was observed that engagement and collaboration between senior decision makers from beneficiaries on common issues would have obvious added value, and *"the absence of such an element in the design has to be considered a missed opportunity"*. It will be important to look at this aspect in the next phase of the HF, for example from the perspective and experiences of EuroMed Justice.

The CoE has itself demonstrated considerable flexibility and reactivity to the conclusions and recommendations of the 2017 ROM Report. The issue of limited uptake of the ECM has been addressed through a revised overall strategy relative to communication and visibility (see also JC 34 below), which has already resulted in an upswing in the number of requests for support under the mechanism.

The regional aspect has also been directly addressed since the 2017 ROM Report, with an agreement reached to develop a concept note and proposal on strengthening the HF's regional scope in the current Phase. This has already resulted in several new regional activities regarding prisons (in particular de-radicalisation in prisons) and policing, as well as protection of minorities and the fight against economic crime and corruption. The CoE states that it continues to examine and develop the most appropriate themes and activities or interventions for capitalising on the Facility's regional aspects. It was noted that certain themes are particularly sensitive, which makes them difficult to address with national institutions, but are easier to approach at the regional level. Issues relative to minorities and anti-discrimination were cited as examples, but equally sensitive issues relative to accountability of RoL institutions could also conceivably be addressed within regional activities.

It is noted in particular that the second Phase of the HF has been developed directly in response to the lessons learnt of the current phase, building on results obtained to date, and on the relationships that have been established. It is observed that the presence of a permanent contact person within each CoE Country Office has contributed significantly to the overall results of the interventions. A shift in implementation strategy in the second Phase is that interventions will in principle be fewer, but longer in duration, since *"even small interventions over a longer period have concrete results and greater sustainability"* [CoE Country Office]; this has been particularly evident in the interventions supporting prison systems and detainee rights.

The development of a "reserve fund" is also envisaged, which could serve to support or extend specific programmes that do not fit squarely within the TAPAs. It is considered by the Evaluator that this would provide even greater flexibility and responsiveness.

Whilst the ECM was under-utilised in the earlier stages of Phase 1, it has amply demonstrated its responsiveness. In Bosnia and Herzegovina for example, it was determined that the Electoral Law

required urgent review. Experts from the Venice Commission came in within less than three weeks, which is considerably faster than existing mechanisms providing technical assistance (see also JC 83). As one CoE interviewee noted “[the ECM] is like an insurance policy: you may never need it, but when you do, it’s there”.

The implementation strategies are of particular relevance to the institutional and cultural contexts of the beneficiaries in the Western Balkan region, where institutions are often politicised and exchanges therefore become more problematic. This has been marked in several contexts (e.g. Macedonia), where meetings and exchanges have taken place between Prosecutors, ombudsmen, and justice sector institutions, which have worked together with Parliament to implement CoE recommendations. Given that legal systems, laws and by-laws have strong similarities, the CoE has observed that this is likely to have substantial flow-on effects since it “has helped us identify similar projects” [CoE] in the immediate region.

#### 2.2.4 Synergies and complementarity within the portfolio (JC33)

While individual interventions have been designed on a de facto bilateral basis, based on specific national needs (see JC 32 above), there is significant evidence of synergy and complementarity between interventions from other bilateral actions supported by the EU and other donor partners. Risks of overlapping or duplication are considered negligible, since the CoE clearly “brings expertise that no-one else can bring” [CoE Office in Pristina].

This is particularly important given the relatively large number of total EU actions in each of the beneficiaries supported by the HF. The EC, EUD, CoE and beneficiary institutions have been careful to minimise overlap, and seek ways to strengthen complementarity. EUD interviewees noted that the HF allows them to “jump in, expand and up-scale, and close gaps that emerge with big structural EU programmes”, and likened the HF interventions to “superglue”. Importantly however this does not occur automatically, but requires constant vigilance on the part of the EUD, CoE and national counterparts regarding emerging needs of all partners, noting that: “we are not fire-fighters, but flexibility is key”.

Of particular importance is that the HF demonstrates considerable complementarity with existing technical assistance modalities, such as Twinning and TAIEX, and has provided additional added value within a single beneficiary context, for example with CoE monitoring bodies’ recommendations being incorporated into technical assistance planning, or used to establish baselines for on-going or future assistance.

The HF has also demonstrated its potential to create synergies with other donor initiatives, for example in Kosovo where a case-management and information system is being supported by the Norwegian Agency for Development Cooperation (Norad) with whom the HF has been working to determine how CEPEJ guidelines and other CoE tools can be used to bring added value to the project.

#### 2.2.5 Efficiency, monitoring and visibility (JC34)

An element of efficiency cited by the 2017 ROM Report is the choice of using a direct agreement with the CoE to deliver the HF, given its “specific expertise in the fields of action, its ability to link support directly to its monitoring mechanisms and its status as an international organisation of which many HF countries are members” (p.5). The implementation mechanism itself is elaborate, and reflects the challenge of ensuring the delivery of interventions across six countries. The triple-layer of CoE management (Strasbourg, Belgrade and local offices) appears costly and time-consuming, however the 2017 ROM Report considered that it has to date been efficient and effective, with close collaboration between CoE local offices and beneficiaries, which in turn has ensured that actions have been implemented in line with local needs and in a flexible manner. EUDs have also been proactive and constructive in the implementation of the HF.

The HF has steering committees at three levels: one for each TAPA, one annual national steering committee, and an annual Steering Board for the overall HF. National partners are co-chairs, and meetings have been well attended and have generated specific recommendations on improving performance.

CoE staff consider that the overall CoE management structure is itself somewhat cumbersome, in particular relative to institutional difficulties concerning de-centralisation. Given that this is an initial Phase of the Facility, certain “teething problems” have been experienced concerning workflows, and harmonising agreement on work-plans and activities, and the right level of “balance” in terms of inputs from the EUD (see however their added value relative to policy dialogue as elaborated below).

The HF has a complex monitoring and reporting mechanism that in principle allows for bi-monthly collection of performance data of the TAPAs, however the 2017 ROM Report noted that this is very

time-consuming for CoE local offices. In addition, monitoring reports are described as being descriptive rather than strategic, and they “do not allow managers, donors or monitors to clearly understand how HF actions are performing against planned targets” (p.6). It further notes that no results or indicators exist at neither at country level, nor for the ECM, which creates significant difficulties in the assessment of the HF’s objective performance. EUD staff interviewed echoed this conclusion to some extent, with some noting that project management tools are overly vague, and called on DG NEAR to be much stricter on scrutinising indicators of success. CoE staff also consider that the HF structure is top-heavy with “80% of their time spent on reporting and administration, and a maximum of 20% on substance”.

The CoE formally complies with visibility rules, however the 2017 ROM Report noted that there was a variable approach taken to promoting the TAPAs, and that, given they are intended to produce a wide range of high quality outputs, a more strategic approach from the EC and CoE to communicating these benefits is desirable. As indicated above, the CoE responded in a considered and strategic manner to the findings and recommendations of this Report, and has now developed a revised overall strategy relative to communication and visibility, with communication training and visibility guidelines in place, a permanent communications officer present in the HF “hub” in Serbia, and *ad hoc* expertise provided to all offices, with the CoE Albania office already having benefited from the support of a media consultant and the CoE Montenegro programme office using a framework contract for communication services. In addition, CoE has also published a tender for a media agency to produce audio-visual materials, info-graphics, etc. in support of HF interventions. Importantly, CoE Headquarters considers its overall communication to be in itself an on-going process and therefore subject to adjustment and development.

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination / complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

A co-ordination mechanism was established between the CoE, EU, CoE Field Offices, EUD and HF Beneficiary Co-ordinators, which aims to ensure synergies with other actions in the region. The effectiveness of such coordination has varied from beneficiary to beneficiary. In addition, difficulties relative to coordination between national authorities have been experienced. However, it was observed that the HF has served as a catalyst to improved coordination between EU services in Brussels.

Given the long-standing EU-CoE partnership, the internal clarity of EU strategic orientations is evident. Likewise, given that the HF is largely demand-driven, and guided by identified needs, clarity for beneficiary countries is relatively high.

### 2.3.2 Partnerships established at global level (JC41)

This JC is examined in the overall analysis in Volume I, the main report.

### 2.3.3 Coordination with EU MS / other donors at country level (JC42)

A co-ordination mechanism was established between the CoE, EU, CoE Field Offices, EUD and HF Beneficiary Co-ordinators (officials appointed by authorities to act as focal points for the implementation of the HF) to ensure inclusive and comprehensive co-ordination between the CoE, the EU, the stakeholders and partners at the national level, and with other international organisations. This co-ordination mechanism aims to ensure synergies with other existing and planned actions in the region as well as tangible and sustainable results for the final beneficiaries and the general public. An example of where coordination has worked well is Macedonia, where the EU supports a Sectorial Working Group, which has encouraged Ministries (including Justice and Home Affairs) to take initiative. A number of EUD staff has however stated that a significant barrier to coordination is a tendency on the part of national counterparts to “withhold” information – from donors, from other insertions, and even within institutions – resulting in a persistent lack of national coordination.

Some contexts have not always experienced effective coordination, with some Serbian stakeholders interviewed stating that there is a serious lack of coordination within the EU-funded portfolio of CoE projects, which has led to some confusion on the part of governmental counterparts. The CoE does not agree with this assessment.

CoE staff noted however that the regional nature of the HF has also helped facilitate coordination between the various EU services in Brussels, and has emphasised the importance of continued close relationships and transparent flows of information between DG NEAR and CoE HQ.

### 3 Effects of the EU support to RoL

#### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy / strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion / minority rights / gender) and democracy issues into partner countries' RoL policy</b>

##### 3.1.1 Summary of key findings (EQ5)

Numerous interventions have made direct and complementary contributions to legal and constitutional reform (in particular the development of constitutional case-law), to the national policy and strategic framework, as well as to integrating human rights (notably detainees rights) and democracy issues (notably electoral reform). These have included:

- Proposing amendments to the national legislation (Albania);
- Reviewing secondary legislation to improve judicial capacities (Montenegro);
- Supporting the integration of ECtHR judgements and international standards into national jurisprudence and case-law (Macedonia, Montenegro, Bosnia and Herzegovina);
- Supporting the establishment of the legislative and institutional framework for an external police oversight mechanism (Macedonia);
- Providing an opinion on rights of victims of torture subsequently reflected in draft legislative reform (Bosnia and Herzegovina);
- Supporting the transfer of prison health care to the Ministry of Health (Kosovo);
- Developing strategies for the implementation of the Judicial laws (Montenegro); and
- Supporting the regulatory and operational framework to improve conditions in prisons (Montenegro).

Significant support has also been provided through the ECM to legal and constitutional reform, and incorporation of human rights standards in national strategies and policies.

Stakeholders interviewed confirmed that the factors contributing to these successes are linked to the interventions' relevance to country needs, the CoE's credibility related to the excellence of expertise provided, and the timeliness of responses. There is no evidence however that the regional aspect of the Facility contributed to these successes, although it is noted that regional expertise has often been utilised at the bilateral level; the coming months will provide an opportunity for additional and more direct regional contributions.

Despite these contributions, beneficiaries often experience difficulties in implementation of legislation, including due to problems of political will and capacity/ resources, and the small scale of the HF interventions.

##### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)

There have been several specific interventions that have targeted support to legal and constitutional reform. In particular, this was the case for the project *Supporting effective domestic remedies and facilitating the execution of ECtHR judgments* in Albania, which proposed amendments to the national criminal legislation. The intervention *Accountability of the Judicial System* in Montenegro reviewed secondary legislation to improve the recruitment, promotion and assessment of judges and Judicial Council's capacities.

One concrete result has been in Macedonia relative to support integration of judgements of the ECtHR, which has brought national case-law and jurisprudence in line with European standards. In Montenegro, substantial judicial achievements are similarly described, with pilot judgements having been issued by the Constitutional Court on Article 3 of the ECHR (prohibition of torture and ill-treatment), relating to highly sensitive cases of violence towards citizens during protests, which had never been adequately investigated or prosecuted. The intervention *Enhancing human rights policing in Macedonia* sought to establish the legislative and institutional framework for an independent external oversight mechanism of the police; it has been working to set up a sustainable network of trainers on Art 3 and 6 (right to a fair trial) of the ECHR, including trainers-of-trainers, and cascade

training. The two interventions were specifically designed to be mutually supporting. Working directly with judges and prosecutors has provided an essential opportunity to discuss cases “informally” and internally. Contributions to case-law have included relative to compensation for lengthy proceedings, ineffective and prejudicial investigations, and several crucial procedural aspects; these are considered to be landmark cases and hence represent a lasting contribution to law reform.

A similar approach has been adopted in Bosnia and Herzegovina, where CoE experts have provided *amicus curiae* opinions to the Constitutional Court, which has also resulted in significant developments in national case-law. The ECM has also provided essential inputs to legislative change, with the Minister of Justice having requested an opinion on rights of victims of torture, with the HF inputs being reflected in a draft amendment of existing law; this an excellent example where EU actions are “*the big stones and ECM is the cement*” [source: CoE staff member].

Stakeholders interviewed confirmed that the factors contributing to these successes are linked to the relevance of the interventions to country-level needs, the CoE’s overarching credibility related to the technical excellence of the expertise provided (and which is generally considered to be significantly superior to expertise provided under bilateral projects), and the timeliness of their responses.

Significant support has also been provided through the ECM to legal and constitutional reform, and incorporation of human rights standards in national strategies and policies. Out of 19 ECM requests, 14 related to the Venice Commission’s work, and assistance was provided in the form of Venice Commission Opinions or *amicus curiae* on the issues related to constitutional and ordinary justice and electoral matters. Some very important examples include:

- Venice Commission assistance provided to Serbian authorities in drafting of the constitutional amendments related to judiciary and subsequent adoption of the Venice Commission Opinion;
- Venice Commission Opinion on the draft Law on the Prevention and Protection against Discrimination in the former Yugoslav republic of Macedonia; and
- Venice Commission expert assistance to the Albanian Parliament in the process of preparation of the amendments to the Electoral Code etc.

Nevertheless all beneficiary contexts experience difficulties in the implementation of legislation, even when aligned with European standards through HF support; this is generally due to deficiencies in overall political will and capacity/resources, and because HF projects are simply not of sufficient scale to work on broader implementation issues. Nevertheless, in beneficiary countries where the HF has provided support to amending laws and mechanisms such as the CPT can provide one level of external monitoring, and while some complementary advice has been provided relative to the implementation of laws, additional expertise provided to civil society organisations and ombudspersons, for example in Bosnia and Herzegovina, creates an additional layer of local oversight.

There is no evidence however that the regional aspect of the Facility contributed to these successes; nevertheless it did have the possibility to exchange positive practices in the region, and it is observed that CoE technical assistance has brought the knowledge and experiences of its 47 member states, and the collective expertise from the region was very often used within HF bilateral interventions. Given that CoE management is adopting a more regional approach, the coming months will hopefully provide additional and more direct regional exchanges..

### 3.1.3 National RoL policy / strategic framework (JC52)

Projects that provided support in this regard include: *Supporting effective domestic remedies and facilitating the execution of ECtHR judgments in Albania*, which sought to identify the shortcomings concerning the non-enforcement of national judgments. The HF was also used to increase the efficiency of the Albanian justice system, in line with European standards, through direct support to the implementation of the Justice Reform Strategy.

*Enhancing the Protection of Human Rights of Prisoners in Kosovo*, which aimed to ensure efficient transfer of the prison health care from the Ministry of Justice to the Ministry of Health; *Enhancing human rights policing* in Macedonia, which as indicated above also sought to establish the institutional framework of the police oversight mechanism; *Accountability of the Judicial System in Montenegro* which was to draw up a strategy for the implementation of the 2015 Law on the Centre of Training of Judiciary and Prosecution; *Enhancing human rights protection for detained and sentenced persons in Montenegro*, which sought to improve the regulatory and operational framework in order to improve healthcare, prevent ill-treatment and improve conditions in prisons.

### 3.1.4 Integration of HR and democracy issues (JC53)

These elements are grouped and discussed at JC 82 below.

### 3.2 Quality / efficiency of justice systems (EQ6)

<b>EQ6</b>	<b>To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?</b>
<b>JC 61</b>	<b>Justice system planning and budgeting improved</b>
<b>JC 62</b>	<b>Infrastructures and equipment (e.g. court facilities, IT systems) improved</b>
<b>JC 63</b>	<b>Capacities, skills and procedures in key RoL entities (e.g. judiciary, courts, public agencies, professional associations) improved</b>
<b>JC 64</b>	<b>Legality ensured, harmonisation of domestic law with international law / jurisprudence promoted, and enforcement of international judgments improved</b>

#### 3.2.1 Summary of key findings (EQ6)

Some interventions have made indirect contributions to justice system planning and budgeting.

No physical infrastructures or equipment were provided by the interventions of the HF, however some broad interventions can be considered as having made contributions to institutional infrastructures: and specifically their structure, composition and overall approach.

The improvement of skills and procedures in RoL entities is clearly the strongest contribution by the HF, and many actions have provided highly targeted inputs to a broad range of institutions. These have included *inter alia*:

- Support to the quality, efficiency and effectiveness of courts and justice institutions;
- Support to the status, organisation and professionalism of court and prison staff;
- Improvement of internal procedures;
- Improvement knowledge and capacities of legal professionals on law and procedure;
- Strengthening capacity of judicial training centres;
- Developing guidelines for detained persons;
- Reinforcing offender management programmes;
- Fostering cooperation between Ombudsmen, public institutions and civil society.
- Developing and piloting rehabilitation programmes;
- Improving detainee risk and needs assessment tools; and
- Strengthening prevention of ill-treatment, and revising disciplinary procedures.

Concrete evidence of results includes:

- Development and institutionalisation of recruitment policies and training (Albania);
- Training of prison and Ombudsman staff on human rights issues, and development of prison management guidelines (Bosnia and Herzegovina);
- Development of guidelines, standard operating procedures, training manuals and strategies regarding prison healthcare, suicide prevention (Kosovo);
- Support to implementation of the OPCAT and the Mandela Rules (Kosovo);
- Support to the Constitutional Court's pilot judgements on ECHR Article 3 in Montenegro.

Considerable added value has been provided relative to alignment with European standards, and the use of CoE tools. These numerous technical interventions contributed to the harmonisation of domestic law with international law, and in particular the capacity of courts and other RoL entities to harmonise their practices with international and European standards.

#### 3.2.2 Justice system planning and budgeting improved (JC61)

In Montenegro, support was provided to the Judicial and Prosecutorial Councils in the preparation of their respective budgets (*Accountability of the Judicial System in Montenegro*), and in other contexts, some support was provided to gender-based budgeting. In addition, some of the actions described at JC 63 below had elements that would have contributed indirectly to change in this regard, as for example in Albania, the project *Increase the efficiency of the Albanian justice system, in line with European standards - Support to the implementation of the Justice Reform Strategy* provided a CEPEJ-based analytical study on the efficiency of the justice system.

### 3.2.3 Infrastructures and equipment improved (JC62)

While the focus of the HF is on technical contributions, IT equipment was provided as part of some actions' outcomes, and various small tenders were organised in this regard to improve judicial bodies' performance (for example the Constitutional Court in Montenegro).

in addition, some interventions were of such importance and broad scope that they can be considered as having made likely contributions to institutional infrastructures, that is the structure, composition and overall approach of key RoL institutions.

The interventions of particular relevance in this regard include: *Enhancing the protection of human rights of prisoners in Albania*, which aimed to improve the overall provision of health care, including mental health care; *Enhancing human rights protection for detained and sentenced persons* in Bosnia and Herzegovina, with Component III aiming to improve prison health care; *Strengthening the protection of the rights of sentenced persons* in Macedonia, which aimed to improve the treatment of sentenced persons through introduction and implementation of specific treatment programmes; and *Enhancing human rights protection for detained and sentenced persons in Montenegro*, which sought systematic solutions for reduction of overcrowding in prisons and improving detention conditions, the introduction of rehabilitation and reintegration programmes, and improvement of the institutional set up for the provision of health care services to detainees.

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

Support by the HF to the improvement of skills and procedures in RoL entities clearly comprises its strongest added value. Literally dozens of actions and activities have provided highly targeted inputs to a broad range of institutions. These have included the following forms of support to professional skills: general support to the quality, efficiency and effectiveness of courts and justice institutions; support to the status, organisation and professionalism of court and prison staff; improvement of internal procedures (e.g. individual sentence planning and regime); improving knowledge and capacities of judges, prosecutors and other legal professionals on both general and highly specific areas of law and procedure; strengthening capacity of judicial training centres; developing guidelines for detained persons; reinforcing offender management programmes; fostering cooperation between Ombudsmen, public institutions and civil society.

In addition, specific examples of where procedures have been improved include: developing and piloting targeted rehabilitation programmes; improving detainee risk and needs assessment tools; developing and piloting rehabilitation programmes; 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 *inter alia* alignment with European standards, applying specific articles of the ECHR and case law of the ECtHR, and building capacity of courts to deliver justice in accordance with CEPEJ tools; in short it is evident that contributions have, in line with the overall objectives of the HF, leveraged the technical expertise of the CoE.

Notable examples of tangible and sustainable results have included the following: In Albania, where the HF has addressed crucial issues of recruitment policy of RoL institutions, provided initial training, and developed curricula that are now institutionalised; in Bosnia and Herzegovina where prison staff and the Ombudsman's Office have been trained in human rights issues, where European-standard compliant guidelines have been developed for managing prisons. The EUD has reported that: "we see better recommendations and reports from the Ombudsman, and fewer complaints of ill-treatment in prisons". Contributions in Kosovo have also been considerable, with for example guidelines, standard operating procedures and training manuals being developed on providing healthcare in prisons, development of a suicide prevention strategy; collaboration with the prison inspectorate, relative to prison monitoring and the application of the Mandela Rules. Macedonian stakeholders interviewed also point to significant and sustainable results, with support to knowledge and skills having been instrumental in the development of national laws and strategies, and institutionalised into training curricula.

### 3.2.5 Harmonisation of domestic law with international law (JC64)

The numerous technical interventions outlined at JC 63 above have undoubtedly contributed to the harmonisation of domestic law with international law, and in particular the capacity of courts and other RoL entities to harmonise practices with international and European standards. The intervention *Fighting ill-treatment and impunity and enhancing the application of ECtHR case law on the national level* in Montenegro is a strong example of a practical contribution to harmonisation, since it aimed to enhance the institutional capacities of the Constitutional Court towards better application of the ECtHR case-law. Support was also provided to the Constitutional Court's pilot judgements on ECHR Article 3

in Montenegro. Another example was the CAPI Action in the former Yugoslav Republic of Macedonia, which was subsequently followed up by expertise provided to the Supreme Court under the ECM.

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence / impartiality / accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence / impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of RoL institutions enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

Numerous interventions have contributed to the independence of RoL institutions, and to ensuring their accountability. These have included:

- Increasing public confidence in the judicial system by strengthening the capacity of High Judicial Councils and prosecutors (Serbia);
- Supporting internal mechanisms, rules and procedures (Serbia);
- Strengthening the implementation of Codes of ethics
- Improving Judicial and Prosecutorial Councils' rules, procedures, tools and working methods (Montenegro);
- Developing efficient complaint systems, and strengthening monitoring (Macedonia);
- Developing mechanisms to prevent ill-treatment and corruption by prison staff (Macedonia).

These interventions are generally considered by interviewed stakeholders to have been effective, but that it is too premature to observe any longer-term impacts. Where difficulties or stagnation have occurred, this is linked to a lack of deep systemic changes, including a need for constitutional reforms that require strong political support, and a desire for reform from RoL institutions themselves.

#### 3.3.2 Independence / impartiality of the judiciary (JC71)

Several interventions targeted the independence of RoL institutions. The most significant intervention in this regard was *Strengthening legal guarantees for independent and impartial tribunals* in Serbia, which aimed to increase public confidence in the judicial system as a whole by strengthening the capacity of the High Judicial Council (HJC) and the State Prosecutorial Council (SPC) in protecting judges and prosecutors from undue pressure, by supporting and implementing internal mechanisms, rules and procedures for providing guarantees for judges, prosecutors and judicial/ prosecutorial assistants. It is however observed that the overall cumulative effect of technical assistance efforts relative to the independence and impartiality of the judiciary in Serbia has been uncertain, given the need for profound systemic changes, and for which constitutional reforms are first required, and which require strong political support and will for reform from the judiciary itself. Furthermore, a recent opinion of the Venice Commission of the CoE, itself supported by the HF ECM, noted that essential changes have not been achieved with the proposed amendments to the constitution drafted in 2017.

#### 3.3.3 Accountability of the judiciary and other RoL institutions (JC72)

Ensuring the accountability of RoL institutions is an area that has received substantial support from the HF, and considerable results have been observed. A significant intervention in this regard was *Accountability of the Judicial System in Montenegro*, which sought to identify mechanisms for strengthening the implementation of the Code of ethics for judges and prosecutors, and build capacity and awareness of new ethical standards. It also sought to improve and render more transparent the Judicial and Prosecutorial Councils' rules, procedures, tools and working methods, while enhancing their capacities to monitor and evaluate national justice strategies. Mechanisms for ensuring objective and transparent implementation of disciplinary procedures were to be identified, and the capacities of supervisory judicial bodies to apply these procedures improved. At the time this intervention was designed, a key issue was to the need to "reawaken" the judiciary in terms of its own broader accountability; however parts of this reform had lain dormant. The intervention therefore served to raise sensitive issues, such as the evaluation of judges and transparency, fine-tune institutional reform, and provide a forum for the judiciary to question itself.

The intervention *Enhancing human rights policing* in Macedonia sought to develop an efficient complaint system, and strengthen governmental inspection and independent monitoring; to establish complaints forms for prisoners and introduced the possibility to appeal decisions; and to improve prison staff recruitment policies, based on defined standards of education and proficiency.

The intervention *Strengthening the protection of the rights of sentenced persons*, also in Macedonia, has *inter alia* developed more effective mechanisms for the prevention of or dealing with cases of ill-

treatment or corrupt practices by prison staff, and improve the capacities of the prison inspection mechanism.

### 3.4 Broader effects on the RoL (EQ8)

<b>EQ8</b>	<b>To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?</b>
<b>JC81</b>	<b>Access to justice strengthened</b>
<b>JC82</b>	<b>Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened</b>
<b>JC83</b>	<b>Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved</b>

#### 3.4.1 Summary of key findings (EQ8)

There was no support targeted directly at access to justice. However, significant contributions can be presumed from a number of interventions, notably those that were more broadly based, focusing on the efficiency and effectiveness of RoL institutions.

All HF actions were specifically intended to address cross-cutting issues, including gender mainstreaming, and ensured the engagement of civil society organisations. Indeed, support to human rights is a key element of all HF interventions, examples of which have included:

- Enhancing the protection of human rights of prisoners (Albania, Serbia, Bosnia and Herzegovina, Macedonia, Montenegro, Kosovo)
- Supporting domestic remedies and the execution of ECtHR judgments (Albania, Kosovo, Montenegro)
- Strengthening the Human Rights Ombudsman to fight discrimination (Bosnia and Herzegovina)
- Enhancing human rights policing (Macedonia)
- Enhancing Human Rights Protection of Prisoners (Kosovo)

Of particular significance is the Horizontal Facility's strong emphasis on detainee rights, including prison conditions, prevention of torture, dignity and physical and mental health, and reintegration and rehabilitation, which are rarely a focus of direct donor support.

Results are modest given the scale of interventions, but are nonetheless significant with strong examples including:

- Development of data-collection systems and checklists on cross-cutting issues, including the gender mainstreaming tool now used throughout the CoE;
- Significantly better health protection for prisoners, and a decreased incidence of ill-treatment (Bosnia and Herzegovina)

Some results have however been mixed, for example, in Serbia, where lack of continuity with, and sustainability of, earlier projects has been a particular concern.

While none of the interventions targeted direct contributions to overall governance and democratic processes, given that some targeted constitutional and other legislative reform there is some evidence of contribution to governance and democracy, for example In Bosnia and Herzegovina where support was provided for a review of the Electoral Law.

#### 3.4.2 Access to justice (JC81)

While significant changes have occurred in each of the beneficiary countries regarding access to justice, there has been no direct support provided in this regard. However indirect contributions can be presumed through a number of interventions, notably those that were more broad-based, for example those focusing on the efficiency and effectiveness of RoL institutions.

#### 3.4.3 Respect for human rights (JC82)

While significant changes have occurred in each of the beneficiary countries regarding human rights, there is insufficient evidence to link these directly to the HF interventions. All HF actions were specifically intended to address cross-cutting issues such as gender mainstreaming, protection of minorities and vulnerable groups, and engaged civil society organisations at multiple levels in its implementation. It was noted however in the 2017 ROM Report that "*gender mainstreaming has not been considered in any structured way in the programming of the TAPAs*" (p.5); this aspect has since been corrected (see gender mainstreaming toolkit below).

Indeed support to human rights was a primary focus of many HF interventions, in particular:

- Enhancing the protection of human rights of prisoners in Albania

- Supporting effective domestic remedies and facilitating the execution of ECtHR judgments (Albania)
- Enhancing human rights protection for detained and sentenced persons in Serbia
- Enhancing human rights protection for detained and sentenced persons (Bosnia and Herzegovina)
- Strengthening the Human Rights Ombudsman to fight discrimination (Bosnia and Herzegovina)
- Enhancing human rights policing (Macedonia)
- Strengthening the protection of the rights of sentenced persons (Macedonia)
- Enhancing human rights protection for detained and sentenced persons in Montenegro
- Fighting ill-treatment and impunity and enhancing the application of ECtHR case law on the national level (Kosovo, Montenegro)
- Enhancing the Protection of Human Rights of Prisoners in Kosovo

Of particular interest, since not routinely addressed in other programmes in the portfolio examined by the current Evaluation, nor in initiatives of other donors, is the emphasis on detainee rights, including prison conditions, prevention of torture, dignity and physical and mental health, and reintegration and rehabilitation. While results are on a smaller-scale given the size of interventions, they are nonetheless significant, and include for example: developing systems of data-collection and checklists on cross-cutting issues including relative to gender (notably a gender mainstreaming toolkit that is now used in all CoE operations); in Bosnia and Herzegovina interventions have resulted in significantly better health protection for prisoners, and a decreased incidence of ill-treatment by police and prison staff, to the extent that consideration is being given to replicating this approach in other HF beneficiaries.

Other results have however been mixed, for example, in Serbia, prison reform project management staff report that the lack of continuity between projects has been a particular concern, and that there has been very little sustainability of the results of an earlier 2010 project that could be built on [CPT report].

Whilst the 2017 ROM Report found that civil society was insufficiently consulted during the design phase, the involvement of civil society during implementation of interventions has been essential for their effectiveness and sustainability, in particular those relative to human rights issues. In Montenegro for example, civil society plays a key role in the monitoring of the prison system and beyond (rehabilitation and reinsertion), and has been therefore actively consulted and supported where possible. Civil society representatives are also included as permanent members of Steering Committees in beneficiary contexts.

It is also observed that actions addressing trafficking in human beings, under Theme 3 of the HF have also provided important, though indirect, contributions to promoting and protecting human rights, and specifically victims' rights.

#### **3.4.4 Governance and democratic processes (JC83)**

None of the interventions examined initially anticipated any direct contributions to overall governance (although some have related to the governance of the judiciary as indicated at JC 71 above, and contributions to the independence of the judiciary as described above support the principle of the separation of powers) and democratic processes, however to the extent that some targeted constitutional and other legislative reform (see JC 51 above), there is some evidence of contribution to governance and democracy. In Bosnia and Herzegovina for example, it was determined that the Electoral Law required urgent review; experts from the Venice Commission came within three weeks, considerably faster than existing mechanisms providing technical assistance. Similarly in Macedonia, a CoE expert was embedded in the Electoral Commission for six months, which was considered to have been highly beneficial.

## 4 Annexes

### 4.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Head of Division, Office of the Directorate General of Programmes	Council of Europe
Head of the Criminal Law Cooperation Unit	Council of Europe
Staff	Council of Europe Albania
Deputy Head of Office	Council of Europe Bosnia and Herzegovina
Head of Operations	Council of Europe Montenegro
Deputy Head of Office	Council of Europe Office in Pristina
Horizontal Facility Co-ordinator HF	Council of Europe Serbia
Delegation contact point for the Horizontal Facility	EU-EEAS, EUD Bosnia and Herzegovina
Delegation contact point for the Horizontal Facility	EU-EEAS, EUD Kosovo
Delegation contact point regarding the Council of HF, Twinning&TAIEX Coordinator; Cooperation Section	EU-EEAS, EUD Macedonia
Project Manager in charge of Rule of Law related to HF/CoE	EU-EEAS, EUD Macedonia
Replacement of Operational Manager for Horizontal Facility	EU-EEAS, HQ
Legal Expert related to the HF	Ministry of Justice, Kosovo

### 4.2 List of documents consulted

#### 4.2.1 EU strategy and programming

European Commission (2007-2014): Enlargement Strategy and Main Challenges.

European Commission (2014): IPA II 2014-2020. Multi-Country. EU-CoE Horizontal facility for Western Balkans and Turkey.

European Commission (2014): IPA II 2014-2020. Multi-Country. EU-CoE Horizontal facility for Western Balkans and Turkey - Phase II.

#### 4.2.2 EU reporting

European Commission (2017): IPA Multi-Country Programmes. Activity Report. January – June 2017.

#### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2016 EU/Council of Europe Horizontal Facility for the Western Balkans and Turkey
- Albania
  - 2014 EU-CoE Project to increase the efficiency of the Albanian justice system, in line with European standards - Support to the implementation of the Justice Reform Strategy (SEJ 1 and 2)
  - 2016 Enhancing the protection of human rights of prisoners in Albania
  - 2016 Supporting effective domestic remedies and facilitating the execution of ECtHR judgments
- Bosnia
  - 2016 Enhancing human rights protection for detained and sentenced persons
  - 2016 Strengthening the Human Rights Ombudsman to fight discrimination
- Macedonia
  - 2016 Enhancing human rights policing
  - 2016 Increasing capacity of the judiciary to safeguard human rights and combat ill-treatment and impunity

- 2016 Strengthening the protection of the rights of sentenced persons
- Montenegro
  - 2016 Accountability of the Judicial System in Montenegro
  - 2016 Enhancing human rights protection for detained and sentenced persons in Montenegro
  - 2016 Fighting ill-treatment and impunity and enhancing the application of ECtHR case law on the national level
- Serbia
  - 2016 Enhancing human rights protection for detained and sentenced persons in Serbia
  - 2016 Supporting effective remedies and mutual legal assistance
  - 2016 Strengthening legal guarantees for independent and impartial tribunals
- Kosovo
  - 2016 Strengthening the Quality and Efficiency of Justice in Kosovo
  - 2016 Enhancing the Protection of Human Rights of Prisoners in Kosovo

#### **4.2.4 Others**

European Commission (2012): Evaluation of Commission's cooperation with the Council of Europe

## Case study note – Armenia

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# 1 Introduction

## 1.1 Context

Armenia is a Parliamentary Republic based on the principle of the separation of powers. Its Constitution was adopted in 1995 but underwent considerable reform which ensured a more balanced distribution of power and greater independence of the judiciary, media and local government bodies in 2005 as a core commitment for accession to the CoE. A constitutional referendum was held in Armenia on 6 December 2015. The resulting amendments to the Constitution placed the country on a course from having a semi-presidential system to being a parliamentary republic, with the first changes taking place during the 2017–18 electoral cycle.

A series of peaceful anti-government protests took place in Armenia from April to May 2018 staged by various political and civil groups led by Member of Parliament Nikol Pashinyan (head of the Civil Contract party), which resulted in the democratic change of the Government. As a result, the Parliament elected Nikol Pashinyan Prime Minister on 8 May. The transition government published a one-year programme, with the primary objective of organising early National Assembly elections, which will take place on 9 December 2018..

Armenian authorities have made recent legislative advances relevant to the Rule of Law (RoL), including a new Criminal Procedure Code, amendments to the Criminal Code, and developing programmes and policies for judicial reform, however concerns remain regarding judicial independence, access to justice and fair trial rights, in terms of adherence to international standards and implementation of existing requirements, Courts demonstrate difficulties ensuring the presumption of innocence and equality of arms, with serious delays from investigation to judgment to enforcement arising for numerous reasons including limited court capacity and efficiency, as well as widespread corruption. A new Justice Strategy 2018-2023 aiming to tackle further challenges, including harmonious application of the law in court rulings, independence of the judiciary, the fight against corruption, and identifying alternative dispute resolution (ADR) mechanisms was drafted in 2017. In December 2017, it passed a short open consultation process online<sup>1</sup> to which a team of EU experts provided assistance. Currently, the Draft Strategy for Judicial and Legal Reforms and Action Plan is undergoing revision and public consultations by the new Government of Armenia. In this context, the EU launched an enhanced EU-Armenia policy dialogue in the justice sector in September 2018. While Armenia continues to address issues related to human rights and fundamental freedoms, further work is necessary. In 2012, Armenia adopted a *Human Rights Protection Strategy*, followed in 2014 by its Action Plan. The new *National Strategy on the Protection of Human Rights and the Action Plan for 2017-2020* has been drafted based on lessons learnt from the 2014 Strategy. The Ministry of Justice plays the lead coordination role, an Inter-governmental Coordination Body chaired by the Prime Minister was established, and public hearings with CSOs are foreseen every six months to implement and monitor the Action Plan more effectively.

According to the observations and recommendations of international human rights treaty bodies and Progress Reports relative to ENP implementation, the country faces significant challenges regarding its human rights obligations, including torture and ill-treatment. Nevertheless, Armenia has made some progress with regard to free legal aid and limited progress with regard to the independence of the judiciary.

The EU-Armenia Partnership and Cooperation Agreement (PCA), signed in 1996, was recently replaced by the **EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA)**. This ambitious Agreement, which was signed on 24 November 2017 in the margins of the Eastern Partnership summit in Brussels, and entered into provisional application on 1 June 2018, sets out the joint objectives and provides a framework for EU-Armenia cooperation.

In line with the new Agreement, Armenia and the European Union have jointly developed **Partnership Priorities**, defined along the **Four EaP Priorities** and **20 Deliverables for 2020**. These aim at facilitating the implementation of the cooperation between the partners, including pursuing the promotion of universal values and stability, resilience, security and prosperity built on democracy, human rights, rule of law and sustainable economic growth and openness.

Armenia joined the Eurasian Economic Union (EEU) in 2015, and despite its decision in 2013 not to sign an EU Association Agreement, Armenia and the EU continue political dialogue in areas where this is compatible with Armenia's EEU obligations.

<sup>1</sup> Draft available at <http://www.moj.am/en/legal/view/article/1104>

The EU has supported Armenian reform in the RoL sector since 2009, and while some progress has been achieved in recent years, this is not sufficient to meet key reform objectives, including judicial independence, combating corruption and implementing existing laws.

*Table 1 Overview of ENI-financed interventions in the area of RoL in Armenia*

<i>Decision year</i>	<i>Title</i>	<i>EU contributions (mEUR)</i>	<i>Implementation methods / channels</i>
2008	Support Justice Reform I	18	Sector Policy Support
2009	Support to Office of Human Rights Defender	0.9	Twinning – Project Approach
2012	Support Justice Reform II	17	Sector Budget Support
2012	Support Justice Reform II	1.5	Technical Assistance
2014	Support to Human Rights Protection in Armenia	15,7	Sector Budget Support
2014	Support to Human Rights Protection in Armenia	1,3	Complementary Support
2017	Consolidation of the Justice System in Armenia	4	Grant

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

<b>EQ2</b>	<b>To what extent has EU support to RoL responded to the bilateral and regional contexts?</b>
<b>JC21</b>	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
<b>JC22</b>	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 Summary of key findings

Action documents for each of the interventions include analyses of national development policy and sector context. Reference is made to the Sustainable Development Programme (SDP), which sets out the priorities for sustainable development for the period 2008-2021. The political commitment required to undertake the strategic steps, together with signs of progress, were observed. The *Strategy of Judicial and Legal Reforms and Action Plan* were developed with EU support, and were linked to the aims of the SDP and structured around nine pillars, each of which were integrated by the EU actions.

There is evidence of participatory processes in the development of RoL programmes, and the *Strategy* was drafted through an inclusive approach involving all relevant stakeholders; this was then directly linked to the design of subsequent EU-supported programmes. Consultative approaches were clearly a cornerstone of the EU support to the sector, and ownership was sought by engaging strongly with the government at the programming stage. Coordination and policy dialogue between the EU and Government have helped to increase the transparency and accountability of EU's interventions. Specific sector needs were adequately taken into account in the design of EU support.

The EU requirement that legislative acts in the conditionality matrix must be discussed with CSOs, which centred the support on qualitative performance, and embedded participatory processes, resulting in greater civil society's involvement and the establishment of an innovative online public consultation platform (see also EG8 below).

#### 2.1.2 Alignment and participatory processes (JC21)

Action documents for each of the interventions include analyses of national development policy and sector context. Reference is made to the Sustainable Development Programme (SDP), which sets out the priorities for sustainable development for the period 2008-2021, with strategies for modernising the country's administration system and promoting good governance. The political commitment required to undertake the strategic steps, together with signs of progress, were observed.

The 2011 *Strategy on accelerating the reforms in the Republic of Armenia within the framework of the EU Eastern Partnership* stressed the importance of enhancing democratic structures and the RoL, including reform in Justice, Liberty and Security (JLS), as well as respect for human rights and fundamental freedoms. These issues are underlined in the government's *White Paper on Republic of Armenia Reform Agenda within the EU Integration Context*, which translated the Strategy into concrete action. The 2009 *Anti-corruption Strategy of Armenia and Action Plan 2009 – 2012* followed the main recommendations of the OECD and Group of States against Corruption.

The first comprehensive justice reform strategy was the *Strategic Action Programme for Judicial Reforms 2009-2012*, which was followed by the *Strategy of Judicial and Legal Reforms for 2012-2016 and its Action Plan*. The Strategy, developed with EU support, was linked to the aims of the SDP, and structured around nine pillars: justice sector coordination, penitentiary reform, criminal justice, civil justice, administrative justice, functional judiciary, prosecution, advocacy, and services to citizens. It is observed that each of the actions under consideration integrated all of these strategic pillars.

There is recent evidence of participatory processes in the development of RoL programmes, for example in 2016 a Joint Analysis, based on the 2014-2025 Armenian Development Strategy (ADS), was endorsed by EU MS in Armenia as the result of extensive consultations with MS and Switzerland, CSOs and stakeholders, including the private sector. The analysis was positively received by the government and donor community, and is now the cornerstone of EU's bilateral support to Armenia.

The *Strategy of Judicial and Legal Reforms for 2012-2016 and its Action Plan*, referred to above, and which was developed with EU support, was drafted through an inclusive approach involving all relevant stakeholders, including the Ministry of Justice, the judiciary, the prosecution, police, lawyers, civil society representatives, and donors. This was then directly linked to the design of subsequent EU-supported programmes.

Programming documents stressed that efforts were to be made to support civil society capacities and engagement in the development, implementation and monitoring of national sector strategies, including through participation in policy dialogues and service delivery schemes; hence consultative approaches were clearly a cornerstone of the EU support to the sector. It is noted that several on-going projects promote structured dialogue between CSOs, local authorities, government and EU institutions, and 25 on-going projects have as their objective the inclusion of CSOs and local authorities in national policymaking.

Progress documents underscore that the EU embedded the key principles of development effectiveness in the design and implementation of support to the country. Country ownership was sought by engaging with the government at the programming stage of EU actions, based on the country and sector strategies, and on joint analyses of the EU and MS. The coordination between EU and the Government of Armenia, and related on-going policy dialogue, have both helped to increase the transparency and accountability of EU's interventions.

The degree of ownership in the implementation of projects was observed by stakeholders consulted to be variable, however the participatory processes noted above, particularly in the development of the Strategy, would have themselves increased the degree of ownership by each of the institutions and other stakeholders consulted.

In the second Budget Support, the EU introduced a requirement that all legislative acts represented in the conditionality matrix were to be first discussed with CSOs, which centred the support on qualitative performance, and embedded participatory processes at all stages of implementation (see EQ 8 below).

### **2.1.3 Needs, opportunities; and responsiveness (JC22)**

Specific sector needs were not directly assessed by the programming documents, and hence the responsiveness of EU interventions could not be directly analysed. Generally speaking, given the support provided by the EU to the Strategy referred to above, and that this in and of itself responded to needs that were clearly articulated by a broad range of stakeholders, it is considered that these elements were adequately taken into account in the design of EU support.

## 2.2 Implementation / choice of modality (EQ3)

EQ3	To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?
JC31	High quality policy dialogue established: content (promotion of RoL and European standards and principles), frequency, synergies between operational (intervention-level) and high-level dialogue, etc.
JC32	Implementation strategies appropriately chosen and combined / complemented
JC33	Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)
JC34	Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into account.

### 2.2.1 Summary of key findings (EQ3)

In 2017 policy dialogue covered all sectors of cooperation with Armenia and was particularly strong in sectors covered by Budget Support Programmes, including human rights, and justice. It resulted in considerable contributions to legislative reform and political engagement to aligning with international and European standards, and demonstrated the EU's significance in a country that does not aspire to accession but is nevertheless keen on reform.

While judicial institutions experienced difficulties cooperating with each other, EU initiatives focussed on providing an environment for finding collective solutions.

The first round of budget support progressed successfully. However, the second budget support was more challenging; these difficulties were linked to institutional flux, amongst other structural and political obstacles.

Support was highly complementary with initiatives from other donors, and, for example, reinforced the conditionality of World Bank tranches.

### 2.2.2 Policy dialogue (JC31)

In 2017, policy dialogue covered all sectors of cooperation with Armenia and was particularly strong in sectors covered by Budget Support Programmes, including human rights and justice. This bore fruit in the Human Rights Budget Support (HRBS) Programmes 2016-2019 that considerably contributed to the adoption of a law against domestic violence in 2017, and the Government's commitment to sign and ratify the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). The law has been a subject of heated debates and politicisation, including negative anti-Western propaganda attacking civil society organisations promoting democracy and human rights protection. Here the EU demonstrated its significance in a partner country that does not aspire to accession but that is nevertheless keen on gradual reforms. The EU has engaged in human rights and democracy exchanges in various contexts, including the Cooperation Council and the Cooperation Committee. The annual Human Rights Dialogue and the Justice, Freedom and Security Sub-Committee in 2017 saw frank discussions on a wide range of issues, including elections, national human rights action plan, freedom of assembly, freedom of expression, prevention of ill-treatment and torture; women's rights and gender equality, child rights, and rights of persons belonging to minorities. In the context of the GSP+ monitoring (Report on 2016-2017), human rights and labour rights were raised.

Since the 2018 "Velvet Revolution", renewed justice dialogue has been launched to support the ongoing review of the Strategy for Judicial and Legal Reforms and Action Plan and comprehensive reforms in this area, with a focus on the complementarity of EU support to the current programme of legislative and institutional reform. The EUD observed that there exists strong political will in the wake of the Revolution, and a desire on the part of government to lead on policy reform, with EU providing the means to implement this policy for instance with further assessment through a functional review of the justice system and in view of a future SRPC in this area depending on the needs and priorities of the Armenian counterparts. A roadmap is currently being developed with the Ministry of Justice.

### 2.2.3 Choice of implementation strategies (JC32)

Approximately 40% of EU bilateral assistance flows through budget support, with the remainder of funding using a wide range of tools, including support to government structures such as technical assistance and Twinning projects, as well as contracts with international organisations and Member States. In addition, there are grants to civil society organisations.

Progress reviews found that Armenia continued to meet all three eligibility criteria for budget support (sector policy, macroeconomic stability and PFM reform). Concerns about budget transparency and accountability were addressed through the 2012 Budget law; as of 2017 the authorities continued to pursue a credible and relevant stability-oriented macroeconomic policy, and progress was observed in improving PFM systems. For the budget support component, performance was at times lower than expected; however, this was mostly regarding large infrastructure projects that are not within the scope of the current evaluation. Complementary support for capacity development and institution building activities, which included support to technical assistance in the justice sector, addressed the implementation of priority commitments deriving from EU agreements, which was especially focused on approximation to EU legislation and technical standards. The ENP Action Plan foresaw that cooperation tools such as Twinning or TAIEX would play an essential role in achieving its objectives.

EUD observed that judicial institutions (judiciary, prosecutors, lawyers) in the early stages of EU cooperation refused to cooperate with each other. Subsequent EU initiatives contributed significantly to these institutions finding common areas of concern and provided the environment necessary to finding collective solutions. An early justice strategy was developed collaboratively in the early 2000s, an initiative which constituted the cornerstone of subsequent EU support.

The first round of budget support progressed successfully, with 97% of funds paid and a conditionality matrix that concentrated on key issues including independence of justice, access to justice and access to information in the justice sector, as well as ambitious procurement components (see also IT and infrastructure below). The second budget support was more challenging, with a decision made to have only a variable tranche. This resulted in some difficulties, for example, relative to the participation of civil society organisations (see participatory processes at EQ 2 and EQ 8) but ultimately “*represented a qualitative step forward*” in the design of this support.

The first tranche was however considered “a failure”, with only 32% of the budget ultimately paid, rising however to 90% by the third tranche, and an overall amount of 72% disbursed. The reasons for these earlier difficulties was linked to institutional flux (three ministers, and fourteen focal points in the MoJ in the corresponding implementation period, amongst other structural and political obstacles); these issues were largely resolved with the appointment of a permanent focal point within the MoJ.

### 2.2.4 Synergies and complementarity within the portfolio (JC33)

The first budget support was reportedly highly complementary to World Bank support being provided at the time, with very few initiatives of EU Member States in the RoL sector. The support reinforced the conditionality of the World Bank tranches, which was also centred on renovating several courts in a critically dilapidated state at the time. Some differences, resolved through a double attribution (plaques) on court premises, arose relative to visibility for these contributions.

The second budget support was centred on moving the focus on justice and judiciary to a broader concept of justice, liberty and security, which also took into consideration and followed up the support being provided by the World Bank and GIZ, amongst others. The support took into consideration a large project being implemented by the CoE supporting legislative reform, prison conditions, mediation and probation, and their very specific contributions through the Venice Commission and their own in-house technical capacity. The CoE is considered by EUD to be a highly sought after and credible actor in the RoL sphere.

### 2.2.5 Efficiency, monitoring and visibility (JC34)

.No specific observations are made about efficiency, monitoring and visibility.

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination / complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

The EU had a partnership with the UNDP in the form of a technical assistance contract for Support to Human Rights Protection and contributed to the UN Basket Fund. Programming and project documents referred to the extensive RoL support provided by the World Bank, GIZ, the CoE, OSCE, and USAID.

Early donor coordination processes took place through meetings, which was described as reasonably effective, which then led to the creation of permanent coordination led by the Ministry of Justice with the participation of main national stakeholders. A working group for coordination and performance monitoring of judicial and legal reforms composed of high-ranking officials and complemented by steering committees, was created. A more formalised coordination and monitoring mechanism was later established.

### 2.3.2 Partnerships established at global level (JC41)

This JC is examined in the overall analysis in Volume I, the main report.

### 2.3.3 Coordination with EU MS / other donors at country level (JC42)

The EU has an on-going partnership with the UNDP in the form of a technical assistance contract for Support to Human Rights Protection (EUR 749,910), and contributed to the UN Basket Fund: Support to the Electoral Process in Armenia (SEPA) (EUR 2 million). UNDP, UNICEF, and UNFPA provide technical assistance to support the Government of Armenia in advancing its human rights national agenda and meeting commitments vis-à-vis European and international human rights instruments, including in the areas that are aligned with the targets of the Human Rights Budget Support programme.

Programming and project documents referred to the extensive support provided by the World Bank to judicial reform, including the renovation of courthouses in Yerevan and regions, and technical assistance on judicial governance (including IT management systems), legal information, raising public awareness in the field of reforms, bailiffs and ADR. The German Agency for International Cooperation (GIZ) provided assistance in the field of administrative justice (legislation on the Criminal Procedure Code and Code of Administrative Offences, training of judges and court personnel). The CoE supported penitentiary reforms, and the OSCE had various projects on Court Monitoring in Criminal Justice, and supported capacity building of judges, prosecutors, and advocates. USAID focussed on judicial independence with on-going projects with the Association of Judges, and supporting the Chamber of Advocates.

Early donor coordination processes took place through meetings, organised either by one of the donors or by the Ministry of Justice, where representatives of the donors shared information on their on-going projects and future plans. Donor coordination was described as reasonably effective, but could be improved at general and sectorial level, and it was considered that the Government should take a stronger lead, since there had been several instances of multiples requests for support on identical themes.

This then led to the creation of permanent coordination led by the Ministry of Justice with the participation of main national stakeholders, as was proposed in the Justice Strategy for 2012-2016. When preparing the strategy the EC consulted other donors at an early stage to ensure cohesion and complementarity. Such coordination was considered particularly important as the EC was increasingly providing assistance on the basis of sector programmes, including pool-funding and budgetary support as appropriate. While the EU was by far the largest donor, the choice of priority sectors was guided by the imperative to complement and reinforce interventions financed by other donors.

The EU *Joint Analysis of the Situation in Armenia*, which resulted from an exercise carried out in 2016 between EU MS and the EUD, was endorsed in 2016 and 16 consultation meetings with international organisations present in Armenia took place in 2017. The Analysis was positively perceived both by

the EU MS and the Government, and is used successfully for EU coordination, reinforcement of donor coordination, and as a basis for programming of EU assistance to Armenia 2017-2020.

Donor coordination is currently undertaken at two levels, with a general donor coordination meeting between the EU Head of Delegation, EU Ambassadors, national counterparts, and other donors. Coordination also naturally occurs bilaterally at the cooperation level, in a more informal level. Current coordination is considered intensive and effective, and scrupulous records of meetings are kept.

The Working Group in charge of coordination and performance monitoring of judicial and legal reforms was created by Presidential decree in 2008 and is composed of highest-ranking officials. Such coordination is complemented through steering committees set up for the EU budget support programme and Joint Project "Access to Justice" with Council of Europe. Under the new Justice Strategy and Action Plan for 2012-2016, an improved, and more formalised, coordination and monitoring mechanism has been proposed, with a policy-making coordination council, sub-sector working groups and supporting staff. Programming documents highlighted visibility activities; no particular issues were highlighted in this regard – see however *Complementarity* below regarding attribution of support to courthouses, relative to the World Bank

### 3 Effects of the EU support to RoL

#### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy / strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion / minority rights / gender) and democracy issues into partner countries' RoL policy</b>

##### 3.1.1 Summary of key findings (EQ5)

The 2012 Justice Reform programme (Component 1) aimed to contribute to the revision of criminal code in order to broaden the grounds for and scope of alternative sanctions and alternative punishment systems; it also intended to support the establishment of the new probation service. The Consolidation of the Justice System programme intends to reinforce evidence-based policy-making, including through an improved statistical data analysis and monitoring system

There has been progress with respect to conditions of detention as a result of the construction of accommodations at Armavir prison, which reduced some overcrowding, and conditions have improved in real terms, notably relative to overcrowding. The objectives of the Gender Action Plan 2016-2020 were raised in justice sector policy dialogue. An EU-funded initiative is supporting consolidated communities in drafting community-driven development plans, and is an indicator of responsiveness to emerging concerns.

##### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)

The 2015 Third Tranche Review of the Sector Support Programme *Support to Justice Reform in Armenia (Phase I)*, Third Tranche Review noted that the objective of the first indicator for this Specific Condition was to promote the greater use of non-custodial sanctions and reduce the use of imprisonment as a punishment. Legislative amendments in 2016 enabled the establishment of a probation service; however, this is not yet functioning and there are no provisions that change the underlying sanction structure.

The government did not commence amendments of the Electoral Code until less than one year before the 2017 elections, despite OSCE/ODIHR recommendations.

In April 2014 the Committee for Constitutional Reform published a concept paper for comprehensive reforms, including changing to a parliamentary system of governance, implementing other changes to the electoral system, and better balancing of powers and greater respect of human rights. In October 2014, the Venice Commission of the Council of Europe adopted an opinion on the paper, commending the objectives while refraining from commenting on the choice of the governance system.

The 2012 Justice Reform Programme (Component 1) aimed to contribute to the revision of criminal code to provide for an enlargement of the grounds for and scope of alternative sanctions and alternative punishment systems. It also intended to support the establishment of the new probation service. The EU was only able to provide a partial contribution in this regard. The Sector Policy Support Programme also sought to provide support to the revision of criminal code and alternative punishment systems.

Support has been given to the harmonisation of national law with international standards, notably relative to a domestic violence law, which is considered to have been a significant contribution (see also Participation above).

##### 3.1.3 National RoL policy / strategic framework (JC52)

The most significant contribution has been to the three justice sector strategies (see above), with this having been of more importance in the initial budget support, and tapered off during the second, as the government's capacities increased. The on-going Consolidation of the Justice System programme intends to reinforce evidence-based policy-making, including through an improved statistical data analysis and monitoring system (see also JC 73). With the construction of a new prison, a prison strategy was developed that was rolled out to other prisons. This addressed inter alia prisoners' rights and conditions, including training for prisoners, torture prevention, and the fulfilment of CPT requirements; EUD reported that prison overcrowding has been substantially reduced.

### 3.1.4 Integration of HR and democracy issues (JC53)

There has been progress with respect to conditions of detention as a result of the construction of accommodations at Armavir prison, which has significantly reduced overcrowding. With respect to the requirement to adopt a penitentiary reform action plan detailing the way improvements achieved in the pilot prison, would be rolled out across other prisons, there was no credible action plan: what was produced was overgeneralised and characterised by lack of sequencing and unrealistic timeframes and budget estimates. These observations in the context of budget support meant that 50% of the third tranche was not released (see also *Modalities* above).

The objectives of the Gender Action Plan (GAP) 2016-2020 were raised specifically in policy dialogue in the justice sector, and the EU has recognised the importance of gender equality in the Single Support Framework for EU support to Armenia 2017-2020

The April 2017 National Assembly elections led to an increase in women's representation in Parliament; however, the territorial reform process consolidating rural communities into larger and more financially sustainable administrative units has led to a sharp decrease in the number of elected women. A new EU-funded initiative is supporting the new consolidated communities in drafting community-driven development plans, and is an indicator of responsiveness to emerging concerns. The EU has raised gender equality in several high-level meetings with the government and made very concrete suggestions to the new Gender Equality and Gender-Based Violence strategies, which were formulated but not adopted in 2017.

## 3.2 Quality / efficiency of justice systems (EQ6)

EQ6	To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?
JC 61	Justice system planning and budgeting improved
JC 62	Infrastructures and equipment (e.g. court facilities, IT systems) improved
JC 63	Capacities, skills and procedures in key RoL entities (e.g. judiciary, courts, public agencies, professional associations) improved
JC 64	Legality ensured, harmonisation of domestic law with international law / jurisprudence promoted, and enforcement of international judgments improved

### 3.2.1 Summary of key findings (EQ6)

The Support to Justice Reform aimed to provide a comprehensive strategy for implementation of judicial reform and proper PFM system in the justice sector, and the Consolidation of the Justice System programme targets the better governance of the judiciary through improved budgeting, management practices, and institutional structure.

The EU invested considerable amounts in infrastructure, for example, the reconstruction of courts; however, the contribution in qualitative terms to RoL principles of such projects is considered to have been minimal. Nevertheless significant contributions were made relative to information and equipment, which was desperately needed.

The EU has provided strategic, sustained, and wide-ranging support to improving the skills and procedures of RoL entities. The Support to Justice Reform programme sought to streamline the implementation of laws via the establishment of a permanent training system/ scheme, to optimise the Penitentiary System, and to strengthen cooperation and exchange with relevant EU authorities. The Justice Reforms Programme provided support to the Justice Academy and the School of Advocates, and TA was provided to help CSOs evaluate and monitor budget support conditions. The Human Rights Protection programme aimed to enhance coordination and cooperation in the area of human rights, and increase capacity of relevant stakeholders. The Consolidation of the Justice System programme seeks to increase the independence, transparency, efficiency and effectiveness of justice, including through the development of e-Justice.

The 2008 Support to Justice Reform programme targeted Armenia's accession to several international agreements in the field of justice law and security, and to support the development, adaptation or amendment of laws in line with international standards.

### 3.2.2 Justice system planning and budgeting improved (JC61)

The Support Justice Reform programme aimed to provide a comprehensive strategy for implementation of judicial reform and a proper PFM system in the justice sector through combining the strategies of different fields of judicial chain reforms into a common reform strategy with a strong emphasis on anticorruption measures and development of sectorial PFM and MTEF. The Consolidation of the Justice System programme (due to commence at latest end-2018) will also target the improved governance of the judiciary through improved budgeting, management practices, and institutional set up.

### 3.2.3 Infrastructures and equipment improved (JC62)

The EU invested considerable amounts in infrastructure, for example the reconstruction of the courts in Marzis; however, the contribution in qualitative terms to RoL principles of such projects is considered to have been minimal. As one EU interlocutor observed "*if judges are corrupted or not impartial, it is not enough to just have a beautiful courtroom*". This is to be contrasted however with contributions relative to prisons, and prison conditions as discussed at EQ 8 below. Nevertheless EUD noted that some significant contributions have been made relative to information and equipment, with information kiosks established in all courts, and provision of computers, printers and scanners etc., which were desperately needed given the antiquated equipment then in use.

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

The Justice Academy was established in 2013 and commenced activities from January 2014. The Academy is responsible for the training of judges and prosecutors. Judges and prosecutors must each participate in at least 80 hours of training each year, and the Academy also provides training to candidate judges and prosecutors. A MoU was signed by the Justice Academy and the School of

Advocates in 2015 to establish cooperation and exchange experiences, advance the qualification of professionals in compliance with the best international practice. Pursuant to this, the institutions organise joint courses, academic events, conferences, and seminars; exchange academic materials, literature, and information; carry out scientific and research activities in the fields of mutual interest; and exchange personnel. They intend to introduce a platform for distance learning,

The EU has provided strategic, sustained, and wide-ranging support to improving the skills and procedures of RoL entities. The 2008 Support to Justice Reform programme sought to streamline the implementation of laws via establishment of a permanent training system/ scheme; to optimise the penitentiary system, including legal framework adjustment, structural optimization and implementation; and to strengthen cooperation and exchange with relevant authorities in EU. The 2012 Justice Reforms Programme (Component 1) provided support to the Justice Academy and the School of Advocates, thereby contributing to better-trained judges, prosecutors and advocates. In addition, TA was to be used to build the capacity of relevant civil society organisations in evaluating and monitoring the budget support conditions. The Sector Policy Support Programme also provided support to the Justice Academy and School of Advocates. Support was provided to the establishment of a Chair for EU and International Law, and EU Centre, at the State Law School.

The 2014 Human Rights Protection programme aimed to enhance coordination and cooperation in the area of human rights, increase the capacity of relevant stakeholders, and ensure the effective coordination role and capacity of the Ministry of Justice for the implementation and annual revision of the Human Rights Action Plan and related international human rights commitments. A further objective was to strengthen the capacity of the Human Rights Defender office by providing human rights education, addressing concerns of vulnerable groups, and cooperation with state institutions. It sought also to strengthen the capacity of law enforcement structures in the area of human rights through improved investigation and enforcement techniques and relevant education/training, and to strengthen the capacity of the National Assembly Standing Committee on Protection of Human Rights and Public Affairs. All of these interventions would have had direct effects on the essential RoL and oversight entities in the country.

The aforementioned Consolidation of the Justice System programme will seek to increase the independence, transparency, efficiency and effectiveness of justice through capacity building and exchanges of experience between EU and Armenian institutions, as well as through development of e-Justice, which would also increase the quality of judgements and the efficiency of court proceedings.

### **3.2.5 Harmonisation of domestic law with international law (JC64)**

The 2008 Support to Justice Reform programme targeted Armenia's accession to several international agreements in the field of justice law and security, and supported the development, adaptation or amendment of laws relative to the Prosecution, Advocacy and Arbitration procedures in line with international standards. The Consolidation of the Justice System programme also aims to develop the justice reform program in line with EU best practices; increase the independence, accountability, predictability and efficiency of justice, in line European standards.

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence / impartiality / accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence / impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of RoL institutions enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

The implementation of the *Judicial Reforms Strategy*, supported by the EU, resulted in a number of measures aimed at strengthening the independence of the judiciary. Subsequent reforms have fallen short of adhering to international standards in this regard. Nevertheless, the EU provided consistent support to strengthen the independence and professionalism of the judicial system, including through budget support and political and policy dialogue. The EU has also provided sustained support to the accountability of RoL institutions in multiple ways.

#### 3.3.2 Independence / impartiality of RoL institutions (JC71)

The implementation of the *Judicial Reforms Strategy 2012–16* resulted in a number of measures aimed at strengthening the independence of the judiciary. This included legal amendments to the Judicial Code which defined the duties of the self-governing structures, improved the criteria for evaluating and promoting judges, and made the procedure for appointing them more transparent. However, the amendments formally endorsed the role of the President in the final appointment of judges, public distrust of the system and its integrity remains high, and there have been no tangible developments relative to impunity following the deaths that occurred in the context of the 2008 presidential elections. While an Ethics and Disciplinary Commission (EDC) (*see JC 73 below*) was established, the power of the Minister of Justice to initiate disciplinary proceedings separately from the EDC was considered by the EU to violate basic independence principles.

One purpose of constitutional reform was to ensure a transfer from a presidential to a parliamentary democracy. The primary responsibility for judicial appointments was given to the National Assembly, with the presidential approval of candidates being a mere formality. While the General Assembly of Judges was to have a significant role, this represents a significant deviation from the principle of the separation of powers, and hence of structural judicial independence.

The EU continued to help strengthen the independence and professionalism of the judicial system, including budget support and political and policy dialogue.

The 2008 Support Justice Reform programme aimed to increase the “real independence” of the judiciary by strengthening the status of the Council of Judges, and thereby improve public trust in court proceedings. The Sector Policy Support Programme also aimed to support an independent, transparent and accountable justice sector, and to support justice chain reform that secures a better separation of powers.

The Consolidation of the Justice System programme (AAP 2017) also aims to increase the independence, accountability, predictability and efficiency of justice in line with the EU Peer Review recommendations, and support the further implementation of anti-corruption measures.

#### 3.3.3 Accountability of RoL institutions (JC72)

One of the key aims of reform in the judicial sector has been to increase the role of the General Assembly of Judges (GAJ) as the first of the three self-governing bodies designated by the Judicial Code. A 2014 amendment of the Code provided that an Ethics and Disciplinary Committee (EDC) under the GAJ would replace the previous Ethics Committee under the Council of Court Chairmen. The EDC meets once a week to consider complaints from citizens, CSOs, and judges; it commenced sittings in 2014 and has since considered over 500 cases. However, as indicated above, serious structural concerns persist regarding its independence.

The justice sector has lagged on other indicators relative to accountability and transparency. The 2016 Review of the Sector Support Programme for “Support to Justice Reform in Armenia (Phase II)”, Third Tranche Review concluded only partial compliance on Expected Result 1 (c) (publication of relevant statistical indicators, digitalization of court archives and random assignment of cases). It noted significant gaps in the availability of statistical data and that no progress had been made on the digitalization of court records and archives. However it noted that a special unit had been created by MoJ to introduce a system of E-filing for civil and administrative cases, and that this was being tested.

The EU has provided sustained support to the accountability of RoL institutions in multiple ways. The 2008 Support Justice Reform programme specifically sought a substantial decrease of corruption in the judiciary, with support to the provision of pre-conditions for anticorruption measures within the judiciary sector, including the payment of “decent salaries” for judges. The Sector Policy Support Programme intended to help improve mechanisms to nominate, evaluate promote and discipline judges, including through amendments to the Judicial Code; to increase the transparency and role of the Ethics and Disciplinary Commission (see Changes above); and to increase the accountability and transparency of the justice sector through the publication of relevant statistical indicators, digitalisation of court archives and random assignment of cases (see Changes above). The Human Rights Protection programme supported the effective monitoring mechanisms and monitoring capacity of the Interagency Commission for the implementation of the provisions of the Human Rights Action Plan. The 2017 Consolidation of the Justice System programme aims to Improve governance of the judiciary through better budgeting, management practices, and institutional structures; and enhance transparency and efficiency of the justice system, including judicial proceedings through the provision of better quality public services and the further development of e-Government and e-Justice tools.

### 3.4 Broader effects on the RoL (EQ8)

<b>EQ8</b>	<b>To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?</b>
<b>JC81</b>	<b>Access to justice strengthened</b>
<b>JC82</b>	<b>Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened</b>
<b>JC83</b>	<b>Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved</b>

#### 3.4.1 Summary of key findings (EQ8)

The EU contributed significantly and directly to changes related to the legal aid system. It contributed to improving cooperation between stakeholders, setting up proper schools for advocates, judges and prosecutors, and increasing the quality of the judicial process. An ADR model was developed and CoE TA was used to support specific access to justice activities. The Sector Policy Support Programme aimed to support efficient and accessible justice, by enhancing free legal aid mechanisms and improving quality of legal aid. Emphasis was also given to access to justice information.

The EU has undertaken sustained and strategic dialogue with Armenia on human rights, and has made significant contributions to the laws relative to inter alia domestic violence and alternatives to imprisonment, and to Armenia's ratification of the Istanbul Convention. The EU has also raised gender equality in several high-level meetings. The Support to the Office of the Human Rights Defender had a global objective of supporting the principal human rights oversight institution. Penitentiary reform, torture prevention and fair trial rights, and vulnerable groups and minorities were also targets of support.

The EU Delegation has implemented a comprehensive civil society, human rights, democracy portfolio throughout the Evaluation period, through the EIDHR Country Based Support Scheme, which is considered to have made real and complementary contributions to civil society regarding human rights and democracy issues, and the CSO-LA has also been actively used. Numerous oversight institutions have received support relative to capacity building.

Support to electoral reform made a direct contribution, in particular relative to minimising electrical fraud. Support was provided to an E-Civil Registry, which has also reduced the risks of voter fraud, and supports democracy and governance more generally.

#### 3.4.2 Access to justice (JC81)

The 2016 Review of the Sector Support Programme for "Support to Justice Reform in Armenia (Phase II)" Third Tranche Review relative to Expected Result 2 (b) (free legal aid mechanisms are enhanced and quality of legal aid is improved) noted inter alia that although the PDO budget was increased, and additional funds were used to support the Yerevan office, these financial resources were insufficient to enhance the capacity of the PDO or expand other free legal aid provision. Nevertheless the state budget allocation was substantially increased in 2016, rising by almost 30%, which provided funding for an increase in public defender positions by 10%, and a legislative change increased the categories of population groups eligible for free legal aid.

The 2015 *Law on Making Changes and Amendments to the Republic of Armenia Law on Commercial Arbitration* brought Armenia into line with UN Commission on Trade Law (UNCITRAL) standards and extended the application of arbitration to disputes of a non-commercial nature. Amendments facilitating access to justice were also introduced into other legislation, including the Civil Code, the Civil Procedure Code, the Family Code, the Labour Code, the Law on Protection of the Rights of Consumers, and the Law on Compulsory Enforcement of Judicial Acts. For example, the 2015 "Mediation Package" amended the Civil Procedure Code, the Judicial Code, the Civil Code, the Family Code, and the Law on State Duties to introduce the institution of mediation. These initiatives have been accompanied by training to ensure their effective implementation.

The EU contributed significantly to the changes related to the legal aid system under the 2012 Support to Justice Reform II through increased funding for free legal aid, provision of necessary improved physical resources to the Public Defenders' Office to provide legal aid coverage across the country, and specialised compulsory training to Public Defenders to ensure the quality of the legal services provided.

It sought to contribute to an efficient and accessible justice sector by improving cooperation between all the stakeholders, setting up proper schools for advocates, judges and prosecutors, and by increasing the quality of the judicial process in the first instance courts. It also aimed to improve

efficient and accessible justice cooperation among the main actors of the judicial process, and to enhance free legal aid mechanisms and the quality of legal aid. It also targeted the simplification of procedures in relation to notarisation in order to introduce the principle of a "one-stop-shop", and the simplification of civil registration procedures by implementing an E-Registry process. An ADR model was developed.

Emphasis was also placed on access to justice information, with electronic tools being made available to the public and legal actors, which has contributed to a greater awareness of justice and human rights issues.

TA was used to continue the partnership with the CoE to support specific activities foreseen under the programme. Through the current EU-CoE joint project "Access to Justice", the CoE has successfully set up the School of Advocates, and is working on setting up the future Justice Academy. There are also other ongoing CoE/ PGG projects in the field of justice: "Supporting the criminal justice reform and combating ill-treatment and impunity in Armenia" and "Support to the implementation of the Judicial reform in Armenia", as well as a project on "Strengthening health care and human rights protection in prisons in Armenia".

The Sector Policy Support Programme not only aimed to support efficient and accessible justice but also to assist in the establishment of the probation service, which was intended to enforce alternative non-custodial sanctions and support reintegration of offenders into the society. As can be seen immediately above, only mixed contributions have been made in this regard.

### 3.4.3 Respect for human rights (JC82)

During the period under consideration, Armenia has taken significant steps to incorporate international human rights standards in its national legislation; in addition a national human rights strategy and action plan have been adopted. This is a roadmap for coordinated action by public institutions to fulfil Armenia's international obligations and is universally considered a major step forward; however it failed to address certain priority areas, including the UN Convention Against Torture (UNCAT), electoral rights and ensuring greater respect for women's rights.

The government respects freedom of association, and recent legislation allows the flexible regulation of CSOs and permits them to be more sustainable, developed and independent, self-regulated and institutionally strong. The current law on freedom of assembly is in line with EU and other international standards; however its implementation is uneven, with a number of reported incidents of excessive force by security forces.

Awareness of international human rights instruments and Armenia's obligations remained low among national institutions, including the judiciary and law enforcement bodies; this may contribute to implementation difficulties such as those expressed above. The MoJ has established a separate department to deal with follow-up to ECtHR cases.

LGBTI rights remain troublesome: a draft bill prohibiting all forms of discrimination was put on hold, with provisions expressly prohibiting discrimination on the basis of sexual orientation removed; the bill was ultimately abandoned after the government joined the Russia-led Eurasian Economic Union.

The adoption of a comprehensive anti-discrimination strategy is one of the conditionalities under the on-going Human Rights Budget Support programme; this law will be put forward to the parliament after the December 2018 parliamentary elections. The Equality Law is part of a legislative package that includes a comprehensive Law on the Protection of the Rights of National Minorities.

Prevention and prosecution of hate speech is not adequately addressed. Police impunity remains a challenge, as does the overuse of pre-trial detention and limited options for non-custodial sentencing.

The legislative definition of torture does not include crimes committed by public officials, and there have been few tangible developments regarding ill-treatment in police custody. There has been concern about the use of coerced confessions in trials and the failure to investigate certain defendants' allegations that confessions have been obtained using force. There has been limited progress in reforming the prison system (see Armavir Prison above), however inhumane treatment and conditions in prisons remains problematic.

The HRBS conditionalities also require the following to be implemented by end 2018:

1. The entry into force of a legal framework ensuring that in ten pilot police stations all interrogations taking place in police custody are audio-visually recorded. Access to records is granted to the Public Monitoring Board and the Human Rights Defender/ National Preventive Mechanism at the interrogated person's request or where there exist strong grounds for suspicion of torture/ ill treatment, in full respect of data protection legislation, and without prejudice to the national legislation; and

2. All police facilities where a person may be detained, specifically the investigator's room, are open to monitoring through independent oversight (including the Public Monitoring Board and the Human Rights Defender/ National Prevention Mechanism<sup>2</sup>).

Despite progress on religious minorities, society's acceptance of these groups remains low. The law on freedom of conscience and religion has still not been adopted, and discrimination against minority religious groups continues. The law on equal rights and opportunities for women has still not been implemented efficiently, and the law on domestic violence has not been adopted. Nevertheless, the visibility of women's rights defenders has increased as a result of increased usage of internet and social media, with the unintended side-effect of triggering an increase in threats and hate speech.

The human rights action plan recognised the need to strengthen the protection of the rights of vulnerable groups; the government submitted a draft law aimed at providing certain vulnerable groups assistance in various forms, but widespread discrimination persists against persons with disabilities.

The EU has undertaken sustained and strategic dialogue with Armenia on human rights. The EU has recognised gender equality as a development potential in the Single Support Framework for EU support to Armenia 2017-2021, and is actively mainstreaming gender in the Annual Action Programme 2018.

The EU made significant contributions to the law against domestic violence and Armenia's ratification of the Istanbul Convention through the human rights budget sector support programme; it is noted that the government itself led public discussions and policy discussions with civil society actors. The EU has also raised gender equality in several high-level meetings with the government and made very concrete suggestions to the new Gender Equality and Gender-Based Violence strategies formulated in 2017.

In 2017 the Committee of Experts of the CoE worked on developing a legal and institutional framework for protecting and promoting minority languages.

The Support to the Office of the Human Rights Defender (Twinning) had a global objective of supporting the principal human rights oversight institution. The 2012 Support to Justice Programme sought to contribute to the revision of the Criminal Code and promote alternatives to imprisonment in line with international standards. The Sector Policy Support Programme targeted general penitentiary reform.

The 2014 Human Rights Protection programme seeks to improve the protection of human rights through enacting and implementing relevant legislation in the areas of right to free elections, torture prevention, anti-discrimination (including minorities, people with disabilities and other vulnerable groups), gender equality, and child protection. It also seeks to contribute to progress in torture prevention through legal, investigative and enforcement reforms, as well as (i) greater protection against discrimination of persons belonging to minorities, people with disabilities, and other vulnerable groups; (ii) effective gender equality mechanisms and protection of victims of domestic/gender-based violence and abuse; and (iii) an improved child protection system including deinstitutionalisation of children. It specifically aims to strengthen capacity of the Ministry of Labour and Social Affairs; of the Women's Council under the Prime Minister as the National Gender Machinery; of law enforcement structures in the area of human rights through improved investigation and enforcement techniques and relevant education/training; and of the National Assembly Standing Committee on Protection of Human Rights and Public Affairs.

#### 3.4.4 Governance and democratic processes (JC83)

During the period under consideration, the EU Delegation has implemented a comprehensive civil society portfolio which includes three larger capacity-building projects and an active portfolio of human rights, democracy promotion, notably under the EIDHR Country Based Support Scheme. These addressed a wide range of issues such as: rights of the disabled, children's rights, awareness on human rights issues, independence of the judiciary and the justice system in general, freedom of information, women's rights and domestic violence, labour rights, strengthening the role of civil society in the promotion of democratic reforms. The EUD observed an "*overall positive tendency in increasing CSOs capacity to be involved in policy formulation, legislative amendments/improvements and governance matters*".<sup>3</sup> The CSO-LA thematic instrument has also been actively utilised in Armenia to strengthen capacity development of civil society and local authorities.

In the second Budget Support, the EU introduced a requirement that all legislative acts represented in the conditionality matrix were to be first discussed with CSOs, which centred the support on qualitative

<sup>2</sup> Armenia ratified the Optional Protocol to the convention Against Torture in 2006

<sup>3</sup> EAMR 2013 p.4

performance, and embedded participatory processes at all stages of implementation. This led to a significant broadening of civil society's implication in legislative reform, the creation of the role of Civil Counsel within the MoJ, and the establishment of the innovative online platform E-Draft<sup>4</sup>, where legislation is placed for public consultation, comments and voting, an important example of which was the law on domestic violence.

The Support to Office of the Human Rights Defender (Twinning) has an objective to support up to four Armenian administrations in meeting their obligations under the PCA and ENP in areas with the potential to enhance good governance and strengthening of democratic structures, through the development of an efficient peer to peer relation with a similar administration of an EU Member state.

The 2014 Human Right Protection programme also seeks to enhance the electoral system in line with CoE and OSCE/ODIHR recommendations, and as indicated above strengthen the capacity of the Women's Council under the Prime Minister and of the National Assembly Standing Committee on Protection of Human Rights and Public Affairs.

Whilst direct contributions have not been observed, it is considered that these initiatives would have likely significant transversal contributions to governance and democracy that would have in turn supported the RoL.

Support to electoral reform was described however as having made a direct contribution, in particular during the April 2017 parliamentary elections when EU provided significant assistance, not only relative to monitoring, but also in terms of their conduct, for example by providing equipment to minimise electoral fraud. This contributed to increased transparency in election administration. The ODIHR Election Observation Mission acknowledged the contribution of EU support to reducing irregularities. This was, however, not sufficient to address all concerns, notably those related to political party actions, and abuses of executive power. .

Under the second budget support, support was provided to an E-Civil Registry, which enables all birth registration to be done online; this has also reduced the risks of voter fraud, and indeed has supported all aspects of democracy and governance.

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<sup>4</sup> See [www.edraft.am](http://www.edraft.am)

## 4 Annexes

### 4.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Project Manager	EU-EEAS, EUD Yerevan
Interim geo desk Armenia	EU-EEAS, HQ
Desk officer	EU-NEAR

### 4.2 List of documents consulted

#### 4.2.1 EU strategy and programming

European Commission (2007): ENPI. Armenia. National Indicative Programme 2007-2010.

European Commission (2007): ENPI. Armenia. Country Strategy Paper 2007-2013.

European Commission (2014): Programming of the ENI – 2014-2020. Single Support Framework for EU Support to Armenia (2014-2017).

European Commission (2014): Single Support Framework. Armenia 2014-2017. Summary.

European Commission (xx): EU/Armenia Action Plan.

ETF (2017): ENPI. Armenia. Country Strategy Paper 2017-2020.

#### 4.2.2 EU reporting

EU (2008-2013, 2015-2017): External Assistance Management Report (EAMR). Armenia.

European Commission (2012, 2013): European Neighbourhood Policy Progress Report.

#### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2008 Support Justice Reform I
- 2009 Support to Office of Human Rights Defender
- 2012 Support Justice Reform II
- 2014 Human Rights protection
- 2017 Consolidation of the Justice System

#### 4.2.4 Evaluations and Studies

Particip (2017): External Evaluation of the European Neighbourhood Instrument (ENI) (2014-mid 2017).

#### 4.2.5 Other

Amnesty International Report (2015): The state of the world's human rights (2014/2015).

Open Society Foundation Armenia (2017): Monitoring report on implementation of ENP in Armenia in 2015-2017.

OSCE (2012): Republic of Armenia. Parliamentary Elections. 6 May 2012. Final Report.

OSCE (2013): Republic of Armenia. Presidential Elections. 18 February 2013. Final Report.

OSCE (2015): Republic of Armenia. Constitutional Referendum. 6 December 2015. Final Report.

OSCE (2015): OGP Armenia: Civil Society Monitoring Report.

OSCE (2017): Republic of Armenia. Parliamentary Elections. 2 April 2017. Final Report.

The Group of Public Observers conducting public monitoring in penitentiary institutions and bodies of the RA ministry of Justice (2016): Annual Report.

## Case study note – Georgia

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# 1 Introduction

## 1.1 Context

In the early years of the evaluation period, Georgia displayed a post-Rose Revolution commitment to strengthening institutions supporting democracy, strengthening human rights and fundamental freedoms, and consolidating the RoL. These commitments were translated into acceding to international and CoE instruments. In the area of RoL, a strategy for comprehensive reform of the judicial system was put in place in 2005 and an Action Plan was promulgated in 2006 (CSP 2007-2013, p. 10). The governing style of President Saakashvilli led to an increasingly tense political atmosphere, which exploded with the prison abuse scandal of September 2012. Political consequences followed rapidly. Democratic Parliamentary elections leading to a change in Government were held in October 2012. In November 2012, Constitutional reform shifted Georgia from a presidential to a semi-parliamentary system, and further reforms approved in May 2013 reformed the common court system and attempted to de-politicise the High Council of Justice. Presidential elections took place in October 2013.

Despite some pressure from nationalist and pro-Russian forces, popular support for European integration is high and government commitment is firm. Over the review period, the government of Georgia has implemented a number of significant reforms bringing it closer in line with European standards. As shown below, with EU support there has been a dramatic decrease in the use of detention, a decline in the prevalence of ill treatment, passage of a new Juvenile Justice Code, and passage of an Anti-Discrimination Law and some progress on implementation. At the same time, and despite important constitutional reforms affecting justice institutions, some of the most important of them vetted by the Venice Commission, lack of progress on the independence, impartiality, and accountability of the judiciary remains a major source of concern (see EQ 7).

## 1.2 Overview of the EU support

The EU lent support beginning in 2008 in the form of a justice reform budget support programme - Support to the reform of criminal justice system in Georgia<sup>1</sup>. The basis of EU programming for 2007-13 was the ENP Action Plan agreed in November 2006. In line with the AP (Chapter 4.1, especially 4.1.1), EU support was designed to strengthen democracy and good governance, RoL, human rights, and fundamental freedoms, covering also the development of civil society and the fight against corruption (CSP 2007-2013, p. 20). In judicial reform (AP Chapter 4.3), the emphasis was on implementing the existing government reform plan (developed with EUJUST THEMIS assistance<sup>2</sup>) covering the criminal justice system and penitentiary systems. Under the NIP 2007-2010, Priority Area 1, Support for democratic development, rule of law, and governance received EUR 31.5 million, 26% of the total ENPI allocation. Sub-priorities included i) democracy, human rights, and civil society development; and ii) rule of law and criminal justice reform. Objectives and expected results and impacts match those in the EU-Georgia ENP Action Plan (NIP 2007-2010, pp. 6-8).

Moving further into the evaluation period, the NIP 2011-2013 reflected the deepened EU-Georgia relations that developed as a consequence of the August 2008 war with Russia. More than the previous NIP, it reflected a widened process of consultations (described on pp. 27-28 of the NIP) with government, civil society, and other actors. The NIP fully reflected the adjustments to the criminal justice reform sector strategy and Action Plan made in the context of the Sector Policy Support programme - Support to the Criminal Justice Sector in Georgia (AAP 2011). Sub-priority 1.1 covered media freedom, political pluralism, human rights, and civil society development; under sub-priority 1.2, justice sector expected results included increase public confidence, improved access to justice including women and vulnerable groups, juvenile justice reform, improved conditions of detention, and strengthened capacity of justice institutions to adhere to European standards in justice.

Relations between the EU and Georgia entered a new phase with the commencement of negotiations towards an Association Agreement in July 2010 and its signature in June 2014..

In addition to the three sector budget support programmes – the last of which is currently coming to a close - the EU provided support to civil society through the bilateral justice programmes CSF of the Eastern Partnership and the ENP Comprehensive Institution Building programme (under “More for

<sup>1</sup> Support to the reform of criminal justice system in Georgia, ENPI/2008/019-630 (EUR 14.5 million contracted amount)

<sup>2</sup> EU Rule of Law Mission to Georgia. This mission was implemented under the European Security and Defence Policy (ESDP).

More,” which covered, *inter alia*, support to Parliament and the Public Defender’s Office.<sup>3</sup> The EU has intensely engaged in policy dialogue, not only in the context of budget support, but also at the highest political level. It has formed a tight partnership with the Council of Europe (and its institutions such as the Venice Commission, actively advising Georgia in legal and Constitutional reform). This is symbolised by the fact that the Commissioner for Human Rights, who was called into the country *in extremis* during the political crisis of 2012, returned in 2013-2014 following his retirement as EU Special Representative for Constitutional Change and Human Rights. His 2013 report *Georgia in Transition* deeply informed subsequent reforms.

Table 1 Overview of ENI-financed interventions in the area of RoL in Georgia

Decision year	Title	Planned EU contributions (mEUR)	Main channels/ implementing partners
2008	Support to the Reform of the Criminal Justice System in Georgia	14.5	Georgia gov (SBS)
2011	Support to the Criminal Justice Sector in Georgia	18	Georgia gov. (SBS)
2012	Support to the Criminal Justice Sector in Georgia (EaPIC - scale-up)	6.0	CoE
2012	Improving the quality of CSO policy dialogue with the Georgian Parliament	0.2	Westminster Foundation for Democracy (Grant)
2014	Support to the Justice Sector Reform in Georgia <sup>4</sup>	50.0	Georgia gov. (SBS)
2014	Human Rights for All in Georgia	10.0	UNDP
2014 & 2016	Strengthening the System of Parliamentary Democracy - Phase I & II	1.5 1.5	UNDP
2015	Studies and Research of Media Election Coverage in Georgia for Parliamentary Elections 2017.	0.3	UNDP

Several interventions have also been implemented in areas closely related to RoL in the context of the Framework Programme in Support of EU-Georgia’s Agreements and the regional PGG Framework with the Council of Europe. Georgia also benefited from the Eastern Neighbourhood Civil Society Facility and the EIDHR instrument financed interventions in areas such as elections and human rights<sup>5</sup>.

<sup>3</sup> Negotiations with the Government of Georgia on the Association Agreement culminated in the definition of a "Comprehensive Institution Building (CIB) Framework Document" which identified three clusters of institutions requiring institutional strengthening: i) institutions in charge of reform co-ordination; ii) institutions in the area of trade; iii) institutions in the area of democratic development, good governance and human rights (Oversight bodies). The Framework Document entered into force on October 2010 at the signature of a CIB Memorandum of Understanding between the Government and the European Commission.

<sup>4</sup> Under budget support, a number of actions not separately enumerated below were, for example, "Access to Justice" (UNDP) and "Enhancing access to justice and promoting a child-friendly justice system in Georgia" (UNDP/UNICEF).

<sup>5</sup> Examples of EIDHR-funded interventions: 2013 project "Communities for democratic elections"; 2017 project "Preventing torture and ill treatment in Georgia, Armenia and Ukraine".

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

<b>EQ2</b>	<b>To what extent has EU support to RoL responded to the bilateral and regional contexts?</b>
<b>JC21</b>	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
<b>JC22</b>	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 Summary of key findings

Justice sector reform has been a key government priority throughout the evaluation period and, through budget support, the EU has closely aligned with government priorities – as well as influencing them. Based on progress made in many areas, government ownership appears to be strong. However, and as noted by the EU, there is a marked contrast between areas where progress was obvious – penitentiary reform, ill-treatment, juvenile justice, and legal aid being good examples – and those where it was not, particularly the independence, impartiality, and accountability of the judiciary (see EQ 7 for full discussion). In that area, all stakeholders in the field interviewed (apart from government officials and members of the judiciary) were of the view that there was no political will for real reform at the Ministry of Justice; in addition to which, influential members of the judiciary are deeply opposed.

#### 2.1.2 Alignment and participatory processes (JC21)

Conditions over the evaluation period have been conducive to 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, and is made explicit in the European Neighbourhood Policy and Association Agreement agenda and action plans. 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. Indeed, the first criminal justice sector budget support programme was essentially designed by an EUJUST THEMIS intervention. The broadened justice sector reform programme (in addition to the National Human Rights Strategy and Action Plan) and the directions of Constitutional reform since 2013 have been closely based on the recommendations of the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, former CoE Human Rights Commissioner Thomas Hammarberg, whose mandate covered 2013 and 2014 (the reference document being the September 2013 report "Georgia in Transition"). 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.

There was very good alignment with national priorities and strategies during the evaluation period. 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 that have been evolving since the mid-2000s. Among government RoL strategies that were in place or about to be put into place at the time the 2014-2017 SSF was being drafted are: i) Criminal Justice Reform Strategy and Action Plan, ii) Strategy on Fight against Ill-treatment, iii) Juvenile Justice Strategy, iv) Civic Integration Strategy (dealing mostly with minorities), and v) Human Rights Strategy and Action Plan. The SSF 2014-2020 contains a clear statement of the RoL features of the Government's strategic programme "For a Strong, Democratic, and United Georgia" (p. 15).

This reading of strategic documents aligns with the findings of the Georgia case study conducted during the mid-term review of the ENI instrument 2014-2017<sup>6</sup>, which describes an extremely close alignment of EU and Government priorities, hypothesising that this is due to a shared agenda to reduce Russian influence.

Policy dialogue on RoL has been strengthened by the fact that strengthening democracy, human rights, and the RoL has been at the centre of EU-Georgia discussions since the time of the EU-Georgia ENP Action Plan; and that there had been three justice sector budget support programmes totalling over EUR 80 million. The EU, through a THEMIS mission, contributed to designing the very

<sup>6</sup> [https://ec.europa.eu/europeaid/mid-term-review-report-external-financing-instruments\\_en](https://ec.europa.eu/europeaid/mid-term-review-report-external-financing-instruments_en)

first justice sector reform strategy and has been involved in continually updating this based on annual consultations. It is as a result of these consultations and accumulated experience that the focus of EU support has evolved, from criminal justice reform to sector-wide justice reform, to the emerging areas of civil, commercial, and administrative law. Field mission interviews on this subject revealed differing views, some concerned that the EU is moving away from criminal law and human rights too soon; others stating that because of the primacy of integration with Europe, a move into more economic aspects of law is necessary to maintain relevance. The choice of GIZ to lead efforts in this area is appropriate because of close traditional ties between Germany and Georgia.

All of the annual EAMRs consulted have reported good policy dialogue with the Government, as did the 2017 EUD Compliance Assessment of justice sector budget support.

Strategic documents reviewed do not explicitly assess government ownership, but stress close continuous consultations, the alignment of support for RoL, democracy, and human rights with the EU-Georgia Action Plan and, more recently, the Association Agreement. Based on the generally positive reports on implementation of the ENP in 2011 and 2012 (SWD(2012)114 Final, SWD(2013) 90 Final), and of the Association Agreement in 2016 (SWD(2017) 371 Final), government ownership has been adequate. However, as discussed at a number of points in this report, it has also been highly variable. The one sector where there is no evidence of national willingness to undertake effective reform is the judiciary.

The CSP 2007-2013 contains a very brief listing (p. 28) of Government agencies and International Financial Institutions consulted, referring to a single Round Table with NGOs. The NIP 2007-2010 contains a similarly brief section (p. 17) describing the process of consultation with Government. By contrast, the NIP 2014-2017 contains a detailed Annexe (pp. 36-39) describing a broad consultative process involving both government and civil society (in addition to MS and other Development Partners). The EUD has had, over the evaluation period, a programme officer devoted to civil society development. There was a tripartite EU-civil society-Government dialogue initiated at the suggestion of Mr. Hammarberg during the political crisis of 2012-13. The Eastern Partnership and the establishment of a National Platform of the associated Civil Society Platform has provided a conducive institutional atmosphere (EAMR 2011), as has the fact that there is a high degree of professional migration between Government and civil society. NGO representatives interviewed during the field mission were unanimously of the view that the EU's engagement had provided them with added leverage for advocacy and generally expressed satisfaction with the overall level of participation in policy design and monitoring. The relationship between civil society and government is sometimes tense, but has been cordial, in part because of a significant degree of "circular migration" of professionals between the two sectors – many have worked in both

### 2.1.3 Needs, opportunities; and responsiveness (JC22)

All strategic and programming documents consulted, as well as implementation progress reports, contain detailed discussions of issues related to RoL, democracy, and human rights. While the CoE is a privileged partner of the EU in Georgia (as are high-capacity NGOs such as Open Society Foundation Georgia, Georgia Young Lawyers Association, and Transparency International Georgia), references in EU strategic and programming documents to monitoring reports from these civil society actors are rare. All EU documents make an effort to analyse institutional capacity constraints.

Explicit analysis of political will is generally missing, but as stated above, moving closer to European standards in RoL, democracy and human rights is a Government priority, and the steady progress under budget support is testimony to a reasonable level of political will in many areas. Nonetheless, EU strategy, programming, and monitoring reports routinely contrast areas of progress (such as penitentiary reform, juvenile justice, and to some extent anti-discrimination) with areas where progress is slow (such as independence, transparency, and accountability of the judiciary). The latter has been particularly troublesome, and all stakeholders outside government and the judiciary itself interviewed in the field were of the view that political will for reform in the area is lacking at the Ministry of Justice; in addition to which, influential members of the judiciary are opposed. Georgia has seen tumultuous change over the evaluation period, notably the election of a new Government in October 2012 following widespread protests triggered by a prison abuse scandal and a new President in 2013. There have been significant Constitutional changes, covering inter alia the appointment of judges and the role of the High Council of Justice. EU support has flexibly adjusted to changing circumstances, not least of all the transition from the ENP agenda to the Association agenda. The general trend in RoL has been the significant broadening of EU justice sector reform support from criminal law to a broader focus.

As RoL, together with democracy and human rights, has been a core Government concern throughout the evaluation period as well as in the preceding years, all strategic and programming documents reviewed have contained adequate discussions of the issues. Examples are the CSP 2007-2013 (p. 9

on issues surrounding the judiciary and pp. 13-14 on the human rights situation), the NIP 2007-2010 (“Strategic context / justification” section for Priority Area 1: Support for democratic development, rule of law, and governance; p. 5); and the SSF 2014-20 (p. 8 on the justice sector). Both the Action Fiche for EU budget support to justice sector reform under AAP 2011 and the Action Document for budget support under AAP 2014 contain detailed analyses of the justice sector context, issues, challenges, institutional constraints, etc.

While the CoE is a close EU partner in Georgia, no contracts with CoE were signed under the latest justice budget support programme. More robust reference to CoE is made in the programme documents related to the separate EU/CoE PCF/PGG framework. The CSP 2007-2013 and SSF 2014-2020 only contain passing references, e.g. to GRECO and the Committee for the Prevention of Torture, in their substantive sections. However, in the latter document, CoE reports (e.g., CEPEJ) figure significantly in Annex 2 giving indicators and means of verification for Sector 3: Justice Sector Reform (pp. 21-22). The Action Fiche for Support to the Criminal Justice Sector under AAP 2011 makes only glancing reference to the CoE as an institution. So too does the Action Document under AAP 2014, although this makes substantial reference to the Hammarberg Report of 2013.

Apart from general comments on constraints, strategic documents for the programming period 2007-2013 do not contain in-depth discussions of institutional factors. An exception to this is the discussion of Public Financial Management from the standpoint of budget support in the NIP 2011-2013 (pp. 45-52), which concluded that budget support in Georgia was working “fairly well.” The Action Fiche for justice sector budget support under AAP 2011 contains a detailed analysis of institutional structures and their coordination (pp. 3-4) in addition to an assessment of institutional capacity in the sector (p. 4).

All strategic and programming documents reviewed align proposed actions to priorities identified by Government in its justice sector reform strategy. Political will is sometimes mentioned under Risks (e.g., p. 7 of the Action Fiche 2011 for budget support; specifically, Government’s willingness to allocate sufficient budgetary resources to justice institutions).

The transition from the ENP to the Association Agenda was handled smoothly. Georgia offers an example of a nimble EU response to radical political change, namely the upheaval of late 2012 and 2013. While justice sector reform continued along the lines already established, the SSF 2014 called (p. 8) for a broadening from criminal justice reform to include administrative and civil justice, and based on the ENP Progress Report 2013 (SWD(2014)72 Final), gave greater attention to independence of the judiciary and access to justice. The change in Government required intensified dialogue during the drafting of the SSF 2014. Both the Action Fiche 2011 (pp. 5) and Action Document 2014 contain sections on lessons learnt, although these are more at the level of implementation than strategy, the latter being largely dictated by Government. The “Key lessons learnt for the new programming cycle” of the CSP 2007-2013 (pp. 17-18) is more strategic in tone, as is the “Lessons learnt” section of the Action Document for justice sector reform under the AAP 2014 (pp. 11-12). There is no corresponding section in the 2014-2020 SSF.

## 2.2 Implementation / choice of modality (EQ3)

EQ3	To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?
JC31	High quality policy and political dialogue established: content (promotion of RoL and European standards and principles), frequency, synergies between operational (intervention-level) and high-level dialogue, etc.
JC32	Implementation strategies appropriately chosen and combined / complemented
JC33	Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)
JC34	Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into account.

### 2.2.1 Summary of key findings (EQ3)

As a privileged dialogue partner, the EU has effectively used policy dialogue to advocate for progress in RoL, democracy and human rights. It has, in addition, strengthened civil society to participate in policy dialogue and provide independent monitoring. Policy dialogue has been leveraged because the EU has consistently moved from small, scattered actions to consolidated budget support for sector-wide reforms, with benefit also in efficiency gains. As the largest and most present donor in RoL, and given the Government's priority of EU integration, EU visibility in the field has been high. A large amount of TA complementary to budget support has been delivered across a broad front, and capacity has been built in a wide range of public institutions to implement the Human Rights Strategy. Monitoring and reporting have been of good quality. The choice of implementing partners with specialised expertise, such as UNDP, UNICEF, ILO, and the CoE has assured the quality of actions.

### 2.2.2 Policy dialogue (JC31)

The key to policy dialogue in Georgia has been the government's eagerness for European integration. As stated above, the EU is a privileged government partner in RoL, democracy, and human rights, and policy dialogue – not only in the context of sector budget support, but in the context of the Human Rights Policy Dialogue in place since 2009, in which civil society is a full partner. Civil society monitoring and policy documents play an important role in informing EU cooperation directions, although admittedly the evidence of this is more anecdotal than documentary. As is often the case, EAMRs present much more detail on achievements than on the quality of dialogue. Both representatives of government and NGOs reported open and cordial relations with the EUD. The involvement of civil society in policy dialogue has steadily increased over the evaluation period. It is reported that policy dialogue under sector budget support played an important role in adjusting the Association Agreement agenda, suggesting synergy between operational dialogue and high-level political dialogue. The EU has noted that Government's reform policy is "generally in line" with European standards and priorities, even when implementation lags.

A policy dialogue between the EU, Government and civil society organisations has long been in place in the context of justice sector budget support (SSF 2014-2020, p. 15). The EU-Georgia Human Rights Dialogue, in place since 2009, also includes issues related to democracy and fundamental freedoms (ibid.). There appears to have been, however, some gaps in reporting on policy dialogue from the EUD. In the annual EAMR 2011, the section devoted to progress in policy dialogue in cooperation sectors (pp. 1-3) is, rather, an enumeration of actions and achievements. In the 2012 annual EAMR report, it is reported that the 5<sup>th</sup> round of the Human Rights Dialogue in June discussed elections issues, media freedom, and labour rights, and was preceded by an EU-civil society seminar organised by the EUD. Dedicated meetings with Government, civil society, DPs, and international organisations were held in response to the September prison abuse scandal. The 2013 annual EAMR noted that the 6<sup>th</sup> round of the EU-Georgia Human Rights Dialogue in June included a greater degree of "self-criticism" on the part of Government. Again, however, the discussion of policy dialogue in justice reform is essentially an enumeration of areas of progress and need for improvement, not an analysis of policy dialogue in the normal sense of the term. The same is true of the Political Dialogue and Reform sections of the ENP implementation progress reports for 2011 and 2012 (pp. 4-8 and 4-9, respectively) and the progress report on implementation of the Association Agreement in 2017 (pp. 2-7), with very little on the quality of dialogue, and a great deal on the state of reform progress. Quality of dialogue is more fully discussed in budget support reports.

The “Sector policies and challenges” section of the Action Fiche for EU budget support to justice reform AAP 2011 cites (p. 2) international commitments under the Partnership and Cooperation Agreement, as well as commitments to kindred organisations such as the CoE, OSCE, and UN; it notes that Government reform policy is “generally in line” with EU policies (ibid.). At the level of ENI support taken as a whole, the External Evaluation of the European Neighbourhood Instrument (ENI) (2014 – mid 2017) case study reports assessed the level and quality of policy dialogue with Government to be high (JC 22). In assessing JC 61, it cited in particular policy dialogue at the budget support level (regular discussions of the budget support matrix) as a key means of adjusting and fine-tuning Georgia’s Association Agenda reforms. The EUD’s justice sector reform budget support compliance assessment report of 2017 found policy dialogue had, on the whole been effective and constructive.

The involvement of Georgian civil society (including think tanks) in policy dialogue, some of it tripartite (EU-Government-civil society), has steadily increased over the evaluation period. While small and local NGOs remain weak, large, well-established Tbilisi-based organisations such as Georgian Young Lawyers Association, Open Society Foundation Georgia and others are prolific sources of high-quality analyses, often legal in nature. Given the close contact between the EU and civil society, it can be concluded that civil society positions are taken into accord and that, through this, civil society expertise has an impact on EU strategy and its implementation.

### 2.2.3 Choice of implementation strategies (JC32)

In general, the EU’s approach (following the recommendation of the 2007 TACIS evaluation) has been to move away from scattered, small interventions in favour of budget support. Thus, the main approach employed in the justice sector has been sector budget support for justice reform with complementary TA. The only twinnings for which evidence has been found were between Latvian experts and the High School of Justice and with the National Bureau of Enforcement ((no information is available on the latter) . Under Comprehensive Institution Building made possible under the “more for more” principle, the EU has financed extensive capacity building. The Public Defender’s Office, in particular, benefitted from the latter, specifically focusing on its role as a National Preventative Mechanism and in combatting discrimination. Under indirect management, UNDP coordinated the work of UNICEF, ILO, and the Office of the High Commissioner for Human Rights to implement the joint EU-UNDP project “Human Rights for All” project, which built capacity in multiple agencies to implement and monitor the National Human Rights Strategy. UNDP coordinates the work of all agencies and provides liaison with the EU. There are three components: i) implementation of the Human Rights Strategy, (ii) awareness raising, and (iii) personal data protection. Other directions include rights of children, labour rights, and parliamentary oversight of human rights. UNDP also implemented a large and successful capacity building project for Parliament that contributed in particular to strengthening the committee oversight. Under the Partnership for Good Governance and its predecessor, the Partnership Cooperation Framework, the CoE has been financed to implement a range of actions ranging. Under the PGG, these have covered topics including institutional development at the Bar Association, needs assessment at the High School of Justice, implementation of the European Convention on Human Rights (with the Prosecutors Office and Public Defenders Office), prisons health, promotion of CoE conventions on national minorities, and media freedom.

The EU4Justice projects (judiciary, penitentiary, and criminal justice) has delivered a wide range of TA, capacity building, and training actions across a broad front. The judiciary project has seven components: (i) Research and drafting of the Judicial Reform Strategy, (ii) training to increase the skills of judges and their assistants, (iii) improved management of the judiciary through information technology, better human resources policies, etc., (iv) improved ethics and disciplinary procedures, (v) communications, investment in judicial staff, and building institutional capacity related to the European Convention on Human Rights. Beneficiaries of particular importance from the judiciary reform point of view are the Supreme Court and the High Council of Justice although, in view of limited progress in that area, the impact of the TA can be questioned.

The High School of Justice received Twinning from a Latvian-French project, although results have been limited. The start-up of the project was uneasy. Current efforts focus on affiliating the High School of Justice more closely with the European Judicial Training Network. An indirectly managed intervention with GIZ dealt largely with private and administrative law. UNDP implemented the project Access to Justice to strengthen the State Legal Aid Service, as well as the Georgian Bar Association; the latter is reportedly still very weak but has improved over the review period. Another component of the project encouraged Alternative Dispute Resolution (ADR). There is a new draft law on mediation,. UNICEF was primarily responsible for advising on developing child-friendly justice. PGG projects through CoE have been mentioned above.

The “Framework Programme in support of EU-Georgia agreements” (EUR 9.7 million) included a specific component, Comprehensive Institution Building, which provided support to, inter alia,

institutions in democratic development, good governance, and human rights, including the PDO, the Chamber of Control, and the Parliament (Action Fiche for Georgia AAP 2011, p. 26). In more recent years, CIB has been replaced by a project “Fight Against Discrimination” directly implemented by the PDO. The direct implementation approach is appreciated by the beneficiary because of its flexibility, as opposed to funding from other donors that is often tied to very specific issues. Much the same sentiment was expressed by a representative of the UNDP-EU “Human Rights for All” project, which supports implementation of the entire Strategy taken as a package rather than picking out specific aspects to be supported.

The SSF 2014-20 contains (pp. 21-22) a detailed matrix matching justice sector expected results, indicators, and means of verification. These are, for the most part, SMART. No information is provided in the budget support Action Fiche for 2011 and Action Document for 2014. Annual reviews with the responsible Coordinating Council have been substantive and have resulted in adjustments. Based on three annual implementation reports (2012, 2013, and 2017), EU reporting thoroughly identified areas of progress and areas of continuing concern. In its 2017 Compliance Assessment of General and Specific Conditions, the EUD found Government to be in compliance with Specific Condition 1 (access to justice through enhanced legal aid and human rights institutions) and partially compliant with Specific Condition 4 on improved prison conditions. It judged Government non-compliant with specific indicators related to land registration; the quality and efficiency of the criminal justice system; and juvenile justice. The specificity of the indicators, while conducive to the SMART philosophy, resulted in some anomalies, however. For example, while there is broad overall agreement that great progress was made in juvenile justice overall, government was penalised for not having constructed a specific juvenile facility (which was not, in the view of government officials, needed in light of juvenile justice reform).

The EU has provided significant technical support to Georgian policy reform, beginning with THEMIS support to elaborate the first justice sector reform plan in 2005. Throughout the review period, EU expertise was readily available across a broad front through the EU4Justice TA project. TA is held to be of high quality by national partners, and the particular expertise of the Team Leader in the area of juvenile justice was a stimulus to progress in that area. The 2013 Hammarberg Report “Georgia in Transition” written by the EU Special Representative served as the de facto basis for re-designing criminal justice reform in broader terms, gave rise to significant Constitutional Amendments, and had broad impact on the National Human Rights Strategy and Action Plan.

#### **2.2.4 Synergies and complementarity within the portfolio (JC33)**

The external evaluation of EIDHR CBSS projects financed from the 2013-2014 budget was largely favourable, suggesting complementarity with other parts of the EU portfolio. Civil society representatives interviewed during the field mission expressed the view that EU support strongly increased their ability to advocate for full implementation of RoL, HR, and democracy-related aspects of the Association Agreement.

The CSP 2007-2013 makes passing reference to eligibility for EIDHR (p. 27); there is no mention in the SSF 2014-20. The latter does refer to the availability of complementary funding for civil society under the Civil Society Facility 2011-2013 (p. 16). The annual EAMRs for 2011 and 2012 cite the complementarity and gap-filling functions of EIDHR in the field of justice sector reform (pp. 6 and 6, respectively).

The evaluation of EU Support to the European Neighbourhood, admittedly covering mostly the pre-evaluation period (2004-2010), found that good governance and justice were among the weakest elements in the EU’s regional-level cooperation with the Neighbourhood East. While political commitments were made in strategic documents, cooperation tended to be diluted the further downstream towards implementation it moved (JC 81). However, it noted that activities in the area increased with the initiation of the Eastern Partnership and associated Civil Society Forum. Regional seminars organized in cooperation with the CoE have brought together professionals dealing with electoral standards, judicial reform, fight against corruption, etc. (JC 83). A reasonable number of projects benefiting Georgia under PGG in the current evaluation period were regional in nature, and CoE representatives interviewed were of the view that the sharing of regional experiences added value.

#### **2.2.5 Efficiency, monitoring and visibility (JC34)**

The move to budget support responded to the 2005 TACIS evaluation which found that support was too fractured among small, independent actions. The conventional wisdom is that, provided the pre-conditions are in place, budget support is more efficient (lower management costs, closer alignment to Government priorities, etc.) than the project approach. All 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. Annual Association progress reports examined have been of high quality, as have EAMRs. The EU has been highly visible in its support to RoL, democracy, and human rights.

As mentioned above (JC 32), a consistent tendency in choice of modality has been the move towards budget support strengthened and complemented by TA, twinning, and support to civil society. Citing positive experience in justice reform and in response to the 2005 evaluation of TACIS, the 2007-2013 Country Strategy emphasised (CSP, p. 17) the move from stand-alone projects to multi-instrument approaches closely aligned with government sector reform strategies (CSP 2007-2013, p. 17). The CSP called (pp. 17-18) for flexible provision of policy advice complementary to budget support, as opposed to reliance on large service contracts (pp. 17-18). Positive experience with budget support to date called for extension of the approach (ibid.) as well as less earmarking of support in order to strengthen adherence with the Government's MTEF. The 2012 and 2013 annual EAMRs identified an ongoing discussion between the EUD and Government regarding the proportion of ENPI assistance delivered under budget support, already quite high but with the Government articulating a desire for yet more. This does not appear from the text to have been related to efficiency aspects.

Policy dialogue under justice sector budget support has been characterised by high-quality discussions focused on the policy matrix, so areas of progress and lack thereof have been discussed with beneficiary Government institutions. (See also the comment on SMART indicators under JC 32.)

Overhead costs for support implemented through UN agencies and CoE have been high; however, the choice of these implementing partners has been justified by good results achieved. The specialised skills of agencies concerned – for example, UNDP for governance, UNICEF for children's rights, the ILO for labour reform, CoE for prison health, ethnic minorities, and matters related to the ECHR – has well justified the choice of implementing partners.

ROMs examined have been of adequate quality. Annual ENP and Association implementation reports reviewed (for 2011, 2012, 2014, and 2016-17) have been of high quality. Annual EAMRs examined have been thorough and reflect a high level of EUD effort. The CSP 2007-2013 responded to the 2005 TACIS evaluation report. The Government reform strategy benefitted from the expertise of a two-person team that visited in 2010 and reviewed progress in criminal justice reforms under ENPI AAP 2008 budget support (2008-2010) with a view to recommending future directions to be taken (Annual Action Fiche for Georgia AAP 2011, p. 2).

Responsibility for monitoring justice sector reforms rests with the Inter-Agency Coordinating Council Secretariat. It publishes semi-annual monitoring reports and annual Progress Reports. The EU has expressed satisfaction with the monitoring process (Action Fiche for Georgia AAP 2011, p. 4). The Council organises coordination meetings attended by the EU, civil society, and DPs including MS and other donors concerned with justice and human rights; notably, USAID, a significant supporter of judiciary reform and civil society development (ibid, pp. 5-6).

Association with the EU has long been at the centre of the Georgian policy and has grown in importance with increasing concern regarding encroachment on sovereignty by Russia. Strengthening RoL, democracy, and human rights is, in turn, at the centre of the Association agenda, as it was at the centre of the ENP agenda and, prior to that, the PCA. The EU's privileged position in RoL, democracy, and human rights is exemplified by the work of the EU Special Representative for Constitutional and Legal Reform and Human Rights, whose 2013 report "Georgia in Transition" formed the basis for fundamental Constitutional reforms which followed, as well as the basis for strategic planning of reforms in the justice sector and other areas related to RoL (SSF 2014-2020, p. 8). EU visibility in RoL is increased by the regular RoL Round Tables involving Government, national and international NGOs, and donors. The EUD's 2017 Compliance Assessment of justice sector budget support spoke favourably of EU visibility in the area.

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination/ complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

Coordination and complementarity of EU support with other development partners, including MS, has been strengthened and is currently satisfactory. The EU has supported Government donor coordination mechanisms through TA; in addition to which, Government over the evaluation significantly strengthened coordination structures.

### 2.3.2 Partnerships established at global level (JC41)

This JC is examined in the overall analysis in Volume I, the main report.

### 2.3.3 Coordination with EU MS / other donors at country level (JC42)

Government coordination of cooperation in Georgia was “traditionally weak” (CSP 2007-2013, p. 18) and “not fully satisfactory” (NIP 2011-2013, p. 28), but has been strengthened with EU support (largely TA). In the early years of the evaluation period, there were significant institutional changes in coordination structures, with overall responsibility for donor coordination, based in the Ministry for European and Euro-Atlantic Integration, being in effect placed under the supervision of a new high-level coordination unit in the Government Chancellery. The EUD hosts regular MS meetings and coordination at sector level is described as “generally good” (ibid, p. 19). In criminal justice reform, coordination is ensured by the Criminal Justice Inter-Agency Coordination Council (ICC), its Secretariat, and its 11 Working Groups (SSF 2014-2020, pp. 14-15). Since 2009 Government has hosted at least annual coordination meetings bringing together all stakeholders to report on progress and discuss actions for the following year. Other coordination bodies in place are an Anti-III Treatment Council and Anti-Corruption Council; the EU participates in all these Councils. With the broadening of the reform agenda to cover civil and administrative law reform as well as criminal justice, a Consultative Council on Civil Law was constituted (Action Document for Justice Reform Under AAP 2014, p. 15). Justice sector coordination is described in more detail in the Action Fiche for AAP 2011 (pp. 3-4). A MoU between Government and major players in justice reform (the EU, UN, Norway, USAID and others) was signed in 2010 (ibid.). The annual EU-Georgia Human Rights Dialogue has been in place since 2009 and is reported by participants to be strong and characterised by good engagement.

There is sustained and close communication between donors active in RoL and related areas under the direction of the ICC (Action Fiche for Georgia AAP 2011, p. 5). Joint programming between the EU and MS commenced in 2017. One area where coordination has been less than successful is support to the High School of Justice, where multiple donors are active, resulting in a multiplication of visitors and study tours, as well as possibly conflicting messages; e.g. sending civil lawyers on study tours to common law countries.

## 2.4 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy / strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion / minority rights / gender) and democracy issues into partner countries' RoL policy</b>

### 2.4.1 Summary of key findings (EQ5)

The evaluation period has seen continuous legal and constitutional reforms in Georgia, all in the direction of closer alignment with European values and CoE standards in RoL, democracy, and human rights. The EU has played a significant role in contributing to these changes. At the same time, and largely through CoE monitoring and its Venice Commission, as well as the work of major Georgian civil society organisations, shortcomings, weaknesses, and contradictions have frequently been identified.

The attitude of Government has, in general, been constructive, but there are identifiable areas of strong and weak Government will. The Criminal Procedure Code adopted in 2014 is generally in line with European and international standards, as is the new Juvenile Justice Code. Electoral law and media transparency have seen progress, as has protection of privacy. The area slowest to reform has been independence, impartiality, and accountability of the judiciary, discussed in more detail under EQ 7. While institutional and constitutional reforms have been enacted, as highlighted at many places, the actual results have been unsatisfactory due to a combination of weak political will (particularly in the Ministry of Justice) and the opposition of influential persons within the judiciary.

Legal reforms have addressed discrimination against women, the disabled, and ethnic, religious, and sexual minorities; in addition to gender-based violence. As discussed more thoroughly under EQ 6, implementation has been weak. However, there are signs of progress in the form of an increasing number of discrimination complaints and gender-based violence cases brought and the gradual development of case law.

### 2.4.2 Legal and constitutional reforms, and Parliaments (JC51)

The evaluation period has been marked by significant legal and constitutional reforms. The Electoral Code has been changed to incorporate a number of suggestions from the Venice Commission and OSCE ODIHR. The law on Assembly and Demonstrations was reformed, again in line with Venice Commission suggestions. The CoE has found the Criminal Procedure Code as amended in 2014 to be generally in conformity with international standards. With significant support from EU4Justice and UNICEF, the juvenile justice system was comprehensively reformed to be in line with international standards. As a result, the number of juveniles in detention has been significantly reduced, the use of methods that steer young persons in conflict with the law away from the court system have expanded, prosecutors specialised in juvenile justice have been trained, etc. Georgia made the transition from a Presidential to a Parliamentary system of governance and the latest round of Constitutional reforms, in 2017, has largely met with CoE approval. Laws related to the financing of political parties and transparency in media ownership were passed. While it is not always possible to identify a direct EU contribution to every change, the broad nature of support to RoL, democracy, and human rights, including through policy dialogue, suggests that the EU contribution was a significant one.

The list of reforms that have been implemented is long, and includes significant reforms related to elections, the functioning of Parliament, the role of civil society, and media freedom. A new Election Code was adopted in December 2011, as were amendments to the law covering the financing of political parties. Parliamentary elections in October 2012 resulted in the first democratic transfer of power in the country's history. The legal and institutional framework for elections continued to evolve throughout positively throughout the evaluation period. There was a continuous process of Constitutional reform, closely followed and often criticised by civil society, over the evaluation period. The basic direction of the reforms was the transition from a Presidential to a mixed and finally to a fully Parliamentary system, as had been advised in the Hammarberg Report. Civil society organisations in Georgia generally operate free from Government harassment or restrictions (USAID 2016 CSO Sustainability Index for Central and Eastern Europe and Eurasia, p. 99). The 2015 Country Strategy Evaluation of EU support to Georgia 2007-2013 found (EQ 4) that the principal issues confronting civil society in Georgia were not related to the political, legal, or institutional environment, but rather to the fact that only a relatively small, Tbilisi-based group of NGOs had the capacity and resources to contribute effectively to democratic development.

Through its broad support to RoL in Georgia, and particularly through ENI-financed budget support, the EU has made some contribution to a number of positive developments, even if no development can be always tied to a specific EU intervention. An example where a direct EU contribution can easily be identified is the Criminal Procedure Code adopted in as amended in 2014, found by the CoE to generally in conformity with international standards and best practice (ENP annual report on implementation in 2014, SWD(2015) 66 final, p. 6). Parliament benefited from capacity building under the UNDP-implemented 2010-2013 project “A Strong Parliament in a Consolidated Democracy.” Starting in February 2014, UNDP implemented (under Comprehensive Institution Building complementary support) the project Strengthening the System of Parliamentary Democracy in Georgia (EUR 3.3 million), scheduled to run until 2020. Support to the Parliament significantly strengthened the capacity of parliamentary committees to fulfil their oversight responsibilities. The Human Rights Committee was supported in the drafting of Action Plans, and the Budget Committee was provided with TA. The capacity of the PDO to play its role as NPM and engage in anti-discrimination activities was also strengthened by UNDP with EU support, as well as through direct support.

In the run-up to the Parliamentary elections of 2013, the EU financed three capacity-building projects for the electoral authority and civil society (Implementation Report of the ENP in 2012 (SWD(2013) 90 Final, p. 5; EAMR 2012). The CSO project aimed at monitoring media coverage in the pre- and post-October 2012 Parliamentary election period. In addition the EU financed a major event organised by the Georgian National Platform of the Eastern Partnership Civil Society Forum.

The EU has supported Georgian civil society through the Civil Society Facility and EIDHR, as well as by engaging with NGOs in policy dialogue. In the justice sector reform Action Document under the 2014 AAP (p. 15), the EU proposed two calls for proposals for CSOs to support:

1. Development of their capacity for advocacy, networking, policy making, and monitoring of reforms, and
2. Service provision to broaden access to legal advice, implement rehabilitation and re-socialisation programmes, and design and implement crime prevention programmes.

Other non-financial support to civil society is ongoing dialogue in the context of justice sector reform budget support (Annual EAMR 2011, p. 6). All civil society representatives interviewed during the field visit were of the view that EU support significantly increased their ability to advocate for reform.

#### **2.4.3 National RoL policy / strategic framework (JC52)**

Government commitment to the RoL reform agenda is strong, as is evident from the breadth of reforms embraced. At the same time, the overwhelming political consensus in favour of strengthening RoL overall must be nuanced by the mixed picture at finer-grained level. One of the principal findings, for example, of the Country Strategy Evaluation 2007-2013 was that, while government ownership of penitentiary reform (essentially, the fight against torture, ill-treatment, and impunity) was strong, commitment to reinforcing the independence of the judiciary was weak. This was reinforced during the field visit, when all persons outside government and the judiciary itself who were interviewed declared that the political will to meaningfully reform the judiciary was lacking; in addition to which, influential forces in the judiciary itself resist change.. The EUD Compliance Assessment of budget support found that while the general condition related to the overall progress in different areas of the justice sector was met, some of the Specific Conditions had not been fully met, as some particular targets were not fulfilled.

The Government programme “For a Strong, Democratic, and United Georgia” contains references to RoL, human rights, de-politicisation of the judiciary and law enforcement agencies, and reform of the Prosecutor’s Office and Ministry of Interior Affairs (SSF 2014-2020, p. 15). The justice sector reform strategy and associated Action Plans has been updated periodically since 2009. Government commitment is suggested by the broad basket of RoL-related reform strategies and associated Action Plans implemented during the evaluation period: the Criminal Justice Strategy, the National Human Rights Strategy and Action Plan 2014-2020, the Strategy on the Fight against Organised Crime 2013-20 and the Strategy on the Fight against Ill Treatment (Action document for support to justice sector reform under the AAP 2014, pp. 7-8). Of more recent vintage are the Strategy and Action Plan on Equality and Integration (Association Implementation Report for 2017, SWD(2017) 371 Final, p. 3), Judiciary Strategy of May 2017 (ibid., p. 5) and Prosecutorial Strategy of 2017 (ibid., p. 6). While reform of civil and administrative law is less developed than that of criminal law, there has been some progress with the putting in place in May 2013 of a Consultative Council on Private Law Reforms with Working Groups covering property law, civil procedure, company law and insolvency, law of obligations, personal rights and other aspects (Action Document Support to Justice Sector Reform under the AAP 2014, p. 8). In December 2016, a series of legislative amendments addressed a broad range of judiciary reform issues; in that year, a new Juvenile Justice Code was also adopted with the

goal of reducing the number of juveniles subjected to criminal prosecution; this is broadly acknowledged to have been a major step forward in aligning with European standards.

A number of legal and policy reforms have been cited. These include, but are not limited to: the Election Code of December 2012, December 2011 amendments to the organic law on Political Unions of Citizens, the January 2012 Law on Transparency of Media Ownership, the law on Assembly and Demonstrations of July 2011, amendments to the Criminal Procedure Code of November 2011 and 2014, the law on Common Courts of August 2014, amendments to the Code of Administrative Offences of August 2014, and the Anti-Discrimination Law of May 2014.

Of the 11 chapters in the justice reform strategy, the EU has supported five through sector budget support: juvenile justice, penitentiary, probation, legal aid, and the Public Defender's Office (SSF 2014-2020, p. 15; Action fiche "Support to the Criminal Justice Sector" under the Georgia AAP 2011, p. 2). The PDO was also strengthened through the Comprehensive Institution Building programme. The EU has contributed significant non-financial support through its involvement of policy dialogue related to RoL, democracy, and human rights; including annual reports, engagement in dialogue platforms, and coordination with other development partners.

#### **2.4.4 Integration of HR and democracy issues (JC53)**

All OSCE-ODIHR observation mission reports on elections over the evaluation period have found them to be generally in conformity with international standards and good practice.

While legal reforms have enshrined gender equality in the law, violence against women is high and women's participation in political processes is low. Similarly, the Anti-Discrimination Law covers discrimination against sexual minorities, so discrimination based on sexual orientation is illegal, but homophobia and its consequences are rampant. Strategies related to gender, ethnic minorities and persons with disabilities are in place but implementation is spotty and discrimination, despite EU support for the PDO that is tasked with dealing with it, continues to be widespread. In the case of gender, violence against women remains high although the EU supported at least one project devoted to building response capacity at the Ministry of Internal Affairs. However, persons interviewed in the field visit report that there are positive developments: more complaints related to discrimination and gender-based violence are being brought, and case law is developing. Prosecutors and judges have been trained with EU support and the Human Rights Unit of the Prosecutors Office is active. Working with the CoE, the Human Rights Unit started producing data on hate crimes in 2017, and prosecutors have been trained to identify elements that would lead to a crime being labelled hate crime. The availability of public services, including free language classes in ethnic minority areas, is improving.

While ill-treatment of prisoners has diminished, occasional cases continue to be reported and verified. An Action Plan on Fighting Torture, Inhuman and Degrading Treatment or Punishment (2017-2018) was adopted in 2017, but there is still no independent investigative body (Association Implementation Report 2017, SWD(2017) 371 Final, p. 3). That report states, that, as found also by the Country Strategy Evaluation 2007-2013 EQ 1) the tendency has been for mistreatment to move from prisons to police stations. Field visit interviews suggest that ill-treatment by prison staff has been "outsourced" to ill-treatment administered by fellow-prisoners. The EUD Compliance Assessment of budget support found Government only partially compliant with the Specific Condition on penitentiary conditions.

## 2.5 Quality / efficiency of justice systems (EQ6)

EQ6	To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?
JC61	Justice system planning and budgeting improved
JC62	Infrastructures and equipment (e.g. facilities, IT systems) improved
JC63	Capacities, skills and procedures in key RoL entities improved
JC64	Legality ensured, harmonisation of domestic law with international law and jurisprudence promoted, and enforcement of international judgments improved

### 2.5.1 Summary of key findings (EQ6)

The years just prior to the evaluation period saw a drastic increase in the budgetary resources available to the justice sector, and EU budget support (both financial and non-financial inputs) must take some of the credit, both for the increase and its maintenance. As early as 2011, judicial salaries were held to be adequate and, despite problems such as a shortage of courtrooms, equipment, computers, copiers, secretarial staff, etc., were also assessed as adequate. Georgia has the reputation of being reasonably compliant in the enforcement of ECtHR judgments. For progress in tackling discrimination, see JC 82. Georgian law (e.g. the Criminal Procedure Code, the Juvenile Justice Code) is generally in line with international standards.

### 2.5.2 Justice system planning and budgeting improved (JC61)

As part of its budget support, the EU has contributed to significant improvements in justice sector budgeting in a sector with multiple agencies spanning the executive and the judicial branches. A recent assessment found that the relevant budgets were credible instruments aligned with a credible MTEF 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, the prosecutors, and legal aid) and to significant increase in some justice professions' salaries (notably, first-instance judges).

The table below presents data on the share of the justice sector and selected components in national annual approved budgets for 2010 and 2014, the latest year for which data are available. While no time trend can be estimated for the justice system as a whole, the judicial system and prosecutors service both experienced significant increases, both in absolute per capita terms and as a share of GDP. Legal aid, while small in absolute terms, also experienced a substantial gain between the two years. All persons interviewed during the field visit described improvements in legal aid as a significant achievement over the review period. When established, the Legal Aid Service was part of the Ministry of Justice. Now, it is an independent institution with stable staff, reporting to Parliament, and looking to expand its support into civil law.

Table 2 *Share of the justice sector from Georgia's national annual approved budgets for 2010 and 2014*

<i>Annual Approved Budgets</i>		
	2010	2014
Whole justice system		
Per inhabitant	Not available	EUR 35.7
As % of GDP	Not available	1.43
Judicial system		
Per inhabitant	EUR 5.5	EUR 9.6
As % of GDP	0.28	0.36
Prosecution services		
Per inhabitant	EUR 1.64	EUR 3.62
As % of GDP	0.08	0.14
Legal aid		
Per inhabitant	EUR 0.24	EUR 0.35
As % of GDP	0.01	0.01

Source: CEPEJ STAT

<https://www.coe.int/en/web/cepej/dynamic-database-of-european-judicial-systems>

The table below present data on judges' and prosecutors' salaries in 2010 and 2014 (the latest year for which data are available). All have increased over the period, particularly the salaries of newly hired 1<sup>st</sup> instance judges and senior prosecutors. Data on lawyers' salaries are not available because these are not public employees.

*Table 3 Georgia's judges and prosecutors gross annual salaries in 2010 and 2014*

<b>Gross Annual Salaries</b>		
	2010	2014
<b>Judges</b>		
1 <sup>st</sup> instance, start of career	EUR 11,642	EUR 20,978
As multiple of average gross salary	x 3.9	Not available
Supreme Court, end of career	EUR 22,270	EUR 26, 223
As multiple of average gross salary	x 7.4	Not available
<b>Prosecutors</b>		
First instance, beginning of career	EUR 8, 976	EUR 9,996
As multiple of average gross salary	x 3.0	Not available
Supreme Court prosecutor, end of career	EUR 15,480	EUR 33, 540
As multiple of average gross salary	x 5.1	Not available

Source: CEPEJ STAT <https://www.coe.int/en/web/cepej/dynamic-database-of-european-judicial-systems>.

The TI Georgia National Integrity Assessment 2015 noted (p. 42) that there were substantial increases in judges' salaries in the years leading up to the last Assessment, in 2011. Inadequate salaries were not one of the problems cited in the Report.

Government budget allocations to the justice sector were carefully examined during policy dialogue regarding budget support. The EU does not, through budget support, directly pay salaries; however, by providing overall resources to the national budget and putting an emphasis (via policy dialogue) on public expenditure in this sector, it contributes to loosening constraints on these spending items. Budgetary needs have been carefully assessed in support for justice sector reform; in addition to which, the EU has built capacity of relevant institutions to plan and implement budgets. According to the Action Fiche for criminal justice reform under the 2011 AAP (p. 3), beginning with the Ministry of Justice and Ministry of Corrections and Legal Assistance, programme budgeting was introduced, followed by the Judiciary and Ministry of Internal Affairs, and the PDO. Overall budget coordination was ensured by the Inter-Agency Coordinating Council in coordination with line ministries and the Ministry of Finance, the latter ensuring synergies with the EU's support for Public Financial Management. The Action Document Support to the Justice Sector Reform under the AAP 2014 characterised (p. 9) the Government's annually revised "Basic Data and Directions" report, which policy reform priorities are linked to financial projections, as "a proper sector expenditure plan for justice, consolidating institutional spending components and programme-based provisions in a medium-term framework." The Action Document also noted, however, that executive agencies had greater capacity for independent budgeting than non-executive agencies such as the judiciary.

### 2.5.3 Infrastructures and equipment improved (JC62)

Georgia is in the process of developing IT applications in justice, it has made some progress and, using CEPEJ criteria, does not compare unfavourably to some Western European countries. Laws, legal forms, and higher-instance decisions and judgments are generally available on the internet. Between 2011 and 2014, there were significant increases in the budget for maintaining existing court facilities and building new ones – as above, this cannot be directly attributed to EU budget support, but money is fungible and it is safe to attribute some contribution.

According to CEPEJ Studies No. 24, "Thematic Study: Use of Information Technology in European Courts," Georgia is in a state of "ongoing development" in all three areas identified as relevant to IT – Equipment, Legal Framework, and Governance (Table 6, p. 46). On a scale of 1 to 10, Georgia ranked 5.0 on matters related to equipment (CoE median 5.2), 3.6 on the legal framework for informatisation (CoE median 3.6), 8.2 for the quality of project management (CoE median 5.2), and 4.9 for IT governance (CoE median 5.5) (Annex 1, p. 69).

In 2011 (data are not available for 2010), allocated budget for maintenance of existing court buildings was EUR 0.227 million and budget allocated for construction of new ones was EUR 0.128 million ([https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Georgia\\_en.pdf](https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Georgia_en.pdf)). The corresponding figures for 2014 were EUR 1.213 million and EUR 0.560 million ([https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/Par\\_Pays/Georgia%20data%20file.pdf](https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/Par_Pays/Georgia%20data%20file.pdf)), both representing substantial increases. According to the same sources, the budget allocated for computerization was EUR 0.118 million in 2011 and EUR 0.145 million in 2014.

According to the TI Georgia National Integrity Assessment 2011 (p. 63), courts and judges have adequate equipment (copy machines, computers, etc.) and full access to internet.

Run by the Legislative Herald of Georgia, the website [www.matsne.gov.ge](http://www.matsne.gov.ge) is a user-friendly, protected, and regularly updated website providing all normative acts adopted by state agencies, as well as international agreements, decisions by the Constitutional Court, local self-government acts, and public statements. Supported by USAID, the site went live in 2011. It contains a Find-a-Law feature. Supreme Court decisions are disseminated on <http://www.supremecourt.ge>.

The websites of the High Council of Justice (<http://hcoj.gov.ge>) and Courts of Georgia (<http://www.court.ge/index.php>) both contain basic citizen information (court rules, etc.) as well as standard legal and administrative forms (for registering a claim, etc.).

Prison conditions have improved, with a massive decline in the number of persons incarcerated, both because of the 2013 amnesty and changes in sentencing culture. There has been substantial investment in prison health, including a CoE project implemented with EU funding, leading to a dramatic reduction in prison mortality. Particularly to thank was better detection and case management of tuberculosis and Hepatitis C. Several prison facilities clearly below international standards were closed. As of the July 2017 EUD Compliance Assessment, compliance with the provision of improved health care facilities in prisons was likely, but the plan for a new juvenile detention system under the UNICEF juvenile justice programme had been abandoned. The failure to open the facility led to a reduction in funds disbursed, a decision that government officials interviewed felt was unfair because, due to the juvenile justice reform, there was no further need for the facility.

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

Through Twinning with the High School of Justice, the EU contributed to strengthening training practices for judges and prosecutors. The Twinning appears to have had only limited success, however, in part because the School remains extremely inefficient in administrative terms. The support staff ratio is unreasonably high, in addition to which, turnover among qualified professional staff is extremely high. Given the proliferation of donors, the HSJ is abundantly endowed for the amount of training it provides; this despite the fact that there is a serious shortage of judges in Georgia.

Enhancing advancement of administrative capacity of criminal justice institutions through training and TA was a specific objective of the 2007-2010 NIP (p. 7). Under the detailed description of the budget support contract (Action Document Support to the Justice Sector reform under the AAP 2014, pp. 13-14), there is mention of support to legal higher education institutions (Result 1.2). Strengthening the Prosecutors Office was a major objective from December 2014 onwards (ENP implementation progress report 2014, SWD(2015) 66 Final, p. 6), with the adoption of a strategy, a new ethics code, and appraisal plan rolled out in 2017 (Association Agreement implementation progress report 2017, SWD(2017) 371 Final, p. 6). Under EU budget support, there was extensive training of prosecutors in human rights and anti-discrimination law. A number of projects under sector budget support (UNICEF on juvenile justice, UNDP on Parliament and Human Rights, the ILO on labour law, GIZ on civil and administrative law) represented in skills transfer and improved practices and procedures in justice sector institutions.

#### **2.5.5 Harmonisation of domestic law with international law (JC64)**

The basic requirements for legality are satisfied in Georgia, although decisions at first and second instance often fail to live up to European standards. Legal harmonisation is at the heart of the Association Agreement. Both the EU and civil society have noted progress, although the latter identified justice as one area where more could have been accomplished.

According to the 2017 Association Implementation Report, Georgia has made progress on implementing the Agreement, including DCFTA. Harmonisation with EU law and standards is a key element of the AA. Some examples of progress: Georgia acceded to the Energy Community Treaty, there has been progressive approximation of technical regulations and standards, importantly including phytosanitary standards, in line with DCFTA. EU technical assistance across the board contributed to advancing the AA. For progress in adhering to international conventions, notably in the area of anti-discrimination, see JC 82. Laws on elections, the financing of political parties, transparency in media ownership, and data protection were passed under civil society and Venice Commission scrutiny. Georgia has the reputation of being a reasonably efficient enforcer of ECtHR judgments, and CoE with EU support has put in place ECtHR centres to disseminate information. One action under the EU-financed UNDP Access to Justice Project is producing a search engine for ECtHR decisions. Rulings and judgments of the Constitutional Court of Georgia are available on <http://constcourt.ge/en/legal-acts/judgments>. Decisions of the Supreme Court of Georgia are available on <http://www.supremecourt.ge/eng/>.

## 2.6 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence / impartiality / accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence / impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of RoL institutions is enforced</b>

### 2.6.1 Summary of key findings (EQ7)

EU progress reports, CoE monitoring documents, and credible NGO reports, all identify independence of the judiciary as the weakest point of Georgian RoL reform, despite EU support, particularly in the form of policy dialogue and TA. Field interviews confirmed that the executive continues to exercise excessive power over judges. While lifetime tenure has been introduced, this is not available until after a three-year probationary period, a rule that has been criticised by the Venice Commission and the EU. Reports of political pressure on judges are not uncommon. While in “regular” cases, there is no pressure, according to civil society representatives interviewed, in cases with political consequences, influential members of the judiciary can steer decisions. There has been an observable drop in the number of judges arbitrarily re-assigned to undesirable duties, and some improvement in disciplinary procedures, although judges remain immune from criminal prosecution, including corruption. While the High Council of Justice has been thoroughly reformed in line with CoE standards, stakeholders interviewed in the field agreed that, with the personnel set-up, incentive structure, and judicial culture unchanged, real reform is unlikely. Public perceptions are mixed; some surveys indicate that trust in the court system has declined, while other evidence indicates that faith in the independence of judges has increased – the fact that the court system includes prosecutors, broadly distrusted for exercising undue influence over judges in criminal cases, may play a role. Further aspects of public distrust of the prosecutorial system are discussed under EQ 8. The EU, through sector budget support, has actively supported improved governance of the prosecutorial system. Bribery of judges has largely ceased, and civil and administrative cases are largely decided in conformity with the RoL.

A new wave of judicial reforms is currently being designed. According to a High Council of Justice representative, areas emerging are definition of specific grounds for disciplinary procedures against judges, dealing with the backlog of cases at 1<sup>st</sup> and 2<sup>nd</sup> instance, reform of the HCJ to increase its independence, and improvement of working procedures of the HCJ.

### 2.6.2 Independence / impartiality of RoL institutions (JC71)

The EU’s contribution in this area has largely been in the form of policy dialogue and TA. While there have been improvements – for example, bribery of judges has been largely eliminated, judges are now eligible for lifetime tenure after a three-year probationary period, and the bringing of disciplinary charges has been separated from their adjudication – the independence of the judiciary remains a persistent problem. As documented in reports consulted and confirmed in field interviews, of all weaknesses in the Georgian justice system, this appears to be one that Government, specifically the Ministry of Justice, is least willing to address. Multiple stakeholders interviewed referred to the High Council of Justice, despite reforms, as being so bitterly divided as to be nearly dysfunctional.

Cases continue to be allocated to judges likely to be friendly to the government’s position, and there are instances of judges reporting pressure, including threats. Selection of judges is non-transparent. Public trust in the court system remains low, in part because the prosecution is broadly perceived to have the upper hand in criminal cases (see below).

#### Judicial independence overall

In May 2013, a new law on common courts was adopted that increased the independence of the judiciary (ENP Implementation Progress Report 2013, SWD(2014) 72 Final, pp. 3 and 6). However, the weak independence of the judiciary (and prosecutorial system) remains a stubborn problem (Action Document Support to the Justice System in Georgia 2014, p. 9; ENP implementation Progress Report 2012, SWD(2013) 90 Final, p. 5) and, as the Country Strategy Evaluation 2007-2013 (EQ 1) found, Government will to tackle structural independence issues is limited, or at least was in the early years of the evaluation period. In field interviews, all stakeholders outside the judiciary itself who were interviewed characterised the prospects for meaningful reform as bleak. Key members of the judiciary, with the support of the Ministry of Justice, seek to retain their influence by informal means – an accountability, as well as independence and impartiality issue (see JC 72). Civil society representatives interpret what is conventionally referred to as a lack of political will to be, more accurately, an unwillingness to dismantle informal influence structures.

The World Economic Forum Global Competitiveness Report 2016-2017 ranked Georgia 87<sup>th</sup> out of 137 countries surveyed in the area of judicial independence, with a slightly improving trend since 2012-2013 followed by a decline in the years leading up to 2016-2017. The Transparency International Georgia National Integrity System Assessment 2011 estimated (p. 64-68) that, while Georgia scored 75 out of 100 on the legal framework guaranteeing independence of the judiciary; in practice, however, it scored only 25 out of 100 due to undue influence exerted by the executive and the Prosecutors Office. Noting the undue influence of the Prosecutors Office, and the executive in cases involving Government's political interests, the TI report stated (p. 66), however, that civil and administrative cases were largely settled "*independently and in accordance with the law.*" The NISA 2015 estimated (pp. 42-46) that found that the legal basis for independence of the judiciary remained unchanged at 75 out of 100 while in practice, the score had improved to 50 out of 100. The acquittal rate, while still unacceptably low, had risen slightly and judges were more critically assessing prosecutors' motions. The proportion of administrative court cases brought by private parties against the state had increased dramatically. OSCE/ODIHR found that the judiciary's handling of cases arising from the 2012 Parliamentary and 2013 presidential elections was fair, a contrast to the situation as assessed in the 2011 NISA.

#### Selection and career advancement of judges

The selection and career advancement of judges has been a contentious issue throughout the evaluation period. In its 2011 National Integrity Assessment, TI Georgia reported evidence that appointments were non-transparent and that there was no formal mechanism for promotion (p. 67). In a review of the judiciary 2012-2016, TI Georgia characterised the system for selecting judges as suffering from "*low quality of transparency and publicity of the process of appointment of judges and failure of the HCJ to substantiate the decisions made*" (Assessment of the Georgian Judicial System 2012 - 2016, pp. 13-15). The NGO Coalition for a Fair and Independent Judiciary has argued that the selection process leaves judges open to political influence (U.S. State Human Rights Report Georgia 2016). Civil society representatives interviewed also drew attention to the highly centralised structure of the Prosecutors Service, leading to a non-transparent appointment process.

#### Attempts to influence or intimidate judges

The Constitutional Court remains politically fractured. In July 2016, the outgoing Chairman of the Court asserted that justices were subjected to political pressure, a charge denied by justices belonging to the other political party (U.S. State Department Georgia 2016 Human Rights Report, p. 14).

#### Until-retirement mandate

Until 2013, judges were appointed for a ten-year term. In that year, an amendment to the Law on General Courts Article 36(4) stipulated that judges can be granted lifetime (until retirement at 65) tenure by the High Council of the Judiciary after a three-year probationary period (Bureau of the Consultative Council of European Judges, Report on judicial independence and impartiality in the Council of Europe member states in 2017, CCJE-BU(2017)11, pp. 18-20). This has been criticised by both the Venice Commission and the Council of Europe (TI National Integrity Assessment, p. 44). In a June 2017 opinion, the Venice Commission noted that the principle of lifetime appointment of judges, embodied in the draft Constitution, did not extend to Supreme Court judges and urged that this gap be filled (Venice Commission, CDL-AD(2010)028, Report on Judicial Appointments, para 87).

#### Compelled transfer

Prior to the evaluation period, secondment to other courts (typically remote) of judges who made decisions that were unfavourable to the ruling party was a common sanction. The December 2009 Law on General Courts Article 44(1) states that judges may be transferred only for a limited term and on the basis of a reasoned decision by the High Council of Justice (TI National Integrity Assessment 2015, p. 43). The number of arbitrary secondments decreased greatly in 2011-2015, from 42 in 2011 to 13 in 2013 (*ibid.*, p. 45). Field interviews suggest that punitive transfers have ceased; however, it is still possible for influential judges to see to it that juniors are overloaded, miss targets, and are not re-appointed as a result. Civil society representatives interviewed in the field summarised the situation succinctly: becoming a judge is simply not an attractive career option for a talented young law graduate.

#### Perceptions of the judiciary

Despite reforms, the judiciary remains one of the least trusted institutions in Georgia. As shown in the table below, public trust has significantly declined over the evaluation period. A major reason for the low reputation of the court system is the perception that criminal prosecutions are unfairly handled. See also JC 81 (prosecutions brought on the basis of shoddy evidence)

Table 4 Public perceptions of the court system in Georgia

<b>Public perceptions of the court system</b>		
	2010	2017
Fully trust	10%	5%
Fully distrust	8%	11%
Neither trust nor distrust	30%	36%

Source: Caucasus Research Resource Center, *Caucasus Barometer Reports Georgia 2010 and 2017*, <http://caucasusbarometer.org/en/cb2017ge/TRUCRTS/>.

Specific to the independence of judges, in 2011, 28% of respondents agreed or fully agreed with the idea that judges were independent in Georgia; this had increased to 34% in 2014 (Caucasus Research Resource Center, “Attitudes to the Judiciary in Georgia Assessment of General Public, Legal Professionals and Business Leaders” May, 2014, pp. 7-10). Generally, however, the opinion was that judges were puppets of the government, and of the Prosecutors Office in particular.

Improving the independence of the judiciary was Specific Objective 1 of the second justice sector budget support programme, and improving the independence of the prosecutorial system was Result 2.3 under Specific Objective 2 (Action Document Support to the Justice System in Georgia 2014, p. 13). Throughout the evaluation period, the EU has promoted independence and impartiality of the judiciary through policy dialogue both at operational and political levels, as well as TA. However, independence and impartiality are not directly supported in the Specific Conditions against which budget support is measured.

### **Other elements relevant to separation of powers and independence of the judiciary**

The Georgian Constitution embodies the separation of powers as an overriding principle. It calls for the judiciary to be independent and states that only another court may alter the decision of a court.

Independence of the judiciary is guaranteed by Article 84 of the Constitution of Georgia, and interference with judges’ work is a criminal offence. The separation of powers is enshrined in Article 5(4). According to Article 84(5) only a court may quash, change, or suspend a decision by another court as determined by law.

Constitutional amendments since 2010 have not altered the fundamental separation of powers principles considered here.

### **2.6.3 Accountability of RoL institutions (JC72)**

Disciplinary procedures have been improved since 2011 through legislation separating the bringing of disciplinary charges (responsibility of the High Council of Justice) and their adjudication (the Disciplinary Panel) (TI Georgia National Integrity Assessment 2015, p. 48). However, judges retain unlimited immunity from prosecution, including prosecution for corruption. Many disciplinary cases brought to the High Council of Justice remain indefinitely suspended.

There are clear codes of ethics in place for judges and bribery of judges has been eliminated. The bringing of disciplinary charges and their adjudication have been separated in line with CoE good practice, but in fact, when charges are brought (which is rare), they often languish in procedural stagnation with no outcome. A more positive development is that the PDO in Georgia is, with EU support, active, respected, reasonably staffed, and effective when there are enforcement mechanisms in place (e.g., in ill-treatment and torture, less so in anti-discrimination although the situation is improving). The EU has provided significant support to the PDO throughout the review period.

The EU consistently supported civil society in Georgia over the evaluation period through EIDHR, the CSF, and to somewhat lesser extent, NSA/LA (see the Country Strategy Evaluation 2007-2013 EQ 4 for the early years of the evaluation period). Civil society was involved in all major EU-sponsored activities related to RoL, democracy, and human rights, including programming and monitoring. A full-time programme officer was responsible for civil society at the EUD. EU support to civil society and, more generally, policy dialogue, has strengthened NGOs’ ability to monitor the judiciary. All civil society representatives met during the field mission were of the view that EU support in the context of the Association Agreement had significantly increased their leverage with government. Over the evaluation period, civil society was heavily involved in monitoring justice system reforms at all levels. It has taken part in debates such as those concerning video and electronic surveillance and the Rustavi 2 television case. Civil society organisations were active in, among other areas of justice reform, juvenile justice, monitoring prison conditions and investigating allegations of ill-treatment, and rehabilitation and re-socialisation of prisoners. One of the strongest Georgian civil society organisations, the Georgia Young Lawyers Association, specialises in justice system issues, but other actors as well, such as Open Society Foundation Georgia and East-West Management Institute have been active. Under the Georgia national platform of the Eastern Partnership Civil Society Forum,

NGOs in Georgia have organised coalitions, such as the Coalition for a Fair and Independent Judiciary, to leverage their interests and expertise.

Georgian media is often described as free and independent, but deeply fractured along political lines. At the beginning of the evaluation period, the TI Georgia National Integrity Assessment 2011 found that, while court sessions were open, there was a ban on video recording in court and journalists were not allowed to make audio recordings or even take notes without the judge's permission. By the time of the 2015 National Integrity Assessment (pp. 46-47), these restrictions had been largely lifted. Media freedom was a prominent sub-sector in the EU's NIP 2011-2013.

Like media, political parties operate without legal restrictions but are likewise fractured, tending to reflect not so much popular will but the interests of their leaders. The internal democratic governance of parties remains weak, so they are less vehicles for aggregating and representing social interests than they are vehicles for projecting the views and interests of their top leadership (TI Georgia National Integrity Assessment 2015, p. 98).

## 2.7 Broader effects on the RoL (EQ8)

<b>EQ8</b>	<b>To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?</b>
<b>JC81</b>	<b>Access to justice strengthened</b>
<b>JC82</b>	<b>Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened</b>
<b>JC83</b>	<b>Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved</b>

### 2.7.1 Summary of key findings (EQ8)

The latest SBS review assessment found Georgia to be compliant with specific conditions related to access to justice. One of the most striking achievements over the review period has been the development of an independent Legal Aid Service reporting to Parliament. The legal aid budget has increased and the LAS is now considering expanding into the field of civil law. Plea bargaining, while still high, has declined and the process of plea bargaining is subject to increased judicial supervision. Due to the weakness of the Ministry of Internal Affairs' investigative services, too many flimsy prosecutions continue to be brought, resulting in unjust convictions because of the prevalence of plea bargaining and wide skills gap between prosecutors and defence attorneys. The EU is attempting to address this through TA to the MoIA.

The human rights situation has generally changed for the better, with the institution of a National Human Rights Strategy whose implementation was supported by the EU (see JC 82; the EU was the main donor supporting the Human Rights Action Plan) and the work of the Public Defender's Office. There has been a significant decline in reports of ill-treatment, although such reports still crop up and are credible. While discrimination against women, disabled persons, and ethnic and sexual minorities continues, there has been a gradual increase in the number of complaints brought and a body of case law is developing. Similarly, while violence against women continues to be problematic, more prosecutions are being brought.

International harmonisation issues have been discussed under JC 64 and governance of the judiciary, including public attitudes, under EQ 7.

### 2.7.2 Access to justice strengthened (JC81)

The latest SBS review report found Georgia to be in compliance on specific indicators related to access to justice. There have been significant increases in the legal aid budget, and the development of the legal aid system over the review period is broadly held to have been a major success. The Legal Aid Service has been separated from the Ministry of Justice and is now an independent institution reporting to Parliament. It wishes now to extend its services to civil law, which has raised some concerns about overreach, however, that the move is being considered at all indicates that the LAS is at an advanced stage of development.

Similarly, there have been increases in the budget for court infrastructure. Higher-instance judgments are reasoned and disseminated on the internet. The proportion of criminal cases ending in conviction is unacceptably high due to heavy recourse to plea bargaining (about 60-70% of cases) and the low quality of defence counsel, but has come down somewhat, and judges are now less likely than previously to invariably rule in favour of the prosecution. Amendments to the Criminal Procedure Code in November 2011 require judges to now assess not only the legality, but the fairness, of plea-bargain agreements (ENP implementation Progress Report 2011, SWD(2012) 114 Final, p. 5). Further amendments adopted in 2014 increased judicial supervision of plea bargaining (ENP implementation Progress Report 2014, SWD(2015) 66 Final, p. 6). The current 60-70% represents a drop from a previous 80%.

A structural problem, which the EU is attempting through TA to the Ministry of Internal Affairs to address, is that the skill level of criminal investigators is low. The effect is that sloppily-investigated cases are referred to prosecutors, who are very likely to win conviction because of the prevalence of plea bargaining and the wide skills mismatch between prosecutors and defence attorneys. There are also independence issues; international good practice is that investigators and prosecutors act independently, whereas in Georgia, an effect of the weakness of investigators is that prosecutors often become de fact investigators.

### 2.7.3 Respect for human rights (JC82)

Human rights have been at the centre of policy dialogue between the EU, Government, and civil society, and the situation has significantly improved. The EU directly supported human rights through the activities of the EU Special Representative for Human Rights and Constitutional Change in 2013-2014, Comprehensive Institution Building at the Ombudsman's Office, support for penitentiary reform, and other interventions. The EU was the primary donor supporting the Human Rights Action Plan, in part through the "Human Rights for All" project implemented by UN agencies to build capacity to implement the National Human Rights Strategy in a wide range of public institutions. In its 2017 Compliance Assessment of General and Specific Conditions, the EUD found Government to be partially in compliance with Specific Condition 4 on improved prison conditions. While there has been a notable decline in cases of torture and ill-treatment, there is still the absence of an independent investigative mechanism to take up those cases that are referred by the Ombudsman. There are still scattered reports of ill-treatment, which may have migrated from the prison system to police stations. Some experts interviewed pointed out that, while ill-treatment at the hands of prison staff may have declined, ill-treatment inflicted by fellow prisoners remains a problem. NGOs now actively monitor conditions of detention, and regularly join visits of the National Preventive Mechanism, but have no independent right of oversight.

There was significant progress on the anti-discrimination front. Georgia ratified the International Convention on the Rights of People with Disabilities, in addition to passing the Anti-Discrimination Law. While needed amendments to the Anti-discrimination Law have been tied up in Parliament, which is reluctant to re-engage in the sensitive area, the passage of the basic law is regarded by stakeholders interviewed as a major step forward, and one that can be attributed to EU advocacy. As pointed out at several points, discrimination of all kinds as well as violence against women remain unacceptably common, but there is slow progress in addressing the issues.

### 2.7.4 Governance and democratic processes (JC83)

Bribery of judges has virtually disappeared, and there has been some improvement in public perceptions of the independence and impartiality of the judiciary – apart from prosecutors, who continue to be distrusted for reasons described above. Whatever changes in public opinion have been observed, however, have not been spectacular (see EQ 7). There were sweeping changes in national governance and significant reforms in governance of the judiciary, although independence, impartiality, and accountability continue to lag (see EQ 7). Cases are still sometimes assigned in a non-transparent manner and there are reports of political pressure on judges. Independent observers have found that most civil law cases are now decided in line with international standards. There are no legal obstacles to civil society, but capacity outside the capitol continues to be weak. Legislation on Transparency in Media Ownership was passed and media are free (if polarised); however, one of the most contentious and politicised cases, Rustavi 2, is still before the ECtHR.

## 3 Annexes

### 3.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Head of the Human Rights Unit	Chief Prosecutor's Office of Georgia
Head of Office	CoE
Deputy Head of Cooperation	EU-EEAS, EUD Tbilisi
Deputy Head of Political Section	EU-EEAS, EUD Tbilisi
Head of Cooperation	EU-EEAS, EUD Tbilisi
Human Rights focal point	EU-EEAS, EUD Tbilisi
Justice, Freedom, Security/Visa Liberalisation	EU-EEAS, EUD Tbilisi
Manager of Justice Reform Programme	EU-EEAS, EUD Tbilisi
M&E focal point	EU-EEAS, EUD Tbilisi
Sector Coordinator - Governance, PAR	EU-EEAS, EUD Tbilisi
Human Rights Advisor Gender and Human Rights Section EUMM Georgia	EU Monitoring Mission
Deputy Team Leader	EU4Justice
Chairman	Georgian Young Lawyers' Association
Judicial and Civil Law Reform Project Manager	GIZ
Deputy Head of the Department	HCoJ
Head of EU Assistance Coordination and Sectoral Integration Department, Directorate General for European Integration	Ministry of Foreign Affairs of Georgia
Deputy Minister	Ministry of Internal Affairs
Director of International Relations Department	Ministry of Internal Affairs
Head of Project Management Division	Ministry of Internal Affairs
Head of the Board	Open Society Georgia Foundation
Chair of the Human Rights and Civil Integration Committee	Parliament of Georgia
Chair	Penal Reform International
Deputy Public Defender of Georgia	Public Defender, Ombudsman
Head of Communications and Coordination; II Category, Deputy Head of Primary Structural Unit	Supreme Court of Georgia
Programme Manager	Transparency International
Resident Twinning Advisor	Twinning with HSJ
Enhancing Access to Justice, Human Rights for All Manager	UNDP

### 3.2 List of documents consulted

#### 3.2.1 EU strategy and programming

European Commission (2007): ENP, Georgia, National Indicative Programme 2007-2010  
 European Commission (2007): ENP, Georgia, Country Strategy Paper 2007-2013  
 European Commission (2011): ENP, Georgia, National Indicative Programme 2011-2013  
 European Commission (2012 – 2016): Annual Action Programme Georgia  
 European Commission (2014): Single Support Framework for EU support to Georgia (2014-2017)  
 Government of Georgia (2014): National Human Rights Strategy of Georgia 2014-2020  
 Government of Georgia (2016): National Action Plan for the Implementation of the Association Agreement between Georgia and the EU

#### 3.2.2 EU reporting

EU (2011-2016, 2017): External Assistance Management Report (EAMR) – Georgia.  
 European Commission (2012, 2013, 2015): European Neighbourhood Policy Progress Report.

#### 3.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2011 Support to the Criminal Justice Sector in Georgia

- 2012 Support to the Criminal Justice Sector in Georgia (EaPIC - scale-up)
- 2012 Improving the quality of CSO policy dialogue with the Georgian Parliament
- 2014 Support to the Justice Sector Reform in Georgia
- 2014 Strengthening the System of Parliamentary Democracy P1
- 2015 Human Rights for all in Georgia
- 2015 Support Public Defender
- 2016 Combating discrimination
- 2016 Strengthening the System of Parliamentary Democracy P2
- 2016 Protection SGBV

### 3.2.4 Evaluation and studies

Particip (2015): Evaluation of the EU's co-operation with Georgia (2007-2013).

Particip (2017): External Evaluation of the European Neighbourhood Instrument (ENI) (2014-mid 2017).

### 3.2.5 Other

CEPS (2017): Democracy and its Deficits: The path towards becoming European-style democracies in Georgia, Moldova and Ukraine.

Council of Europe (2014): Commissioner for Human Rights Report, following visit to Georgia Jan 2014

Council of Europe (2016): Action Plan for Georgia 2016-2019

DG External Relations Delegation of the European Commission to Georgia (2014): EU Country Roadmap for Engagement with Civil Society 2014-2017

Government of Georgia (2015): Report of the Georgia Council on Criminal Justice Reform

OSCE (2014): Trial Monitoring Report Georgia

TNC Opinion (2014): EU Neighbourhood Barometer – Georgia Autumn 2014

University of Tartu (2017): "Frozen Conflicts" In Associated Eastern Partnership Countries: Georgia And Moldova, a Comparative Case Study

## Case study note – Jordan

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## 1 Introduction

### 1.1 Context

**Prior to 2009** Jordan, despite gaps in producing a fully representative and democratic system, was perceived as one of the most advanced countries in the region in terms of political reform. Efforts in the RoL sector were considered to be made in priority areas such as: the independence of the judiciary, the reform of political parties and election law, equal treatment of women and the development of independent media.

**Since 2011**, Jordan continues to be affected by insecurity challenges generated by the regional turmoil and the neighbouring crisis in Syria with its influx of refugees, which has put enormous burden on the economic and social services, as well as the budget and resources of the country. However, Jordan has managed to preserve its political stability, sovereignty and internal unity.

### 1.2 Overview of EU support

The Association Agreement between the European Union (EU) and the Hashemite Kingdom of Jordan came into force in May 2002 and forms the legal basis of the relations between the two. Adopted in June 2005, the first EU-Jordan Action Plan aimed at developing bilateral relations by opening the doors to several EU initiatives. In October 2010, the EU-Jordan Association Council agreed on an "advanced status" partnership. A new EU-Jordan Action Plan was adopted in October 2012.<sup>1</sup>

Country co-operation strategies make clear references to the support to the RoL in relation to its priority areas:

- Under the CSP 2007-2013: The priority sector "Supporting political and security reform, democracy, human rights, good governance, justice and co-operation in the fight against extremism" focused on the support to human rights, democracy and good governance including the following six main programme areas: Protecting women's rights; Developing civil society; Developing an independent judicial institutional framework; Promoting the Amman Message; Supporting freedom of the media.
- Under the SSF 2014-2017: The priority sector "Reinforcing the rule of law for enhanced accountability and equity in public delivery" follows the overall objective of "Promoting the application of rule of law to enhance accountability and equity in public service delivery."

Essential aspects of the recent focus of support have concerned:

- The reinforcement or creation of relevant institutions to promote and safeguard the principles that underpin democratic systems and practices and ensure respect and promotion of human rights and fundamental freedoms,
- The enhanced accountability of the public sector at large, the promotion of rule of law through continued progress towards justice reform including judicial independence and effective separation of powers, as well as continued efforts to fight corruption.
- Improving the outreach and representation of the Parliament as well as its oversight and control over the Executive, strengthening political parties, the participation of women in political life, independent media and deepening the involvement of civil society in the policy process; all aspects critical to ensure public adherence to the on-going reform process.

More generally, the EU response has aimed at contributing to the consolidation of political reform in Jordan to embed (at all levels of the national apparatus, but also among the population of Jordan) the principles that underpin democratic systems and practices and ensure respect and promotion of human rights and fundamental freedoms.

Table 1 Overview of ENI-financed interventions in the area of RoL in Jordan

Decision year	Title	Planned EU contributions (mEUR)	Implementation methods / channels
2008	Support to Justice Reform and Good Governance in Jordan	6.7	Project approach Grants (UNODC, NICO) IRZ, JCI)

<sup>1</sup> [https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/jordan\\_en](https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/jordan_en)

2011	Support the implementation of the Anti-Corruption Commission in Jordan	1.4	Twinning (Finland)
2010	Support to Democratic Governance	10.0	Service
2012	Support to the justice sector in meeting the required criteria for sector budget support	2.6	Service, Contr. Agr. (CoE), Grant (PRI)
2012	Support to the justice sector reform in Jordan	27.0	SBS (SRC), Service, Gant (ARDD)
2012	Support to the Electoral Process in Jordan	2.0	Project, Grant (CSO, UNDP), contribution agreement (UNDP)
2012	Support to the Civil Society and Media	10.0	Project (MoPIC +NHRC) Service (UNESCO)
2016	Enhanced Support to Democratic Governance in Jordan	17.6	Project, grant (AECID)
2017	Support to the Rule of Law in Jordan	18.0	SBS (SRC) (AFD, AECID, GIZ, UNODC)

Since 2010, EIDHR and CSO-LA instruments were used to finance interventions in areas such as protecting women's rights and participation in local and national development; empowering civil society organizations (CSOs) to participate in policy-making process; reinforcing accountability, transparency and promoting human rights and democratic reform; advancing the right to fair trial, and improving access to justice for victims of torture and people at risk of torture and ill-treatment.

Examples of EIDHR projects include:

- Eliminating the administrative detention of women at risk by establishing just alternatives for their protection.
- Strengthening the capacity of rural women and female municipal members to defend women's rights and participation in Jordan
- Combatting violence and discrimination against women in East Amman through direct empowerment in the community
- Domestic Electoral Observation of the 2016 Parliamentary Elections in Jordan
- Empowering civil society to increase the protection of groups in Jordan vulnerable to discriminatory torture and ill treatment
- EU Support for Empowering Civil Society through Media
- EU Support Towards a Gender Sensitive Rule of Law, Fair Trial and Judiciary
- EU Support to Advancing the Right to Fair Trial and Improving Access to Justice in Jordan

Examples of CSO-LA projects:

- EU Support to CSOs - Promoting feminist leadership to combat sexual and gender-based violence in Jordan
- EU Support to CSOs - Strengthening Community Based Organizations' role as Co- Actors in local development
- EU Support to CSOs - Strengthened Voices: Women and Girls in Online Media

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

EQ2	To what extent has EU support to RoL responded to the bilateral and regional contexts?
JC21	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
JC22	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 (EQ level) Summary of key findings

The design process was marked by the following findings:

- EU strategic documents are thoroughly aligned with national RoL policy frameworks/ reforms and have included in both strategic documents (CSP and SSF) one priority sector supporting reform of democracy, human rights, good governance and justice.
- Programmes and projects in the RoL are demand-driven as they correspond to the priorities set in the national reform agendas, and are therefore closely engaging RoL institutions and CSOs in the design process.
- Ownership appears generally very high among the national authorities, project partners and beneficiary groups.
- Institutional and capacity needs assessments have not been identified prior to the design process but were progressively analysed in the successive implemented projects and their lessons learnt.

#### 2.1.2 Alignment and participatory processes (JC21)

EU objectives in bilateral cooperation strategies have always been aligned with Jordanian reform agenda priorities and justice sector strategies, transposed and based on the priorities of the ENP action plans.

For the period 2007-2013, the first priority of support to Jordanian political reform including democracy, human rights, good governance, justice and co-operation in the fight against extremism was aligned with (i) the “National Agenda” 2006-2015, a comprehensive strategy that developed a set of priorities and action plans in the political, social and economic fields, and (ii) the Kulluna al Urdun (We Are All Jordan) initiative, aimed at bringing together various representatives of the Jordanian society (including youth) to debate about the future of the country. This document was also in line with the 2005 EU-Jordan action plan.

Political reform with regard to democracy, good governance, human rights, civil society, women's empowerment, freedom of the media, political parties, independent judiciary and other related issues was the first of eight chapters included in the National Agenda (2006-2015) under the title “Political Development and Inclusion”.

Priorities of Jordan's political reform process on good governance, justice and basic rights and freedoms focused on: building trust between citizens and institutions and adopting principles of transparency and accountability, guaranteeing the rule of law and the independence of the judiciary, extending political rights and economic rights through public participation in the decision-making process, strengthening the role of civil society institutions, and strengthening the principles of social justice and equal opportunities.

EU support during this period therefore focused on free media development, participation of civil society, support for an independent judiciary, human rights (in particular women's rights), dialogue with civil society; development of political parties; the rules of good governance; development and implementation of national policies and legislation in line with the relevant Human Rights instruments and standards; and the development of an independent press and media.

Under the SSF 2014-2017, following the acceleration of the democratisation process resulting from the demonstrations of 2011 as part of the Arab Spring and the amendment of the Constitution, EU assistance sought to consolidate the previous cooperation and establish democratic standards in the field of RoL, human rights and fundamental freedoms. The first sector of concentration aimed at strengthening the effectiveness, accountability and equity of RoL institutions and systems by supporting the political, democratic and justice reform process.

These developments were in line with the objectives for political, social and economic changes underlined in the “Advanced Status” partnership (2010 Action Plan) between Jordan and the EU under the new ENP strategy the Partnership for Democracy and Shared Prosperity<sup>2</sup>.

In line with the revised European Neighbourhood Policy, the EU and Jordan adopted in December 2016 the EU-Jordan Partnership Priorities and the EU-Jordan Compact 2016-2018. Through these, the EU and Jordan have confirmed their ambition to further strengthen their engagement towards each other, setting a strategic agenda around the above-mentioned three themes. The third priority focuses on supporting efforts to strengthen governance, the rule of law, democratic reform and respect for human rights.

The Jordanian partners have generally taken a leading role in the planning and oversight of RoL activities through their involvement in the design process of the strategic and programming documents via the lead coordination role of the Ministry of Planning and International Co-operation (MoPIC). Cooperation interventions were mostly based on strategic priorities of the successive Jordan National Agendas, so the participatory process was easily established.<sup>3</sup>

The strategic documents (CSP and NIPs), action fiches and EU reports assert that CSOs have been regularly involved in the design and implementation of the EU-Jordan cooperation strategies and programmes. In 2014, CSOs had themselves expressed their satisfaction about their enhanced degree of involvement and responsibilities in the design of EU strategies (e.g., through perceptions collected during focus group discussion and in surveys during field visits).<sup>4</sup> However, they were less positive with regard to their involvement in the implementation and monitoring of EU cooperation strategies and programmes.

From 2010 to 2014, CSOs were invited for consultation with EUD to contribute to reflection upon the pace and commitment to reform in Jordan or new initiatives (e.g. within the framework of the Task Force set up for the SPRING exercise; or to inform the EU Country Strategy on Human Rights for Jordan, the AAP 2012 CSO/media intervention, the justice reform programme, etc.).<sup>5</sup>

From 2015 onwards, the EAMRs from 2015 to 2017 describe the continuous engagement of CSOs in consultations ranging from programming and design purposes to human rights assessment and elaboration of the new partnership priorities.

Prior to 2010, National ownership over justice sector reform under the Judicial Upgrade Strategy (JUST) for 2010-2012 was hampered by (i) the lack of a relevant legal framework taking into account constitutional amendments, (ii) the weak institutional capacity of the Ministry of Justice (MoJ), the Judicial Council and other relevant stakeholders, as well as (iii) the need for coordination among stakeholders.

In addition, there was shortage of financial resources, weak monitoring systems, high staff turnover, and lack of capacity and of leadership continuity at the Ministry of Justice due to frequent Government reshuffles. The rejection by Parliament of a number of temporary laws required providing a legal basis to the JUST strategy, and the stalling of the new Judicial Independence Law weakened its implementation prospects.<sup>6</sup>

From 2011, the constitutional amendments passed in September 2011 and a committee set up by King Abdullah II in April 2011 have strengthened the role of the judiciary, notably through (i) the restructuring of the Judicial Council as a constitutional body with a broader mandate, (ii) the creation of a constitutional court, and (iii) the expansion of the criminal jurisdiction of the civil courts to include cases previously under the jurisdiction of the State Security Court.

The King has influenced reform in the justice sector, mostly through various statements<sup>7</sup> requesting progress in the sector and asserting his commitment to promoting the separation of powers, supporting judicial reform and developing the judiciary.

In 2012, the Judicial Council, granted constitutional status and with royal backing, published with the support of donors a new strategy entitled the Judicial Authority Strategic Plan (2012-2014). This

<sup>2</sup> A new response to a changing Neighbourhood, COM (2011) 303, 25 May 2011 and "A partnership for democracy and shared prosperity with the Southern Mediterranean" COM (2011) 200, 8<sup>th</sup> March 2011

<sup>3</sup> See the different AAPs from 2010 to 2017, Evaluation of the EU-Jordan cooperation 2007-2013

<sup>4</sup> Evaluation of the EU-Jordan cooperation 2007-2013

<sup>5</sup> EAMR 2011 to 2014

<sup>6</sup> AAP 2012 preparatory project in the justice sector: support to the justice sector in meeting the required criteria for SBS and the AAP 2012: Support for justice sector reform in Jordan (SPSP and SBS)

<sup>7</sup> AAP - Preparatory project in the justice sector: support to the justice sector in meeting the required criteria for SBS

strategy together with the expected adoption of the new law on the Judicial Authority, the planned update of the JUST strategy under the auspices of the Ministry of Justice, and the constitutional amendments of September 2011, provided further evidence to establish a strategic reform framework.

The EU considered that these developments contributed to making the sector eligible for sector support and envisaged a EUR 30 million programme for justice reform, largely consisting of EUR 27 million for budget support.

The ongoing Budget Support Programme (BSP) and the technical assistance (TA) service contract also contributed to enhance the institutional capacities of the Ministry of Justice which, through capacity building, technical assistance and trainings, acquired a stronger ownership on the national strategies and reform processes.

### 2.1.3 Needs, opportunities; and responsiveness (JC22)

CSP/NIP 2007-2013: Institutional and capacity needs assessments in the RoL were not clearly identified and described in the programming documents. EU cooperation priorities with Jordan were transposed from the Jordan National agenda and the successive justice reforms.

SSF 2014-2017: was guided by lessons learnt from previous and ongoing programmes and relied on assessments provided in national documents (strategies) or international / donor agency studies.

Only one EU project, support to Media sector in Jordan<sup>8</sup>, included a thorough needs assessment of target groups and beneficiaries, with the production of five studies conducted in close consultation with the stakeholders, so that components and activities were relevant to the expectations of the media sector. One of these, published in September 2015, was an overall assessment study using UNESCO Media Development Indicators and received a great deal of attention<sup>9</sup>.

Needs and opportunities in RoL have also been reflected in a series of discussion papers issued by the King presenting his vision for building democracy founded on the gradual deepening of parliamentary government, active public participation (namely through CSO engagement in dialogue), improvement of political laws, modification of the election law, and support of political parties and of the Independent Electoral Commission (IEC) to perform according to international best practices.<sup>10</sup>

Following the events 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. This intervention followed the Joint Communication “A New Response to a Changing Neighbourhood, a review of European Neighbourhood Policy<sup>11</sup>”.

To support the national justice reform agenda and enable Jordan to become eligible for the modality of EU budget support in the sector of justice, the EU and Jordan agreed that a preparatory project of EUR 3 million should be launched in 2012 to ensure that the justice sector would meet all the conditions for successful cooperation through budget sector support and that stakeholders’ capacities would be reinforced to this end.

The specific objective of the project was to assist the Government of Jordan in improving and completing the strategic framework and coordination at sector level, in setting up the multi-annual sector budgeting and performance monitoring systems and in assessing and enhancing the institutional setting and capacity development of key justice institutions. It also included assistance to legal drafting of the required legislative instruments, laws, by-laws, rules of procedures, etc. needed for the implementation of a comprehensive justice sector strategy.

The SPRING envelop also financed the programme “Support the electoral process in Jordan” with EUR 7 million aiming at supporting the Independent Election Commission (IEC), the judicial sector for elections, political parties, public and civic awareness campaigns, and the media. The programme started in November 2012 just before the January 2013 parliamentary elections and the August 2013 municipal election. It was implemented through grants or contribution agreements to allow more flexibility (see next section).

<sup>8</sup> Project “Support to the media” (implemented by UNESCO- 2014-2017)

<sup>9</sup> EAMR 2015

<sup>10</sup> DAI, 2015. First assessment report of the Budget Support Programme to the Justice Sector Reform

<sup>11</sup> Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission – “A New Response to a Changing Neighbourhood. A review of European Neighbourhood Policy. Brussels, 25 May 2011.

## 2.2 Implementation / choice of modality (EQ3)

<b>EQ3</b>	<b>To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?</b>
<b>JC31</b>	<b>High quality policy dialogue established: content (promotion of RoL and European standards and principles), frequency, synergies between operational (intervention-level) and high-level dialogue, etc.</b>
<b>JC32</b>	<b>Sector approaches (including budget support) used when possible</b>
<b>JC33</b>	<b>EU technical and legal expertise provided as needed</b>
<b>JC34</b>	<b>Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)</b>
<b>JC35</b>	<b>Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into account.</b>

### 2.2.1 Summary of key findings (EQ3)

The EU used an appropriate mix of aid modalities to support the RoL in Jordan:

- Political and policy dialogue on human rights and the justice sector has been regularly used with the Jordanian authorities, the civil society and the donor community over the period 2010-2017, to advance EU objectives and values, and to support the national reform process in the RoL sector.
- The sector approach, with the use of budget support, and a complementary TA project, has proved to be an appropriate choice to support the justice sector, in particular to strengthen the legislative and strategic reform process in the RoL sector and to develop the capacities of the Ministry of Justice, the Judicial Council and the Judicial Institute in implementing the justice sector strategies in line with international human right standards.
- The contribution agreements contracted with international organisations (UNDP and UNESCO), and joint management with the CoE, corresponded to the mandate of these organisations (respectively support to electoral process, media and democratic reforms), exploited their comparative advantage, and were appropriate to the transitional democratic context.
- The modality of partial decentralised management or indirect management under the MoPIC, varied in its adequacy to the RoL interventions depending of the implementation partner and / or mechanism.
- The modality of direct centralised management was used for projects supporting democratic governance.
- Other instruments such as the EIDHR and the IfS / IcSP complement adequately the RoL portfolio promoting sensitive human rights issues or mainstreaming RoL principles and values throughout security sector projects.

### 2.2.2 Policy dialogue (JC31)

Article 5 of the 2002 EU- Jordan Association Agreement of 2002 provides for the institutionalisation of a regular policy/political dialogue on all aspects of the EU-Jordan collaboration, including on democratic governance and human rights issues. It foresees that the political dialogue takes place at regular intervals and whenever necessary at four levels / channels: ministerial, senior officials, diplomatic representatives and by any other useful means. In practice, the EU has held regular and frequent dialogue on political reform with the Government throughout the period under review, in particular on human rights, the judiciary and civil society. Jordan's commitment to political reform started with the establishment of the first sub-committee on human rights and democracy in 2005, a step which enhanced policy and political dialogue between the EU and Jordan and enabled priorities for cooperation to be identified.

This dialogue in the RoL sector is characterised as smooth and fruitful in the EAMRs, progress reports and during interviews carried out with EU staff. It has taken several forms:

- EU Jordan Association Council meetings (the last one taking place in July 2017)
- Head of Mission meetings
- High level steering committees,
- Subcommittee on human rights, governance and democracy and subcommittee on justice and security (taking place once a year, the last ones in February 2018),
- Cooperation operations, and
- Ad hoc meetings.

Some key political reforms, laws and strategies are discussed during the Subcommittee meetings and outstanding issues in the areas of democratic governance and human rights are also openly examined.

Policy dialogue is facilitated by a donor coordination and harmonisation process organized under the Ministry of Planning and International Cooperation (MoPIC).

During the period 2007-2013, it is reported that the EU-Jordan policy dialogue process contributed to the advancing of political reform, through a strengthened EU-Jordan coordination and the different institutionalised dialogue mechanisms reported above. This dialogue was backed up by cooperation interventions in the RoL sector as there was a close linkage of issues discussed in the framework of the subcommittees and followed during programmes' implementation. This dialogue has for instance leveraged the enactment of 14 democratic governance laws / by-laws discussed by the Parliament during the June 2014 Extra-Parliamentary Session. The approval of quite a number of them was an explicit conditionality for facilitating the release of the EU (sectoral) budget support variable tranches. However, it was observed that there was no evidence of effective, structured and systematic monitoring systems in place to follow up on decisions, resolutions and/or recommendations of the Subcommittees.<sup>12</sup>

During the period 2014-2017, the policy dialogue with the Ministry of Justice and justice stakeholders was enhanced in the framework of the EU Budget Support Programme to the justice sector, through the sector donor group set up under the programme and discussions involving civil society and law enforcement agencies. Main issues discussed in this framework related to the judicial independence, namely the independence and accountability of the State Security Courts; the use of administrative detention under the Crime Prevention Law; access to justice and the right to a lawyer for vulnerable groups, reduction of pre-trial detention, reintegration and rehabilitation programmes for inmates. In August 2017, an additional 14 key new laws and by-laws related to the justice reform were enacted by the government, namely with the support of EU budget support.

A close dialogue on human rights continued to be maintained with the Government, the judiciary and civil society, under the Subcommittee on Human Rights and through other informal meetings, namely on issues related to the five priorities of the EU Strategy on HR and Democracy 2016 – 2020: freedom of opinion and expression, Rule of Law, death penalty and torture, women rights and gender equality, and civil society, freedom of assembly and of association.<sup>13</sup>

The EUD engages in a constant political dialogue with the authorities to ensure that laws apply in a proportional way, and that a balance is maintained between legitimate national security concerns and the respect for human rights and fundamental freedoms. The EUD and member states meet the government's Human Rights Coordinator established under the Prime Minister's office. For instance, some amendments of the Law on Civil Society were made following EU and MS dialogue with the government.<sup>14</sup>

### **Position of civil society in policy dialogue**

Since 2011, CSOs were formally consulted in the context of the EU-Jordan Sub-Committee on human rights, prior to the meetings, to address their main issues of concern regarding the situation on Human Rights and for EUD to present their recommendations to the government. CSO are also debriefed on the outcomes of the subcommittees meetings and are consulted on other political topics related to the RoL portfolio (ex: elections), on the occasion of high-level visits or on the preparation of the progress reports.<sup>15</sup> However, prior to 2014, there was no example of consultations between the government and civil society and no institutionalized dialogue structure or mechanism for state and non-state actors.

<sup>12</sup> EAMR 2011 to 2013 and Evaluation of the EU-Jordan cooperation 2007-2013

<sup>13</sup> EAMR 2014 to 2017

<sup>14</sup> Report on the implementation of the Human Rights Country strategy, 2017

<sup>15</sup> EAMR 2011 to 2013

From 2014, CSO participation in policy dialogue related to the justice sector and the human rights situation has been welcomed by the Jordanian Government and the Judiciary in the framework of the justice support programme.<sup>16</sup> The final report (August 2017) of the TA project supporting “the non-state actors to act as effective drivers of good governance and accountability” (under the 2010 Enhanced Support to Democratic Governance Programme) indicates that the engagement of a new minister for Political and Parliamentary Affairs in 2016 was more supportive than the previous leadership, which had demonstrated hostility towards some CSOs. Since then, the Delegation confirms that overall, the involvement of CSOs in political/policy dialogue organised by the government is rarely taking place. For instance, civil society was not consulted by the government on the draft law on income tax before it was sent to Parliament. Consultation on the decentralisation law was also very minimal. Restrictions on freedom of assembly remained a critical issue and major impediment to active participation of CSOs as partners in the political and policy dialogue with Government. The EU therefore decided to continue enhancing policy dialogue between the government and CSO through the 2016 ENI project “Enhanced Support to Democratic Governance in Jordan” and different interventions.<sup>17</sup>

### 2.2.3 Choice of implementation strategies (JC32 & JC33)

#### Sector approach

In 2012, a Sector approach through a budget support and TA modality of 30 EUR Million<sup>18</sup> was chosen to support the Judicial Authority Strategy (2012-2014) elaborated by the Judicial Council and the Ministry of Justice, as well as to back up the significant political and legal reform process initiated since 2011.

This intervention followed a preparatory project of EUR 3 Million providing TA to the key stakeholders enabling Jordan to become eligible for the SBS modality in the justice sector<sup>19</sup>. Government commitment to reforming the sector was also reflected in several declarations by the King stressing the need to enhance the independence of the judiciary as well by the adoption in 2014 of the Law on the Independence of the Judiciary and a new law on juvenile justice.

Both the preparatory project and the Budget Support Programme (BSP) to the Justice Sector Reform (JSR), in their respective action fiches, made explicit reference to fundamental values by emphasizing in their purpose the contribution to the strengthening of the rule of law and human rights. Both interventions were in line with the common objectives set out in the EU-Jordan Action Plan of 2010, stressing the commitment to achieve closer political cooperation and dialogue on the basis of shared values: the respect for human rights and fundamental freedoms, democracy and good governance.

The BSP to the JSR has established seven performance indicators and 14 benchmarks / criteria to monitor the implementation of the justice strategy and action plan, and to measure the level of compliance of the actions to be adopted or undertaken under the objectives and results of the BSP prior to all instalments. The technical benchmarks focused on the independence of the judicial power (with focus on the responsibility of the Judicial Council and enhancement of the Judicial Institute), on the efficiency of the justice sector (improved infrastructure, transparency of statistical data, the reduction of re-offending and improved system connectivity), and on strengthening the rule of law (legal aid mechanisms, reduction of pre-trial detention usage).

These indicators can be considered as specific and relevant to the objectives of the JSR which “aims at contributing to support the independence of judicial power, the development of an efficient, transparent and integrated justice sector in line with democratic principles, good governance and human rights, and at strengthening the credibility and public confidence in the administration of justice according to the rule of law”. Indicators were associated with realistic and measurable quantitative and qualitative benchmarks, which were focused on the process and outcomes. They also proved to be achievable and time bound as in 2015, 2016 and 2017, the EUD considered that the conditions set for the disbursement of the second, third and fourth tranches of the BSP to the justice sector reform in Jordan had been 100% met for all indicators except in 2016 for the indicator related the proportion of reoffending/all convictions (to be diminished by 5% every year) which was 73% met.

A technical assistance service contract complementary to the BSP to the JSR has also been supporting the justice reform agenda and stakeholders through enhancing the capacity of the administration of the MoJ and JC and the training capacity of the Judicial Institute.

<sup>16</sup> EAMR 2015 to 2017

<sup>17</sup> Interview hold with the EU delegation.

<sup>18</sup> The sector budget support (SBS) to the justice sector reform in Jordan (ENPI/2012/023-471)

<sup>19</sup> Project "Support to the justice sector in meeting the required criteria for sector policy/budget support" (2012-2016)

Therefore, the sector approach has proved to be a positive and efficient modality for the justice sector.

### **EU support through decentralised or indirect management**

In general, EAMRs observe recurrent weak government capacity to manage projects in decentralized management mode. Difficulties were mostly observed in the management of CSO grants, namely under the Project on Support to Democratic Governance, under the component on support to Non-State Actors (NSAs).

The TA projects, closely managed with the MoPPA and other stakeholders, were more cumbersome to execute, as despite its general genuine commitment towards project activities, the MoPPA had difficulties to absorb and cope with European standards and regulations.<sup>20</sup>

The Project “Support to Civil Society” was following a complex mechanism, as it was managed under the MoPIC, implemented by the National Center for Human Rights (NCHR) which had insufficient technical and administrative capacities to manage the Civil Society Fund (CSF) and did not accept the TA that was contracted in order to assist in managing the project.<sup>21</sup>

### **EU support through direct centralised management**

Five grants contracted between the EUD, CSOs and UNDP to implement the project supporting the electoral process proved suitable to the context. They enhanced the representation and inclusion role of the institutions supported (MPs, political parties, IEC), as well as the participation of citizens and grass root populations to the democratic process, both core EU objectives. These projects have built the capacities of the public in general and marginalised groups on issues related to the electoral process and reform, democratic processes, their political rights and responsibilities, importance of civic engagement and participation as voters or candidates in the upcoming parliamentary/municipality elections.

**The contribution agreements contracted with international organisations (UNDP and UNESCO),** were corresponding to the mandate of both organisations (support to the electoral process and media, respectively) and were appropriate to the transitional democratic context. The agreements took advantage of the agencies’ specialised expertise and methodological skills (e.g. the diagnosis conducted by UNESCO led to the development of project components relevant to the expectations of the media sector).

### **Joint management**

A Joint CoE-EU Regional Programme “Strengthening democratic reform in the Southern Neighbourhood” (South programme I) was launched in January 2012 in response to the Arab Spring. Its purpose was to support democratic governance reforms in countries willing to cooperate in this sphere. This initiative led to the development of a Joint Programme to assist Jordanian authorities with the process of democratic reforms, tackling challenges related to human rights, the rule of law and democracy. Jordan has benefited from country-specific and regional actions supporting the development of effective legal frameworks, facilitating the creation of a common legal space, reinforcing the capacities of relevant national institutions, and improving training and promoting best practices<sup>22</sup>.

A follow-up EU/CoE Joint Programme for 2015-2017<sup>23</sup> “Towards strengthened democratic governance in the Southern Mediterranean” (South Programme II) has followed to consolidate the results achieved during the first phase, with main objectives of:

- encouraging the authorities to bring Jordanian legislation in line with European and international standards and ratify CoE conventions open to non-member States;
- supporting the development and effective implementation of new legislation in accordance with European and other international standards; and
- supporting the setting-up and effective functioning of human rights institutions and new governance structures.

The achievements of this last JP have been mixed, with limited progress achieved in the area of human rights due to limited resources. However, there was tangible progress in the RoL sector, with new areas of co-operation with the Jordanian Anti-Corruption Commission (JACC) initiated, such as

<sup>20</sup> See final report of the MoPIC on the programme “Support to Democratic Governance” (2011-2017) and the final report on GFA on the TA project supporting the NSA under the same programme (September 2017)

<sup>21</sup> ROM Report of the Project “Support to Civil Society in Jordan”,

<sup>22</sup> Council of Europe (2014). Hashemite Kingdom of Jordan, Neighboring Cooperation priorities (2012-2014). Final implementation report.

<sup>23</sup> Council of Europe, Neighboring Partnership with the Council of Europe, 2015-2017.

the fight against corruption, anti-money laundering and criminal asset recovery. Thanks to the programme, Partner for Democracy Status was granted to the Jordanian Parliament in January 2016. Capacity building on democratic reform processes was also provided to governmental representatives through the Programme of Advanced Training in the field of Human rights, the rule of law and democracy for Southern Mediterranean (PATHS).

The CoE has organised several seminars for Jordanian authorities on key CoE conventions in the field of rule of law and human rights, and in particular on the Lanzarote Convention (see 1.2 Promotion of children rights and fight against violence against children) and the Budapest Convention (see 2.5. Fight against cybercrime).<sup>24</sup>

### 2.2.4 Synergies and complementarity within the portfolio (JC34)

Thematic instruments such as EIDHR and CSO LA are perceived by the EUD as useful complements to the bilateral programmes and are well received in Jordan notably on politically sensitive issues.<sup>25</sup>

EIDHR projects contracted in 2012, 2013, and 2014 focused on women's rights and empowerment, torture and discriminatory ill treatment, and migrant workers. The EAMR 2015 indicated that ROM reports on EIDHR are positive, however the EAMR 2016 reported that one project (CRIS 352332 - Eliminating the administrative detention of women at risk by establishing just alternatives for their protection) was blocked because of interference from the Ministry of Interior.

The EAMR 2017 provides details on the EIDHR projects managed and launched during the year. They focus on political participation and inclusion to strengthen the capacities of rural women and female municipal members to defend women's rights and participation in Jordan, to improve gender equality and decrease sexual and gender-based violence through increased quality and availability of support services addressing SGBV and direct empowerment in the community to confront GBV. Current projects deal with eliminating administrative detention of women at risk and empowering civil society to increase the protection of groups vulnerable to discriminatory torture and ill-treatment, and future projects will tackle the right to fair trial and rule of law, as well as freedom of expression and media freedom.

RoL and SSR interventions (including under IFS/IcSP) are closely coordinated and complementary, given the EU focus on promoting the reinforced integration and application of RoL principles in the objectives and results of the security sector projects, such as accountability, transparency, respect and protection of human rights and fundamental freedoms. Security Sector projects implemented during the period of review meant to ensure the leadership and coordination capacities of the Ministry of Interior to ensure better security services to the population, reinforce public accountability and foster civil oversight mechanisms over the security sector. They also aimed to strengthen operational working methodologies of law enforcement agencies to effectively protect the citizens, namely by strengthening investigation and prosecution procedures and practices with respect of human rights, ensuring child-friendly and gender-sensitive environments in police stations, strengthening the capacity of the Public Security Department to combat cybercrime and the Jordan's Gendarmerie in providing training services on human rights, peace support operations and internal security in Jordan, according to EU and UN standards.<sup>26</sup>

### 2.2.5 Efficiency, monitoring and visibility (JC35)

The analysis of the 2007-2013 interventions portfolio provided evidence that EU support to strengthening democratic governance has been substantial: of the 43 financing decisions contracted in this period, 15 supported government and civil society, with a total allocated amount of EUR 226 million, representing one third of allocated budgetary resources and payments. **Governance was the largest EU Jordan cooperation sector / thematic area** during this period, followed by private sector development and trade (second) and education (third) with respectively 23% and 20% of all allocations.

Analysis of the governance interventions provides evidence that the political/policy dialogue on the different aspects of the reform agenda was efficient because it was backed up by cooperation interventions ensuring their effective implementation and monitoring. Out of the allocation devoted to the governance portfolio: EUR 107.7 million (70.6%) went to Public Finance Management (PFM), EUR 10.0 million (6.6%) to human rights, EUR 8.9 million (5.8%) to decentralisation and support to sub-

<sup>24</sup> Council of Europe, Committee of Ministers – 2016 – Rapporteur Groupon external Relations – CoE Neighborhood Partnership with the Hashemite Kingdom of Jordan (2015-2017) – Interim progress report.

<sup>25</sup> All EAMR

<sup>26</sup> AAP of the 2017 Support Programme to Rule of Law

national government, EUR 7 million (4.6%) to legal and judicial development and EUR 4.0 million (2.6%) to conflict prevention. The category of other government and civil society contracts amounted to EUR 14.9 million or 9.8% of the total.

Under the SSF 2014-2017: out of an indicative allocation varying between EUR 567,000,000 and EUR 693,000,000, an indicative 25% of the EU financial assistance is allocated to the RoL sector and 5% to the civil society. This amount is balanced with the other priority sectors: Employment and private sector development (30%) and Renewable energies and energy efficiency (also 30%).

It should be noted that in June 2018, the EU decided to grant additional funding to Jordan, under the ENI umbrella funding framework, in view of the positive developments that the country has undertaken in the political reform process.<sup>27</sup>

The frequency of ROM reporting is irregular but has been conducted for some CSO grants and contribution agreements with IOs under the programme to support the electoral process and the programme supporting civil society and media.

Implementing agency reporting are of good quality, submitted on time and identify problems which are more related to project management than to substantial issues. Those latter were mostly recorded in relation to projects supporting civil society and media, which have not been able, despite engagement of the relevant ministries and enhanced consultations between stakeholders, to reform the legal framework or improve the legal environment of media and CSO.<sup>28</sup>

The EU's significant role in the thematic areas of human rights and justice reform is highly recognized by government counterparts, namely by its lead function in the donors group on human rights and justice reform. The EU is one of the main donors in the justice sector together with USAID.

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<sup>27</sup> Information provided by EEAS

<sup>28</sup> See ROM report on support to media, AAP 2016 on Programme Support to Democratic Governance and AAP Support

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination / complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

The EU has enhanced and supported the Jordanian Government in setting up and organizing an effective coordination mechanism in the justice sector, in order to streamline a common understanding and vision among donors on the priorities of the Justice sector reform.

The EU has developed meaningful cooperation and partnerships with MS and other international stakeholders at the national and regional to implement or complement its interventions in the RoL sector.

### 2.3.2 Coordination with EU MS / other donors at country level (JC42)

Coordination in the justice sector is ensured through two mechanisms: the High Level Committee (HLC) on the implementation of the Justice Sector Reform and the “Donor/Lender Consultation Group” (DLCG).

The HLC is a platform which has been introduced as one of the four general reform benchmarks applicable to the Sector Reform Contract related to the Justice Sector Reform and consists of representatives of judicial actors tasked with ensuring the ongoing implementation of key aspects of the reform process. Its key tasks have been to monitor the indicators of the policy matrix of the financing agreement and to monitor the justice reform process and achievements according to the MoJ’s and Judicial Council strategies.<sup>29</sup>

The TA project supporting the JSR has a specific objective on improving the external organisation and coordination mechanisms of the MoJ and the Judicial Council with other justice sector partners in order to deal effectively with the shared reform processes and responsibilities. This objective comes in support of one indicator of the BSP to the JSR, which requires the MoPIC and the MoJ to organise and institutionalise a donor coordination mechanism in the justice sector.<sup>30</sup>

The DLCG process was initiated in 2000. This mechanism aims to facilitate dialogue on priorities and programmes in Jordan, reviewing assistance to the country and improving the harmonisation of operational activities with a view to maximizing their effectiveness and efficiency. It ensures coordination between EU, EU Member States, USAID, UN agencies, the WB and other active donors, such as Japan. The DLCG has established six thematic groups with one focusing on governance. The EU and USAID co-chair the group on governance that brings together all international actors active in this domain and aims at sharing information on programmes and discussing political developments and issues of relevance. The EU has the lead on the sub-group dealing with human rights and justice reform.<sup>31</sup>

The EU and UN Women have established a technical gender donor working group that supports the work of the Gender Donor Coordination Group (GDCG) and keeps gender equality and women’s empowerment issues high on the national political and policy dialogue agendas by sharing knowledge on good practices, coordinating strategic initiatives, and creating synergies among GDCG members and other concerned stakeholders.<sup>32</sup>

The EU Delegation usually hosts the meetings of the sub-group on elections chaired by UNDP. EU and USAID also meet regularly with their implementing agencies in a specific technical co-ordination group on support to the IEC. On parliamentary support, the UK and the EU regularly call for meetings of international donors and implementing partners.<sup>33</sup>

<sup>29</sup> Boeschoten, M.F. (October 2015). Initial assessment of the overarching strategy 2014-2016 and the Service Reform Contract within the Judicial Sector in Jordan.

<sup>30</sup> See TA interim reports and performing assessment report of the SRC Jordan

<sup>31</sup> NIP 2007-2010

<sup>32</sup> Jordan - Implementation of the Human Rights Country Strategy - 2017

<sup>33</sup> AAP 2016 of the Programme enhancing Democratic governance

The EUD has close cooperation with member states (MS) in the RoL sector, and relies on European bilateral agencies (AFD, AECID, GIZ) to implement part of the 2017 programme on Support to the Rule of Law.

MS such as Germany, Spain, UK, Sweden, Denmark, the Netherlands and France are very active in the RoL sector. They complement EU interventions by assisting the democratic reform process through projects supporting the role of the political parties, the Parliament, women's empowerment and the decentralisation process; building CSO capacity to engage in policy dialogue, and encouraging active citizenship and public debates on community development. These MS also complement EU efforts to improve gender equality, strengthen the legal and institutional framework of the media sector and support human rights of journalists, support administration of justice and good governance, as well as the support elimination of torture and the protection of victims of torture<sup>34</sup>.

The EU has formed partnerships with UNODC, UNICEF and UNDP through contribution agreements in order to implement programmes supporting juvenile justice and the electoral process.

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<sup>34</sup> 2017 Implementation report of the Human Rights Country Strategy in Jordan

### 3 Effects of the EU support to RoL

#### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy / strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion / minority rights / gender) and democracy issues into partner countries' RoL policy</b>

##### 3.1.1 Summary of key findings (EQ5)

EU support and assistance has been key in the advancement of Jordan's legislative reform process and justice reform strategies, as the successive programmes supporting the justice sector and the democratic process have been achieving positive results. However, the legal and strategic framework still needs to be improved and sustained during the following support programmes to RoL and democratic governance, namely for the civil society and the media.

##### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)<sup>35</sup>

Constitutional and legal reforms have advanced during the period 2010-2017, in particular after constitutional amendments made in 2011 with the establishment of the Constitutional Court (2012) of the Independent Election Commission (2012), the adoption of a new political parties law and a new electoral law (2012), the operationalisation of the Ombudsman's Bureau and of the Anti-Corruption Commission, the establishment of the Judicial Council, the adoption of the Judicial independence law (2014), the establishment of an administrative Court of Appeals, the limitation of the government's ability to enact provisional (temporary) laws, and more restrictive rules on the dissolution of the Parliament.

Some positive steps were also undertaken with regard to the respect of human rights and amendments to the criminal procedure code: with the prohibition of torture, the right to a lawyer and the reduction of the prison penalties and pre-trial detention in the draft Penal/Criminal Procedures law.

The anti-corruption law was updated in 2011 by adding definitions of new criminal offences and improving protection of witnesses and informants.

The Juvenile Law was adopted in 2014 and juvenile courts were established.

A Legal Aid unit was established within the Ministry of Justice. New articles were inserted in the draft Penal Procedure Code to strengthen the legal aid framework and a doubling of the funding for legal aid was noted in the budget for the Ministry of Justice.

A temporary election law adopted in May 2010 governed the parliamentary elections of November 2010, one year after the dissolution pronounced by the King. This law maintained a single-non-transferrable-vote electoral system which hampered political party development. However, this law increased the number of seats in the Chamber of Deputies (the lower house of the parliament), with additional seats allocated to large urban areas and the number of seats reserved for women increased from six to twelve.

New electoral frameworks were adopted in 2015 and 2016: the Parliamentary Election Law (March 2016), the Municipalities Law (September 2015) and the Decentralisation Law (September 2015).

The Law on the independence of the Judiciary, the Criminal Procedure Code, the Criminal Code, and the Civil Procedure Code were amended in 2017; as well as the law on evidence and the law on mediation for the settlement of civil disputes.

The Law on the Bar Association was voted by the Parliament in 2017.

The Law of the Rights of Persons with Disabilities was amended in 2017 to prohibit discrimination against people with disabilities and to encourage their increased participation in society and the

<sup>35</sup> All information under this chapter are withdrawn from EAMR, EU progress reports from 2010 to 2017, EU Human rights reports or Annual Action Programmes and ToR of the listed projects, except if other sources are indicated.

workforce. It also imposes administrative and criminal sanctions for persons violating the law with acts of denial, deprivation or violence against persons with disabilities, or refusal to employ them based on their disability. This law is in line with international standards and ensures equality and freedom for people with disabilities.

Civil society: On March 17, 2016, the Ministry of Social Development released a package of draft amendments to the Law on Societies (2009) introducing more restrictive measures for NGOs to form and operate.

These amendments were so far opposed by CSOs and the International Community. Numerous laws continue to restrict freedom of association, namely the resolution of the Council of Ministers from April 6, 2017, submitting CSOs to the provisions of the Anti-Money Laundering and Counter-Terrorism Financing Law No. 46 2007.<sup>36</sup>

Media: The media freedom legal environment deteriorated after the September 2012 amendments to the press and publications law (entered into force in early June 2013), which introduced a number of requirements relating to the operation of online news portals, seen by the media and civil society as restricting freedom of expression and adding liabilities for the editors in-chief and owners of the sites.

Gender equality: Jordan has ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), but has entered reservations to the articles 9, paragraph 2 and 16 in the fields of inheritance, divorce, child custody and social security. The law amending the Constitution strengthened women's political and civil freedoms. At the 66th (February 2017) session of the UN Committee on CEDAW, the Jordanian government stated that it had no plans to lift these reservations.

The protection against domestic violence bill of 2016 guaranteed the effective protection of women victims of violence, including through shelters. In December 2016, government authorities committed to the establishment of shelters for women at risk of violence and confirmed allocation of state budget for this initiative in 2017.

In 2017, the Jordanian parliament repealed article 308 of the Penal Code, which stated a man could avoid punishment by marrying his rape victim. Lawmakers also amended Article 98, which previously outlined mitigating circumstances in which a man could be acquitted of an honour crime. They facilitated the process for provision of official documentation of children of Jordanian women married to non-Jordanians.

EU started to contribute to legislative changes<sup>37</sup> through its programme "Support to Justice Reform and Good Governance" in Jordan (2010-2014), during which the Juvenile Law and amendments to the Criminal Procedure Code were prepared.

EU substantial assistance to the justice sector contributed to significant legal reform achievements, specifically throughout implementation of the Budget Support Programme (BSP) supporting the justice sector reform (JSR) and the achievement of its indicators. Institutional cooperation has substantially improved over the span of the current BSP to the reform. This is notably reflected in the setting-up of a high-level JSR implementation committee where policies are discussed openly with EU and relevant institutions and implementation of the sector reform is followed up by each responsible party. The inclusion of a benchmark on policy dialogue has been detrimental to the advancement of legislative progress, as it enabled the Budget Support Programme to the justice sector to directly influence on the enactment of key laws in the RoL sector (as seen under 2.2.3).

The TA project to the JSR, beyond its institutional building tasks with MoJ, JC and JJI, greatly supported the MoJ in monitoring budget indicators, assisted the work of the High Level Committee, and facilitated the organisation of the coordination mechanism among national justice actors and the donor community.

The TA project supporting capacity of the House of Representatives (2014-2017), also had some leverage on the elaboration and passing of key draft laws regarding the political parties and the electoral framework. It also supported the HoR to draft amendments on internal rules in order to extend the prerogatives of standing committees and strengthen their technical and financial capacity.

Through its consultations with the government and through EIDHR funded projects, the EU also contributed to policy and legal changes regarding the protection of women's rights and people with disabilities, such as the abolition of Article 308 of the Penal Code (see above) , the government's

<sup>36</sup> International Center for Non Profit Law (2017). Civic Freedom Monitor – Jordan.

<sup>37</sup> References under this section are drawn from the relevant Annual Action Programmes related to the projects cited as well as the assessment performing reports of the SRC to the JSR and the TA projects interim reports.

commitment to arrange for the safe release of all women detained in so-called protective custody and the establishment of shelters for women at risk of harm, as well as the closure of a number of centers for persons with disabilities which did not conform to international standards.<sup>38</sup>

Despite important contributions in support of the civil society and the media, EU assistance in both fields did not succeed yet in improving their legal, regulatory and institutional environment.

This positive contribution must be shared with other donors' support, such as the important contribution provided by USAID which funds programmes in the justice sector and democratic governance areas through different implementing agencies. Main programmes during the period 2010-2017 were: "the Rule of Law Programme" followed by "the Rule of Law and Public Accountability Strengthening" for the justice sector and the "Legislative Strengthening Project" for the sector of democratic governance.

Based on the problem analysis carried out in the AAP 2016 for the Programme Enhanced Support to Democratic Governance, the EU programmes supporting the House of Representatives (HoR) and the political parties have not succeeded in achieving their effective and efficient performance in policy making, legislative and oversight functions. The HoR still has limited outreach and communication, interaction with citizens and CSOs, inadequate human resources and management training, and political parties have a limited role in policy-making due to weak internal organization and lack of training. The future programme will therefore strengthen the functioning of the HoR, the IEC, the political parties and the civil society to better contribute to policy making and democratic governance.

### 3.1.3 National RoL policy / strategic framework (JC52)

During the period under review, the strategic legal and policy framework for the RoL sector has been increasingly improved and upgraded. The JUST 2010-2012 had not been implemented effectively due to the lack of coordination and ownership of the main stakeholders according to the ToR of the TA project to the JSR programme. This situation was subsequently addressed. Contributing were:

- The MoJ Strategy 2014-2016, which aimed to strengthen judicial independence, to support and institutionalise policy dialogue for more efficient judicial system and structural changes, to simplify procedures, and improve court IT infrastructure. Moreover, the strategy sought to achieve a balanced relationship between the institutions of the justice sector by ensuring a free flow of information both internally and externally and raising the efficiency of internal communication and cooperation at the sector level.
- The Jordan 2025 National Vision and Strategy launched by the government in 2015.
- The National Plan for Human Rights 2016-2025 was drafted by a technical committee set up in 2014, following the 2013 UN Universal Periodic Review, which found a need to review national legislation in order to bring it in compliance with international agreements and human rights conventions.
- The Criminal Justice Strategy approved in 2013. However, this started being implemented only in the second half of 2015 due to the low resources allocated in the general budget laws. Its multiple layers structure (committee and platform for each priority) made it also difficult to implement. This strategy has therefore been revised and updated during the reforms of 2017 (see below).<sup>39</sup>
- 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.<sup>40</sup>
- These were followed by the establishment of an ad hoc commission for the reform of the justice system which produced a report in February 2017 with four key priorities<sup>41</sup>: 1) independence of judges and the judiciary, 2) modernising and developing the management of the judiciary, 3) modernising and developing criminal justice and enforcement of decisions, 4) modernising and developing civil case procedures and enforcement.
- The Justice Sector Reform Strategy 2017-2021 (JSR), including the Criminal Justice Strategy. This encompasses three sectoral strategies for the Ministry of Justice (MoJ), the Judicial

<sup>38</sup> EIDHR ROM reports and final reports of the implementing partners, interviews with the EU delegation.

<sup>39</sup> Annex to the Annual Programme of

<sup>40</sup> The Royal Committee for Developing the Judiciary and Enhancing Rule of Law, set up by HE King Abdullah II, produced a 282-page document of recommendations for justice reform.

<sup>41</sup> EU delegation assessment of the 4<sup>th</sup> tranche assessment, Programme "Support to the Justice Sector in Jordan"

Council (JC), and the Judicial Training Institute. It aims to strengthen judicial independence, to support and institutionalise the policy dialogue for a more efficient judicial system and to simplify the procedures and improve the IT infrastructure of the courts. An action plan has also been developed with a yearly financial budget and establishes a budget monitoring committee<sup>42</sup>.

#### **Justice sector:**

The EU has been a key actor in the progressive justice sector reform, first through the programme “Support to Justice Reform and Good Governance” in Jordan (2010-2014), which assisted with the development of National Strategies in Criminal Justice and Anti-Corruption, such as the National Anti-Corruption Strategy of Jordan 2013-2017.

Then the BSP to the JSR, and the complementary TA project, pushed forward reforms; especially independence of the judiciary, modernisation of the legislative and institutional framework, and development and implementation of the reforms (including through the support of the MoJ in budget planning and financial management).

This process has been led in cooperation with other donors (see JC 51) and enhanced by the national political will to achieve the reforms on RoL and human rights, strongly led by the King. The justice reform process shows a greater integration amongst key players in the judicial field and greater operational independence with agreed coordination of the key institutions.

#### **Parliament:**

The project supporting the Institutional capacity of the House of Representatives (2014-2017) has developed the capacity of MPs to democratise the decision-making process by supporting interaction of the HoR with CSOs and citizens through constituency meetings on legislative and political affairs as well as on local development issues.

The EU continues to provide support for strengthening the institutional and administrative capacity of the Chamber of Deputies, the Independent Electoral Commission, the political parties, the MoPPA, but also women, youth and media, under the 2016 “Enhanced Support to Democratic Governance” project, through a direct grant awarded to a consortium of public sector operators, NGOs and foundations. The project seeks to achieve: 1) an increased political awareness amongst the population, including women and youth; 2) intensified efforts amongst elected institutions in public outreach for more inclusive decision-making processes; and 3) increased informed service delivery by public demands responding to the needs/will of the people.<sup>43</sup>

### **3.1.4 Integration of HR and democracy issues (JC53)<sup>44</sup>**

#### Gender equality

The 2011 revised Constitution did not include gender as a ground of discrimination. The UN Committee on the Elimination of Discrimination against Women in February 2017 expressed its concern about Jordan’s backsliding on gender equality and requested Jordan to harmonise its legislation with its international obligations. Major discriminations against women remain in the legislation, mostly in personal status matters related to marriage, divorce, child custody, nationality and inheritance. For instance, children born to Jordanian women married to foreigners cannot acquire Jordanian citizenship and their foreign husbands do not enjoy the same civic rights as Jordanian men married to foreigners. In 2017, the authorities facilitated the provision of official documentations for children of Jordanian women married to non-Jordanians allowing them to have access to health and education. Despite the inclusion of quotas for women in parliamentary and municipal bodies, the political participation continues to be a challenge. However, the proportion of women has increased in the newly elected Parliament (from 12 % to 15 %). The representation of women in the Cabinet has increased to 7 female ministers (25%) in the new reshuffled cabinet sworn in June 2018, and they are positioned in important sectors such as economy, media, social work, tourism, energy and resources, as well as in international relations and cooperation.

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<sup>42</sup> Idem as above.

<sup>43</sup> Application form, Description of the action, “Enhanced Support to Democratic Governance in Jordan”, EuropeAid/152740/DD/ACT/JO

<sup>44</sup> References taken from progress reports 2010 to 2017 and the 2017 EU Implementation report of the Human Rights Country Strategy

Rights of prisoners:

In 2013, 2014, 2015 and 2017, Jordan cancelled its de facto moratorium on the death penalty and carried out a number of executions.

Jordan did not take the steps necessary for signing the Optional Protocol to the Convention against Torture (OPCAT), police prosecutors continue to have authority over the investigation of complaints of torture against officers as standard practice, and trials take place in security state courts.

An indicator in the BSP to the JSR relates to the reduction of reoffending and more timely justice through improved system connectivity, with a benchmark requesting a diminution of 5% of reoffending and convictions per year (with disaggregated gender numbers).

In 2014, a liaison plan for interconnecting MoJ, Civil Status, Police State Department & Correctional and Rehabilitation Department was implemented. Alternative sanctions and post-care schemes were also developed. Despite the only 1% decrease of reoffending / convictions from 2014 to 2015, some new Correction and Rehabilitation Centers implementing rehabilitation and after-care programs had been newly established. The available budget in the MoJ for alternative sanctioning was rather low in 2014 and 2015.

The EAMR 2017 reports that a reduction in the use of pre-trial detention and an increase in alternative methods to detention was recorded in 2016.

Elections:<sup>45</sup>

In 2010, the government accepted for the first time the presence of international observers (on the day of elections only) and also facilitated diplomatic missions, together with domestic oversight. Out of 120 members of the Chamber of Deputies, 83 were new and 13 were women. According to domestic and international NGOs, the elections were an improvement over the 2007 polls, but structural changes were needed to increase voter confidence and allow fairer representation.

The 2012 reform of the electoral and political parties law led to a boycott of the 2013 parliamentary elections by the Islamic Action Front and other opposition parties, so there was a bipolarisation of political parties and movements between those supporting or those boycotting the political and electoral process since 2010.

Parliamentary elections held in 2013 and 2016 were assessed by the EU Election Observation Missions as generally well-administered and inclusive. In 2013, 150 Members were elected of whom 70% were first-term Members of Parliament (MPs), and 18 were women. There was strong political participation of women during this election with 51.8% of voters and 16.7% of candidates being women. Women are allocated a quota of 25% of the seats in municipal councils.

In 2016, some improvements were brought into the electoral system with an open list system (enabling a representation of more members) and a more proportionate representation of populated urban districts, which were under-represented in the past relative to the local districts. The IEC allowed the use of the national ID card, thus making voter registration automatic. Despite the reduction of seats at the HoR, the women's quota has been maintained at 15 seats, which slightly increased the percentage from 10% to 11.5%, and women are still able to compete outside of the quota.

Local elections (Local, Municipal and Governorate Councils) took place in August 2017 and were conducted according to international standards. Based on EUD diplomatic observation, they were found well organised and inclusive. The governorate council elections were the first of their kind in Jordan aiming at increasing the political participation of citizens at regional level.

Based on Progress Reports since 2011, the EU itself has judged that there have been mixed results stemming from the EU funded projects supporting human rights and democracy. Positive outcomes have been achieved in the electoral process and support to the Parliament. However, gender equality has not progressed despite the efforts of the EU to integrate a gender-based approach in all its RoL programmes and to promote women's rights participation and empowerment through policy dialogue.

The Penitentiary project, under the programme "Support to justice reform and good governance" developed a large number of local activities to promote community sanctions and improve the rehabilitation of released prisoners.

The project supporting the juvenile justice system, conducted with technical assistance from UNODC and funding from the Swiss Development and Cooperation Agency and the government of the Netherlands, has noticeably contributed to upgrading the juvenile justice system and implementation of procedures in line with international standards in the sector. The project supported the development

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<sup>45</sup> References are drawn from progress reports and the AAP 2016 on the Programme "Enhanced democratic governance"

of specialised training for judges and training for court personnel including on management and processing of cases and increased the protection provided to children in conflict with the law and facilitate their rehabilitation and reintegration.

The BSP to the JSR has supported the decrease of reoffending and pre-trial detention as seen above.

As regards the Parliament, the TA project supporting the institutional capacity of the House of Representatives (2014-2017) empowered women MPs to mainstream gender equity in Parliamentary work and integrated a gender-based approach in the analysis and elaboration of the national budget, and in the development of key legislation (e.g. the electoral law) and reforms on women's rights (e.g. the strategy for women finalised in 2016).

This project and other EU funded grants / agreement supporting the electoral process have contributed to prepare the ground for free and fair elections through awareness raising and capacity building of the population on civic engagement and participation in policy dialogue. A survey realised under one grant provided evidence that voters' perceptions tend to be positive toward the Independent Election Commission and the electoral system and that 86.1% of voters believed that voting was important as part of their civic duty<sup>46</sup>.

Despite the efforts of the EU to advance the principles of gender equality, promote women's participation / empowerment, and integrate a gender sensitive approach in all the RoL programmes at activity and/or outcome level, the culture and traditions in Jordan continue to hamper the full exercise of women's rights. National politics, laws and social practices are still not aligned to CEDAW principles.<sup>47</sup>

The EU currently supports two regional projects related to death penalty. One aims at strengthening the coordination of the global movement for abolition of death penalty, and the other one promotes the implementation of humane alternative sanctions after a moratorium or abolition.

The EU Human Rights and Democracy Country Strategy for Jordan (2016-2020) foresees five priority areas: 1) Freedom of Opinion and Expression; 2) Rule of Law & Torture; 3) Death Penalty; 4) Women and Gender; and 5) Civil Society, Freedom of Assembly and of Association.<sup>48</sup>

The State security courts are not only dealing with security/terrorist cases and extend their jurisdiction to civilians in some cases: for activists and protesters, drug cases or, more recently, aggravated robberies. Although their conviction rates are not taken into account in the numbers of the ordinary courts, they increase the prison population.

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<sup>46</sup> ROM report of the programme "Support to civil society and the media"

<sup>47</sup> ENI Evaluation of the cooperation with Jordan 2007-2013

<sup>48</sup> Jordan Updates on Democracy and Human Rights 2017 and Implementation of the Human rights country strategy 2017

## 3.2 Quality / efficiency of justice systems (EQ6)

EQ6	To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?
JC 61	Justice system planning and budgeting improved
JC 62	Infrastructures and equipment (e.g. court facilities, IT systems) improved
JC 63	Skills and procedures in key RoL entities (e.g. judiciary, courts, public agencies, professional associations) improved
JC 64	Legality ensured, harmonisation of domestic law with international law / jurisprudence promoted, and enforcement of international judgments improved

### 3.2.1 Summary of key findings (EQ6)

The EU greatly contributed to enhancing the quality and efficiency of justice systems, in coordination with other development partners. EU budget support to the justice sector reform has leveraged improvement of the justice systems and procedures, and enhancement of the skills of the judiciary and MoJ staff.

### 3.2.2 Justice system planning and budgeting improved (JC61)

The sector budget has duly reflected and taken into account all the programmes and projects featured in the various operational plans of the MoJ.

The Judicial Council (JC) has been involved in the budget preparation process each year through request of the Financial Affairs Directorates (FAD) at MoJ and had a separate budget line. Moreover, the JC is represented in the Budget Committee and attends all budget committee meetings and discussions within this committee, including the preparation and approval of the final budget draft at the budget committee. Since the 2017 law, the JC has received a stronger financial independence, with the establishment of its own secretariat<sup>49</sup>.

The budget of the Ministry of Justice increased quite substantially: from JD 52.6 million in 2013, it evolved to JD 57.3 million in 2014, then to JD 60.7 million in 2016 and to approximately JD 84 million in 2018. The amount allocated to the ministry therefore represents 18.7 % of the total budget in 2018.<sup>50</sup>

Transparency International considers that salaries and allowances allocated to the judges are good in comparison with other employment sectors. For basic salaries, they range from JD 450 (for a newly appointed judge to JD 1400 to senior level posts based on six different grades and reach JD 2000 for vice presidents of the Court of Cassation. All judges receive an annual increase of JD 20. However, the judges' assistants which are reporting to the MoJ are considered to be civil servants and claim for increased financial resources.

The TA project supporting the JSR has contributed to improve the capacity of the Ministry of Justice in planning and monitoring of the justice sector budget. One result of the project related to the effective participation of the MoJ directorate and departments in the budget process and the MTEF, through capacity building for on-going monitoring and assessment of cost and expenditures as well as strategic decision making, planning, and implementation of the result oriented budgeting approach.

### 3.2.3 Infrastructures and equipment improved (JC62)

A performance indicator on an updated electronic and statistical system was introduced to the Sector Reform Contract (on budget support to the JSR) following the adoption of the Judicial Authority Strategy for 2012 - 2014 and aimed at enhancing the effectiveness of litigation procedures by reducing litigation time, expediting disposition of cases, limiting the escalation of backlog, and reducing workload on judges.

The benchmark for this indicator is the timely availability of relevant statistical data on the justice sector on the internet and in the annual report of the Judicial Council (including gender and juvenile data).

<sup>49</sup> EU evaluation disbursements reports for the BSP to the JSR

<sup>50</sup> Ministry of Finance Jordan, general Budgets Laws for the fiscal years per ministry

USAID has supported the development of an electronic case management system, called Mizan. The system appears to be successful, and the data of relevant parts of the police, prosecution, judiciary, bailiffs and prisons. Processes are controlled with workflow. The judicial statistics are measured based on a US system tailored to common law systems<sup>51</sup>.

An external service provider has developed a specific tool (dashboard) for statistics that is very flexible in delivering up-to-date and accurate statistics.

In the BSP to the JSR, six additional key elements of information have been agreed upon: (a) case processing time; (b) method of disposition; (c) grievances sources, dispositions and type; (d) the indicators of the Policy Matrix; (e) use of judicial resources; (f) CEPEJ indicators on efficiency.

Based on CEPEJ support, the Ministry of Justice's department in charge of setting up automated judicial scoreboards and reporting systems integrated two CEPEJ indicators: the clearance rate and disposition time, in the Jordanian judicial scoreboards.

In 2017, the EUD noted that investments in ICT had a positive impact on the efficiency of the Judiciary as the caseload quadrupled from 500.000 cases in 2012/2013 to more than 2 M in 2016/2017), based on statistics published in the General Budget Laws of the MoJ. Moreover, the provision and adoption of an electronic notification system in all courts had decreased notification time.

EU assistance in support of Infrastructure investments was delivered under the Programme "Support to Justice reform and good governance in Jordan":

- The criminal justice reform project has created a public website for the Prosecution.
- The juvenile justice project provided a CCTV system to nine courts, upgraded the existing systems in five courts and provided the Judicial Institute of Jordan (JIJ) with an e-learning system.

The EU BSP to the JSR contributed to EUR 10 Million out of the 16 million foreseen by Jordan for infrastructure. The EU contribution supported the construction of two justice palaces, a court of appeal and the judicial institute building.

The TA project supporting the Institutional capacity of the House of Representatives (2014-2017) assisted the HoR to redesign its website including a legislative portal and an offline database for internal use by MPs and staff of the HoR. This improvement multiplied access to the HoR website.

### **3.2.4 Skills and procedures in key RoL entities improved (JC63)**

A benchmark was set in the BSP to the JSR regarding the provision by the Judicial Institute of initial training to newly appointed judges and specialized continuous training events in agreed topics of Judges selected from the Magistrate's Courts, Courts of First Instance, Major Felonies Courts and from specialized courts (Juvenile Courts, the Police Court, the Land settlement Courts, Income Tax Courts, the Customs Court), with gender-disaggregated numbers.

The Judicial Institute training plan was designed as a comprehensive specialization curriculum by a joint JIJ, JC and MoJ Scientific Committee, approved in first instance by the Board of Directors and then by the Judicial Council, who also has the sole competence in selecting the participants to the training courses.

Both programmes supporting the justice reform, including the Criminal Justice Reform Project and the TA project to the JSR, have contributed to develop and implement numerous training for judges and prosecutors, as well as for the staff of the MoJ, the JC and the Judicial Institute (including on planning, organization, management and IT processes).

The TA project supporting the institutional capacity of the House of Representatives (2014-2017) assisted the general secretariat of the HoR to develop a training needs analysis of the parliamentary staff and a training working plan, including an adapted pedagogical methodology and a human and material resources allocation strategy. The MoPPA and the HoR were assisted in developing planning, management and communication skills of their staff. The TA project also organised with the HoR and three other partner organisations to the HoR an induction program for new MPs, as well as training on human rights for MPS and HoR's staff.

### **3.2.5 Harmonisation of domestic law with international law (JC64)**

EU support has consistently sought to bring Jordan in line with international conventions and commitments, as well as European standards, related to criminal law, gender equity, juvenile justice.

As described above, there has been a good progress on juvenile justice, but reforms need to be done in relation to the criminal code and women's rights. The extension of Security Courts' mandate to civilians also remains a concern.

Statistical data are automatically retrieved from the Courts Information System (Mizan) (see JC 62)

- Justice statistics are published on the website of the MoJ in Arabic and include: Judicial Caseload Summary, per specific court jurisdiction, case classification, stating amongst others the clearance rate per case type and duration of cases
- Statistical data and the Judicial Council report are published on internet, disaggregated gender and juvenile cases, number of complainants and defenders in civil and criminal cases.

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence / impartiality / accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence / impartiality of the judiciary strengthened</b>
<b>JC72</b>	<b>Separation of powers (Parliamentary control / judicial review) operates effectively</b>
<b>JC73</b>	<b>Accountability of the judiciary and other RoL institutions is enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

EU assistance has greatly fostered the independence of the judiciary, which was a key priority in the Jordan reform agenda, but EU support seems to have allowed a faster development of the judicial independence process. However, further support need to be provided to the House of Representatives to achieve effectively its policy making and oversight functions.

#### 3.3.2 Independence / impartiality of the judiciary (JC71)

The 2014 law on judicial independence is in line with criteria pertaining to independence of the Judiciary as per international standards.

- It organises the management of the career of judges (recruitment, appointment, promotion, retirement, disciplinary sanctions based on the Judicial Inspection reports etc.) according to rules and clear criteria.
- Judges benefit from immunity related to their function that can be lifted only by the Judicial Council according to specific conditions.

The law was complemented by secondary legislation related, for instance, to amendments of the judges judicial service, procedures for judicial inspections, creation of a social solidarity fund for judges and MoJ employees, definition of judicial salaries and regulation of Trainee Judges and Judicial Assistants.

The Constitutional amendment law of 2016 introduces the role of the King as Head of State in appointing the head of the Judicial Council.

A budget committee was established to supervise the preparation of the MoJ budget and received training provided by the EU on results-oriented budgeting.

Draft by-laws confirmed the new repartition of competencies between the Judicial Power represented by the JC and the MoJ. The latter's main competencies such as the Judicial Inspection, judges' salaries and other financial benefits, the oversight of the judges' career, and discipline have been effectively transferred to the JC.<sup>52</sup>

The EU has strongly supported the implementation of the Judicial Independence Law through its Budget Support Programme to the Justice Sector Reform, which contributed to strengthening the independence of the judiciary through a more professional Judicial Council with its own budget and increased autonomy. The Sector Reform Contract included several indicators related to the independence of the Judiciary, their appointment, promotion, the possibility for them to introduce complaints related to judicial appointment and career path. The indicators to be fulfilled were:

- A system of assessment and appointment of judges established by the Judicial Council on objective criteria and procedures
- The number of Judicial appointments and promotions/year done in accordance with the Law Nr. 29/2014 on Judicial Independence and other declined by laws (gender disaggregated numbers)
- The registration of complaints introduced by Judges related to judicial appointment and career path/year are registered (gender disaggregated numbers).

All required benchmarks under these indicators were attained in 2015, 2016 and 2017.

<sup>52</sup> Performance assessment report on the SBS programme to the justice sector reform, September 2016 and Transparency International, 2016. National Integrity System Report for Jordan.

### 3.3.3 Separation of powers (JC72)

The Constitutional amendments of 2011 included provisions towards an independent judicial power, among others the establishment of the Judicial Council (JC) as an independent institution, and the creation of a Constitutional Court.

The Judicial Independence Law approved in September 2014 by the Parliament represented a significant step for the Rule of Law and reduced the MoJ interference in judicial affairs, by transferring the authority to appoint the judges from the government to the judicial council. This law also enlarged and improved the role of the Judicial Council and the disciplinary committee.

New procedures set for the selection, promotion and transfer of Judges started in 2015 to meet required standards to guarantee transparency and competitiveness.

The JC is competent and responsible for the transfers, promotions, secondments, resignations and dismissals of judges. The king ratifies the appointment of judges which names are submitted by the JC. With the 2014 Judicial Independence law, the disciplinary commission was placed under the supervision of the Judicial Council (JC) and is not subordinated to the Ministry of Justice anymore.

This commission is receiving and investigating complaints filed against judges for disciplinary issues provided for in the law and provides recommendations for penalties to the president of the judicial council or refer the case to the prosecution if a criminal offence has been committed.<sup>53</sup>

### 3.3.4 Accountability of the judiciary and other RoL institutions (JC73)

A judicial code of conduct was developed for judges by a committee formed specifically for this purpose. The Constitution and the 2014 Judicial Independence Law prohibits the judges to be members of political parties and to have other responsibilities in private businesses or board of directors. The annual reports of the Judicial Council, containing its activities, resolutions and decisions, are available on its website (in Arabic)<sup>54</sup>. However, disciplinary proceedings for judges and judicial inspection remain to be further enhanced, by the creation of an ad-hoc Disciplinary Council and a Judicial Affairs unit within the Judicial Council.<sup>55</sup>

The House of Representatives is not yet able to exercise its oversight functions over the executive power and needs to improve the oversight on the implementation of adopted legislation and public policies. CSO's ability to monitor the legislative and policy-making process, as well as to monitor human rights has also been limited by administrative hurdles imposed to them by ministries.<sup>56</sup>

The EU has foreseen to strengthen accountability mechanisms of the Judiciary, the Parliament and the CSO respectively in the programme "Support to the Rule of Law in Jordan" (AAP 2017), and the programme Enhanced Support to Democratic Governance in Jordan (AAP 2016-2017).

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<sup>53</sup> Transparency International, 2016. National Integrity System Report for Jordan

<sup>54</sup> Idem as footnote 48.

<sup>55</sup> Action document for the programme "Support to the Rule of Law in Jordan" – Annual Action Plan 2017

<sup>56</sup> Action document for the programme "Enhanced Support to Democratic Governance in Jordan" – Annual Action Plan 2016-2017

### 3.4 Broader effects on the RoL (EQ8)

<b>EQ8</b>	<b>To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?</b>
<b>JC81</b>	<b>Access to justice and equality of arms strengthened</b>
<b>JC82</b>	<b>Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened</b>
<b>JC83</b>	<b>Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved</b>

#### 3.4.1 Summary of key findings (EQ8)

The EU support to Rule of Law did not achieve sustainable improvements in all aspects of human rights and democracy.

Although there has been some progressive improvement in access to justice and democratic governance, authorities have applied important restrictions to the exercise of the freedom of association and the freedom of expression. Gender equality has also not progressed.

#### 3.4.2 Access to justice and equality of arms (JC81)

Rule of Law index 2017: Jordan performed best in the criminal justice category, standing at the 27th position worldwide, followed by regulatory enforcement (31st) and civil justice (34<sup>th</sup>).

Legal aid is granted by virtue of the Bar Associations law of 1972, but in practice access to free legal aid remains a challenge, especially for vulnerable groups, women and juveniles.

Courts are mandated to guarantee legal representation for adults only in criminal cases entailing the death penalty and/or life imprisonment.

In 2015, the assessment monitoring report of the SRC to the JSR noted the following results:

- The adoption of instructions No 1 /2015 organising legal aid creating a “Legal Aid Section” at the Directorate of Human Rights and Family Affairs in the MoJ with a mandate to: Provide legal aid to indigents and vulnerable categories, to strengthen the capacity and effectiveness of legal aid services, implement MoJ programmes for capacity building in the field of legal aid, and develop a legal aid data-base.
- Two Memoranda of Understanding were signed between the MoJ and the Jordan Bar Association: one that sets the conditions for institutionalizing a legal aid system based on creating a Legal Aid Commission at the Bar Association and one establishing electronic interconnectivity between MoJ and the bar association to facilitate access to files for lawyers commissioned by the JBA with the objective to boost effectiveness and promptness of the judicial process.

In 2016, the MoJ report and monitoring assessment report indicate that instructions related to legal aid services were published on the MoJ and Bar Association websites. There were assorted publications and awareness materials, including material distributed in courts and prisons, as well as dissemination of information via radio broadcast.

The 2017 EU disbursement report of the 4<sup>th</sup> tranche payment for the programme “Support to the JSR in Jordan” apprises that access to justice has improved by increasing the budget for legal aid and the creation of a working group chaired by MoJ.

The EAMR 2017 indicates that access to justice has been enhanced and the numbers of free legal aid services provided by the state – albeit still insufficient - increased by 10% from 2016 to 2017.

Priority objectives of the legal aid strategy now being designed are: promoting access to justice; guaranteeing legal aid to vulnerable groups; improving the administration of justice in the area of pre-trial detention; and, assuring the coherence and sustainability of the legal aid system.

The EU has participated in the changes related the legal aid system under the BSP to the JSR. Changes in the budget indicator related to the facilitation of legal aid and access to justice for the poor have been described above.

The TA project to the JSR has also provided advice to the ministry and stakeholders on the 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 and aims to improve access to legal aid for vulnerable groups such as women, children and the disadvantaged, both Jordanians and non-Jordanians, with the aim of reducing inequalities and strengthening the rule of law.

### 3.4.3 Respect for human rights (JC82)

Rule of Law index: Jordan’s performance on the open government and fundamental rights categories, scores 79th and 76th respectively, which is much lower than its median scores (around 30) on other indicators.

The EU is still raising human rights violations and issues during policy dialogue: the lack of independence of the State Security Courts, administrative detention under the Crime Prevention Law, the right to a lawyer, independence of forensic doctors, and impunity in torture cases.<sup>57</sup> Cases of alleged torture and ill-treatment in police and state security facilities continued to be reported by human rights defenders and Civil Society Organisations.

The de facto moratorium on death penalty was interrupted with executions in 2014 and 2015. In March 2017, 15 people (of which 10 convicted of terrorism) were executed by hanging. 120 people are currently estimated to be on death row, 12 of whom being women.<sup>58</sup>

In October 2017, the UN Human Rights Committee, discussing Jordan's fifth Human Rights report on the International Covenant on Civil and Political Rights, raised concerns on topics such as the lack of comprehensive anti-discrimination legislation the right of women to transmit their nationality to their children, the application of the Domestic Violence Protection Law, protective custody of women, nationality rights for families of Jordanian women married to non-Jordanians, fair trials and administrative detention in particular for women, use of force and torture by members of security forces, access to detention centres by civil society organizations, freedom of consciousness, legal equality of women and men, independence of the judiciary, particularly the jurisdiction and wide powers of the State Security Court, and peaceful assembly and freedom of association.<sup>59</sup>

Media: The conflict in Syria has weakened the political environment for freedom of expression, media pluralism and independence, which have been challenged by security concerns. The trend is to extend control of the media and the journalists rather than fostering respect for international legal standards.

World Press Freedom Index: Ranking: in 2010: 120 out of 178 - in 2014: 140 out of 180 – in 2018: 132 out of 180.

- Restrictive press and publications laws have been adopted in 2012, despite the adoption of the National Media strategy and an action by the Jordanian Government.
- Journalists are subject to close surveillance by the intelligence services and must be affiliated to the state-controlled Jordanian Press Association.
- Since 2013 hundreds of blogs and internet websites were shut down, on the grounds they had no license.
- Under the 2015 cyber-crime law, articles published in online newspapers and posts by citizen-journalists on social networks can be punishable by jail sentences and constitute grounds for pre-trial detention.
- journalists were arrested and committed to trial at the State Security Court for certain cases, based on security grounds.<sup>60</sup>
- The political has been lacking to advance reforms included in the Media strategy and action plans<sup>61</sup>.

### Gender equality

Jordan has worsened its ranking in the Gender Gap Index over the last 7 years and deteriorated further in 2016 to the 134th position out of 144 countries, mainly due to poor economic participation.

Women continue to experience discrimination, mainly due to the lack of a comprehensive legislation on gender equality. Despite a good literacy rate and a relatively high presence of female students in

<sup>57</sup> EAMR 2016

<sup>58</sup> EU report on the EU-Jordan Relations 2017 and Transparency International, 2015

<sup>59</sup> UN Human Rights Office of the High Commissioner (20 October 2017): “Human rights committee examines the report of Jordan”.

<sup>60</sup> Sources: footnote 23 - Reporters without Borders website (2018), ROM report of the “Support to Media action”

<sup>61</sup> ROM report (March 2016) of the project “Support to CSO and Media in Jordan”.

higher education, women's engagement in the workforce stands at around 14%, one of the world's lowest and early marriage concerns 15% of girls in Jordan.

#### Support to Media in Jordan (2014-2017)

The programme aimed to strengthen an enabling regulatory and institutional environment and to build the capacity for an independent, quality-based media sector serving the entire population. Although the programme did not manage to foster advocacy for changes in the legal framework, it established structuring and sustainable elements for the media sector: the establishment of the Association of Jordanian Community and Local Radios Stations and the revision to curricula of two media and communication faculties in two different universities.<sup>62</sup>

#### Gender equality:

The Gender dimension was not clearly visible in the bilateral cooperation projects until 2015, except in the grants contracted in the framework of the Support to the electoral process.

However, EIDHR projects over the 2010-2017 period aimed to improve gender equality and decrease sexual and gender-based violence by improving the quality and availability of support services addressing SGBV, as well as combatting violence and discrimination against women through direct empowerment of women to realize their human rights in the community<sup>63</sup>. The projects also addressed political participation and inclusion to strengthen the capacities of rural women and female municipal members to defend women's rights and participation in Jordan and to implement a systematic, sustainable and coordinated mechanism to promote women's rights in the Southern governorates.<sup>64</sup>

Gender issues have been raised and emphasized more intensively the two last years of the review period within the policy dialogue framework, based on the Gender Action Plan (GAP) 2016-2020, within which specific thematic areas were thoroughly discussed: girls' and women's physical and psychological integrity, the shifting of the institutional culture towards gender in relation with honour killings, the low participation of women in the labour market, women's voice and participation in the political process.<sup>65</sup>

### **3.4.4 Governance and democratic processes (JC83)**

Corruption index Transparency International: Jordan is ranked 59 out of 180 countries, with a score of 48/100. It was scoring 47/100 in 2010 so has not progressed much during the period of review.

Rule of Law Index 2017: Jordan ranks 32 out of 113 for anti-corruption.

Despite the adoption of the Anti-Corruption Commission (ACC) law in 2011, the development of a national anti-corruption strategy, and other positive measures under the 2007-2013 period, the lowest average ROM scores were provided to the anti-corruption interventions under the evaluation of the EU-Jordan cooperation 2007-2013. The ENP Jordan annual progress reports until 2014 indicate that corruption remains an issue of widespread concern in Jordanian society. There is no discussion of the theme in reports after 2015. The Jordanian Integrity and Anti-Corruption Commission (JIACC) has now been established by merging the Anti-Corruption Commission and the Ombudsman office.

#### Electoral process:

The EU reports that the legislative framework needs to be further improved, in particular regarding the universality and equality of the vote. Although the aim of the new electoral system meant to create a party-based system, political parties (9 with 30 seats out of 130) remain a minority. The Parliament still plays a limited role in policy formulation, which remains mainly in the hand of the directly appointed executive.<sup>66</sup>

Civil society: Challenges remain related to CSOs enabling environment and their participation in public life and policy formulation, due to legislative and bureaucratic obstacles (increased levels of approval and authorisations foreign funding and organisation of meetings). NGOs report that freedom of association is challenged by the use of counterterrorism provisions.

<sup>62</sup> ROM report 2017 on the Support to media program and EAMR 2017.

<sup>63</sup> For instance the EIDHR project "Hemaya II – For girls and young women in Jordan", funded by the European Union and the Australian Development Cooperation, implemented from December 2014 to June 2017, in Mafraq and Zarqa governorates. \_

<sup>64</sup> EAMR 2015 to 2017

<sup>65</sup> EAMR 2016

<sup>66</sup> 2017 Report on EU-Jordan relations

EU Support to the electoral process contributed through different projects to enhance democracy, and strengthen and foster political reform through strengthening the participation of the grassroots population in politics.

Five grants, awarded under a call for proposals, were implemented by international, regional and local NGOs:

- One project has positively changed voters' perception (according to survey results) towards the election process and raised awareness on the importance of people's participation in the democratic process.
- Another one addressed local women and youth in rural and remote areas and marginalized women in urban areas to participate in the elections as candidates and voters.
- Another one similarly aimed at enhancing the civic political participation of young people and women through empowerment activities, courses, training, round tables gathering MPs, political parties and CSOs; and a campaign promoting voting and issuing positive messages that touched an estimated for 18,000 people. The main achievement of this project was the participation of political parties from the whole political spectrum and the presence of a political space allowing the debate among all parties.
- The EU-financed programme implemented by UNDP in support of the Independent Election Commission and the Judiciary (2012 – 2017) provided direct support to the IEC and judiciary over a crucial period of the electoral cycle for parliamentary elections and ensured a strengthened start to a new electoral cycle for elections to municipal and governorate councils. Thanks to this support, the IEC improved its functional and institutional capacities and demonstrated consistent levels of people's confidence in its role.<sup>67</sup>

In 2016, a EUR 15 million comprehensive democratic governance programme was initiated, consisting of: support to the Independent Election Commission; technical assistance to the Parliament, the political party system and civil society. Through this programme, the EU intended to continue building on previous projects and to support Jordan's political reform process which aims to consolidate democracy and to promote inclusiveness in policy and decision-making processes, with a strong focus on women and youth.

The election process and prospects for electoral reform and parliamentary and political party system strengthening, the rule of law remain among the issues regularly discussed between the EU and the GoJ.<sup>68</sup>

There is a need to also consider the impact of the US support to the electoral process in order to measure the effective contribution of the EU.

#### Civil society:

The EU has been supporting the inclusiveness and participation of CSO in policy dialogue with the authorities through different projects (as seen in previous chapters) and will continue to support CSO in the 2016 programme "Enhanced democratic governance" to deepen the role of civil society in contributing to policy making, civic education, gender rights, human rights/parliamentary monitoring.

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<sup>67</sup> Independent evaluation of the UNDP programme

<sup>68</sup> EAMR 2016

## 4 Annexes

### 4.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Programme manager justice and security	EEAS, EUD Jordan
Advisor – Political section	EEAS, EUD Jordan
Programme manager- Human rights, migration and governance	EEAS, EUD Jordan
Programme manager – Civil society, Media and Gender	EEAS, EUD Jordan
Jordan Desk Officer – MENA 1	EEAS, HQ

### 4.2 List of documents

#### 4.2.1 EU strategy and programming

European Commission (2007): ENPI Jordan Strategy Paper 2007-2013

European Commission (2013): EU/Jordan ENP Action Plan

European Commission (2014): Programming of the European Neighbourhood Instrument (ENI) - 2014-2020, Single Support Framework for EU support to Jordan

European Commission (2014-2016): Annual Action Programme and Umbrella Programme for Jordan

#### 4.2.2 EU reporting

EU (2011-2017): External Assistance Management Report (EAMR) Jordan

European Commission (2012, 2013, 2015): ENP Progress Report Jordan

European Commission (2017): Jordan - Implementation of the Human Rights Country Strategy

#### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2008 Support to Justice Reform and Good Governance in Jordan
- 2010 Support to Democratic Governance
- 2011 Support the implementation of the Anti-Corruption Commission in Jordan
- 2012 Support to the justice sector in meeting the required criteria for sector budget support
- 2012 Support to the justice sector reform in Jordan
- 2012 Support to the Electoral Process in Jordan
- 2012 Support to the Civil Society and Media
- 2016 Enhanced Support to Democratic Governance in Jordan
- 2017 Support to the Rule of Law in Jordan

#### 4.2.4 Evaluations and Studies

Particip (2017): External Evaluation of the European Neighbourhood Instrument (ENI) (2014-mid 2017).

#### 4.2.5 Other

USAID (2011): Jordan Justice Sector Assessment Report and Recommendations

USAID (2011-2013): Progress reports of USAID Jordan Rule of Law Program

USAID (2012): Judicial Authority – The Strategy of Building 2012–2014

USAID (2015-2016): Progress reports of USAID Jordan Rule of Law Program

## Case study note – Moldova

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# 1 Introduction

## 1.1 Context

The Republic of Moldova (hereafter referred to as Moldova) is a lower middle-income country with a gross domestic product per capita (PPP) of USD 1,900 in 2016. Moldova ranked 107th out of 188 countries on the Human Development Index.

The current government under Prime Minister Filip (Democratic Party) took office in January 2016. Relative stability of the country allowed for the re-starting of reforms, namely through work on the so-called Priority Reform Action Roadmap, which addressed some of the concerns and recommendations expressed in the EU Council conclusions of February 2016. In November 2016, Igor Dodon (The Party of Socialists) was elected President by popular vote.

The European Union is committed to and fully supportive of Moldova's territorial integrity and sovereignty and continues to work towards the peaceful resolution of the Transnistrian conflict.

Stabilisation of the Moldavian economy depends on the implementation of the agreement reached with the International Monetary Fund (IMF) in July 2016 and approved by the IMF Board in November of that year. The IMF Programme re-opened opportunities for the country in the political, financial and economic spheres. Nevertheless, the economy faces a number of significant downside risks: the slowdown in the Russian economy, weaker capital inflows and further reductions in remittances. These external pressures are compounded by poor revenue collection, a fragile banking sector, and structural problems in the non-banking financial sector. (2017 Single Support Framework for EU support to Moldova 2017-2020).

## 1.2 Overview of EU support

Overall **EU-Moldova Cooperation** is framed by the Association Agreement (AA) signed in 2014 and in force since July 2016. Related to this, the Deep and Comprehensive Free Trade Area Agreement (DCFTA) was signed in 2016. The Single Support Framework (SSF) adopted in 2017 sets out priorities in EU-Moldovan cooperation connected to the priority actions set out by the 2017-2019 Association Agenda.

Priority sectors of EU interventions under the 2017 SSF are (i) Economic development and market opportunities (indicative 35% of total budget), (ii) Strengthening institutions and good governance, including the Rule of Law (indicative 15% of total budget), (iii) Connectivity, energy efficiency, environment and climate change (indicative 25% of total budget), and (iv) Mobility and people-to-people contacts (indicative 10% of total budget).

EU assistance is conditional on the progress of the country in its reform agenda. Therefore, when massive fraud was discovered in the Moldovan banking system in 2014-2015, the European Union suspended budget support payments to the Moldovan authorities. Budget support disbursements resumed in line with (i) the agreement at the end of 2016 on the programme between Moldova and the IMF, whose main aim is to stabilise the banking sector in Moldova and (ii) Moldova's compliance with other budget support conditions (e.g. progress on public finance management). Also in place is macro-financial assistance of up to EUR 100 million (EUR 40 million in grants and EUR 60 million in loans) to be disbursed in 2017-2018 when Moldova fulfils the conditions and provided the IMF programme remains on track.

In the period from 2010 to 2017, **EU support to Rule of Law (RoL) in Moldova** was provided in the form of twinning, projects, and budget support – see table below. The major ENI-financed interventions are the “Support to the Justice Sector Policy Reforms in Moldova” (financing decision of 2011) and the “Budget Support to the Justice Sector Reforms” (financing decision of 2012). The 2011 intervention is built up by three service contracts, namely: i) Support to coordination of the Justice Sector reform in Moldova implemented by Altair Asesores SL, ii) Support to the Pre-Trial Investigation, Prosecution and the Defence Set-Up in Moldova implemented by the German Foundation for International Legal Cooperation (IRZ), and iii) Increased Efficiency, Accountability and Transparency of Courts in Moldova implemented by the German Development Agency (GIZ). The 2012 intervention consists of sector budget support targeting the justice sector.

In the closing months of the evaluation period and since then, EU satisfaction with the pace of reforms in Moldova has significantly declined. As of August 2018, outstanding budget support payments, and macro-financial assistance were on hold.

Table 1 Overview of ENI-financed interventions in the area of RoL in Moldova

<i>Decision year</i>	<i>Title</i>	<i>Planned EU contributions (mEUR)</i>	<i>Implementation methods / channels</i>
2009	Support to Prisons System upgrading and Penal Reform	0.85	Twinning (Germany)
2011	Support to the Justice Sector Policy Reforms in Moldova	8.0	Project (three service contracts – see below)
	<i>Support to coordination of the Justice Sector reform in Moldova</i>	2.0	Services (ALTAIR ASESORES SL)
	<i>Support to the Pre-Trial Investigation, Prosecution and the Defence Set-Up in Moldova</i>	2.0	Services (IRZ)
	<i>Increased Efficiency, Accountability and Transparency of Courts in Moldova</i>	2.1	Services (GIZ)
2012	Support to the Justice Sector Reforms	24.8 <sup>1</sup>	SBS (Continuation of TAs above plus one new; see below)
	Tranche component (3 variable tranches and 4 fixed tranches)		Budget Support component
	<i>Support to the Enforcement, Probation and Rehabilitation Systems</i>	1.79	CILIC
2016	Promoting media freedom and pluralism in the Republic of Moldova	0.5	CoE
2017	Strengthening the capacities of the Parliament of Moldova for EU approximation process	1.5	Twinning (Czech republic)

The European Instrument for Democracy and Human Rights (EIDHR) was also used to finance interventions in areas such as the justice sector and human rights. Examples of EIDHR projects include:

- 2010 - Upholding the Human Rights of Victims of Human Trafficking in Moldova and Transnistria: from Multi-disciplinary Assistance to Prevention
- 2011 - Monitoring of justice sector reform for increased Government's accountability

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1 Initial agreement, but suspension caused decommitment of remaining amounts.

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

<b>EQ2</b>	<b>To what extent has EU support to RoL responded to the bilateral and regional contexts?</b>
<b>JC21</b>	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
<b>JC22</b>	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 Summary of key findings

EU support to RoL in Moldova has essentially consisted of budget support to support the Justice Reform Strategy 2011-2016, now being replaced by a new strategy 2018-2024. An independent team in close collaboration with Government, the judiciary, and civil society prepared the strategy, covering seven areas, including one devoted to improving the ability of the MoJ to coordinate reform in the area. Civil society is free in Moldova and has generally been consulted in the preparation of reforms. MoJ ownership of the reform strategy was strong during the earlier years of the period under review – in fact, stronger than that of other actors, such as the judiciary, which has been resistant to change – but a distinct waning of ownership has been observed in recent years. The selection of the SBS approach was carefully considered and progress has been closely monitored to adjust disbursements; however, it fell prey to political instability and low government capacity, experiencing a two-year delay in start-up. EU support has responded flexibly to shifts in the political landscape as well as the 2013-14 financial scandal, which led to the temporary suspension of budget support (during which time the EU maintained policy dialogue and TA and gradually reverted to project approaches). As of August 2018, budget support remains suspended.

#### 2.1.2 Alignment and participatory processes (JC21)

EU support for RoL over the evaluation period has been consistent with key sector policy and strategic documents such as the National Development Strategy (2008 – 2011), the Strategy and Plan of Action on Strengthening the Judiciary (2007-2010), and the Strategy and Action Plan on the Development of the Enforcement System (2007-2011). Most importantly, it finances implementation of the Justice Sector Reform Strategy (2011-2016), with seven key areas: (i) sector reform management, (ii) reform of the judiciary, (iii) reform of investigation and prosecution, (iv) enforcement of judgments, (v) juvenile justice, (vi) intolerance towards corruption, and (vii) human rights protection. The Ministry of Justice coordinated the drafting of a new justice sector reform strategy 2018-2024.

The 2011 programme addresses one of the core problems of the justice sector by strengthening the capacity of a Government-led institution to efficiently steer and coordinate the reform via the development and implementation of a sector-wide strategy and action plan. The Programme itself has a sector-wide approach, providing active support to a variety of actors in the justice chain. The 2011 programme was designed based on a justice sector assessment carried out in 2010 by independent experts in consultation with the Government, the judiciary and the civil society. Local ownership was assured in a formal sense. What has been observed over the years, however, is that ownership is weakest in the judiciary, which has in fact sometimes actively resisted reform efforts promoted by the MoJ. Ownership in the Ministry itself has declined in recent years; for example, the EU has long been requesting a new Justice Strategy, but to no avail.

A desk review of the four TA projects identified in Table 1 found strong alignment with the Justice Sector Reform Strategy and relevance to beneficiary needs. Capacity analyses and needs assessments at beneficiary institution level were adequate and participatory. Beneficiary ownership was high, suggesting that failure to implement reforms was due to lack of higher-up political will (e.g. the slow pace of reforming the Prosecution Service).<sup>2</sup>

Civil society in Moldova operates freely; however, outside a few major Chisinau-based NGOs, capacity is weak, and donor dependence is total. A donor / CSO coordination mechanism was set up early under SBS and is publicly available on the MoJ website, where the minutes of bi-annual consultation meetings are available (see also JC 73). The EU is the largest donor to Civil Society in Moldova and

<sup>2</sup> European Commission (2018). Final Evaluation of four Technical Assistance projects (Support to the Justice Sector Policy Reforms in Moldova (AAP 2011))

provides financial support for advocacy, policy monitoring and service delivery. The EUD has dialogue with two platforms that have been established within the framework of the Association Agreement.

### **2.1.3 Needs, opportunities; and responsiveness (JC22)**

See reference to independent assessment under JC 21. The design of SBS built, in addition, on lessons learnt; for example, the need to pay more attention to sustainability and to share management responsibility between high-level stakeholders and lower-level, more technical, ones. A more detailed list is given in the 2012 Annual Action Plan (AAP). Moldova's eligibility for SBS was established by past experience, as was the need to closely explain conditionality in order to ensure relevance and ownership.

The evaluation period was one of turmoil in Moldova, with an extended period of Government dysfunction followed by a change of Government, as well as a financial fraud so large as to have serious macroeconomic consequences. The EU responded to the latter by suspending budget support, but re-established it in 2016 when an IMF stabilisation plan was in effect. During the period of suspension the EUD continued to use policy dialogue and technical assistance to promote the implementation of agreed reforms. In recent months, budget support has again been suspended because of the slow pace of reforms, as well as in response to specific developments: highly selective investigation of the banking fraud and the High Court's politicised invalidation, on trivial grounds, of the Chisinau mayoral election, which had seen the surprise breakthrough of an opposition candidate.

## 2.2 Implementation / choice of modality (EQ3)

EQ3	To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?
JC31	High quality policy and political dialogue established: content (promotion of RoL and European standards and principles), frequency, synergies between operational (intervention-level) and high-level dialogue, etc.
JC32	Implementation strategies appropriately chosen and combined / complemented
JC33	Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)
JC34	Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into account.

### 2.2.1 Summary of key findings (EQ3)

In the context of the AA/DCFTA, there was been intense political dialogue at high level over the evaluation period. In the RoL area, substantive dialogue focused on the fight against corruption, as well as the persistent failure to reform the Prosecution Service. The selection of SBS was carefully considered. There was a Sector Policy Support Programme (SPSP) in 2011 before SBS commenced in 2012. TA provided under that and the subsequent SBS was of good quality. Experience in Moldova had shown that Government understood the concept of budget support, although one lesson that had been learned was the importance of focusing discussions on conditionality to promote relevance and ownership. EIDHR was used to finance projects supporting persons with disabilities, anti-torture, anti-discrimination (including Transnistria), equality, and social inclusion, complemented SBS, and EiPAC (“More for More”) was used to provide support for human rights. Also complementing sector reform, the EU is the largest supporter of civil society in Moldova. TA in the order of EUR 7 million per year was provided, and a High Level Expert Group of 26, including experts in the justice sector, advised Government. SBS was closely monitored, with both independent review experts and the MoJ expressing dissatisfaction with the pace of progress, which ultimately led to blockage of the third and fourth tranches of support. Efficiency aspects were a problem: due to delays in putting in place an Action Plan and national monitoring and coordination mechanism, EU budget support began to flow only two years after originally foreseen. This, in capacity with the ambition of the range of activities foreseen and low capacity on the part of Government, caused delays in implementation. As described above, budget support has again been paused because of the evident lack of political will to reform, in addition to which, policy dialogue has been downgraded.

### 2.2.2 Policy dialogue (JC31)

Political dialogue with the EU in the context of the AA and DCFTA was intense, an indicator of this being the number of meetings organised at the highest level. In 2015 there were four visits to Brussels at Prime Ministerial level, including the participation in the Association Council (16.03.2015) and meetings with High Representative/Vice-President (HR/VP) Mogherini as well as Commissioners and the Presidents of the European Council, European Parliament, and the European Economic and Social Committee. Moldova has been visited by the President of the European Council, Trade Commissioner C. Malmstrom, and many European Parliament delegations. There is an active annual EU-Moldova Human Rights Dialogue. Policy under the Association Agreement takes place through formal Steering Committees, including for budget support programmes. The EUD cites a good example of dialogue with the National Anti-Corruption Centre, on the new Anti-Corruption strategy 2017-2020. Another was the transmission of a draft law on reforming the Prosecution Service consistent with Venice Commission recommendations in 2014 (although this would require two years to be adopted). The EU extensively supported this reform through complementary TA. Policy dialogue was strengthened through TA to the MoJ to strengthen coordination processes, in the course of which stakeholders understanding of key justice reform policy issues was strengthened.

Recent negative developments have reportedly (according to EU officials interviewed) affected the quality of policy dialogue. There will be no more High Level visits until current issues are resolved. Sector policy dialogue, including in Justice Reform, has been downgraded to the technical level.

### 2.2.3 Choice of implementation strategies (JC32)

While overall, the EU has been shifting from budget support to project-based support in RoL over the evaluation period, SPSP, and then SBS, prevailed. Budget support was chosen largely for two reasons: (i) PFM was adequate and (ii) the Justice Sector Reform Strategy was a sound one, with a clear orientation towards achieving European standards. The policy matrix contained SMART Indicators and progress review was both regular and realistic, the last (largely negative) review taking place in 2017. Most of the SBS package lay in the variable tranche, allowing for tying disbursement to progress against specific measurable indicators. Extensive TA was provided in the context of SBS, as well as in preparing for it (prior to the programmes under ENP 2011 Action Fiche, the EU provided support to the justice sector of around EUR 7 million a year through various forms of technical assistance). Twinning was used once, to support Parliament in pursuing European approximation. An EU high-level policy advice mission of 26 experts covering the entire range of priority sectors was used to leverage EU financial support.

Through Comprehensive Institution Building, the EU supported the Prosecutor General's Office, Ministry of International Affairs, and the Centre for Combating Economic Crime and Corruption.

### 2.2.4 Synergies and complementarity within the portfolio (JC33)

Projects financed under EIDHR covered persons with disabilities, anti-torture, anti-discrimination (including Transnistria), promoting equality, and social inclusion. EiPAC ("More for More") was used to provide support for human rights.

### 2.2.5 Efficiency, monitoring and visibility (JC34)

The Action Plan for implementing the JSRS 2011-2016 was only adopted with a year and a half delay, in mid-2012. The monitoring and coordinating body, the National Council for Law Enforcement Bodies Reform, only became functional in 2013. The set of activities foreseen was ambitious and government capacity low, which led to further delays in implementation. EU budget support for reform was closely monitored in consultation with the MoJ, which proved itself a candid interlocutor. Referring to delays encountered in 2014-2015, the Ministry cited political instability (including acute turnover at the MoJ), shortfalls in donor funding, and resistance / foot dragging on the part of justice sector actors affected by the reform, particularly the judiciary. In response to problems encountered, disbursement of the third, and especially the fourth tranche, did not take place. The review mission noted, however, that during consultations, Government expressed a credible will to overcome the problems encountered. In view of the general problems encountered with budget support, in the latter years of the evaluation period, the EU was moving in the direction of project support.

General conditions for the disbursement of budget support were, in addition to macroeconomic policy and PFM, satisfactory implementation of the Justice Sector Reform Strategy. Specific conditions for the fixed component centred on management of the reform process and financial management policy. For the (far larger) variable component, specific conditions focused on the judiciary, investigation and prosecution activities, execution of judgments, juvenile justice, and professional integrity. Tranche release was carefully monitored, with the latest monitoring review (May-June 2017) recommending against release of the third and fourth tranches, essentially because there had been insufficient progress to satisfy the general conditions. As described above, recent political developments have led the EU to essentially hit the pause button on budget support.

As the lead donor in RoL (and overall) in Moldova, and in view of the Association agenda, the EU is highly visible.

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination/ complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

While the donor landscape in RoL and related justice and human rights areas is crowded in Moldova, the EU is the largest donor. The EU and U.S. Embassy jointly lead the donor coordination group in the justice sector. Through its budget support and TA, the EU supported the MoJ to better coordinate donor support and reform efforts across the wide range of institutions involved.

### 2.3.2 Partnerships established at global level (JC41)

This JC is examined in the overall analysis in Volume I, the main report.

### 2.3.3 Coordination with EU MS / other donors at country level (JC42)

One of the pillars of the Strategy and Action Plan for JSR was more effective coordination of donor support through a regular donor coordination mechanism established by the MoJ. This pillar has been supported by EU TA.

The RoL donor landscape in Moldova is relatively crowded, and includes UNDP, UNICEF, the American Bar Association, SIDA, and the Open Society Foundation among others. UNICEF and German, Dutch, Norwegian, and Swedish bilateral donors have supported reform of probation and rehabilitation services. UNICEF and the Open Society Foundation are active in legal aid and juvenile justice and Germany (IRZ) in the penitentiary sector. There is frequent coordination between major donors acting in the justice field under the joint leadership of the EU and US Embassy. Coordination with EU MS has been strengthened through Friends of Moldova, a French-Romanian initiative bringing together foreign ministers of the EU MS, representatives of EU institutions and the Foreign Minister of Moldova.

### 3 Effects of the EU support to RoL

#### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy / strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion / minority rights / gender) and democracy issues into partner countries' RoL policy</b>

##### 3.1.1 Summary of key findings (EQ5)

There have been a number of legal and constitutional reforms, but parliamentary passage and implementation have often been tardy. The EU supported parliamentary capacity building through twinning, but political fractures remain deep. Some changes, notably the change in the electoral system, were criticised by CoE and OSCE/ODIHR. Developments since the end of the evaluation period could reasonably be characterised as a political crisis. Where major legislation was enacted, for example in the area of enforcement of civil judgments, the actual impact has proven very slow to materialise. A law on reform of the Prosecution Service passed in 2014 entered into force only in 2016. Progress was made in a number of areas related to human rights, such as the rights of persons with disabilities, women's rights, and anti-discrimination. A National Human Rights Strategy was put in place and an Equality Council was established. There has also been progress on juvenile justice, particularly areas such as psychosocial services and vocational education. However, Freedom House in its 2016 report, while finding some signs of progress, cited difficulties relative to ill-treatment in police custody, extended pre-trial detention, and poor prison conditions.

##### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)

As described under JCs below, there have been numerous initiatives to draft legal and constitutional reforms, but parliamentary passage and implementation have often been delayed. Parliament was strengthened through an EU-financed twinning with the Czech Republic. The major electoral reform over the evaluation period occurred in July 2017, when Moldova changed its electoral system from proportional to a mixed proportional-uninominal. Both the Venice Commission and the Office for Democratic Institutions and Human Rights of the OSCE (OSCE/ODIHR) observed that, consensus being lacking, the reform was inadvisable. For progress towards international commitments and standards, see below. In 2015, amendments to primary and secondary legislation to remove deficiencies in enforcement of court decisions including the European Convention on Human Rights and foreign court decisions were drafted and adopted.

At the beginning of the evaluation period, major reform was enacted in the enforcement of civil judgments with the entry into force of the new Bailiffs Act and new Enforcement Code. More than 200 persons have already obtained a licence from the MoJ to become private bailiffs. While the system has started to function, there is still a lack of regulatory clarity and methodology or guidelines for the new function of private bailiff. The reform of the system of bailiffs received a contribution from the joint EU-CoE project "Increased Independence, Transparency and Efficiency of Judiciary."

Reform efforts have recently been damaged by the emergence of a full-blown political crisis. The most recent mayoral elections in Chisinau resulted, against the odds, in the election of an opposition candidate. On the shaky logic that this candidate's "get out and vote" Facebook post in the closing hours of the campaign constituted illegal electioneering, a politicised court invalidated his election, a decision upheld in June 2018 by the Supreme Court. The result has been international condemnation, emergency parliamentary debate, etc.

##### 3.1.3 National RoL policy / strategic framework (JC52)

Concerning the broad legal framework, the UN's 2016 Peer Review civil rights defenders' report found that, while the framework largely conformed to international standards, it was undermined by poor quality of legislation and resistance from the judiciary. Concerning EU-supported strategy for reform, the implementation of the policy and strategic framework embedded in the Judicial Sector Reform Strategy (JSRS) and its Action Plan (2011-2016) was unsatisfactory, as discussed under JC 35 above. Even where actions were implemented, their impact and effectiveness was "not entirely proven". The review team concluded that the general condition on overall satisfactory progress was

not met. This appears to have been less due to the lack of Government ownership than the active resistance of affect justice sector agencies, especially the judiciary, to the basic goals of the reform. However, persons interviewed were of the view that Ministry of Justice ownership of reforms has flagged and noted the fact that a new Justice Reform Strategy is long overdue.

#### **3.1.4 Integration of HR and democracy issues (JC53)**

A National Human Rights Strategy is in place. The relevant Action Plan expired in 2014, and one covering 2018-2022 was not endorsed by Government until 2017. Its adoption by the Parliament is pending.

There has been some progress on the rights of persons with disabilities. In June 2017, a new Law recognising the legal capacity of persons with disabilities, in line with the United Nations Convention on the Rights of Persons with Disabilities, was adopted. In February 2017, Moldova signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Its ratification is pending. In April 2017, the Government approved a new National Gender Equality Strategy 2017-2021. In all these areas, proper resourcing and implementation are concerns. An example is the 2016-2020 Action Plan for the Child Protection Strategy, which lacks financial and human resources and requires further secondary legislation and the development of institutional mechanisms such as child protection social workers at local level. The situation in juvenile justice at the beginning of the evaluation period was extremely poor. However, in 2014-2015, significant efforts (conditions met between 70% – 100%) have been made to improve the juvenile justice system according to the 2017 SBS Review Report. These include limiting the application of coercive education and enhanced psycho-social services including individual development plans.

The AAP 2012 noted that there was progress in anti-discrimination, a key element of the Visa Liberalisation process, early in the evaluation period with the passage of the Law on Equality and establishment of the Equality Council. Assurances were given that this would cover sexual minorities. The Action Plan for the Implementation of the Strategy on Strengthening of Interethnic Relations 2017-2027 was adopted by the Government in November 2017.

According to Freedom House's 2016 report, ill-treatment in police custody, extended pre-trial detention, and poor prison conditions continue to be of concern.

### 3.2 Quality / efficiency of justice systems (EQ6)

EQ6	To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?
JC61	Justice system planning and budgeting improved
JC62	Infrastructures and equipment (e.g. facilities, IT systems) improved
JC63	Capacities, skills and procedures in key RoL entities improved
JC64	Legality ensured, harmonisation of domestic law with international law and jurisprudence promoted, and enforcement of international judgments improved

#### 3.2.1 Summary of key findings (EQ6)

EU-financed training supported the establishment of a functioning budget allocation system for justice sector institutions, and overall justice sector budgeting is in line with the Medium-Term Expenditure Framework. While the EU supported the development of IT systems for the justice sector, these were still not fully functional and inter-connected at the end of the evaluation period. A justice management information system was supported by the EU and appears to be generally functional, although there have been instances when the random allocation of cases facility has been overridden. While a plan for courtroom construction and renovation was developed and costed, there have been delays in its implementation. Judges' salaries have recently been increased. The EU supported trainings for judges and prosecutors on how to implement new directives related to equality and anti-discrimination. In general, the judiciary has continued to be stubborn in the face of proposed reforms to conform to European standards. TA contributed to improved capacity at the MoJ, in the Prosecutors Service, the Penitentiary Department, and the court system.

#### 3.2.2 Justice system planning and budgeting improved (JC61)

Under the TA "Support the Coordination of Justice Sector Reform in Moldova," trainings were organised for the staff and members of all of the seven working groups implementing the JSRS. The JSRS Action Plan was reflected in the state annual budget and in the Medium-term Budget Framework. A working group prioritizes budget requests from institutions involved in the reform in line with the budgetary allocations received from the Ministry of Finance and communicates back to the relevant institutions. However, processes continue to be slow; for example, the Superior Council of Prosecutors has languished in the absence of an approved budget and staff. Judges' salaries have recently been increased.

#### 3.2.3 Infrastructures and equipment improved (JC62)

An NGO, the Legal Resources Centre of Moldova, performed a study estimating construction and renovation needs for proper functioning of the court system. Parliament adopted an infrastructure plan in March 2017, but implementation will take several years. The Strategy for the Development of the Penitentiary System 2016-2020 was approved by Government, but the associated Action Plan has not been budgeted, and persistent delays in construction have been experienced.

Video surveillance in all police stations has been ensured, in particular in detention sites and interview rooms in order to reduce opportunities for forms of torture or ill-treatment. All Moldovan courts have been equipped for the audio recording of hearings. At the same time, the team of experts responsible for the 2017 Report found no evidence that a draft law exists to remove the phrase "unless it is not possible" as it relates to audio hearings from the criminal and civil procedure codes.

A Judicial Information and Management System was put in place with EU support, and observers have found it generally functional. However, there is also evidence that it has been manipulated to interfere with the random allocation of cases. During 2016 two information systems were developed in the framework of the Justice Sector Reform Strategy, one at the Ministry of Interior and one at the General Prosecutors Office, however at the time of the 2017 SBS review these were still not functional.

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

In 2015, after the adoption of the Law on Ensuring Equality and establishment of the Equality Council, an electronic manual for training judges about prohibition of discrimination was been developed. In parallel, the National Institute of Justice and the Equality Council in partnership with OHCHR organised a series of trainings for judges and prosecutors to address and to rule on discrimination and equality issues.

Under “Support the Pre-Trial investigation, Prosecution and Defence Set-up,” EU-financed TA advised on new criteria for selection of prosecutors, assisted in the drafting of a Code of Ethics for prosecutors, distributed Manuals on criminal investigation and law, analysed the electronic case management system, provided training across a wide front, and provided tools for planning and monitoring reform implementation.

Under “Support to the Enforcement, Probation and Rehabilitation Systems,” the EU financed provision of legislative expertise and capacity building through coaching and training. Themes covered included detainee reintegration and rehabilitation, penitentiary inspection, human resources management, prison industry, human rights, ethics, professional standards, communication, budgeting and planning. An evaluation of the Penitentiary Department Headquarters carried out under the project resulted in a restructuring plan and revised organisational structure.

Under “Increased Efficiency, Accountability and Transparency of Courts,” a new code of ethics was drafted and approaches to dissemination were developed and judicial inspection was strengthened. A first-ever communication strategy was developed for the judiciary and there was outreach to the public on the justice reform. CEPEJ contributed to the development of a training program for court administrators, a programme subsequently implemented by CoE with EU support.

### **3.2.5 Harmonisation of domestic law with international law (JC64)**

In December 2015, the Parliament accepted the 1951 Statute of the Hague Conference on Private International Law. The Agreement on cooperation with Eurojust was signed in July 2014 and ratified by the Moldova Parliament in May 2015. Venice Commission objections to Moldovan law are discussed under EQ 7.

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence / impartiality / accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence / impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of RoL institutions is enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

Moldova continues to score poorly on international assessments of the independence and impartiality of the judiciary. While a law stipulating procedures for selection and promotion of judges and clarifying the role of the Superior Council of the Judiciary was passed in 2012, the number of judges to whom the procedures have been applied is unsatisfactory. Judges ranked inferior have been promoted ahead of judges marked better. The fact that both the Prosecutor General and Ministry of Justice sit on the Superior Council of Magistrates (SCM) is contrary to European good practice, and rules on disciplining judges adopted in 2014 run contrary to Venice Commission recommendations. Parliament did not adopt constitutional amendments on the Judiciary and on the Constitutional Court meant to increase transparency, accountability and independence as recommended by the EU-funded peer review mission of 2016. While the law adopted in 2014 on reform of the Prosecutors Office finally entered into force in 2016, the selection of prosecutors remains influenced by corruption and family ties. A comprehensive set of Ethics Codes was promulgated in 2015. A National Integrity and Anti-Corruption Strategy 2017-2020 came into force at the end of May 2017 and a National Integrity Authority is in place, yet the judiciary remains, in the public eye, one of the most corrupt institutions in a generally corrupt country, as indicated by assessments by institutions such as the World Bank and Freedom house.

#### 3.3.2 Independence / impartiality of RoL institutions (JC71)

Moldova ranked 132 out of 137 countries on judicial independence in the Global Competitiveness report 2017-2018 of the World Economic Forum (WEF).

Amendments to ensure the independence of the judiciary, duty of impartiality, strengthening self-regulation through the Superior Council of Magistracy (SCM), criteria and procedures for selection, appointment, promotion, continuous training, and dismissal of judges were adopted by Parliament in 2012. However, in 2013-2014 no relevant amendments to the Law on the SCM took place. In December 2013, legislation introduced a ban for judges on ex parte communication. Rules for selection and promotion of judges have remained unchanged since 2012. The grounds for dismissal of judges were amended by the 2014 Law on Disciplinary Responsibility of Judges, which was adopted despite Venice Commission recommendations against it. While some observers have held that the procedure for disciplining judges is in line with European standards, the team of experts responsible for the 2017 SBS review were of the view that implementation of the procedures was ineffective. In December 2017, the Constitutional Court declared the legal provision on the verification of judges by the intelligence service to be unconstitutional, but weeks later the SCM rejected an appeal of the judge against her dismissal. There have been instances of intimidation of judges who are out of line with the Government.

Despite the new 2012 rules for appointment of judges and clarification of the role of the SCM, the number of judges selected, promoted and transferred in accordance with the new procedures is not held to be satisfactory by independent observers. The SCM sometimes promoted judges other than those who had been ranked highest by the Selection Board. The participation of the Minister of Justice and Prosecutor General in the SCM runs contrary to the principle of impartiality, and was criticised by the CoE's Group of States against Corruption (GRECO). Parliament did not adopt constitutional amendments on the Judiciary and on the Constitutional Court meant to increase transparency, accountability and independence as recommended by the EU-funded peer review mission of 2016. The process needed to amend the Constitution in relation to judiciary system was restarted, and in January 2018 a new law was registered in the Parliament.

The law reforming the Prosecutor's Office was adopted by Parliament in July 2014 and, after a long delay, entered into force in August 2016. The positive opinion of the Venice Commission was obtained before the adoption of the law. The merit-based system of selection and promotion of prosecutors is functional, although still tainted by corruption and family ties. At the time of the 2017 review, the only prosecutor who had been selected line with the new law was the Prosecutor General. A number of cases of prosecution and arrests of political representatives have triggered a lack of trust in the justice system and concerns in the area of human rights and fundamental freedoms.

The impartiality and independence of the judiciary, in this case the Supreme Court, was put to the test by the Chisinau mayoral elections – and found lacking.

### 3.3.3 Accountability of RoL institutions (JC72)

Legal reforms were implemented to allow integrity testing and the National Integrity Authority was given the power to control the personal assets and interests of judges. In the area of the prevention and fight against corruption, fraud and conflict of interest, a new National Integrity and Anti-Corruption Strategy 2017-2020 came into force in May 2017. By January 2018, seven out of nine sectorial anti-corruption plans were endorsed by the National Anti-Corruption Centre.

The following codes of professional ethics have been drafted/ amended:

- Code of ethics of prosecutors, approved by Superior Council of Prosecutors in 2015;
- Code of ethics of judges, approved by the General Assembly of Judges in September 2015;
- Code of ethics of lawyers, approved in July 2016 by the Congress of the Lawyers Union;
- Code of ethics of bailiffs, approved in September 2015;
- Code of ethics of Penitentiary staff, approved in 2013;

While civil society is consulted by public authorities, in some cases insufficient time is dedicated to public consultation (e.g. ten days in the case of the Human Rights Action Plan). The National Participation Council, which enables civil society to participate in decision-making, re-started its activities in 2017, however, recognised civil society activists have taken the view that it is not fully representative. The work on a new CSO law was halted in September 2017 following negative reactions from leading CSOs to an amendment introduced by the MoJ that would prohibit foreign funding for CSOs engaging in political activities. In January 2018 the law was republished for public consultation by the MoJ, minus the offending articles. A CSO Strategy and Action Plan for 2018-2020 were prepared in a working group with the participation of CSOs and registered in the Parliament in December 2017.

An important source of lack of accountability of the judiciary is the presence of the phrase "unless it is not possible" in the Criminal Procedure Code, Civil Procedure Code and Contravention Code. A draft law to remove it was approved by the Government of Moldova in November 2014, but as of the time of the 2017 SBS Review Report, it had not been adopted by the Parliament. Another problem with accountability from the efficiency and quality standpoint is that, as the European Commission for the Efficiency of Justice (CEPEJ) noted in a 2017 report, basic indicators such as case disposition time, clearance rates, etc. are not reported or analysed.

### 3.4 Broader effects on the RoL (EQ8)

<b>EQ8</b>	<b>To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?</b>
<b>JC81</b>	<b>Access to justice strengthened</b>
<b>JC82</b>	<b>Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened</b>
<b>JC83</b>	<b>Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved</b>

#### 3.4.1 Summary of key findings (EQ8)

The overall situation in Moldova is discouraging. This resulted in a joint EU Heads of Mission Statement at the end of 2016 expressing concern about the absence of the RoL and resulting denial of human rights. The political decision of the Supreme Court to uphold invalidation of the election of an opposition candidate to the mayoralty of Chisinau has been referred to at several points, as has the perceived diminution of reform ownership by the Ministry of Justice. Despite EU support (both financial and in the form of policy dialogue and TA), and despite a number of changes in the governance of the judiciary, actual implementation of the JSRS to date has proven slow and has produced only meagre results. This resulted in the conclusion of the 2017 SBS review mission that the general condition concerning the main objectives of reform concerning human rights, RoL, and corruption had not been met. A new Justice Reform Strategy (the last one expired in 2016) is eagerly awaited but has not materialised.

Particularly discouraging, international observers (World Bank, World Economic Forum, Transparency International, Freedom House) have also found that corruption of the judiciary remains rampant. Some estimate that it has actually worsened: the corruption component of the World Bank's RoL Index declined from 32.1 in 2012 to 20.7 in 2014. Public confidence in the judiciary is very poor, in large part because of corruption. There are serious concerns regarding the right to a fair trial in Moldova. Although a number of changes in the governance of the judiciary were adopted, actual implementation was been slow and the judiciary has proven resistant to change. While Moldova has taken steps on paper to improve human rights (passage of anti-discrimination legislation and the institution of a National Equality Council, ratification of the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence, and the adoption of a Child Protection Action Plan), legislative action has lagged and implementation remains low. Penitentiaries remain below international standards, the ECtHR continues to issue decisions against Moldova concerning torture, and credible international observers such as Freedom House cite ill-treatment in police stations, unacceptably long pre-trial detention, and poor prison conditions.

Events such as the HoM statement in 2016, the international outcry over the Chisinau election reversal, the pausing of EU budget support, and the downsizing of policy dialogue speak to the loss of EU confidence in the ability and willingness of Moldova to reform in the spirit of the AA.

#### 3.4.2 Access to justice strengthened (JC81)

Access to justice encompasses many elements, but the right to a fair trial is fundamental. While public perception is no certain indicator, it is striking that, according to the Ombudsman's Report for 2015, only 12% of the public considered that the right to a fair trial was ensured and 20% believed that no such right was ensured at all. The EU Heads of Mission in a December 2016 statement cited selective law enforcements that undermine the RoL and lack of fairness in judicial processes. As stated above, CEPEJ statistics that would judge access to justice from the standpoint of clearance, disposition, enforcement, etc. are not reported on and analysed.

Legal aid has been supported by donors but remains insufficient to meet needs. An infrastructure construction and refurbishing plan complete with cost estimates, with potential to improve access to justice, has been prepared, but actual implementation lags due to resource shortages. The poor state of access to justice can be partially inferred from the low level of public confidence in the judiciary and widespread corruption.

At the highest judicial level, unfairness is evident in the purely technical grounds for invalidation of the Chisinau mayoral election – a Facebook “Go out and vote” appeal.

#### 3.4.3 Respect for human rights (JC82)

Moldova has seen a number of steps forward on human rights, such as the passage of anti-discrimination legislation and institution of a National Equality Council, ratification of the CoE

Convention on Preventing and Combating Violence against Women and Domestic Violence, and adoption of a Child Protection Action Plan. In all cases, either further legislative action or resources are needed. One area in which there has been significant progress (albeit short of full SBS condition compliance) is juvenile justice, in particular the provision of psychosocial services and training to juveniles in custody. However, there has been only limited progress towards meeting international standards in conditions of detention: currently only 3 of the 17 institutions meet the minimum standards of detention. Conditions in the main prison in Chisinau are reported to be deplorable, a problem which has persisted for years. In 2017 the ECtHR issued 16 decisions against Moldova, of which eight are related to violation of the prohibition of torture and the right to liberty and security. Freedom House, while perceiving some improvements, cites instances of ill-treatment in police custody, extended pre-trial detention, and poor prison conditions.

#### **3.4.4 Governance and democratic processes (JC83)**

As noted in the AAP 2012, at the beginning of the evaluation period, the level of trust in the judiciary was “astonishingly low” – estimated to be 2% for the judges and 11% for the prosecution. Only 12% of the public believed that the right to a fair trial was ensured and 20% felt that it was not. At the end of the evaluation period, the judiciary was still regarded overwhelmingly as corrupt and the MoJ was also viewed unfavourably. Although a number of changes in the governance of the judiciary were adopted, actual implementation was proven slow and the judiciary has proven resistant to change. Particularly discouraging, international observers, as well (World Bank, World Economic Forum, Transparency International, Freedom House) have found that corruption of the judiciary remains rampant. Some estimate that it has actually worsened: the corruption component of the World Bank’s RoL Index declined from 32.1 in 2012 to 20.7 in 2014.

The OSCE observation mission found that the parliamentary elections of November 2014 were “generally well administered” and offered voters a wide range of choices; however, changes in electoral law were criticised by the CoE and OSCE/ODIHR.

The political nullification of the Chisinau mayoral election has been mentioned at several points.

## 4 Annexes

### 4.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Head of Unit, Geo-desk Moldova	EU-DG NEAR
Desk officer Moldova	EU-EEAS HQ
Team Leader for Georgia and Moldova	EU-EEAS HQ

### 4.2 List of documents consulted

#### 4.2.1 EU strategy and programming

European Commission (2007): ENPI. Republic of Moldova. Country Strategy Paper 2007-2010. Draft.  
 European Commission (2007): ENPI. Republic of Moldova. Country Strategy Paper 2007-2013.  
 European Commission (2007): National Indicative Strategy 2007-2010.  
 European Commission (2011): National Indicative Strategy 2011-2013.  
 European Commission (2014): Programming of the ENI 2014-2020. Single Support Framework for EU support to the Republic of Moldova (2014-2017).

#### 4.2.2 EU reporting

EU (2007-2017): External Assistance Management Report (EAMR). Republic of Moldova.  
 European Commission (2012, 2013, 2015): European Neighbourhood Policy Progress Report.  
 State Chancellery of the Republic of Moldova (2011): Annual Report on External Assistance to Moldova.  
 State Chancellery of the Republic of Moldova (2013): Annual Report on External Assistance to Moldova.  
 European Commission (2018): Association Implementation Report on Moldova.  
 European Commission (2014): Progress report on the implementation of the Republic of Moldova –EU Association Agenda. September 2014-2016.

#### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2009 Support to Prisons System upgrading and Penal Reform
- 2011 Support to the Justice Sector Policy Reforms in Moldova
- 2012 Support to the Justice Sector Reforms
- 2016 Promoting media freedom and pluralism in the Republic of Moldova
- 2017 Strengthening the capacities of the Parliament of Moldova for EU approximation process

#### 4.2.4 Evaluations and Studies

Particip (2017): External Evaluation of the European Neighbourhood Instrument (ENI) (2014-mid 2017).

#### 4.2.5 Other

CEPS (2017): Democracy and its Deficits: The path towards becoming European-style democracies in Georgia, Moldova and Ukraine.  
 Council of Europe (2013): Action Plan to support democratic reforms in the Republic of Moldova 2013-2016.  
 Gogaladze (2017): “Frozen Conflicts” in associated eastern partnership countries: Georgia and Moldova. A comparative case study.  
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## Case study note – Tunisia

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## 1 Introduction

The **2007-2010 NIP** did not explicitly focus on Rule of Law (RoL) and governance but on economy / competitiveness, employment / employability, and sustainable development. The first EU justice programme in Tunisia “*Support Programme for the Modernisation of the Judiciary System in Tunisia (PAMSJ)*” was part of the 2002-2004 NIP and aimed at consolidating the independence and efficiency of justice. The activities were divided into three components and ran from 2007 to 2010 with a committed budget of EUR 16 million. According to the available reports, the programme has contributed to improving the competence of justice professionals and had led to a certain openness to European and international law and jurisprudence.

In the aftermath of the Arab Spring, the **2011-2013 NIP** continued to support the same sectors of concentration as the ones mentioned above, but EU support was broadened, notably by the SPRING programme. The SPRING programme enabled the launch of new programmes supporting good governance, such as the “Programme to Reform Justice (PARJ)” and the “Programme supporting Civil Society (PASC)”.

The **revolution of 2011** led to a very slow democratic transition process, interrupted by the deterioration of the security situation and a political crisis in 2013. The Tunisian Government made a strategic choice to strengthen the country’s relations and integration with the EU. In 2012, this gave rise to the finalisation of a “privileged partnership” and the conclusion of an ambitious action plan within the European Neighbourhood Policy (ENP) framework. The adoption of the Constitution on 27 January 2014 and the presidential and legislative elections of 2014 accelerated this process. The EU accompanied this transition with the implementation of a new Single Support Framework (SSF) covering the period 2014 to 2015. However, terrorist attacks in 2015 deeply affected the economy. The EU responded to these new threats by adopting six programmes in 2015.

### Box 1 *References to the RoL in EU-Tunisia country strategies / action plans*

The Action plan “*Privileged Partnership EU-Tunisia 2013-2017*” focused on strengthening democracy, the rule of law and good governance, one of the illustrations of which is the “*approximation of the legislative framework of Tunisia with that of the EU / Council of Europe*”, including “*the possible accession of Tunisia to certain Council of Europe Conventions*”. The following objectives in the RoL are covered:

- Establish a democratic electoral system, particularly through the consolidation of the Independent Authority for the Elections.
- Ensure the independence of the judiciary, increase its professionalism and efficiency, ensure respect for human rights, presumption of innocence and the right to a fair trial.
- Carry out security sector reform as part of a comprehensive reform in order to ensure compliance with international standards of Rule of law, human rights and international law.
- Consolidate the protection of human rights, including the rights of women and children.
- Realise media reform and professionalisation of the sector.
- Strengthen the role and capacities of civil society, and protection of human rights defenders
- Dialogue and cooperation on issues relating to human rights and fundamental freedoms.
- Implementation of international conventions on human rights, and cooperation with United Nations special procedures and mechanisms.
- Respect for freedom of expression, association and assembly in accordance with the International Covenant on Civil and Political Rights of the United Nations.
- Abolition of the death penalty and the fight against torture and all forms of discrimination.
- Support the universal application of the Rome Statute concerning the International Criminal Court.
- Consolidate the judicial cooperation and the approximation of the legal systems of both parties
- Reinforce the fight against corruption.

Single Support Framework 2014-2015: The objective of the related programme was to strengthen fundamental elements of democracy in order to:

- support the Tunisian authorities in the implementation of the democratic transition and in the

preparation of sectoral strategies to be put in place by the newly elected government;

- strengthen the rule of law and respect for and the promotion of human rights by supporting the implementation of effective constitutional principles and national priorities for independence of justice, fair trial, and treatment of detainees according to international standards;
- strengthen the media sector professionals in Tunisia and guarantee the dissemination of independent information and plural among the entire Tunisian population;
- contribute to the achievement of equality between men and women in Tunisia by reducing national, regional and local inequalities,
- support the implementation of constitutional guarantees and standards or the reform of the criminal justice chain, support the justice transitional process transitional and support the establishment of an information system and the reinforcement of the judicial and penitentiary infrastructure.

*Sources: EU strategy/programming documents*

On 29 September 2016, the EU adopted the Joint Communication "Strengthened EU support for Tunisia", endorsed by the Foreign Affairs Council on 17 October 2016. The Communication set out EU measures to enhance Tunisia's efforts to address the critical challenges face by the country, in particular in the field of good governance and the RoL, by ensuring that institutions serve the public interest and guarantee civil liberties. This Communication proposes to assist Tunisia in its reform objectives with respect to consolidating democracy including among others working with Tunisia's civil society, promoting good governance through the modernisation of the Tunisian public administration, supporting security sector reform, reinforcing public services and fighting corruption.

The SSF 2017-2020 reflected the expectations of the Joint Communication and the Tunisian National Development Plan 2016-2020. The first key priority sector was to "*ensure good governance and the rule of law by the effective implementation of the Constitution, especially through the creation and functioning of modernised institutions, and to provide for the separation of powers while also enabling different authorities to interact effectively in a way which respects human rights; and through the reform of public services, to support the decentralisation process and the fight against corruption*".

Table 1 Overview of ENI-financed interventions in the area of RoL in Tunisia

Decision year	Title	Planned EU contributions (mEUR)	Implementation methods / channels
2011	Appui à la modernisation du Tribunal Administratif (Contrat de jumelage léger TU10/ENP-AP/JH23)	0.2	Twinning (France)
2011	PASC - Programme d'Appui à la Société Civile (SPRING 2012)	5.0	Project
2012	Appui au processus constitutionnel et parlementaire	1.8	UNDP
2012	PARJ I - Programme d'Appui à la Réforme de la Justice I Rehabilitation des juridictions et prisons Renforcement des institutions de l'administration pénitentiaire Soutien à l'amélioration de la justice pour enfants Appui à la formation des personnels de justice Renforcement des capacités du Ministère de la Justice et des juridictions	25.0	Multiple <sup>1</sup> UGP + TA+ contribution agreements (Unicef- UNOPS) and twinning programme
2012	Programme d'Appui à la Société Civile - PASC TUNISIE (SPRING 2012)	2.0	Project
2014	PARJ II - Programme d'appui à la réforme de la Justice II Soutien à l'opérationnalisation du processus de justice transitionnelle Rehabilitation of jurisdictions and prisons II	15.0	UGP + TA+ contribution agreements (UNDP and UNOPS)
2015	Renforcement des capacités de l'Assemblée des Représentants du Peuple	1.63	Twinning (France)
2017	Programmes d'appui à la société civile et aux instances constitutionnelles en Tunisie	20.0	Project
2017	PARJ III - Programme d'appui à la réforme de la Justice	60.0	Project (signed in 9.2018)

The EIDHR instrument was also used to finance interventions in areas such as civil society and access to justice. EIDHR projects have mainly supporting actions monitoring and advocacy in support of Independent Human Rights Defenders in Tunisia and in support of victims of torture to facilitate their access to justice; democratic media and freedom of expression; reinforcement of the role of civil society and promotion of human rights; mobilising civil society in the follow up of the relations between Tunisia and EU; reinforcing monitoring.

<sup>1</sup> Technical assistance, Project management unit, contribution agreements and Twinning.

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

EQ2	To what extent has EU support to RoL responded to the bilateral and regional contexts?
JC21	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
JC22	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 Summary of key findings

The EU strategic/programming documents and the design of EU-funded interventions are aligned with Tunisian national policies and strategies and adapted to the transitional context of the country. Consultation processes for programming organised by the EU have regularly involved authorities and civil society, with a specific EU support reinforcing the capacity of civil society to engage them with dialogue and strategic programming with the authorities and the international community.

The EU's rapid response to the 2011 events, with the development and implementation of different incentive measures at the regional and national levels was decisive in supporting the democratic transition process in Tunisia and the broad governance sector (including RoL). The economic, security and institutional issues faced by Tunisia until 2015 and the lack of planning and monitoring capacities of the authorities rendered difficult the formulation of comprehensive long-term national strategies in the RoL sector, and hence did not facilitate the ownership of EU programmes by the RoL stakeholders.

#### 2.1.2 Alignment and participatory processes (JC21)

The RoL focal sectors identified in the 2011-2013 NIP and the 2014-2015 SSF have been broadly defined in order to adjust to the specific post-Revolution political context, including to the development of new priorities by the transitional Government and the new Government elected in 2014.

All EU-funded interventions carried out fall within the defined national priority sectors, with the exception of specific thematic or regional activities which ensure a good complementarity of EU interventions. The justice sector was identified as a new area of co-operation in the 2011-2013 NIP before the Revolution and has been later confirmed as one of the key EU sectors of cooperation. This was coherent with the two joint communications "A partnership for democracy and shared prosperity with the southern Mediterranean" of 8 March 2011, and "A new strategy towards a changing neighbourhood" of 25 May 2011.

The project supporting the justice reform (PARJ I)<sup>2</sup> followed some first initiatives taken by the government in the sector<sup>3</sup>:

- A Legislative Decree to change the profession of lawyers (guaranteeing immunity from speech and expanding their powers in notarial acts) was adopted in July 2011.
- The Draft Law on the Transitional Judiciary, replacing the Superior Council of Magistracy, was approved by the Parliament in July 2012.
- Following the destruction of 14 courts and 17 prisons, the Ministry of Justice has begun rehabilitation work.

Moreover, the national human rights strategy (approved in June 2012) emphasised that the conditions of detention and interrogation should be in accordance with international standards. In this context, it was also underlined that better training of prison staff, including in international standards, as well as the establishment of reintegration programmes for prisoners would be desirable.

In addition, the government has declared its determination to fight corruption, in particular to deal judicially with outstanding cases - including those concerning the assets of members of the family of

<sup>2</sup> The financing agreement was signed in December 2012.

<sup>3</sup> AAP PARJ 2012

former President Ben Ali placed abroad - under mechanisms guaranteeing the speed and efficiency of justice.

The specific objectives and key elements of the programme supporting justice reform developed in 2012 reflected the government's overall strategy: 1) Strengthen the independence and efficiency of justice; 2) Improve access to justice and the law and 3) Modernise the penitentiary system. These objectives were closely linked with one of the four priority areas of intervention of the draft EU-Tunisia 2012-2016 Action Plan for a Privileged Partnership (provisional version of 13 March 2012 which led to the action plan 2013-2017).

The objectives of PARJ 2 (the financing agreement for which was signed in April 2015) are closely linked to the 2013-2017 EU-Tunisia Action Plan for a Privileged Partnership and aim to: 1) Support the effective implementation of Constitutional and International Standards (and especially Human Rights) in the field of penal reform; 2) Support actors in the penal system in the treatment of transitional justice cases and the establishment of a protection mechanism for victims and witnesses; 3) Support the progressive implementation of an information system and the reinforcement of the judicial and prison infrastructure and places of detention.

The 2016-2020 Development Plan entitled "Tunisia's future strategic vision", prepared in a participatory manner, was adopted by the Council of Ministers in May 2016 and adopted by the Assembly of People's Representatives in April 2017. The finalisation of this detailed planning exercise allowed the interventions of the public authorities and their international partners, including the EU, to be anchored in a programmatic framework that had been lacking in Tunisia since the beginning of the transition in 2011.

The Joint Communication of September 2016 "Strengthened EU support for Tunisia" aimed to respond directly to the main axes of the Tunisian five-year Development Plan and continuing to support the democratic reform process. The EU – Tunisia Single Strategic Framework 2017-2020 is also aligned with the Development Plan and the EU Communication of September 2016.

The popular revolt of 2011 opened a window for civil society organisations. Before the revolution, the consultation of the Tunisian civil society had to be agreed by the government, and was largely controlled by the former regime. Following a growing demand for citizen participation, the EU proposed a strengthened and more strategic approach to engagement with CSOs.

After 2011, consultations with civil society organisations have regularly taken place. All programmes have provided for the active involvement and consultation of civil society with them in the preparation of RoL projects (PARJ, transitional justice, support to the constitutional and parliamentary process etc.) and the implementation of actions. For instance, the Justice Reform Program took into account the recommendations and engagement of the professional associations of lawyers and magistrates, as well as organisations active in the defence and promotion of human rights and access to Justice. From January 2014, the participation of CSOs in EU programming was reinforced by the Euro-Mediterranean Network for Human Rights (EMHRN), through a project supporting the "mobilisation of the Civil Society in the monitoring of the relations between Tunisia and the EU" to strengthen fundamental freedoms in the country and to ensure that human rights are guaranteed, respected and strengthened. One aim of the project was to help civil society to better monitor and ensure their participation in the relations between the EU and Tunisia, while improving its advocacy techniques and its representativeness. This project improved the participation of civil society in the discussion of some EU strategy papers and in bilateral programme steering committees.

The transition government that led the country until the end of December 2011 had neither the mandate nor the means to enter a process of in-depth reforms in the Rule of Law sector or in the economic or social sectors, as its primary mandate was to prepare and organise the holding of the upcoming elections.

From 2012, the on-going constitutional, legislative and institution-building processes and the security challenges rendered difficult the formulation of sector strategies. Institutions targeted by the different RoL programmes (Assembly, MoJ, Judiciary) demonstrated weaknesses due to their lack of experience and had difficulties to own and implement programmes managed under EU support.

The formulation of a national development plan for 2016-2020 reflected the lack of a shared vision of medium-term socio-economic priorities within the government team and coordination problems within the government administrative apparatus. This plan presented, however, the reforms envisaged by the ministries in the various sectors.

The frequent changes of government (eight since 2012), have not paralysed the administration of the projects, but have led to some delays in the projects' implementation.

Moreover, the coordination carried out by the Tunisian authorities – including in the RoL sector – has lacked efficiency, although some progress was achieved in 2016 in the context of the preparation of the Tunisia 2020 Conference and the finalisation of the 2016-2020 national development plan when Tunisia-G7 + EU coordination has been put in place.

The planning and monitoring capacity of the Tunisian authorities is also weak which has an impact on the analysis and strategic planning capacity of the partners, all of whom are under internal pressure in terms of commitment and respect for the agenda. These difficulties have not however prevented very frequent exchanges on particular programmes / themes.

### 2.1.3 Needs, opportunities; and responsiveness (JC22)

In order to identify the priorities of the NIP 2011-2013 that should be taken into account and to best meet the needs of Tunisian partners, a diagnosis mission (Peer Review mission) of the judicial / penitentiary sector was organised by the EU in 2011, funded through the TAIEX instrument. The identification and formulation of the Justice Programme continued in 2012 to assess the needs in the sector.

The majority of the recommendations of the European experts who carried out the peer review were taken over 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 PARJ I (independence and efficiency of justice, access to justice and law, modernisation of the penitentiary system) were identified based on this review. The infrastructure and IT components were integrated in the project, namely following widespread destruction caused by the Revolution.

The Roadmap for EU engagement with Civil Society was approved by the EU Ambassadors in December 2014, was also based on the results of the "mission to support the improvement of the institutional and legal environment of Tunisian civil society organisations" funded by the European Union in 2013/2014.

In 2011, the EU had a decisive role in supporting the transition, in particular in its rapid and effective response to support the government in preparing for elections. The EU also engaged in a general budget support programme that aimed, among others, to improve the transition process and reinforce democratic governance aspects, in parallel with other donors: the World Bank, the African Development Bank and the French Development Agency, namely under the successive Recovery Support Programmes (PAR I to PAR V) (see section 2.4.3).

The EU also initiated a dialogue and a dynamic accompaniment of the civil society through the formulation and the signing of the project to support civil society as well as the signing and the preparation of numerous contracts under the SPRING<sup>4</sup> funds.<sup>5</sup>

However, the incentive-based approach within the ENI (under the umbrella programmes) has in reality provided only limited incentives for Tunisia, already recognised as a good performer, to take further risks in terms of advancing politically-sensitive reforms. The "more for more" approach also proved difficult to utilise in combination with ENI's own financial mechanisms. The financial incentive was further reduced by the government's understanding that Tunisia was a strategic priority for all western donors, and did not rely on rewards to ensure that it received financial aid.<sup>6</sup>

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<sup>4</sup> The Support to Partnership, Reform and Inclusive Growth (SPRING) Programme aims to respond to the pressing socio-economic challenges that partner countries of the southern Mediterranean region are facing and to support them in their transition to democracy. All Southern Neighbourhood partners' countries will benefit from the programme. [http://europa.eu/rapid/press-release\\_MEMO-11-636\\_en.htm](http://europa.eu/rapid/press-release_MEMO-11-636_en.htm)

<sup>5</sup> EAMR 2011, 2012

<sup>6</sup> ENI evaluation 2014-2017

## 2.2 Implementation / choice of modality (EQ3)

<b>EQ3</b>	<b>To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?</b>
<b>JC31</b>	<b>High quality policy and political dialogue established: content (promotion of RoL and European standards and principles), frequency, synergies between operational (intervention-level) and high-level dialogue, etc.</b>
<b>JC32</b>	<b>Implementation strategies appropriately chosen and combined / complemented</b>
<b>JC33</b>	<b>Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)</b>
<b>JC34</b>	<b>Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into account.</b>

### 2.2.1 Summary of key findings (EQ3)

The choice of implementation approach and aid modalities has been appropriate to support the democratic transition and RoL efforts, given the institutional weakness of the government and national agencies to adapt to the change of regime. Policy dialogue on RoL and promotion of human rights has always been constructive, with a few differences of view on EU norms and values. The twinning programmes, despite their relevance, were not optimally implemented due to the legislative and administrative delays taken by beneficiary administrations and their difficulties to absorb the delivered expertise.

### 2.2.2 Policy dialogue (JC31)

With the transition phase, the EU was able to initiate policy dialogue with the authorities on issues of democratic governance, human rights, women's rights, and media. In the framework of PAR III (support recovery programme jointly financed by the EU, the WB, the AfDB and France), this contributed to notable advances, such as the creation of the national preventive measure against torture. Overall, the dialogue with the National Coordinator (Ministry of Development and International Cooperation - MDCl) has led to the achievement of positive results, especially for the democratic governance aspects contained in the Recovery Support Programme (PAR III). This budget support programme did not specifically target the RoL sector but rather focussed on general economic recovery and governance purposes.

High level policy/political dialogue are taking place in the framework of the entities of the Association Agreement (signed in 1995): i) Association Council; ii) Association Committee; and iii) two technical sub-committees (Justice and Security, and Human rights and Democracy). These subcommittees have not met regularly since 2011, but did so in the last years (5<sup>th</sup> meeting organised in January 2017 for both subcommittees). The committees are preceded by preparatory tripartite consultations, convening the Tunisian authorities, civil society representatives, the EU, and some EU member states as observers.

Association Councils examine the progress of the relations between the EU-Tunisia on the implementation of the action plan for a "privileged partnership" (2013-2017), namely on the first axis focusing on an in-depth political dialogue and cooperation: in particular the reinforcement of high-level political dialogue, parliamentary cooperation, cooperation on justice, democracy and the rule of law, as well as on gender equality, Human rights and fundamental freedoms, and strengthening of co-operation with the Council of Europe and other international organisations are planned. The last engagements made during the Association Councils and the subcommittees in the RoL sector refer to EU support to the finalisation of the legislation harmonisation and conformity process with the Constitution and international norms (including the criminal and criminal procedure codes), the reinforcement of democratic institutions including the Parliament and media, the creation and implementation of constitutional and independent institutions, support to reforms in the administration of justice, the fight against corruption, the establishment of the Constitutional Court and the transitional justice process. Tunisia requested the support of EU on other measures relating to the improvement of

gender equality, human rights and children's rights (see chapters 3.1.5 etc.)<sup>7</sup>. The policy dialogue in the RoL sector with relevant ministries is also satisfactory. For instance, the existence of a national representative in the Project Management Unit of the PARJ (RNP) facilitates dialogue with the Ministry of Justice and follow up on decisions and validations to be made for the Programme's advancement. The productive communication established between the MoJ and the RNP has favoured the Programme's smooth cooperation process, despite a succession of eight ministers since 2012.

During the first consultations with civil society following 2011, CSO's capacity to participate effectively in sectorial and political discussions and meetings with the international community, including the EU, and with the Tunisian authorities, appeared limited, and discussions were sometimes not very constructive, often due to a lack of experience, as most CSOs were created only after 14 January 2011. It was necessary to improve CSO's analytical ability, and familiarise them with partnership agreements, international treaties, programming documents or budget support, and to prepare them for sectorial or political discussions and meetings with the international community, the EU, and Tunisian officials. In this context, the EUD put in place a structured dialogue aimed at improving the involvement of Tunisian civil society in the implementation of the Action Plan for the Privileged Partnership, and increasing its effective contribution to the process of democratic transition, which also responded to an expectation expressed by civil society organisations.

The project on the "mobilisation of civil society in the monitoring of the relations between Tunisia and the EU" (see 2.1.3) implemented by EMHRN aimed to establish a tripartite dialogue between civil society, the Tunisian authorities and the EU on the major issues facing Tunisia, in the areas of justice, gender equality, human rights and migrants / refugees; and economic and social rights. Each working group, composed of some twenty representatives of the most dynamic Tunisian associations, met regularly for debating sessions. This created space for advocacy and constructive exchange with representatives of ministries, as well as with representatives of the EU and the Member States.<sup>8</sup>

EAMR Reports and the ENI evaluation 2014-2017 confirm that ENI support to CSOs has been crucial, helping them to consolidate their status as stakeholders in the consultation processes and in policy dialogue. CSO are however requesting government to facilitate their involvement in the preparation of legal reform, and to have more access to information in order to control public actions<sup>9</sup>. The government has still not organised a systematic consultation process with CSOs due to a lack of resources. They have also requested the EU to provide more follow up on the Association Council's discussions.

Organisations serving women are closely consulted and involved in all initiatives involving civil society. In particular, their opinion helped to define the actions to be carried out under the bilateral gender equality program, which included an important advocacy component relating to the preparation of the future law against violence against women.

Consultations with civil society also accelerated in 2014 and provided the roadmap for EU engagement with civil society for the period 2014-2017. It has been prepared by the Delegation of the European Union and the Member States, in consultation with civil society, technical and financial partners and the Tunisian Government. The priorities of the roadmap are: strengthening technical capacity, management and structuring of civil society organisations; creating an enabling environment for civil society action; strengthening the effective participation of CSOs in national and local political dialogue and policies and strengthening effective coordination between CSOs and Technical and Financial Partners.<sup>10</sup>

### 2.2.3 Choice of implementation strategies (JC32)

The Programme Supporting Justice Reform was implemented through decentralised management with the MDCI. It included various aid modalities: twinning, centralised management for OSC and joint

<sup>7</sup> Operational conclusions, association agreement EU-Tunisia, 5<sup>th</sup> meetings of the subcommittee "Human Rights and Democracy" (Brussels, 18 January 2017) and 5<sup>th</sup> meeting of the subcommittee "Justice and Security" (Brussels, 20 January 2017". 14<sup>th</sup> sessions of the Association Council (Brussels, 15 May 2018).

<sup>8</sup> EAMR 2011 to 2017, interview with EU Delegation

<sup>9</sup> Summary of the discussions – preparatory tripartite consultation to the political dialogue of the subcommittee on justice and security EU-Tunisia (Tunis 13 January 2017).

<sup>10</sup> EAMR 2011 to 2017

management/ contribution agreements with International Organisations (UNICEF for the justice for minors and UNOPS for the infrastructure and ICT).

The use of institutional twinning was favoured for institutional and legal advice activities, the training of judges and civil servants, the realisation of various studies and strengthening the capacity of the administration. Grants with civil society were contracted with the procedures of calls for proposals or direct award. The Call for Proposals covered the objectives of the three components of the PARJ, namely with grants awarded to Avocats sans Frontière and Penal Reform International. Finally, contribution agreements with international organisations (UNICEF and UNOPS) were used. UNOPS provided IT services, equipment and infrastructure work for the renovation or extension of existing buildings but not the construction of new prisons. Finally, long-term technical assistance was made available to the beneficiaries of the programme (state and non-state actors) to provide them with support in the formulation of their needs and for the reinforcement of their capacities.

Contribution agreements were proposed to UN agencies on specific topics: support to the Constituent Assembly and the transitional justice process with UNDP, the juvenile justice component of the justice reform project with UNICEF and renovation of the courts and prisons with UNOPS. The choice of this modality was justified by the emergency of the situation as International Organisations (IOs) were immediately operational and because the government did not have the capacity at the time to improve legislation and harmonise it with international conventions without assistance from the UN. The Delegation ensured that the visibility of the EU was systematically guaranteed by the IOs during the implementation of the projects.

UNOPS operated based on the request of the Government for the renovation of prisons and courts also given the slowness of the procurement procedures in Tunisia, the rate of 20 to 25% of non-execution of the budget, and to minimise the costs (the commission of the private sector being double than the management costs required by an OI).

Many TAIEX actions were also financed in the area of independence of the judiciary, the professionalism of magistrates, the fight against corruption and the strengthening of the ARP (through study visits, seminars on the fight against corruption and a workshop on the acceleration of asset recovery procedures, jointly organised by the EU and the World Bank in June 2012 in Brussels, as well as a seminar on standards in the field of magistrates' evaluation).

The Civil Society Support Programme (PASC) adopted in 2012, was directly managed by the EU (and not through a ministry), providing neutrality to the action and guaranteeing independence to the NGOs to effectively strengthen their contribution to political dialogue, the consolidation of the rule of law and socio-economic development of Tunisia.

At the regional level, the EU funded the project "Strengthening Democratic Reform in Southern Neighborhood Countries" (South Program), implemented by the Council of Europe from 2012 to 2018, with a budget of EUR 4.8 million for the period 2012-2014. This programme aims to strengthen the process of political and democratic reform in the countries of the region, including Tunisia, in accordance with European and international standards (see the case study on this programme).

The EuroMed Justice III project funded by the EU with a budget of EUR 5 million for the period 2011-2014 built on the successes achieved by EuroMed Justice I and II, such as the development of a Euro-Mediterranean area of cooperation in the field of justice, by supporting the strengthening of the capacity of partners and promoting the modernisation of justice, including better access to justice.

The EuroMed Justice IV programme that starting in 2015 was identified in the AAP of PARJ 2 as an important moment to ensure / reinforce synergies with the PARJ as independence and access to justice were identified as key topics.

#### **2.2.4 Synergies and complementarity within the portfolio (JC33)**

The EU Delegation has put in place complementarity mechanisms combining bilateral programmes and thematic programmes in the field of justice, gender equality, human rights and democratic governance mainly. The strategy aims to strengthen national institutions through bilateral programmes and to strengthen civil society in its advocacy work to advance reforms in targeted areas (EAMR 2014).

The Action Fiche of the PARJ 2012 and following annual action programmes confirm that many projects have been launched under the Instrument for Stability (IFS, new IcSP), the EIDHR and the Non-State Actors Thematic Programme.

The objectives of these thematic programmes have only started to be detailed in the EAMR 2017. However, from the list of EIDHR grants since 2010, it appears that the objectives and priorities of these projects covered the following areas:

- Defending and promoting the rights of the child, in particular through the protection and prevention of abuse, violence, and child labour;
- Preventing and combating all forms of discrimination, in particular racial discrimination and any unequal treatment due to mental or physical disability, nationality, or sexual orientation;
- The promotion of a democratic culture of dialogue and consultation between the different actors at national and local level, in particular through the monitoring, observation and promotion of a reliable and transparent electoral process;
- The support of civil society organisations in the promotion of human rights and democratic reforms; and
- The defence of socio-economic rights of vulnerable groups.

### **2.2.5 Efficiency, monitoring and visibility (JC34)**

Despite the generally appropriate choice of twinning programmes to meet the expectations of the beneficiaries in the RoL sector, especially in regards of the twinning programme supporting the Parliament, the three twinning projects implemented under the PARJ were less efficient. They all appeared too short in duration to meet their ambitious objectives and were not cost-efficient as they could not be absorbed by the MoJ's despite their alignment with its action plan 2015-2019.

The internal monitoring process within each project, with a few exceptions, was followed according to plan, conducted through the preparation of monthly performance matrices, regular meetings of project steering committees and technical committees, as well as regular reporting (3 to 6 months depending on the project). This regular follow up process, including the close involvement of the EUD in this process, is acknowledged by the monitoring and evaluation reports as a positive element of the PARJ, having contributed to the strong partnership and participation process established between the project and the stakeholders.

Monitoring and evaluation missions of the PARJ, and its different twinning projects and agreements with UN agencies, have been conducted in 2016 and 2017, and have resulted in the extension of the different projects.

The EUD has decided to assemble all projects budget lines on communication to make visibility more transversal and effective. The visibility of the PARJ has been gradually improved, notably thanks to the recruitment of a permanent communication officer in the UGPARJ. Despite the development of a website, media publications and other relevant communication tools, the programme did not appear to be sufficiently known by certain judicial partners, nor adequately advertised in the regions.

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination / complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

Despite the numerous actors present in the field of RoL and justice in Tunisia, the EU is the biggest donor in the sector. There has been active coordination with other international agencies and MS institutions, namely in the justice and penitentiary sectors and in the civil society sector. International organisations under contribution agreements have also participated in steering.

### 2.3.2 Partnerships established at global level (JC41)

This JC is examined in the overall analysis in Volume I, the main report.

### 2.3.3 Coordination with EU MS / other donors at country level (JC42)

Coordination with the MS occurred at the thematic level in the sector of RoL, namely on human rights issues with a specific group of political advisers. The Delegation prepared a roadmap for progress towards joint programming in December 2013, which was unanimously approved by the Heads of Mission on 17 January 2014, however, joint programming was difficult to achieve until 2016, given the Tunisian context and the lack of visibility and political framework (a National Development Plan was elaborated in 2016). A common strategy has been finalised in 2018, and remains to be validated.

Since January 2012, the EU Delegation in Tunisia initiated a process of coordination of donors and major organisations providing support in the field of justice (Council of Europe/United Nations Development Programme / UNDP, Office of the United Nations High Commissioner for Human Rights / OHCHR, United Nations Children's Fund / UNICEF, Member State Embassies, DCAF, American Bar Association / ABA, World Organisation Against Torture / OMCT, Avocats sans Frontières Belgium / ASF, etc.). The EUD initiated coordination meetings within groups on different thematic issues, involving PARJ contractors as well as Tunisian and international NGOs active in the field. However, the MoJ never assumed the coordination process, and only the group on penitentiary affairs continues. The US (INL), other donors' agencies or international organisations (UK, Centre pour le Contrôle Démocratique des Forces Armées (DCAF), Organisation Mondiale Contre la Torture (OMCT), l'Institut Arabe des Droits de l'Homme (IADH) are also intervening in the penitentiary sector.

The EU has also tried to galvanise a coordination entity involving donors supporting civil society. It aims at strengthening the Jamaity" platform funded by the EU<sup>11</sup>.

UN agencies proposed contribution to actions on RoL subjects: this was the case for the support to the Constituent Assembly with UNDP and the juvenile justice component of justice project with UNICEF. International Organisations also participated in programme steering committees where they received funding (ex: PARJ, Gender Equality Program).

The EUD regularly participated in coordination meetings on good governance and the fight against corruption organised by UNDP.

<sup>11</sup> <https://jamaity.org>

### 3 Effects of the EU support to RoL

#### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy / strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion / minority rights / gender) and democracy issues into partner countries' RoL policy</b>

##### 3.1.1 Summary of key findings (EQ5)

Tunisia has made significant progress towards consolidating the RoL and democracy. But the process of translating the democratic principles and fundamental values enshrined in the Constitution into functioning institutions, effective legal procedures and an efficient justice system remains incomplete. Compliance with international commitments in terms of respect for human rights and fundamental freedoms remains an important priority for the transition, including the setting up of independent bodies provided for by the Constitution and international conventions, including the Constitutional Court.

##### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)<sup>12</sup>

###### Legal and Constitutional reform

The constitutional and legal reform process, that has occurred during the transitional period, started after the election of the National Constituent Assembly in October 2011 and has ever since much evolved and built in conformity with EU and international standards (except for a few), even if at a slow pace. The following major laws in the RoL and the Constitution were promulgated in a period of six years:

- Legislative Decree No. 2011-88 concerning associations was promulgated in 2011 after the change of regime and satisfactorily guarantees freedom of association;
- The legislative Decree 2011-120 of 14 November 2011 on the establishment of a national anti-corruption authority;
- The law establishing an independent body for the organisation of elections was adopted in December 2012;
- The law on the Provisional Judicial Supervision Authority was adopted on April 24, 2013;
- The organic law n ° 2013-43 relating to the National Instance for the Prevention of Torture (INPT) was adopted on 21 October 2013. This law makes public prosecutions relating to crimes of torture imprescriptible and provides for the establishment and general operating procedures of INPT. Its members were only nominated in 2016 due to political blockages. The Instance remains under-resourced and has limited visibility;
- In December 2013, the government passed an Organic Law on Establishing and Organizing Transitional Justice, and established a Truth and Dignity Commission to deal with cases of torture and intimidation by the former regime (see further details below);
- The new Tunisian Constitution was adopted by the ANC on 26 January 2014 and came into entry on 10 February 2014, after numerous consultative process and inputs from civil society and international partners, including EU;
- Criminal reform has been on-going since 2014 with the establishment of a commission working on the reworking of the Criminal Code and Code of Criminal Procedure. This commission is completing its reform work, but has chosen to first proceed with urgent modifications and sequential laws before revising the entire codes as previously foreseen;

<sup>12</sup> Information sources in progress reports, programme action fiches or projects' descriptions, and ROM reports

- In 2016, the amendment of Article 13 bis of the Code of Criminal Procedure reduced the duration of police custody to 48 hours renewable once, and introduced the right to the presence of a lawyer;
- A new law on access to information was adopted by Parliament in March 2016. This law defines the right set forth in Article 32 of the Constitution and establishes an independent authority for access to information;
- The law on the Constitutional Court was passed in November 2015, however the Constitutional Court has not yet been created, as the four judges to be elected by the Parliament did not receive the accord of representatives (March 2018);
- The organic law establishing the Supreme Judicial Council was adopted on 28 April 2016;
- The Whistle-blower Protection Act was adopted in 2017;
- The Independent institutions foreseen in the Constitution: the ISIE (Independent Higher Instance for Elections) has been created and is operational. Two independent interim bodies, the National Counter-Corruption Authority (INLUCC) and the Independent High Authority for Audio-visual Communication (HAICA) are operational until their constitutional successors are in place. The law defining the mandate of the successor of the INLUCC was adopted in July 2017, while the law on the successor of HAICA is still on the agenda of Parliament. The two other constitutional bodies: the Human Rights Institution and the Entity on Sustainable Development and Rights of the Future Generation are not yet in place;
- On 26 July 2017, Parliament unanimously adopted the Comprehensive Law to Combat Violence against Women, following many years of engagement of civil society and government.
- On September 13, 2017, of a law on “reconciliation in the administrative field” provided a serious setback to the transitional justice process, as it offered impunity for civil servants implicated in corruption and embezzlement of public funds but who did not benefit personally.

#### Capacity of Parliament/ elections

The National Constituent Assembly (NCA) elected in October 2011 had two functions as it was mandated to draft the Constitution and to act as the provisional parliament of Tunisia until the Constitution was adopted and new elections for a permanent parliament could be held. Public servants working at the secretariat of the National Assembly prior to the Revolution were used to a non-pluralist system and had difficulty understanding their role and the role of the Assembly under a new democratic system. Moreover, newly elected parliamentarians had a limited understanding of the need and benefits of public consultation, lacked capacity and limited means to develop new regulations, tools, and infrastructure needed to create this consultation space. There was no procedure in place for research work and the drafting of laws.

The parliamentary elections of October 2014 allowed for the transition from a temporary institution to a permanent and more "classical" parliamentary institution in its role and its functioning, the Assembly of People's Representatives (ARP) is leading to delays in the vote of the laws, although consideration is on-going as to how to improve the process. Control mechanisms need to be improved, due to a lack of coordination between commissions and other resource issues. Notably, representatives do not have offices and assistants to facilitate their work. The Parliament's budget is 30 million Tunisian dinars (EUR 10 million), which is primarily disbursed on salaries of representatives and support staff.<sup>13</sup>

The EU funded the second component of a programme supporting the constitutional and parliamentary process (implemented by UNDP from September 2012 to June 2016) by providing technical and logistical assistance to the Assembly in the exercise of its parliamentary functions. The objective of the project was to strengthen the capacity of the NCA to assume its legislative, control and representation functions. The project intervened on several aspects: support to the elaboration of the constitution, restructuring of the parliament and national dialogue (with support to the civil society). A mid-term evaluation of the project in August 2014 assessed that given the urgency and importance of developing a new Constitution for the Tunisia, the activities reinforcing the capacities of the NCA were naturally relegated to the second plan by the deputies and staff. The project partially met its

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<sup>13</sup> Information provided by the CRJ (Conseiller resident jumelage) of the twinning project and a UNDP project manager

objectives: thanks to this support, the Assembly was able to better enact laws and better involve citizens in the policy formulation but many of the project's activities could not be completed due to the political challenges that the NCA faced in 2013 (political assassinations) and the slow pace in setting up activities. However, the project had completed important needs' assessments and made detailed recommendations for the training of MPs and staff. The project was therefore reoriented during the second period (2014-2016) based on the new priorities required by the new constitutional framework, as well as the priorities expressed by the new leadership of the ARP and the specific priorities expressed by the European Parliament in its capacity to support the new ARP. The expected results of the prolongation entailed:

- An enhanced support for constitutional and parliamentary work, particularly with regard to the sensitive aspects of democratic transition (institutional and administrative reform);
- A structuring and strengthening of technical cooperation and political dialogue between the European Parliament and the ARP;
- Strengthening the effectiveness of Tunisian parliamentarians and parliamentary groups.

On 4 November 2015, the European Parliament and the ARP established a mixed parliamentary cooperation commission (with 12 members from each Parliament), which met in Brussels on 18 February 2016.

The EUD decided to follow up on this intervention by a twinning project for a period of three years (January 2017 –January 2019) with funding of EUR 1,63 million (under the support programme to the association agreement and to the transition (P3AT)), in order to adopt a more neutral and apolitical position. The project seeks to consolidate the role of ARP in strengthening democracy and the rule of law, and to reinforce its institutional capacities for the efficient exercise of legislative power, in conformity with the 2014 Constitution (see section. UNDP continued its assistance to the Parliament without EU funding, completing the interventions of the Twinning with no overlap. They work on institutional support (including control of the law's implementation, support to special commissions (e.g. governance) and reinforcement of capacities. They are also supporting citizen participation to ensure greater transparency through interactions between representatives and CSOs.

In 2011, 2014, 2015 and 2017, through the European Instrument for Democracy and Human Rights (EIDHR) and the Country Based Support Schemes (CBSS), the EU has contracted actions to be implemented by civil society to observe and support the electoral process, support political parties, support the participation of citizens in democratic processes, strengthen the accountability and capacities of the elected representatives, train women candidates; and organise campaigns awareness and electoral education.

#### Legislative process

The TA to the PARJ has contributed to supporting the legislative reform process, namely through expertise supporting the commission revising the Criminal Code and Criminal Procedure Code, by exchanging on amendments in line with Tunisia's international obligations, and the new Constitution. The inputs from EU experts have specifically helped the commission to borrow certain European principles and techniques. The reform commission drafted the first book of the Criminal Code containing the set of general principles, as well as the definition of new alternative penalties. The MoJ requested a consultation of practitioners on this project and the technical assistance organised four workshops in Sfax and Sousse in December 2017, and Tabarka and Tunis in January 2018. The TA of the PARJ was also requested to formulate propositions of draft laws on alternatives to imprisonment, prior to the revision of the entire criminal code. Both draft projects and the national consultation have been taken over and discussed by an internal working group within the MoJ, and were planned to be submitted to the Council of Ministers and the ARP.

The TA of the PARJ has also been requested to support the commission established within the MoJ to work on the drafting of a revised code of civil and commercial procedures. The MoJ foresees only ad hoc reforms on urgent aspects of the code and requested TA of the PARJ to provide an analysis of the provisions of the code in force and recommendations on reform in line with this strategy.

Technical expertise and support to the functioning of the Constitutional Court is included in the new phase of the Justice Reform program, PARJ 3.

The EU programmes adopted in 2017 to support the constitutional independent bodies and the civil society aims to accompany the establishment of independent constitutional bodies and other independent bodies and provide them with support in the exercise of their statutory functions.

The EU supported gender integration in the Tunisian's policy framework through the bilateral programme on the 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 on the fight of violence against women, sent to Parliament.

### 3.1.3 National RoL policy / strategic framework (JC52)

Justice sector reform has been gradually constructed and the democratic institutional framework needs to be completed in order to implement the provisions of the Constitution.

In regard to strategic reform, the Ministry of Justice initiated a reflection on the reform of justice following the diagnostic mission of the judiciary / prison sector organised by the EU in 2011 ("peer review mission").

This was first translated into a roadmap in 2012, then in a Strategic Plan for the justice reform (2012-2016). A national consultation was then organised to feed into the "Strategic Vision for Justice Sector Reform" whose main lines of action were adopted at the end of December 2013.

A more detailed strategy of judicial and penitentiary reform was then adopted in May 2014 and a 2015 – 2019 action plan finalised in September 2014. Its main strategic priorities and expected outcomes include:

1. The independence and autonomy of the power of justice;
2. The accountability of the judicial and penitentiary system;
3. The quality of justice and the protection of citizens' rights;
4. Access to justice;
5. Communication and partnership.

A National Strategy for Human Rights was also elaborated for the period 2012-2016.

Based on the 2013 Law on the transitional justice process, the Truth and Dignity Commission (IVD) was established and commenced in December 2014. This law provided a set of mechanisms aimed at determining the truth about human rights violations between 1955 and 2013, as well as prosecuting alleged perpetrators, compensating and rehabilitating victims, preserving memory and providing guarantees that such violations would never reoccur. The IVD adopted a strategy encompassing the period 2015-2018, and started to transfer cases to the specialised chambers in March 2018; twelve hearings were conducted in 2017.

#### 3.1.3.1 EU contribution to the observed changes

The PARJ has supported the various strategic reforms of the MoJ. PARJ 1 (EUR 25 million) was implemented from October 2012 to October 2018. 80% of the total amount had been disbursed to the end of the last programme estimate (October 2017). PARJ 2 (EUR 15 million) came as a prolongation of the first programme to support the justice sector, and the financing agreement was signed in April 2015, with a period of implementation running until April 2021. The PARJ 3 has not yet commenced, with the financing agreement to be signed before end 2018. It will involve a new modality (budget support) in order to support the implementation of further reforms and lead ownership of the introduction of budget management. Twinning projects under PARJ I encountered many obstacles mostly due the slow legislative process, as the project relied on the adoption of certain laws to progress. Moreover, the frequent changes of ministers implied some change of priorities/ opinions and the budgetary constraints impeded the reorganisation in the ministerial directions and units (see under section 4.2.4).

Under PARJ II, the EU is supporting the operationalization of transitional justice in Tunisia through a three-year project (2016-2018, EUR 800.000) implemented by UNDP and OHCHR. The project supports transitional justice hearings, by reinforcing the capacities of magistrates appointed to specialised chambers, and other actors responsible for dealing with past human rights violations. It also assists with the implementation of mechanisms for the protection of victims and witnesses. An investigation strategy and a strategy for the protection of victims and witnesses were elaborated, and a protection unit was established. Hundreds of lawyers and magistrates were sensitized on transitional justice, and magistrates trained on the conduct of transitional justice criminal cases. By the end of October 2017, the IVD had heard more than 35,000 victims and handled 16,430 cases, and 5,652 cases were investigated.

### 3.1.4 Integration of HR and democracy issues (JC53)<sup>14</sup>

#### Gender

On August 13, 2017 (Women's Day in Tunisia), the President of the Republic announced several important measures for women: the possibility of marriage with a non-Muslim and the creation of a Commission on individual freedoms and equality to propose recommendations to ensure equality of inheritance.

Substantial preparatory work was conducted by the EU Delegation on the issue of gender-responsive budgeting, which materialised in 2017 through several pilot initiatives set up in key ministries.

The objectives of the Action Plan for equality between women and men to which the Delegation and the Member States contribute are as follows: - Girls and women do not suffer any form of violence against them, both in the sphere of private than public (Goal 7) - Equal access to financial services, productive resources such as land, trade and entrepreneurship for women (Goal 15) - Equal rights and capacities of women to participate in political and governance processes at all levels (Objective 17).

#### Elections

The Tunisian authorities invited the EU to deploy an Election Observation Mission (EOM) to cover the 2011 and 2014 elections. In 2011, the EOM recognised the Tunisia legal framework complied with international standards for democratic elections "and that It contained "appropriate and essential measures for the protection of civil and political rights, including freedom of expression and association and the right to universal suffrage". In 2014, the EOM has considered that the Independent High Authority for Elections (ISIE), constituted beginning of 2014, had ensured a good organisation of the polls, in the transparency and impartiality, despite the very tight deadlines between the approval of the legislative framework and the elections.

The number of women elected to the new Assembly has increased to 70, or 32.3%, compared to 59 women in 2011.

#### Discrimination

The fight against all forms of discrimination is discussed within the framework of the EU-Tunisia association council subcommittee on human rights and democracy. During the subcommittee on 18 January 2017, Tunisia requested technical support from the EU to elaborate a draft law and an action plan to fight discrimination and guarantee citizens' rights in order to ensure an inclusive society.\_

#### Detainee rights

See prison conditions under Section 3.4.3.

The PARJ supported the penitentiary administration through different projects:

A grant contract with PRI (Penal International Reform) for an amount of EUR 442,754.34, allowing the modernization of the Tunisian prison system in the governorate of Sousse (prison of Messadine and the detention centre of Sidi El Anhi) to reduce recidivism and improve living conditions for inmates through the implementation of a prison model, focused on reintegration and the provision of services to persons deprived of their liberty (October 2015 - October 24, 2017). This project has implemented few activities and therefore achieved few results, mostly due to a failure to conduct a problem assessment/analysis, inadequate planning and follow up of activities, and lack of ownership by the judiciary, penitentiary institutions and CSOs. However, a criminal and penitentiary strategy has not been developed, and access of CSOs to prison services has been difficult to obtain.<sup>15</sup>

Another twinning project aimed "to develop the appropriate structures of the Ministry of Justice to pilot the implementation of prison reform and the effective application of international standards" (10-2015 to 9/2018). The programme included strengthening the institutional capacities of the General Direction of Prisons and Re-education (development of a strategy, reorganisation and functioning of the penitentiary system), support to the National School of Prisons and Rehabilitation (improvement of training), and gradual implementation of a national probation system to counter prison overcrowding, and guarantee prisoners' rights and their reintegration. Six probation offices have been established under this project and equipped with the support of UNOPS.

<sup>14</sup> Sources for this chapter derive from the progress reports

<sup>15</sup> Mid-term evaluation of the PARJ

The TA project of the PARJ also conducted a successful pilot project, by training 386 penitentiary officers on prison management and improvement of working conditions, developing training workshops. After the end of the pilot in December 2016, beneficiaries requested an extension of the pilot's procedures to eight other penitentiary establishments. A baseline study was also conducted for the DGPR to integrate the state of play of the workshops in its five-year plan (2017-2021). Another pilot is being developed in the form of Houereb.

#### Children's Rights:

Despite Tunisia having ratified all international instruments related to juvenile justice, and the adoption of a "child protection code" in 1995 introducing specific and appropriate mechanisms and procedures, the UN committee on Children's rights in 2010 noted inadequate implementation of the law, and a malfunctioning juvenile justice system. New provisions related to the rights and best interests of the child were integrated in the Constitution, and the five-year national development plan included reform measures on education and social protection. The EU supported a project implemented by UNICEF contributing to a more efficient and respectful justice system for minors in conflict with the law, to ensure better implementation of the law<sup>16</sup>. The project resulted in capacity-building of one thousand actors involved in the juvenile justice system on the better application of the law related to the specific needs of the child (including pedagogical and support materials for training schools). Over one hundred minors in conflict with the law have benefited from individual reintegration projects; they have also promoted alternative mechanisms to detention with the application of a "mechanism for supervised release" in five governorates, through partnership between CSOs and children's judges. An *ad hoc* committee was created at the level of the MoJ to discuss follow up of the mechanism, with the anticipated creation of a body overseeing "supervised release", for which the project developed a professional repository and training module. One mid-term outcome of the project, occurring after its termination, is the establishment of a juvenile justice unit under the MoJ that is intended to continue the interventions and to establish a permanent inter-ministerial coordination mechanism.<sup>17</sup>

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<sup>16</sup> Project entitled "Support to the improvement of the justice system for children in Tunisia" (3/2013 to 3/2017)

<sup>17</sup> Interview with the Director of the International cooperation at the MoJ.

## 3.2 Quality / efficiency of justice systems (EQ6)

EQ6	To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?
JC61	Justice system planning and budgeting improved
JC62	Infrastructures and equipment (e.g. facilities, IT systems) improved
JC63	Capacities, skills and procedures in key RoL entities improved
JC64	Legality ensured, harmonisation of domestic law with international law and jurisprudence promoted, and enforcement of international judgments improved

### 3.2.1 Summary of key findings (EQ6)

The justice sector remains under-budgeted, and the progress of legal and judicial reform is impeded by budgetary constraints. These constraints and the numerous political changes that occurred over a six-year period led to delays in implementation of EU funded projects. Despite these obstacles and the slow transition process, the judicial and penitentiary sectors that have been supported by the EU demonstrate positive early changes, in the alignment of procedures with European and international norms, and in the modernisation of working methods.

### 3.2.2 Justice system planning and budgeting improved (JC61)

The State budget for 2012 and 2013 in the field of justice amounted to approximately EUR 145 million, i.e. 1% of the budget. In absolute terms, the 2012 budget has increased by 15% compared to 2011. 75% of the budget concerns public remuneration, a large part has also been allocated to the rehabilitation of the courts and prisons that were damaged during the Revolution (PARJ action fiche 2012 and PARJ II ToR). The State budget for 2017 in the field of justice was of 542 million dinars – 182 million Euro (+ 10 % in comparison with 2016). In 2018, it was estimated at 591, 578 million dinars with an increase of 9.7 % in comparison with 2017. The current budget for the justice sector represents between 1,4 and 1,6% of the state budget and is planned to reach 1,9% in 2020.<sup>18</sup>

In August 2017, the ministerial council decided to increase the bonus of the magistrates of 1000 dinars for the judges of the 3rd rank, 950 dinars for the judges of the 2nd rank and 900 for the judges of the 1st rank. Moreover, a special bonus of 300 dinars was granted for judicial attachés to the anti-terrorism, economic and financial justice poles.<sup>19</sup> The salaries of the first president of the court of auditors and the first president of the administrative tribunal are now assimilated to the salary of a secretary of state or a minister.<sup>20</sup> Despite increases in the salaries of other civil servants, these remain low. Moreover, due to economic and financial problems, the Ministry of Finances decided to halt recruitment in the public service in 2018, adding to the deficiency of human resources at the MoJ level.

### 3.2.3 Infrastructures and equipment improved (JC62)

During the revolution, 14 tribunals and 17 penitentiary institutions were destroyed, which led the Ministry of Justice to engage considerable investments for the rehabilitation of infrastructure. The needs were estimated at EUR 156 million.

12 Trial Chambers of the administrative tribunal were created in May 2017. The government has also initiated the construction of a new tribunal for Tunis (paid from the state budget).

A national digital strategy was launched at the end of 2017, including the project “Digital Justice 2020” by the MoJ in cooperation with the Ministry of Technology and Communication; this strategy includes the automation of judicial cases. The MoJ has re-launched the automation projects of the criminal and civil justice systems, in February and July 2018 respectively. An integrated electronic information system enabling to access legal information directly on the MoJ portal is currently under study.

<sup>18</sup> Estimation provided by the National Representative of the PARJ during field mission.

<sup>19</sup> <http://www.businessnews.com.tn/de-nouvelles-mesures-decidees-en-faveur-des-magistrats,520,74214,3>

<sup>20</sup> <https://africanmanager.com/tunisie-certains-juges-vont-toucher-plus-que-les-ministres>

The EU supported, under the PARJ, the rehabilitation of three courts and two prisons through a contribution agreement with UNOPS of EUR 12.8 million under PARJ I, and EUR 9,2 million under PARJ II. The objectives were to improve the working conditions of the judiciary and the use of the judicial system and the tribunals of Nabeul, Sfax and Gabès, as well as the prisons of Messadine and Gabes were rehabilitated in line with international standards. IT equipment was also provided to MoJ structures. The agreement with UNOPS has been prolonged under PARJ 2, in order to carry out works in new identified infrastructures, to improve the information system already in place in the jurisdictions and to connect custody and penitentiary services, with the support of new equipment.

Moreover, the PARJ through a pilot project, provided training equipment for professional workshops in three prisons for the benefit of 355 sentenced inmates.

The electronic management of documents (“GED”) was done in several phases and is still underway. It includes the digital scanning of judgments and decisions from the tribunals and courts, as well as the scanning of notaries’ registries. The documents have not yet been centralised and the GED is entering into its consolidation phase during PARJ 2. A central server will be purchased in order to collect all judgements and decisions. The access to and use of the digital system needs to respond to citizen and magistrate users, and therefore requires the securitisation and certification of documents, in cooperation with the General Direction of Computerisation (DGI).

A Tunisian IT expert has joined the TA project supporting the PARJ to provide advice on the project and follow on the IT component implemented by UNOPS.

In the framework of its activity to reform the “judicial map”, the PARJ assisted the Administrative Tribunal, at its request, to support the creation of new administrative courts of first instance and the court of appeal provided for by the Constitution. A technical expertise was first provided to reform the working methods of the administrative tribunal. The previous support to the administrative tribunal, under the TAIEX instrument, had delivered methodological working documents and studies as IT equipment were not in place and the required human resources were not available for the required training, according to the final report of the implementing agency.<sup>21</sup>

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

A project funded under the Association Agreement Support Programme (P3A2), has enabled to support the Higher Institute of the Legal Profession (December 2011- December 2014, EUR 629,965). The project focused on modernising the Higher Institute to improve the professional practice of future lawyers. Its regulatory texts have been redesigned to make it a school of law enforcement and a training of trainers was launched. The Higher Institute has also started continuing education for practicing lawyers.

The twinning project supporting the training of the Justice personnel under the PARJ, implemented from October 2015 to September 2018, aimed to improve the capacities and skills of the judiciary through the strengthening of the Higher Institute of Magistracy (*Institut Supérieur de la Magistrature - ISM*), which receives its own budget from the MoJ to provide initial and continuous training programmes for judges, continuous training for clerks and initial training of notaries and bailiffs. This project brought substantial changes and modernisation to the training methods and approaches used by the ISM, through a participatory process and the creation of working groups to work on pedagogic instruments, revision of curricula and development of an annual training programme (catalogue), based on the needs assessment of jurisdictions at the regional level, through engaging and providing incentives to training coordinator judges (chiefs of courts) to collect and follow up on the needs requests. The project also allowed the ISM to deliver a professional initial training more oriented on practice, and continuous training that is more diversified, thematic-specific, “de-concentrated” in the regions (following the Italian model) and obligatory for judges with up to 16 years of experience (currently 6 years). The project also supported the creation of initial training for clerks (adding to the continuous training programme that already existed). Two projects were elaborated with the support of the Twinning project on the structuration and administrative / financial organisation of the ISM as well as on the system of studies and training (including among others: a change in the organogram including a director for training, the creation of a permanent training unit, the organisation of the entry examination of candidate judges by the ISM, thus taking over responsibility from the MoJ, the

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<sup>21</sup> Twinning programme implemented by the French State Council from January to July 2012

extension of initial training for bailiffs and notaries from 6 to 24 months etc.). The ISM has not established a monitoring and evaluation system for the performance of the training delivered, and would require additional support to do so.

Another twinning programme "Strengthening the capacities of the Ministry of Justice and Jurisdictions" (11/2015 – 10/2018) aimed to strengthen the institutional, managerial and organisational capacities of the MoJ and its jurisdictions. The project faced several constraints and delays linked to the political changes, namely for the implementation of components related to the revision of the legal and regulatory framework of the MoJ, the development of skills and capacities of the MoJ staff, and the implementation of the judiciary policy. This impeded the revision of the organogram and the structural reorganisation of the administration as recommended.<sup>22</sup> Instead of targeting broad aspects linked to legislative and procedural reforms that had not impact, the project refocused its attention on micro-interventions linked to working organisational methods and a training plan for MoJ staff.

The twinning project "supporting the Assembly of representatives" focuses on the professionalisation of the Parliament, strengthening its internal organisational process and administrative procedures: to legislate, amend laws and control the governmental action, but also supporting the functioning of the general services and human resources management. The ARP has gained complete ownership of the project, which adapted to the needs of the working groups formed for each of the 6 project components, and produced the necessary manual of procedures, practical guides, strategies and other products they requested for their work with the expertise support of their European pairs in the framework of a co-construction process. The UNDP project, that continued without EU finding, is complementing the twinning project and created a Parliamentarian Academy that allows the coordination of training programmes for parliamentarians and political advisers proposed by the various cooperation agencies supporting the ARP.

The PARJ has also delivered training to the Bar during one year on three aspects:

- The qualities required to be a defence lawyer;
- The lawyer-client relationship; and,
- Professional taxation issues.

### 3.2.5 Harmonisation of domestic law with international law (JC64)

Tunisia has increased its adherence to international human rights conventions, by ratifying several conventions: Optional Protocol to the International Covenant on Civil and Political Rights, Optional Protocol to the Convention against Torture and Other cruel, inhuman or degrading treatment or punishment, International Convention for the protection of all persons against enforced disappearances and recognising the status of the International Criminal Court in 2011.

The 2014 Constitution enshrines the presumption of innocence and respect for the rights of the defendant (Article 26), guarantees for detainees and access to the lawyer (article 28), equality before the law, the right to a fair trial within a reasonable time and access to justice (Article 105). It also states in Articles 29 and 30 the rights of detainees and equality before the law. Article 23 of the Constitution states that the crime of torture is not subject to a statute of limitations. However, the Constitution does not prohibit other cruel, inhuman or degrading treatment or punishment and institutional and legal reforms remain to be aligned with article 23 of the Constitution, with the aim of strengthening safeguards and prevention.<sup>23</sup>

Nevertheless, Tunisia is the first country in the region to have set up a national preventive mechanism in 2016, in accordance with the obligations of the Optional Protocol to the UN Convention Against Torture. Moreover, despite the *de facto* moratorium on the application of the death penalty, the new Constitution did not proceed to its *de jure* abolition.

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<sup>22</sup> ROM report November 2017

<sup>23</sup> United Nations, Human Rights Council, Working Group on the Universal Periodic Review - Twenty-seventh session - 1-12 May 2017 UPR – Report of the OHCHR on Tunisia

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence / impartiality / accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence / impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of RoL institutions is enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

The independence of judiciary is still a nascent concept in Tunisia as the Supreme Judicial Council was recently created and the legislative framework regulating the separation of powers between this institution and the MoJ is still not promulgated. Accountability mechanisms of RoL institutions are still under development, with the support of the EU.

#### 3.3.2 Independence / impartiality of RoL institutions (JC71)

In 2012, the appointment / promotion / transfer of magistrates continued to be carried out by the executive power. There are currently 2,300 magistrates, with recruitment of 70 to 200 per year necessary (vacant position numbered 250 in 2017); the number of women represented in the judiciary was 70% in the last intake.

The 2013 law on the Provisional Judicial Supervision Authority organised the composition of the body ensured greater independence in the management of judges' careers.

The Constitution of January 2014, in its Chapter V, guarantees the independence of justice, Magistrates' tenure and the establishment of a new Supreme Judicial Council (SJC) in April 2016. The SJC became operational in 2017 and organised the rotation of judges in September 2017.

The law creating the Supreme Judicial Council, does not include the distribution of competencies and functioning modalities attributed to this institution, the General Inspection of Judicial Affairs and the MoJ, which led to the impossibility of revising the legal framework of the MoJ.

Under the PARJ, numerous expert contributions were provided to support the elaboration of the SJC organic law. Moreover, methodological support was provided and an IT application developed to support the preparation of the movements of magistrates.

#### 3.3.3 Accountability of RoL institutions (JC73)

RoL institutions are still developing their judicial or legal / budgetary control mechanisms: this is true for the Parliament but also for the Judiciary, as the general inspection of the MJ and the SJC are still waiting for a law to regulate their respective competencies in terms of judicial control. Moreover, the Constitutional Court is not established so there is no possibility to invalidate laws that violate human rights confirmed in the constitution.

The component supporting to the statistic system of the MJ and the reform of the data collection, process under the EU twinning programme reinforcing the capacity of the MJ, has not been successfully achieved, as experts recommendations to change the collection and analysis system have not been validated.

Laws are accessible on the website of the Official Journal. However, the case-law of the Court of Cassation and the other courts and tribunals is neither accessible nor disseminated. The PARJ is working on digital scanning of the judgements of the tribunal and the decisions of the Court of Appeals with UNOPS.

The TA of the PARJ was requested, through the mobilisation of an expertise, to select, analyse and disseminate the jurisprudence of the Court of Cassation, which is not made public until now, so remains unknown by the other chambers of the Cassation Court as well by the other courts and tribunals, and prevents from a uniform and harmonised interpretation of its jurisprudence. The website of the Court of Cassation previously carried out by an expert from the TA of the PARJ was also examined, and proposals for amendments made. Discussions were initiated with the Case Law Research Unit of the Faculty of Law in Tunis for support to the academic analysis of jurisprudence.

Local civil society organisations and media are under-capacitated to monitor and control the implementation of justice reform, and few media organisations are effectively reporting on legal issues and judicial cases.

The project supporting the transitional justice system, funded under PARJ II and implemented by UNDP, has sensitised and trained journalists for the coverage of public hearings and on the protection of victims and witnesses. These actions were accompanied by the development of a code of ethics signed between the IVD (Truth and Dignity Commission) and the main professional organizations of journalists and media, which integrated the respect of minimum protection guarantees for victims providing evidence.

The TA of the PARJ also conducted a pilot project aimed at building the capacities of CSOs on internal management, and greater understanding of justice institutions, and reform to ensure greater oversight of the justice and penitentiary system. Meetings were organised between CSO, MoJ representatives and the director of criminal cases of the DGPR, to exchange on their roles and the key justice reform issues. Other dialogues were organised with the ISM on issues related to the training of magistrates and its own training. An international organisation (DRI) is publishing reports that periodically monitor the implementation of the Tunisian Constitution at the level of the legal framework.

### 3.4 Broader effects on the RoL (EQ8)

EQ8	To what extent has EU support to RoL contributed to sustainable fundamental improvement in the RoL and related aspects of human rights and democracy?
JC81	Access to justice strengthened
JC82	Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened
JC83	Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved

#### 3.4.1 Summary of key findings (EQ8)

Despite some legislative and procedural progress on access to justice and respect for human rights, the human rights protection framework guaranteed by the Constitution is not fully implemented. Human rights abuses and allegations of torture keep being denouncing during police custody and detention places, where precarious conditions are still a rule. However, EU through the PARJ is progressively influencing behavioural and legal changes (with a coming legalisation of alternative measures to detention). Access to legal aid remains cumbersome and weak. There has been backsliding on freedom of expression, based on the emergency law. However, progress have been achieved in the legal framework in favour of women rights. Fight again corruption et freedom of association remain challenging in practice.

#### 3.4.2 Access to justice strengthened (JC81)<sup>24</sup>

##### Penitentiary sector, criminal procedure and legal aid

In 2011 during the riots, around 10,000 prisoners escaped from prisons. The imprisonment rate in Tunisia was double the average rate in European countries and about 50% of prisoners were waiting to judgment. Then, there have been several amnesties and pardons, reducing the prison population to 21,000 prisoners, 10,000 fewer than before revolution.

The peer review mission of the justice system had pointed out the following malfunctions in the criminal procedure:

- lack of effective direction of the judicial police by the prosecution;
- the organisation of correctional affairs hearings was not controlled with several hundred set at each hearing, resulting in a large number of postponements and considerable loss of time;
- very high proportion of judgments pronounced by default (40 to 50%) leading to many oppositions and the unjustified holding of repetitive hearings in the same audience.

In 2012, judicial system was very congested with an appeal rate of more than 80%, resulting in prison overcrowding, conditions of detention beneath international standards as well as a weak administrative management system in terms of performance and efficiency. The custody procedure was not subject to the effective control of the judicial authority.

In 2013, out of 25 000 inmates in prisons, 55% were in preventive detention and prison occupancy rate exceeded 136%.

In 2014, overcrowding remained a problem with a high rate average occupancy of 150%. The 27 Tunisian prisons housed around 24,000 inmates, approximately 13,000 in pre-trial detention (55% to 60% of detainees). Cases of ill-treatment and torture of detainees were reported by human rights defence associations. The Criminal Procedure Code did not allow systematic access to a lawyer during police custody and the control of the judicial authority is effective only when custody is extended beyond three days.

The conditions of detention remained precarious with an average occupancy rate of around 150% and the lack of alternative measures to detention.

The Legal Aid Law, passed in 2002, provides for legal aid only in cases of serious crimes carrying a minimum prison sentence of five years, however the designation of pro-bono lawyers by the legal aid

<sup>24</sup> Information for this chapter stem from the progress reports 2011 to 2017

commission does not function well because cases are assigned to trainee lawyers who are inexperienced and not trained in the management of very sensitive files. Moreover, there is no oversight and quality control of the services performed.<sup>25</sup>

There are twenty-four judicial aid offices established by the MoJ in each first instance tribunals, providing judicial assistance in criminal and civil cases to indigent persons; however, many vulnerable persons are excluded from this assistance.<sup>26</sup>

The law guaranteeing the right for detainees to access a lawyer (2016) is not being fully applied, despite having improved the treatment of persons arrested (prevention of torture and abuse) and reduced provisionally the number of persons placed in custody.<sup>27</sup> According to the Ministry of Interior, only 22% of all suspects detained between June 2016 and May 2017 exercised their right to a lawyer. This law includes many gaps; among them, it does not change the criteria for access to legal aid and it does not provide for a minimum waiting period for the defence lawyer to arrive at the police station before commencing interrogation. The obligation of the police to inform detainees and their families of their right to be assisted by a lawyer is also not systematically respected<sup>28</sup>.

According to a member of the ministerial commission in charge of revision of the criminal code, a draft law on alternative measures to detention is now being finalised.

See the contribution of the PARJ under “Rights of Prisoners” under EQ 3.1.5.

The PARJ has also supported the implementation of a pilot project at Manouba tribunal, chosen by the MoJ, to study the functioning of the criminal chain, and provided a diagnostic and recommendations for a treatment of criminal case in real time, reorganising work methods and coordination between judicial police and prosecutors, with the delivery of the summons to the hearing of the person arrested. This pilot has been successful and resulted in the decrease of 30% of the judgements rendered in absentia. It is currently being replicated and extended to seven other tribunals.

Alternative measures to detention with the gradual establishment of six pilot probation offices, as well as reintegration and access to work programmes for prisoners have been advocated and supported under the PARJ (3.1.5)

Under the PARJ, a grant to Avocats sans Frontières (three years (10.2015-10-2018); EUR 500.000) was intended to support implementation of the action entitled: "ADELA- Improving Access to quality justice in Tunisia" implemented throughout the Tunisian territory with a focus on the regions of Greater Tunis, Gafsa, Kasserine and Sidi Bouzid (also funded by UNDP). The programme aimed to promote justice reform in the legal aid sector and greater confidence of citizens in the judicial system. More specifically, the project focussed on improving access to justice for people in vulnerable situations in the Greater Tunis, Gafsa, Kasserine and Sidi Bouzid regions in cooperation with social workers (from the Ministry of Social Affairs), lawyers from the Bar and civil society organisations, ASF reinforced the capacities of social workers and young lawyers to provide free primary legal consultations and to proceed with referrals to attorneys for judicial assistance. The programme also advocated for the draft law on access to a lawyer for people in police custody, and promoted dialogue between civil society and policy makers, namely through the organisation of a national conference on access to justice in 2018, in partnership with the Ministry of Justice, the Ministry of Social Affairs and many national and international organisations and agencies. This conference was the first to gather numerous stakeholders active in the field of access to justice, and to discuss reform of the legal and penitentiary systems initiated in 2015.

European projects in the area of access to justice were presented, and discussions resulted in recommendations to ensure coordination between all actors involved and to improve the efficiency and effectiveness of assistance by exploring new partnerships (ex: between the bar and universities to develop legal clinics).

### 3.4.3 Respect for human rights (JC82)

#### Human rights

<sup>25</sup> ASF and UNDP (2014). L'état de l'aide légale en Tunisie ». Information confirmée par les acteurs rencontrés.

<sup>26</sup> Information received by ASF during field mission

<sup>27</sup> Information received by EUD and ASF

<sup>28</sup> Human Rights Watch Report (2018).

On May 22, 2012, Tunisia was submitted to the second Universal Periodical Review of the Human Rights Council. The main questions raised concerned the reform of the judicial system, torture, freedom of expression and association, the reform of the security system, women's rights and the punishment of death. Tunisia accepted 110 recommendations of the Council and rejected three on the decriminalisation of defamation and homosexuality.

In May 2017, Tunisia was submitted to the 3<sup>rd</sup> UPR of the HRC. Despite the recommendation to bring national legislation in line with its international obligations, reforms regarding human rights obligations have been slow. Tunisia's support for recommendations to end torture and other ill-treatment and investigate allegations of torture has not been fulfilled in practice.<sup>29</sup>

Allegations of torture and ill-treatment by security guards, especially during police custody outside prisons and during investigations for terrorism-related crimes, continued to be denounced since 2011 and remain a source of concern, as noted in the 2017 UN's annual report of the World Organisation Against Torture (EU progress report 2018). To date, there has not been a single conviction for perpetrators, despite the presence of many victims of inhuman and degrading treatment; this has contributed to a prevailing "culture of impunity".<sup>30</sup>

The convictions of homosexuals on the basis of the Penal Code (Article 230) and the implementation of forced medical tests provided for in the Penal Code raise the question of the conformity of these provisions and practices with the Constitution (EU progress report 2018).

On 13 August 2017, the President of the Republic created a commission on individual freedoms and equality that published a report in February 2018 proposing reform measures aligned with the Constitution and international human rights standards, including recommendations to decriminalise homosexuality, outlaw so-called anal tests, eliminating offences relating to "infringement of morality" and to "public morality", guaranteeing equality between men and women in the field of inheritance, and abolishing the death penalty.

Many projects have been launched under the EIDHR Thematic Program, notably to support participation of civil society in consultation processes, promotion of human rights, children rights, non-discrimination, gender equality and prevention of violence.

In particular, the EU has been supporting assistance to victims of torture and ill-treatment and awareness raising on the prevention of torture and the fight against impunity, through the "SANAD" project implemented by the World Organisation Against Torture (OMCT). The project aims to strengthen the monitoring and advocacy of civil society organizations to facilitate access to justice for victims of torture and ill-treatment, supporting their rehabilitation through psycho-social, medical and legal assistance. OMCT also reinforces the advocacy of its civil society partners on torture prevention and the fight against impunity; through communication events, research, provision of subgrants to grass root organisations. OMCT also coordinated or participated in the drafting of alternative reports for submission to the United Nations Committee against Torture and the Human Rights Council.

#### Freedom of expression

The fall of the regime of President Ben Ali allowed the disappearance of most of the obstacles to freedom of expression, association and participation in political life.

The country has made significant progress in the ranking of the world press freedom index, which ranks Tunisia 97<sup>th</sup> out of 180 countries in 2018. The country was ranked 126<sup>th</sup> in 2015, 134 in 2011/2012, and 164 during the regime of President Ben Ali.

The constitution guarantees the freedoms of opinion, thought, of expression, information and publication which "cannot be submitted to a prior checking".

The country has ambitious legislative measures that enshrine the rights of journalists, prohibit restrictions on the free flow of information and protect their sources, in line with the Constitution. The Independent High Authority for Audio-visual Communication (HAICA) and the National Union of Journalists play an active role in ensuring media independence.

Despite these positive developments, pressure on journalists and bloggers, in particular, based on Article 91 of the Military Code and Article 128 of the Criminal Code, provide for heavy prison sentences in case of defamation of public and military authorities, are still denounced.

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<sup>29</sup> UPR Reports

<sup>30</sup> Project proposal of OMCT (2015 EIDHR project)

The EU is funding a programme supporting the Media (PAM), which started in February 2017 and is planned to end in January 2020. Its primary objectives are to reform the media legal framework, reinforcing the capacities of journalists and media on journalistic ethics, drafting releases on access to information, and instituting proceedings with the HAICA (independent constitutional body) .

Gender: Tunisia is ranked 117 out of 144 in the Gender Global Gap Index 2017.

Tunisia has improved slightly with a score of 0.651 from 0.629 ten years ago (the score of 1 representing total parity) and is currently ahead of other Arab states.

In 2014, the new Constitution gives women equal political and socio-economic rights that the State guarantees and undertakes to achieve (like parity in elected assemblies).

The State is required to take "the necessary measures to eliminate the violence against women ".

An experts' steering committee was instituted for the formulation of a draft law against any form of gender-based violence.

On 17 April 2014, Tunisia notified the United Nations (UN) of the decision to withdraw the reservations made at the time of ratification of the Convention on elimination of all forms of discrimination against women (CEDAW) in 1985. However, the Government stated that the provisions contained in the Convention will not be applied when in conflict with the Constitution.

The new electoral law, adopted at the beginning of 2017, introduces the principle of horizontal parity (all lists include equal numbers of women and men) and vertical (alternation between men and women in the same list), which should guarantee stronger feminine representation in the future.

In 2016, the Council of Peers for Equal Opportunities between Men and Women was created by decree. This committee is in charge of finalising a National Action Plan for the Institutionalisation of Gender in each sector. The members are composed of one person per Ministry / ARP / Presidency of the Government / Civil Society who will have to put in place a gender action plan within their entities.

Provisions discriminating against women remain in the Personal Status Code despite the fact that the principle of equality is enshrined in Tunisia's new Constitution.

The EU Tunisia's gender profile was developed in 2014 and was used as a basis for formulating a programme for the promotion of gender equality in Tunisia with Tunisian partners, whose financing agreement was signed in April 2015, for an amount of EUR 7 000 000: "Moussawat" programme.

The programme contributes to the achievement of gender equality in Tunisia by reducing inequalities at national, regional and local levels.

Three main components are funded:

- capacity building of the Ministry of Women, Children and the Family and its state and non-state partners in mainstreaming the gender approach;
- improving the participation of the woman in the economic and public life. A call for proposals was launched in 2016 with a large part of the funds allocated to economic participation and the implementation of the Entrepreneurship Action Plan of the Ministry of Women;
- contribution to reducing discrimination and gender-based violence.

In the other EU ongoing projects, the gender approach is applied (especially in the areas of justice, human rights, the media, strengthening of civil society, environment, etc.).

The Moussawat programme effectively assisted the Tunisian authorities in adopting the law and is now following its implementation. It has also sensitised the Council's members on gender. These people represent important entry points for the mainstreaming of gender by sector of intervention of the Delegation.

#### Freedom of association

The PASC (programme supporting the Civil Society) has been the result of an extended consultation and joint identification with 150 civil society partners and 60 technical and financial partners, including international organisations and Tunisian authorities, which took place in 20 governorates during the year 2012. In addition to Tunis, five regional civil society support offices have been created, which will enable harmonious and balanced development of the capacities of civil society throughout the country, and not in the capital alone.

The EU Civil Society Support Programme facilitated the regularisation of more than 1000 associations and provided support to improve the management of non-governmental organisations.

### 3.4.4 Governance and democratic processes (JC83)

Corruption Perception Index - Transparency International: Tunisia is ranked 74 out of 180 countries with a score of 42 points. The Corruption Index in Tunisia averaged 44.95 points from 1998 until 2017, reaching the lower record of 38 points in 2011 and 2015.

The survey on corruption in the Arab States of 2016 indicates that 64 % of people think corruption has increased over the past 12 months in Tunisia. 62 % think that the government is handling badly the fight against corruption. 5% people reported to have pay bribes to judges or courts officials. Citizens in Tunisia feel the most empowered to help fight corruption: 71%.

From 2011, the government had committed to fight corruption, and to prosecute outstanding cases - including those concerning the assets of family members of the former president. See legislative measures adopted under section 3.1.3. These measures were followed by:

- The establishment of a judicial pole in charge of corruption cases in the 1st Instance court in Tunis in August 2012 (operational since early 2013);
- On 8 December 2012, the Ministry of Governance presented a national anti-corruption strategy based on four major axes: establishment of a national integrity system, promotion of the National Independent Authority to fight corruption (which replaces the previous Commission), the strengthening of civil society participation and the training of specialised journalists;
- In 2016, the 2016-2018 Action Plan linked to the national strategy on good governance and the fight against corruption was adopted as well as the organic law relating to the judiciary economic and financial pole dealing more independently with the treatment of corruption and money laundering cases.
- The National Anti-Corruption Agency will be replaced by the future Governance and Anti-Corruption Forum, stipulated by the Constitution. This was created by the organic law of August 27, 2017;
- Following the candidacy of Tunisia to the Council of Europe Group against Corruption (GRECO) in March 2017, a review of Tunisia's institutional and legislative anti-corruption framework, including recommendations, was finalised in 2017 according to the methodology of GRECO.

However, on 13 September 2017, the Parliament adopted the so-called law on “reconciliation in the administrative field” supported by the President despite strong opposition from a number of MPs.

Initially, the bill provided for the amnesty of certain persons - businessmen, members of the regime of the ousted dictator Ben Ali and others - prosecuted for corruption, in return for payment to the State of illegally acquired sums and a financial penalty. Nevertheless, the law has been revised to include only officials who are accused of being involved in administrative corruption and have not received bribes.

Moreover, following conclusions of the FATF on 13 December 2017, on the strategic deficiencies of Tunisia in the fight against money laundering and fight against the financing of terrorism, Tunisia was included by the Commission in the EU list of "high risk third countries", in line with the requirements of the 4th Money Laundering Directive. Tunisia has therefore made a political commitment to implement an action plan to respond to FATF recommendations.

The EU has supported projects supporting the fight against corruption through the TAIEX instrument, notably the implementation of the Whistle-blower Protection Act.

#### Civil Society

Freedom of association has been reinforced by the adoption of the new law on associations (Decree No. 88 of September 2011) which facilitates establishment of new associations (by simple declaration and no longer on the basis of formal authorisation), authorises the legal constitution of networks of associations (previously prohibited) and gives the possibility to international organisations to open offices, under the same regime as national organisations.

The 2014 Constitution guarantees the freedoms of assembly and peaceful demonstration.

Despite the liberalisation of the legal framework concerning freedom of association, the directorate responsible for monitoring the activities of associations lacks resources and the law is hardly enforceable. New organisations face difficulties in registering.

The Ministry of Civil Society and Human Rights is preparing a draft law that regulates associations in Tunisia to replace the current law governing associations and to strengthen the mechanisms for

controlling the financing of associations. The Ministry has convened a committee of experts to draft the new law and has said it will conduct a series of consultations with civil society before submitting the draft law to the parliament. Civil society is concerned that this new law will introduce restrictions against associations/CSOs.

The financing agreement of the Civil Society Support Programme (PASC) was signed in early July 2012. The programme aimed inter alia to strengthen the structuring of Tunisian civil society organisations and frameworks for consultation and communication between Tunisian civil society organisations, as well as setting up frameworks long-term consultation and cooperation at local, regional or national level local authorities and local authorities, on the one hand, and CSOs, on the other. Its specific objectives were to: 1) strengthen the operational capacities of Tunisian CSOs; and 2) improve the institutional and legal environment of Tunisian civil society organisations. In the RoL sector, it was essential that organisations were sufficiently structured to be able to participate in PARJ and to play their role in the context of justice reform and democratic control of prisons. A final evaluation conducted during the identification process of the programme supporting civil society and independent institutions (2017) highlighted the high relevance of the PASC, but also its effectiveness. Positive results were achieved through well-defined strategies and effective decentralisation of its institutional set-up represented by 6 field offices in the regions and about 15 focal points covering the 24 governorates. This experience enabled the effective accompaniment of partnership dynamics between the civil society and the public actor at local and regional level.

In addition, the programme "Mobilisation of civil society in the monitoring of relations between Tunisia and the European Union", launched in 2012 and implemented by the Euro-Mediterranean Human Rights Network (EMHRN), made it possible to implement one of the axes of the European policy of strengthening dialogue. policy. This programme continued for a second phase and runs until December 2018.

#### **3.4.5 Broader effects on RoL - Other findings**

The following gaps to fill in in the RoL have been identified in the SSF 2017-2020, all of the elements described below remain to be completed:

- The finalisation of the constitutional structure by consolidating legislative and judicial powers and reforming the public administration, in particular by improving central and local public service provision;
- The finalisation of the legislative framework for decentralisation and local democracy and its implementation;
- The fight against corruption for the creation of a transparent system of law;
- ensure Tunisia's resilience in the face of security challenges by providing for modernised security institutions which respect human rights;
- The electoral process;
- The compliance with international commitments on respect for human rights and fundamental freedoms;
- The setting-up of the independent bodies provided for by the Constitution and international conventions, in particular with regard to human rights;
- The involvement of citizens, especially young people, in political life and the decision-making process.

## 4 Annexes

### 4.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Director	Avocats sans Frontières
Project Manager	Avocats sans Frontières
Project director	ARP (Twinning Project for the Parliament)
Lawyer	Bar Association
Attaché de coopération	EU-EEAS, EUD Tunis
Desk manager – Security – provisional manager for RoL/ justice	EU-EEAS, EUD Tunis
Head of Section – Governance, Social Sectors and Sustainable Development	EU-EEAS, EUD Tunis
Human Rights Officer	EU-EEAS, EUD Tunis
Political Officer	EU-EEAS, EUD Tunis
Director of studies	Higher Institute of the Judiciary
Magistrate in charge of PARJ follow-up	Ministry of Justice
Advocacy and Lobbying Coordinator	OMCT
Team Leader	PAMT - Programme d'appui aux médias en Tunisie, Particip
Administrative and Financial Manager	PARJ
Assistant	PARJ
National Manager of PARJ	PARJ
Project Administrator	PARJ
Resident Twinning Advisor to the Ministry of Justice	PARJ
TA Expert	PARJ
TA Expert	PARJ
TA Expert	PARJ
Expert in constitutional strengthening and parliamentary development	UNDP

### 4.2 List of documents consulted

#### 4.2.1 EU strategy and programming

Council of Europe (2015): Accord d'Association Union européenne – Tunisie, 4ème réunion du Sous-comité « Justice et Sécurité », (Tunis, 23 avril 2015), Conclusions opérationnelles

Council of Europe (2017): Accord d'association Union européenne – Tunisie, Consultation tripartite préparatoire au Dialogue politique sur le contre-terrorisme et la sécurité et au sous-comité justice et sécurité UE-Tunisie, Tunis, 13 janvier 2017, Résumé des discussions

Council of Europe (2017): Accord d'Association UE – Tunisie, 5ème réunion du Sous-comité "Droits de l'Homme et Démocratie", (Bruxelles, 18 janvier 2017), Conclusions opérationnelles

Council of Europe (2017): Accord d'Association UE – Tunisie, 5ème réunion du Sous-comité, « Justice et Sécurité », (Bruxelles, 20 janvier 2017), Conclusions opérationnelles

Council of Europe (2018): 14ème session du Conseil d'association UE-Tunisie, (Bruxelles, 15 mai 2018)

European Commission (2005) : EU/Tunisia ENP Action Plan.

European Commission (2007): ENPI. Tunisia. Strategy Paper 2007-2013 & National Indicative Programme 2007-2010.

European Commission (2011): Tunisie. Programme Indicatif National. 2011-2013.

European Commission (2013): Relations Tunisie- Union Européenne : Un partenariat privilégié. Plan d'action 2013-2017. Sommaire.

European Commission (2014) : Programmation de l'Instrument Européen de Voisinage (IEV) (2014-2017). Cadre Unique d'Appui pour l'appui de l'UE à la Tunisie (2014-2015).

#### 4.2.2 EU reporting

EU (2007-2009, 2011-2017): External Assistance Management Report (EAMR). Tunisia.

European Commission (2007, 2012, 2013, 2015): European Neighbourhood Policy Progress Report. Tunisia.

#### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2011 Programme d'Appui à la Réforme de la Justice (PARJ)
- 2011 Société Civile (PASC)
- 2011 Appui à la modernisation du Tribunal Administratif (Contrat de jumelage léger TU10/ENP-AP/JH23)
- 2012 Appui au processus constitutionnel et parlementaire
- 2012 PARJ I - Programme d'Appui à la Réforme de la Justice
- 2012 Programme d'Appui à la Société Civile (PASC)
- 2013 Support for the improvement of the child justice system in Tunisia
- 2014 Programme d'Appui aux Médias
- 2013 Rehabilitation des juridictions et prisons 2014 Transitional Justice
- 2015 Renforcement des institutions de l'administration pénitentiaire
- 2015 Renforcement des capacités de l'Assemblée des Représentants du Peuple
- 2015 Renforcement des capacités du Ministère de la Justice et des juridictions
- 2015 Appui à la formation des personnels de justice
- 2017 Programmes d'appui à la société civile et aux instances constitutionnelles
- 2017 PARJ III

#### 4.2.4 Evaluation and Studies

Particip (2017): External Evaluation of the European Neighbourhood Instrument (ENI) (2014-mid 2017).

#### 4.2.5 Other

ASF (2018): Press release dated 29/06/2018, Tunisia: making access to justice a reality for all

Beney et al. (2011): Mission UE de Diagnostic du système judiciaire et pénitentiaire (Peer Based Review) en Tunisie.

Business News Tunisia (2016) : Résolution du Parlement européen sur les relations de l'Union avec la Tunisie

Council of Europe (2016): Communiqué de presse 189/16 du 18/04/2016, Conseil d'Association UE – Tunisie, communiqué conjoint de la Haute Représentante Federica Mogherini et du Ministre des affaires étrangères tunisien Khemaies Jhinaoui

Council of Europe (2017): Communiqué de presse 250/17 du 11/05/2017, Déclaration conjointe à l'occasion du Conseil d'Association UE-Tunisie du 11 mai 2017

Council of Europe (2018): Press Release 255/18 dated 15/05/2018, Joint press statement on the occasion of the 14th meeting of the EU-Tunisia Association Council

Democracy Reporting International (2018): la mise en œuvre de la constitution tunisienne au niveau du cadre juridique

European Council on Foreign Relations (2017): Peripheral Vision: How Europe Can Help Preserve Tunisia's Fragile Democracy

European Commission (2011): Mission UE de Diagnostic du système judiciaire et pénitentiaire (Peer Based Review), rapport final

European Commission (2016): JOIN(2016) 47 final, Joint Communication to the European Parliament and the Council, Strengthening EU support for Tunisia

- European Commission (2018): Communiqué de presse du 24 avril 2018, Tunisie : L'UE se félicite de la Feuille de Route des Réformes Prioritaires
- France, Ministère des Affaires étrangères et du développement international (2016) : Evaluation de la contribution des acteurs de la société civile à l'action de développement et de solidarité internationale de la France (2009-2015)
- Human Rights Watch (2018): You Say You Want a Lawyer? Tunisia's New Law on Detention, on Paper and in Practice
- International Crisis Group (2017): La transition bloquée : corruption et régionalisme en Tunisie
- International Crisis Group (2018): Restoring Public Confidence in Tunisia's Political System
- International Crisis Group (2018): Endiguer la dérive autoritaire en Tunisie
- Kapitalis (2018): News article dated 19/06/2018, Tunisie : Les 1ères assises nationales de l'accès à la Justice
- L'économiste maghrébin (2018): News article dated 12/06/2018, A télécharger : le rapport sur les libertés individuelles et de l'égalité
- Mir Barata, Joan (2018): PAM, Recherche/étude comparative sur les grandes écoles de politiques publiques médiatiques
- NATO (2018): Non-Governmental Organizations, International Organizations and Civil Society in Tunisia
- Project on Middle East Democracy (2018): is civil society in Tunisia under threat? Factchecking the arguments for a new NGO law in Tunisia
- Princeton University (2017): Innovations for successful societies, Information for the People: Tunisia Embraces Open Government, 2011 – 2016
- UNDP (2014): La société civile dans une Tunisie en mutation
- Web Manager Center (2018): News article dated 09/06/2018, Tunisie : Le rapport final de la Commission des libertés individuelles et de l'égalité disponible le 12 juin 2018

## Case study note – Ukraine

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# 1 Introduction

## 1.1 Context

The evaluation period (2010-2017) is marked by the caesura, in 2013/2014, of the Revolution of Dignity in Ukraine. This was triggered by public discontent over the abandonment, in late November 2013 by the then-government under President V. Yanukovich, of Ukraine's EU integration agenda. The ensuing months saw widespread protests, at the centre of which was the public's disenchantment with endemic corruption at all layers of the state and its institutions; the absence of the Rule of Law (RoL); and a lack of accountability by politicians to citizens. This led to the impeachment of President V. Yanukovich in February 2014, and, ultimately, to early presidential elections in Spring 2014, which voted in a pro-European candidate, Petro Poroshenko.

Ukraine signed the Association Agreement (AA) with the EU in Spring/early Summer 2014. From November 2014, those sections of the AA relating to human rights, fundamental freedoms and the rule of law began to be applied; at that point, the co-operation context had again dramatically changed with the annexation by the Russian Federation of Crimea, and the Russian incitement of war in Eastern Ukraine.

## 1.2 Overview of the EU support to RoL

EU support to rule of law (RoL) precedes the time frame covered in this evaluation, and goes back to the period in the immediate aftermath of Ukraine's gaining independence in 1991.

The international community, including the EU, supported reform after the 2004 Orange Revolution, which had been triggered by what was later confirmed to be widespread electoral fraud during that year's presidential vote in favour of Viktor Yanukovich over his contender Viktor Yushchenko. After a re-vote in late 2004, V. Yushchenko was declared the legitimate winner. EU-oriented Prime Minister Yulia Timoshenko set out to implement widespread political and economic reforms in the country. There was a considerable inflow of donor funding to support Ukraine in the reform process, set out, *inter alia*, in the 2005 EU-Ukraine Action Programme. However, these reform efforts failed to deliver results, and the political discourse was marked by political rivalries and in-fighting between the President and the Prime Minister, eventually bringing V. Yanukovich back to power in 2010.

EU co-operation from 2005 has been guided by the EU-Ukraine Action Plan. The 2007-2013 Country Strategy Paper (CSP) outlines the EU's support to Ukraine's own reform agenda, encompassing, in the area of RoL, the consolidation of democracy; the protection of human rights and fundamental freedoms; the strengthening of the institutions guaranteeing democracy; the advancement of judicial and legal reforms in order to guarantee the independence of the judiciary; as well as the fight against crime and corruption.

The 2007-2010 National Indicative Programme (NIP), echoing the CSP, listed "Rule of Law and Judicial Reform" as one of the sub-priorities under Priority Area 1, "Support for Democratic Development and Good Governance." The NIP acknowledged the considerable investments already made, while pointing out that further support was required to achieve the objectives of "*guaranteeing the independence of the judiciary and strengthening its administrative capacity and to ensure the impartiality and effectiveness of the prosecution.*" The NIP also aimed at supporting measures to improve access to justice; at promoting citizens' participation in public life and their increased role in overseeing the institutions; and support to legislation that improves the operating environment for NGOs. The hitherto guiding EU-Ukraine Action Plan was replaced in 2009 by the Association Agenda, which resulted in increased co-operation across all areas.

The 2011-2013 NIP listed "Good Governance and the Rule of Law" as one of the priority areas for support, aligned with the Association Agenda and the negotiations, at the time, of the Association Agreement with the EU (which was eventually signed in 2014, updated in 2015, and entered into force in 2017, and Title III of which covers rule of law). Under this priority area, "Justice, Freedom and Security" is a sub-priority, with the specific objective stated to contribute to the development and implementation of a coherent sector-wide reform strategy in the area of administration of justice, with specific results expected to be "*increased efficiency of administration of justice in line with international standards*"; "*increased impartiality and integrity of the judiciary*"; "*improved respect for human rights by the prosecution, law enforcement agencies, and penitentiary staff in accordance with international standards and best practice*"; and "*easier access to justice for the general public (including vulnerable groups) and economic operators.*"

The period between 2010 and 2013 (i.e. the first half of the period covered by this evaluation) was marked by considerable stagnation across co-operation areas: while nominally, the government pursued the Association Agenda with the EU, in reality, systemic progress was very slow at best.

In response to the political situation in Ukraine (i.e. the ousting of Yanukovich from the office of President; the annexation by the Russian Federation of Crimea and the prospect of military action in Eastern Ukraine), the EU adopted, in April 2014, a “Special Measure in Favour of Ukraine”, triggering an allocation of EUR 242 million, which included a State-Building Contract with one fixed and one variable tranche of funding, the disbursement of which was made conditional on the achievements of key reform milestones by mid-2015, including in the area of constitutional and judiciary reform and the harmonisation of electoral legislation. The State-Building Contract outlines the need for medium to long-term reforms “*especially as regards the rule of law*”, and where the “*aim is to produce a coherent and complete set of strategies for the constitutionally independent players in the justice sector.*”

Also, in 2014, a Reform Package for Ukraine was adopted, which set the annual amount of development assistance at around EUR 130 million, with the prospect of this envelope increasing (“*more-for-more*”) depending on the fulfilment of key reforms (“*on the basis of proven progress in deepening democracy and respect of human rights*”). Moreover, in 2014, the Support Group for Ukraine (SGUA) was created, “a task force to support Ukraine in the implementation of the Association Agreement [...] and of the Association Agenda [...]”. In accordance with the AA’s reform priorities, SGUA has thematic teams including on rule of law and justice and home affairs.<sup>1</sup> SGUA has been credited by the expert community with making “a pivotal difference in devising a more agile and tailored strategy for promoting reforms. The support group has also been involved in tackling the most important and politically-charged issues, such as corruption and judicial reforms.”<sup>2</sup>

Given the fragility of the political and security situation in Ukraine, no multi-annual programming exercises took place during the period from 2015-2017. Instead, EU support was governed by separate Special Measures on specific actions or projects. Multi-annual programming resumed in 2017, and there is a new Single Support Framework (SSF) covering the period from 2018 to 2020. One of the SSF’s priorities is “Strengthening institutions and good governance, including the rule of law and security”, highlighting pervasive corruption and an inefficient judiciary as key areas in need of reform. Specific rule of law objectives under the SSF 2018-2020 are “*reinforced independence, integrity, quality and efficiency of the judiciary and prosecution*”.

Table 1 Overview of main/important ENI-financed interventions in the area of RoL in Ukraine

Decision year	Title	Planned EU contributions (mEUR)	Implementation methods / channels
2010	Support to the Justice Sector Reforms in Ukraine, implemented between 2013 and 2017	10.0	CoE; JCI
2011	Twinning project "Increased Effectiveness and Management Capacities of Administrative Courts in Ukraine"	1.5	Twinning (JCI / France)
2016	Rule of Law in Ukraine– policy and budgetary analysis in the area of police/law-enforcement reform	0.13	Service
2016	Rada za Evropu: Capacity-Building in Support of the Verkhovna Rada of Ukraine	1.3	UNDP
2016	Implementation of best European practices with the aim of strengthening the institutional capacity of the Apparatus of the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson) to protect human rights and freedoms	1.5	Twinning (Lithuania)
2016	Strengthening the Institutional Capacity of the Supreme Court of Ukraine in the Field of Human Rights Protection at the National Level	1.3	Twinning (Germany)

The EIDHR instrument was also used to finance interventions in areas such as human rights and rights for vulnerable groups. Some examples of EIDHR projects which fall within the scope of this evaluation include:

- 2014 - Strengthening the role of civil society in protecting the human rights of vulnerable groups of offenders in Ukraine

<sup>1</sup> See [https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/ukraine/sgua\\_en](https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/ukraine/sgua_en).

<sup>2</sup> See Wolczuk, K.: EU Must Be Bolder in Driving Reform in Ukraine. (2017). At <https://www.chathamhouse.org/expert/comment/eu-must-be-bolder-driving-reform-ukraine>. Assessed 17 September 2018.

- 2015 - Human Rights Agenda for New Ukraine
- 2016 - Improvement of access to justice and defence of the right to a fair trial for vulnerable groups in Ukraine.<sup>3</sup>

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<sup>3</sup> The in-country data collection phase of the evaluation reached out to all three projects; however, contact was only established with one of these, the 2015 “Human Rights Agenda for Ukraine.”

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

<b>EQ2</b>	<b>To what extent has EU support to RoL responded to the bilateral and regional contexts?</b>
<b>JC21</b>	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
<b>JC22</b>	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 Summary of key findings

As described above, there is a bifurcation in the evaluation period caused by the 2013/2014 Revolution of Dignity. The period leading up to this juncture (2010-2013) was marked by ever decreasing political will of the then Ukrainian government and institutions to genuinely embrace the requirements of the Association Agenda. There is only one project in the interventions selected for the case study that falls into this period (ENPI 2011/241-814 Twinning Project on “Increased Effectiveness of the Management Capacities of the Administrative Court of Ukraine”). The other interventions examined for this case study started in 2014<sup>4</sup> or later, that is, in a context of a total overhaul of the legislative and institutional setting in relation to rule of law and beyond.

Assistance both pre- and post-2013 corresponded generally to the needs of Ukraine. However, in the pre-revolution period covered by the evaluation, there was no political will to seriously tackle justice sector reforms. This changed after 2013/2014, where the reform of the judiciary, including its de-politicisation, independence, accountability and efficiency, was declared a priority by the newly-elected president.

All post-2013 interventions examined as part of this evaluation aligned with national reform priorities. The key intervention within the selected portfolio of support, the EUR 8.5 million *Support to Justice Sector Reform Project*, clearly responded to the needs and opportunities provided by the reform momentum in the aftermath of the 2013/14 revolution. An on-going twinning project is building the capacities of the newly established Supreme Court. The project *Rada za Evropu* was the outcome of a fact-finding mission by the European Parliament in 2015/2016, and resulted in a roadmap for reform adopted by the Ukrainian parliament. A project outside the sample selected for this evaluation, implemented by the Council of Europe, supported penitentiary reform in Ukraine, for which momentum developed in the aftermath of the 2013/2014 revolution.

Across the projects considered, there is consistent evidence of participatory approaches in at least two ways: i) projects themselves facilitate consultation among a wide range of institutional stakeholders (e.g. the project *Further Support to Penitentiary Reform*; the Project in support of the Parliamentary Ombudsman etc.); ii) involvement of civil society in projects has been strong – this has been formal (e.g. *Justice Sector Reform Project*; *Further Support to Penitentiary Reform*), but there is also a considerable amount of informal communication on a regular and frequent basis between the EUD operations section and civil society organisations, which is acknowledged by these.

With regard to responsiveness, mixed feedback was received from stakeholders working on EU-funded interventions. The *Justice Sector Reform Project* managed to respond flexibly to the opportunities created by the reform momentum in 2014 and onwards. At the other end of the spectrum, the *Rada za Evropu* project in support of the Ukrainian parliament should have been readjusted once it had become clear that the initially assumed reform momentum could not be maintained. The 2016 ROM report for this project, which is implemented by the UNDP, states that “*firm support for fast moving reform evident in 2014 and 2015 had subsided by 2016, as the initial wide majority coalition fractured, leaving the Government bloc (itself riven with internal opposition) with a delicate majority. This has made it nearly impossible to push through certain [...] procedural reforms.*” Stakeholders, including from the parliament, expressed the wish for a less rigid project

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<sup>4</sup> The Support to Justice Sector Reform project, the key intervention for the current Evaluation, formally started in late 2013. However, in reality, some activities commenced in 2014, and the project increased pace after the adoption of the Justice Sector Reform Strategy and Action Plan in 2015 (to the drafting of which the project made a substantial contribution).

framework (including workplans and the time span of the support), in particular in the context of the rapidly changing environment of post-revolutionary Ukraine.<sup>5</sup>

### 2.1.2 Alignment and participatory processes (JC21)

EU support has been aligned with Ukrainian national policy frameworks across the evaluation period, including in the pre-2013 phase during which national policies existed, but when the political resolve for implementation was low. The ENPI 2011/241-814 *Twinning Project on Increased Effectiveness of the Management Capacities of the Administrative Court of Ukraine* aligned with the “*Concept for the improvement of the judiciary in order to ensure fair trials in Ukraine in line with European Standards*” by the President of Ukraine.

Post 2013/2014, the implementation period of the project *Support to Justice Sector Reforms*<sup>6</sup> falls into the immediate aftermath of the “*Revolution of Dignity*.” It was clearly aligned with the reform needs in the justice sector, including the judiciary, as well as being successively adjusted to both inform the direction of reforms, as well as to respond to needs as they evolved throughout the process.

Other interventions, too, were designed with stakeholder consultation. This includes the ongoing project *Rada za Evropu – Capacity Building in Support of the Verkhovna Rada of Ukraine*, which followed a detailed needs assessment, in 2014/2015, as a result of a Memorandum of Understanding between the parliament (the Verkhovna Rada) and the European Parliament, and which resulted in a roadmap adopted by the Ukrainian parliament, which provides the broad strategic directions for reform of the parliament.

Both the ongoing project in support of the Parliamentary Ombudsperson and the new Supreme Court are also based on thorough needs assessments.

There is clear evidence across the selected interventions that participation and consultation of a broadest possible range of stakeholders is anchored in the projects’ working methods. The on-going project in support of the Parliamentary Ombudsperson sought to build consensus among civil society, MPs, and institutions for legislative reform affecting the Ombudsperson’s institution. The Council of Europe-implemented project (outside of the sample selected for this evaluation), *Further Support to Penitentiary Reform in Ukraine 2015-2018*, involved civil society organisations across Ukraine, as well as relevant stakeholders (National Preventive Mechanism; General Prosecutors Office; National Bar Association) outside the Ministry of Justice (under which the State Penitentiary Service falls) and the relevant parliamentary sub-committee of the Ukrainian parliament. The *Support to Justice Sector Reforms Project* formally co-operated with civil society organisations from the Reanimation Package for Reforms (RPR); RPR is a coalition of NGOs organised around thematic areas, which was formed in the immediate aftermath of the revolution to maintain pressure on the government to implement reforms. The RPR’s secretariat, as well as individual coalition member organisations, are also supported separately through EU financial assistance (including under EIDHR), and dialogue and exchange of information specifically between the EUD and NGOs is frequent and regular, including on key technical aspects of judicial reform. Crucially, as part of the new appointment process to the new Supreme Court of Justice, which was considerably supported by the *Justice Sector Reforms Project*, a formal role was assigned to civil society through the establishment of a Public Integrity Council (PIC).

As touched upon elsewhere (EQ3) in the report, some issues seem to arise where there is a divergence in the assessment of the direction of reforms between EU-funded interventions on the one hand, and civil society organisations on the other. Concerns were raised by civil society organisations specifically in the context of the support provided by the *Justice Sector Reforms Project* regarding the appointment procedure for the judges of the new Supreme Court, where civil society was accorded a formal role through the Public Integrity Council (PIC). At the time of the field work for this report, the PIC had suspended its participation in the on-going re-evaluation process, as well as in the upcoming appointment of the second cohort of judges to the new Supreme Court.<sup>7</sup> The source of conflict appears to be the disappointment of the PIC in the effectiveness of their role in the vetting of candidates. The key concern, which is shared by experts from the international community involved in

<sup>5</sup> A recent, August 2018, research paper by Chatham House’s Ukraine programme corroborates this finding across a greater spectrum of EU assistance. See Wolczuk, K. and D. Zeruolis: “Rebuilding Ukraine: An Assessment of EU Assistance”, at <https://www.chathamhouse.org/sites/default/files/publications/research/2018-08-16-rebuilding-ukraine-eu-assistance-wolczuk-zeruolis.pdf>.

<sup>6</sup> A project led by JCI and funded from the 2010 ENPI budget.

<sup>7</sup> The USAID-funded “New Justice” project initiated and funded a mediation process to resolve the deadlock between the PIC and the HJQC, which did not, however, yield any results, see article of 6 November 2018 in the Yurydychna Gazeta at <http://yur-gazeta.com/golovna/grd--vkks-zavershennya-mediacyi.html>. A new PIC will be appointed in December 2018, as the term of the current PIC ends then.

Ukraine, is the perception that concerns voiced by PIC regarding certain candidates were not taken forward by the body in charge of the process, the High Qualification Commission of Judges, resulting in the appointment of a number of judges whose integrity is in doubt.<sup>8</sup> In other words, while participation of civil society was considered a key element of the process, and which was supported by the project, the way in which it played out in practice clearly offers lessons learned in terms of clearer setting out the procedures and rules that govern such an involvement.

### 2.1.3 Needs, opportunities and responsiveness (JC22)

In the area of justice sector reform, assistance is aligned with the provisions of the Association Agreement, which, in turn, are informed by Council of Europe Standards on the role and independence of the judiciary, and which also underpin the national Justice Sector Reform Strategy 2015 – 2020,<sup>9</sup> in the development of which assistance provided through the *Justice Sector Reform Project* has been instrumental. The *Justice Sector Reform Project* officially started prior to the 2013/2014 revolution; its objectives broadly remained in place (with the exception of two areas that were extracted to be covered through separate interventions) from the initial design.

A key result of the project – and considerably leveraged by the EUD – has been the development of a medium-term Justice Sector Reform Strategy by the Judicial Reform Council (JRC) under the President of Ukraine and which was, according to the EUD, a condition to be fulfilled prior to the authorisation of expenditure under the project. The 2015-2020 Strategy – which is the first strategy of its kind in any sector in Ukraine in terms of the level of policy itemisation and the degree of coordination in implementing it – now serves as the comprehensive framework for sector reforms for the various justice sector institutions, and to which assistance by the international donor community aligns. The project was able to react and respond to assistance needs as they arose in the reform process, starting with the provision of support to facilitate necessary constitutional amendments and legal reforms to pave the way for subsequent reform steps (see discussion below), as well as support to the implementation of these reforms, such as the appointment of judges to the new Supreme Court.

The UNDP-implemented project in support of the parliament, *Rada za Evropu – Capacity Building in Support of the Verkhovna Rada of Ukraine*, is built on the findings of a detailed needs assessment mission by the former President of the European Parliament conducted in 2015/2016, and responded to the wish of the then-chairman of the Parliament to strengthen the role of Parliament. The needs assessment was adopted as the official roadmap for reform of the parliament – the project's components aimed to provide assistance on key aspects of the implementation of this roadmap. As highlighted above, the actual reform momentum for parliamentary reform was short-lived, and stakeholders from inside the project suggested that a more flexible approach, possibly established through formative evaluation processes, might have helped to adjust the project's objectives to the new reform context when it became clear that the initial objectives might not be achievable within the given project.

The on-going Twinning project *Strengthening the Institutional Capacity of the Supreme Court of Ukraine in the Field of Human Rights Protection at the National Level* was designed prior to the decision to establish a new Supreme Court as a result of the 2016 judicial reform process, i.e. it did not initially specifically target the new Supreme Court, which began operating in December 2017 and which has since been the project's beneficiary. The project has, however, specifically responded to needs arising from new legislation in place since 2015, in particular the February 2015 "Law on Ensuring the Right to a Fair Trial", as well as from the reform in 2016 of the Ukrainian Court system from a four-tier to a three-tier system.

A Twinning project in support of the Parliamentary ombudsperson of Ukraine is underway, and aims to further increase the institution's capacity as well as at more closely aligning its structures and functions with European best practices. A new Ombudsperson was appointed in Spring 2018, in a process marred with violations of the established parliamentary procedures, leading to the departure, with the outgoing ombudsperson, of almost the entirety of the institution's staff, thereby depleting both institutional capacity and memory. The Twinning project's objectives and deliverables (training of trainers; proposals for legislative changes and changes at the level of administrative procedures etc.) remain unaffected, although a wider question remains for any international assistance (the institution of the Ombudsperson has had considerable international support in the past, including prior to the 2013/2014 revolution) as to how to respond to a staff exodus on this scale.

<sup>8</sup> Concerns over 27 judges are widely shared among all stakeholders interviewed during the in-country phase of the evaluation. And USAID-funded assistance to justice sector reform has adopted a specific freeze on cooperation with the judges in question.

<sup>9</sup> The Strategy can be found in English under <http://jrc.org.ua/strategy/en>.

## 2.2 Implementation/choice of modality (EQ3)

EQ3	To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?
JC31	High quality policy dialogue established: content (promotion of RoL and European standards and principles), frequency, synergies between operational (intervention-level) and high-level dialogue, etc.
JC32	Implementation strategies appropriately chosen and combined/complemented
JC33	Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)
JC34	Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into account.

### 2.2.1 Summary of key findings (EQ3)

Various levels of policy dialogue between the EU and Ukraine address rule of law and human rights. Rule of law is encompassed by the EU-Ukraine Association Committee, which is held annually with the participation of the Prime Minister of Ukraine and the EU High Representative for Foreign Affairs and Security Policy. A specific sub-committee on Justice, Freedom and Security also covers rule of law issues. A specific EU-Ukraine Human Rights Dialogue is also held annually, which is preceded by consultations with civil society. Stakeholder interviews and documentation suggest that there is an open discussion on issues of concern during the Association Committee and sub-committee meetings. EU institution stakeholders have pointed to tension between criticism on the pace and shape of reform on the one hand, and respect for ownership for such reforms by the Ukrainian government. This has been particularly highlighted in connection with the concerns surrounding the appointment process of judges to the new Supreme Court, and where these concerns have been raised as part of the political dialogue. Civil society stakeholders have pointed out that while they value the role they are being given in the Human Rights Dialogue, they are looking for a more structured feedback process after the regular consultation in which they are already participating.

Third party stakeholders assess that the EU at the political level is reluctant to push the government too hard, trading reform progress, including on rule of law issues, for predictability and stability.<sup>10</sup>

There are differing perspectives on the co-operation dynamics and synergies between the operational and political aspects of EU support, as perceived by different stakeholders. These include: a lack of a shared understanding of the division of roles within the EUD; a lack of clarity expressed by some implementing organisations and national stakeholders about the roles of the EUD operations and political sections, as well as the roles of EEAS and DG NEAR/SGUA, respectively. Evidence has been anecdotal and includes: operations is considered to dominate political dialogue; and the autonomy of assistance projects is considered to be too wide-ranging, which has led to instances where projects appeared to contradict political messages. Stakeholders have also observed that there should be more in-depth technical expertise present within the EUD to support — and challenge — projects.

In terms of choice of modalities and implementing partners, the EUD has opted for a consolidation in the implementation of assistance to key rule of law reforms, by bundling assistance in one large contract in the *Justice Sector Reform Project* (EUR 8.5 million), and which is now followed up by the *PRAVO Justice* project (with a financial envelope of EUR 15 million). The size of the *Justice Sector Reform Project* was determined prior to the 2013/2014 revolution and was guided by efficiency considerations. Project implementation occurred, however, during a period characterised by an intense pace of reform, to which the project strived to react in real time; a recent evaluation of the *Justice Sector Reform Project* suggests that this may have come at the expense of project management best practices. The evaluation also found that the project had been too complex, which resulted in limited inter-linkages between its components, some of which would have merited stand-alone projects.

<sup>10</sup> See Wolczuk, K.: EU Must Be Bolder in Driving Reform in Ukraine. (2017). At <https://www.chathamhouse.org/expert/comment/eu-must-be-bolder-driving-reform-ukraine>. Assessed 17 September 2018.

The implementation of the project in support of the reform of the Ukrainian parliament (*Rada za Evropu*) was contracted to UNDP in acknowledgement of the organisation's global experience with parliamentary support. The performance of the Council of Europe, which implemented the project *Consolidation of Justice Sector Reforms*, running in parallel to the *Justice Sector Reform Project*, appears to have been disappointing, and on the specific topic of justice sector reform no further projects were contracted as a result. However, the Council of Europe has implemented a project in *Further support of penitentiary reform in Ukraine*, meaning that the Council of Europe remains an implementing partner on Rule of Law reform. Other projects implemented by the Council of Europe target strengthening human rights standards; fighting ill-treatment and impunity; supporting the Ukrainian Bar; fighting corruption and supporting free and fair elections.

Projects are undergoing ROM on a regular basis, and both the EUD and implementing partners have found these exercises useful. In the portfolio of projects selected for assessment, only the *Justice Sector Reform Project* had been evaluated separately (the evaluation was still being finalised at the time of writing of the country case note), as most of the other interventions were still ongoing.

The portfolio of interventions is characterised by clear synergies and complementarities: although the number of interventions selected for closer assessment was limited, a look beyond the chosen projects reveals a stringent picture of instruments supporting and complementing one another across the spectrum, including ENI funding; regional funding as part of the Partnership for Good Governance (Council of Europe project on support to penitentiary reform); and EIDHR.

Visibility of the projects is in line with EU requirements. In particular with regard to the *Justice Sector Reform Project* and the Council of Europe project *Consolidation of Justice Sector Reforms*, visibility is particularly high among interested stakeholders from civil society and the international community. Most stakeholders were in principle clear on the separation of EU-funded projects' results and opinions on the one hand, and the role of the EUD on the other hand; however, there was a specific concern that the public outreach and communication from the project contradicted official EU positions. This would seem to offer a lesson learned in terms of visibility and management of assistance in high-stake environments.

### 2.2.2 Policy dialogue (JC31)

Policy dialogue between the EU and Ukraine addresses rule of law and human rights issues. Rule of Law, including judicial reform, are encompassed by the EU-Ukraine Association Committee, which is held annually with the participation of the Ukrainian Prime Minister and the EU High Representative for Foreign Affairs and Security Policy. There is a specific sub-committee on Justice, Freedom and Security, which deals with Rule of Law issues. The first meeting of the sub-committee in July 2015 covered progress in the area of judicial reform as a result of the change of the legal framework, and where Ukrainian stakeholders specifically highlighted the relevance of the EU technical assistance *Justice Sector Reform Project* and *Consolidation of the Justice Sector Reforms* in advancing judicial reform efforts.<sup>11</sup> Judicial reform has not been as prominent in subsequent meetings, where the thematic focus has shifted to discussing Ukraine's progress in the area of anti-corruption, and specifically the establishment of an infrastructure of anti-corruption institutions.

Statements from EU high level officials regularly and critically comment on progress on key rule of law reforms—this includes concerns over the appointment process of judges to the new Supreme Court.<sup>12</sup> Stakeholders from civil society as well as from the international community in Ukraine, consulted during the in-country work highlighted instances where messages coming from projects contradicted the EU's political statements, as well as occasions where they expected clearer statements, in particular in connection with the controversial appointment process of the new ombudsperson in Spring 2018. Stakeholders' expectations of the EU are high, and it is considered a key ally in the reform process, in particular for civil society stakeholders. Some tension has however been articulated by EEAS, EC and EUD stakeholders alike arising from clear support to the reform process by the EU on the one hand, and the clear principle that the Ukrainian government maintains ownership of reform. Hence while civil society stakeholders look for a more muscular approach from the EU, on the EU side, it is clear that ultimately, the direction and pace of reforms is and should be decided by the Ukrainian government. An autumn 2017 report by Chatham House assessing the EU's approach to

<sup>11</sup> See press release by the High Qualification Commission of Judges on <https://vkksu.gov.ua/en/news/the-first-meeting-of-the-subcommittee-justice-freedom-and-security-of-the-eu-ukraine-association-committee/> (accessed on 16 August 2018).

<sup>12</sup> See "EU concerned with how Ukraine selects Supreme Court Judges", 1 June 2017, at <https://en.hromadske.ua/posts/even-a-few-judges-with-tainted-reputations-risk-the-entire-credibility-of-the-judicial-reform-eu-ambassador>. (Contains verbatim quote of statement of EU ambassador; accessed 16 August 2018).

reforms in Ukraine finds that “many EU officials in Brussels and in Kyiv are much more reluctant to engage at a political level. They are also apprehensive about pushing too hard, believing that working with the current, pro-European administration is more desirable than triggering a change of government. EU officials typically put a premium on stability and predictability. [...] Reformist forces within Ukraine are heavily dependent on political support from the EU. Yet, they are increasingly concerned that, despite being the largest donor to Ukraine, the EU is going ‘soft’ on the Ukrainian authorities by being too gentle and diplomatic.” The report suggests that in its reluctance to be more demanding of the Ukrainian government to deliver on reforms, the EU has become complicit in perpetuating the existence of powerful patronage and rent-seeking networks. It also finds that “as Ukrainian society becomes more frustrated with the slow progress of reforms, the reluctance on the part of the EU officials to critique the government creates the impression of indifference.”<sup>13</sup>

There have also been several suggestions by EU stakeholders that EU leverage in practice is limited, with the IMF having considerably more influence.

Human rights are part of a specific EU-Ukraine Human Rights Dialogue, which is also held annually, at the level of the Deputy Minister of Justice on the Ukrainian side, and senior management level on the EEAS side. The Dialogue is preceded by consultations with civil society, including recipients of EU EIDHR grants in support of their human rights work, such as the Centre for Civil Liberties, which is working on raising awareness of human rights abuses including those committed by Ukrainian forces in Eastern Ukraine; and on advocacy work for Ukraine to ratify the Rome Statute of the International Criminal Court – a requirement of the Association Agreement between the EU and Ukraine. Civil society organisations recognise and value their participation in the consultations, and that issues they highlight as concerns during the consultation processes are being discussed during the high-level dialogue events. However there has been an expressed wish to receive more structured feedback from the actual EU-Ukraine official dialogue beyond the consultation. In its “*2017 Annual Report on the Implementation of the Association Agreement between Ukraine and the EU*”, the Ukrainian government reports a number of steps undertaken as a result of the Human Rights Dialogue, specifically with respect to the protection of rights of internally displaced persons.

There are differing perspectives on the co-operation dynamics and synergies between the EU’s operational and political arms, as perceived by different stakeholders. These perspectives include: a lack of a shared understanding of the division of roles within the EUD; a lack of clarity (expressed by some implementing organisations and national stakeholders) about the roles of the operations and political sections in the EUD, respectively; as well as the roles of the EEAS and DG NEAR/SGUA, respectively. This includes a perceived dominance of operations to the detriment of political dialogue; and an autonomy of technical assistance projects that is perceived to be too wide-ranging and stakeholders cited examples of projects that were perceived to contradict political messages. Several stakeholders have also suggested that there be more in-depth technical expertise on the specific subjects pursued by technical assistance interventions to be present at the level of the EUD to support—and challenge—technical assistance projects.

### 2.2.3 Choice of implementation strategies (JC32)

In the interventions selected for this case study, there has been an extensive use of Twinning. These include the 2011 Twinning *Project on Increased Effectiveness of the Management Capacities of the Administrative Court of Ukraine*; the on-going *Supreme Court Twinning: Strengthening the Institutional Capacity of the Supreme Court in Ukraine in the Field of Human Rights Protection at the National Level*; and the Twinning *Implementation of the best European practices with the aim of strengthening the institutional capacity of the Apparatus of the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson) to protect human rights and freedoms*. The flagship *Justice Sector Reform Project* was often referred to as a “super-twinning” project, but this might not adequately capture the implementation modality, not least given the size and financial envelope of the project. A number of stakeholders highlighted coordination with the European Union Advisory Mission (EUAM), but highlighted that in terms of the working modalities, the expertise provided by EUAM was too short-term, and that there was a preference, as in the selected portfolio of projects, for longer-term residential expertise, which was considered pivotal to working in the complexity of the Ukrainian environment.

Two projects in the portfolio were implemented by international organisations. The project *Consolidation of Justice Sector Reforms*, which in part ran parallel to the *Justice Sector Reform*

<sup>13</sup> See Wolczuk, K.: EU Must Be Bolder in Driving Reform in Ukraine. (2017). At <https://www.chathamhouse.org/expert/comment/eu-must-be-bolder-driving-reform-ukraine>. Assessed 17 September 2018.

*Project*, was implemented by the Council of Europe. Both projects were to complement each other, however results appear to have been modest on the Council of Europe side and no follow-up funding has been granted. The project *Rada za Evropu* in support of the reform of the Ukrainian parliament is being implemented by UNDP.

The implementation of the project in support of the reform of the Ukrainian parliament (*Rada za Evropu*) was contracted to UNDP in acknowledgement of the organisation's global experience with parliamentary support. The project was the result of an EU Needs Assessment Mission (EUNAM), and contracting UNDP to implement a project that would work on the implementation of the Roadmap<sup>14</sup> that was a result of the EUNAM was considered the quickest option.

The performance of the Council of Europe, which implemented the project *Consolidation of Justice Sector Reforms* running in parallel to the *Justice Sector Reform Project* appears to have been disappointing, no further projects were contracted on justice sector reform as a result. However, the Council of Europe has implemented a project in *Further support of penitentiary reform in Ukraine* as well as a number of other projects in the RoL area, including on human rights standards; fighting ill-treatment and impunity; supporting the Ukrainian Bar; fighting corruption and supporting free and fair elections

Implementing strategies are typically provided in the form of technical advice and providing a facilitating role to strategy development (for example the *Justice Sector Reform Project* for the Justice Sector Reform Strategy 2015-2018; the UNDP *Rada za Evropu* project supported the development of a communications strategy, and an IT strategy; the CoE *Support to Penitentiary Reform* project provided assistance to the MoJ's "Passport of Reform", a mid-term strategy for penitentiary reform; trainings and workshops; and technical advice on draft legislation. None of the projects in the portfolio procured infrastructure at any scale; however, the *Justice Sector Reform Project* had a procurement component in that it financed the purchase of psychological testing services that were used in the setting up new key justice institutions.

#### 2.2.4 Synergies and complementarity within the portfolio (JC33)

Although the number of interventions selected for closer assessment was limited, it provides clear evidence of instruments supporting and complementing one another across the spectrum, including ENI funding; regional funding as part of the EU-Council of Europe Partnership for Good Governance (Council of Europe project on *Further Support to Penitentiary Reform*); and EIDHR.

Thematically, there is clear complementarity of interventions within the selection of interventions and beyond. For example, while the *Justice Sector Reform Project*, among other, facilitated the drafting of the mid-term Justice Sector Reform Strategy 2015-2020, the Council of Europe-implemented *Consolidation of Justice Sector Reforms* was to work in support of developing and implementing a monitoring strategy for the Justice Sector Reform Strategy. The *Justice Sector Reform Project* assisted in the implementation of key judiciary reforms, including the creation of a new Supreme Court, the reform of the governance of the judiciary with a core role of the High Council of Justice; and contributions to the setting up of the new probation and private enforcement services; the *Supreme Court Twinning: Strengthening the Institutional Capacity of the Supreme Court in Ukraine in the Field of Human Rights Protection at the National Level* is now providing capacity building assistance to the new Supreme Court. Initially part of the *Justice Sector Reform Project*, anti-corruption efforts are now part of separate technical assistance interventions, however, there is clear evidence that the projects co-operate and coordinate.

The *Twinning Implementation of the best European practices with the aim of strengthening the institutional capacity of the Apparatus of the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson) to protect human rights and freedoms* works on strengthening control and prevention mechanisms for the observance of human rights and fundamental freedoms in Ukraine. Outside the selected portfolio of interventions, there are also complementarities. For example, separate grants support the work of civil society organisations that monitor the reform process, such as the Reanimation Package of Reforms, an umbrella structure for an NGO coalition, and where different organisations take the lead on specific reform themes/ aspects.

With regard to EIDHR projects, these focus on accountability, prevention of torture, the protection of fundamental freedoms, and the protection of rights of minorities and vulnerable groups, and reflect the priorities of the Human Rights Dialogue between the EU and Ukraine. For example, the Centre for Civil Liberties with the help of an EIDHR grant is raising awareness of human rights violations in the

<sup>14</sup> The Report and Roadmap on Internal Reform and Capacity Building for the Verkhovna Rada of Ukraine can be found at <http://www.europarl.europa.eu/resources/library/media/20160229RES16408/20160229RES16408.pdf>.

context of the on-going military conflict in Eastern Ukraine; a regional EIDHR grant implemented by the European Human Rights and Democracy Centre at Middlesex University worked with Ukrainian human rights defenders to litigate strategic cases at the European Court of Human Rights in Strasbourg, including cases involving human rights abuses in Eastern Ukraine. An EIDHR grant to the Kharkiv Human Rights Group works on the “Improvement of access to justice and defence of the right to a fair trial for vulnerable groups in Ukraine”; the same group also participated as a partner in the Council of Europe implemented project *Further Support to Penitentiary Reform in Ukraine*.

### 2.2.5 Efficiency, monitoring and visibility (JC34)

Of the six projects in the portfolio, three projects are closed. The 2011 *Project on Increased Effectiveness of the Management Capacities of the Administrative Court of Ukraine* finished prior to the 2013/2014 revolution, and stakeholders, including those that have been present in the country for a prolonged period of time, were unable to offer suggestions as to the extent to which pre-2013 support on capacity development had been carried over to the post-revolution period (they were clearer on other aspects such as assistance to legislative reform); several stakeholders posited that the changes within these institutions had been so considerable that it would be difficult to link these with previous projects’ efforts.

With regards to the *Justice Sector Reform Project*, the EU has opted for consolidation in the implementation of assistance to key rule of law reforms, through bundling assistance in one large contract in the *Justice Sector Reform Project* (EUR 8.5 million), and which is now followed up by the *PRAVO Justice* project with a financial envelope of approximately EUR 15 million. The size of the *Justice Sector Reform Project* was determined prior to the 2013/2014 revolution, and was guided by efficiency concerns. Project implementation has however occurred during a period characterised by an intense pace of reform, and to which projects had to react in real time; this may have occasionally resulted in certain aspects of project management being crowded out; indeed a recent evaluation found that project management tools (logical framework and indicators etc.) should have been adjusted to better account for the project activities. It also found that in terms of efficiency, some components had performed better than others. The evaluation of the project finds that its size was a problem, and that the six components “*had an overall different development and rather low integration among themselves - which leads to the conclusion that classical Technical Assistance/Twinning projects are maybe not the most adequate contracting tool for projects with this relatively large size and wide set of objectives. Each Component of the evaluated project could in fact have generated a self-standing contract/project.*”<sup>15</sup>

Overall, of the six projects selected for assessment, only the *Justice Sector Reform Project* has been evaluated separately (the project has also had two audits). ROMs are performed regularly (five ROMs were on file for the five projects in the portfolio), and project implementers have feedback that they find these helpful, not simply for the final report but also in terms of the actual process. Stakeholders have also suggested that in the rapidly changing context of Ukraine, they would find strategic evaluations helpful that could lead to an adjustment of project objectives and implementing strategies. All projects report a very high frequency of contacts with, and strong support from, the EUD operations section.

Visibility of the projects is in line with EU requirements. In particular with regards to the *Justice Sector Reform Project* and the Council of Europe project *Consolidation of Justice Sector Reforms*, visibility is high among interested stakeholders from civil society and the international community for specific aspects of the projects (its contribution to the development and implementation of the appointment procedure for the judges of the new Supreme Court). Generally, stakeholders were clear on the separation of EU technical assistance projects’ results and opinions on the one hand, and the role of the EUD on the other. However, there was specific concern, voiced by civil society and by representatives of the international community in Ukraine, that the public outreach and communication from the project contradicted official EU positions with regard to the appointment process of judges to the new Supreme Court. The evaluator’s time and resources were too limited to come to a conclusive assessment on this specific aspect. However, it should be highlighted that the *Justice Sector Reform Project* is associated (rightly or wrongly) by many stakeholders both in the international community and within civil society in Ukraine with what would seem to be a problematic appointment process to the Supreme Court. This would seem to offer lessons learned in terms of visibility and management of public outreach of assistance projects in high-stake environments, and where there might have to be a closer alignment on messages between projects and the EUD.

<sup>15</sup> See draft evaluation report, p. 69

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination/complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

Donor coordination overall works. The EUD as well as staff from the individual projects participate regularly 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. The project has also developed an online coordination tool, which is reportedly being used by the Ministry of Justice. For support to penitentiary reform, the "Passport for Reform", developed with the assistance of the CoE-implemented, EU-funded *Further Support to Penitentiary Reform* project has become the strategic document to which support by other, bilateral donors (Norway, Canada) align. In the area of parliamentary support, the 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 for USAID and some smaller projects in support of the reform of the Verkhovna Rada (GIZ).

### 2.3.2 Partnerships established at global level (JC41)

This JC is examined in the overall analysis in Volume I, the main report.

### 2.3.3 Coordination with EU MS/other donors at country level (JC42)

The consecutive EAMR reports from 2014-2017 suggest that donor coordination is working well and that, in the area of RoL, the EU is recognised as being in the lead, in particular as the reforms required are anchored in the requirements on rule of law laid out in the 2014 Association Agreement. The EUD as well as the individual projects participate regularly in the monthly rule of law donor and implementers' coordination meetings convened by the USAID-funded "New Justice" project. This is an established, standing format, which started after the Orange Revolution in 2006. Meetings include donor information exchange, but also have an alternating thematic focus, which depend on current developments and reforms in the sector, and which include keynote speakers from the Ukrainian institutions. Approaches between the EU on the one hand, and USAID on the other hand, differ on certain aspects. At the time of the field visit for this case study, stakeholders reported, for example, the USAID "New Justice" project, which is working on similar objectives as the now closed *Justice Sector Reform Projects* and the follow-up project, *PRAVO-Justice*, does not work with the new Supreme Court judges whose appointment has been controversial.

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 the wider donor community aligns its technical assistance. A dedicated online donor coordination tool, originally designed with the assistance of the *Justice Sector Reform Project*, is reportedly being implemented by the Ministry of Justice and other stakeholders. For the support to penitentiary reform, the "Passport for Reform", developed with the assistance of the Council of Europe-implemented, EU-funded *Further Support to Penitentiary Reform* project has become the strategic document including to determine the support by other, bilateral donors (Norway, Canada). In the area of parliamentary support, the EUNAM provided the roadmap for parliamentary reform that was subsequently adopted by resolution by the Ukrainian parliament, and which provides the overall strategic framework for technical assistance projects, including for USAID and some smaller projects in support of the reform of the Verkhovna Rada (GIZ).

### 3 Effects of the EU support to RoL

#### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy/strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion/minority rights/gender) and democracy issues into partner countries' RoL policy</b>

##### 3.1.1 Summary of key findings (EQ5)

Building on the opportunities provided by the strong reform momentum after the 2013/2014 Revolution of Dignity, as well as the commitment by the Ukrainian government to the implementation of the Association Agenda, EU support has contributed to legal and constitutional reforms; and to the consolidation of the national rule of law policy and strategic framework:

- The *Justice Sector Reform Project* has contributed to bringing the constitution and key legislation on the judiciary of Ukraine in line with European standards on key aspects of independence of the judiciary, judicial accountability, and the right to a fair trial. The project has also been pivotal in facilitating the drafting of the 2015-2020 Justice Sector Reform Strategy and its Action Plan, as well as its Annual Implementation Plans—the first of their kind in the country in any sector - which provide a strategic framework to which justice sector stakeholders and donors are aligned.
- A “Passport for Reform” of the penitentiary system has been adopted and provides the strategic framework for stakeholders (the Ministry of Justice’s penitentiary service and the Parliamentary Sub-Committee on Penitentiary System Reform) to sequence and advance reforms in the sector, as well as for other donors.
- A Roadmap, a result of a fact-finding mission of the European Parliament, to strengthen the Verkhovna Rada (Ukraine Parliament) was adopted, and technical assistance was tailored in support of its implementation; the Roadmap, if implemented, could bring about a considerably strengthened parliament; however at present there is no strong political consensus and leadership to implement the necessary reforms. Nonetheless, the project has contributed to the reduction of legislative spam; as well as the adoption of a communications strategy, as well as an IT strategy.
- The project in support of the Parliamentary Ombudsperson of Ukraine aims to strengthen the institution’s role in monitoring and advocating for the integration of human rights issues into national legislation and policies; however, the institution has suffered a considerable setback with the appointment in Spring 2018 of a new Ombudsperson that contravened appointment procedures. The majority of staff has resigned and left with the outgoing ombudsperson, and the institution is now confronted with a lack of institutional memory and a loss of the capacities built by previous international support.

##### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)

The *Justice Sector Reform Project* contributed—through comments, expert opinions and recommendations—to the drafting of key constitutional amendments and amendments to legislation on the judiciary in Ukraine, which were needed in order to advance key priorities of the Justice Sector Reform Strategy 2015-2020, in particular those relating to the de-politicisation of the judiciary. Key constitutional amendments to the development of which the *Justice Sector Reform Project* directly contributed relate to the redefined role of the High Council of Justice (HCJ) as a self-governance mechanism in line with Council of Europe standards. Other key legislation on which the project provided expertise was the law on the High Qualification Commission of Judges (HQCJ) of Ukraine; an amendment to the Law on the Judiciary and the Status of Judges; and the Law on the Ukrainian Bar.

There is some difficulty in establishing a direct correlation between the project and legal reforms. First, the legal changes passed since the 2013/2014 revolution are so considerable that it is a challenge to find a consolidated record. Second, other donors have also contributed to these reforms; for example, consecutive USAID technical assistance projects have worked on legal reform in the above areas – while pre-2013/14, progress was incremental, stakeholders nonetheless claim that the ground had

been prepared for many years, and which allowed for a greater pace of adoption of the legal framework post-2013/2014. However, it is clear that the *Justice Sector Reform Project* made a significant contribution to facilitating the necessary reforms. The project also contributed to the changes in the Law on Enforcement Proceedings and the Law on the Bodies and Persons Authorised to Enforce Court Decisions and Decisions of Other Bodies, and which paved the way for reform in the enforcement system and the introduction of the profession of private enforcement officers, in parallel to the existing state enforcement system. The aim of the reform has been to improve the performance of the system to enforce civil and commercial court decisions in accordance with the fundamental right to a fair trial within a reasonable time, in accordance with Article 6 of the European Convention on Human Rights. Finally, the Project played a key role in the setting up the new probation service.

The Council of Europe-implemented project *Further Support to Penitentiary Reform* has assisted the development of a package of five draft laws aimed at humanising the conditions of detention, in line with Council of Europe standards, four of which were passed as laws by the Parliament of Ukraine in 2016.

A European Parliament Needs Assessment Mission (EUNAM) at the Ukraine Parliament, conducted in 2015 and 2016 resulted in a “Roadmap for Internal Reform and Capacity Building for the Verkhovna Rada of Ukraine,” and which was signed and adopted by its then-Chairman. The “Roadmap” formed the basis of an on-going project implemented by UNDP in support of the parliament, *Rada za Evropu – Capacity Building in Support of the Verkhovna Rada of Ukraine*, and which aims to strengthen the parliament’s “framework for improving and monitoring the quality of the legislation in substance and in form, including in the context of the Association Agreement implementation.” The USAID Rada programme also works to implement the Roadmap’s priorities. While both efforts have had some results, it is clear that the political will to implement some of the key strategic priorities does not currently exist.<sup>16</sup>

Most projects did contribute to the drafting of legislation, however, in most cases, the adoption of such legislation is yet to be achieved, for example, the Twinning project in support of the parliamentary ombudsman, which developed draft legislation on personal data protection in line with the requirements of the Association Agreement and Council of Europe standards, as well as a draft Law on the Ukrainian Parliament Commissioner for Human Rights. In the area of penitentiary reform, a “Draft Law on the Penitentiary System” was developed with the help of the Council of Europe project on “Further Support to Penitentiary Reform”; the draft law represents a departure from punitive to a rehabilitative approach, and contains provisions relating to an internal prison inspectorate and social rehabilitation services, but has not yet been passed.

### 3.1.3 National RoL policy/strategic framework (JC52)

The *Justice Sector Reform Project* has been the key technical assistance project to support the establishment of a strategic framework for justice sector reforms in Ukraine. The project substantially contributed to the development of the 2015-2020 Justice Sector Reform Strategy (JSRS), which is overseen by the Justice Reform Council (JRC) operating under the auspices of the Presidential Administration. The JRC itself was created specifically upon advice of the Project in the summer 2014, and included a wide range of leading justice sector stakeholders and international donors. JRC coordinates various justice sector reform stakeholders, including the Supreme and High Courts; the Prosecutor General Office; the Ministry of Interior; the Ministry of Justice; the Council of Judges; the National Bar, etc. Documentation and stakeholders consulted for the purposes of this evaluation agree that the existence of a sector strategy (along with an Action Plan and Annual Implementation Plans) has been an important result in itself, particularly given that this is the first such strategy in Ukraine. The EUD reports to having made a strategic decision in 2014 to insist on such a comprehensive strategy as a precondition for any expenditure under the *Justice Sector Reform Project*, which was already in place at that time, that is, where funding was theoretically readily available. The wider donor community, for example the USAID-funded “New Justice” programme, is aligned with the priorities of the strategy. There are mixed assessments from stakeholders with regard to the drafting process of the strategy on the one hand, and the monitoring of the strategy on the other. With regard to the process that led to the drafting of the Justice Sector Reform Strategy, some stakeholders consider that this process was insufficiently consultative. On the other hand, there have been several voices that have questioned the methodology in place to measure progress of the strategy, and which was found to be very complicated and impractical.

<sup>16</sup> This project is still being implemented, however a 2017 ROM report suggests that its objective may not be reached “due to the political changes that have taken place, [planned outputs] have not been delivered and so the assumption that there would be wider support for reform was misplaced.”

Stakeholders from civil society expressed disappointment with the results coming from the *Consolidation of Justice Sector Reforms*, implemented by the Council of Europe in parallel with the *Justice Sector Reform Project*. The project set out to “help to measure the impact of reforms, as well as the CoE’s and other international stakeholders’ interventions in this area in Ukraine and informing the CoE and other international stakeholders on the course of reforms and further needs for support.” Stakeholders however did report that the project resulted in a proposed methodology that was not applied to the Justice Sector Reform Strategy in a systematic way.

The Council of Europe-implemented project on support to penitentiary reform in Ukraine contributed to the drafting of the Ministry of Justice’s “Passport for Penitentiary Reform”. The Ministry of Justice reports that this not only provides the medium-term strategic directions for reform in the sector, but that it has also become the standard setting format for planning sectorial reforms across the Ministry of Justice, as it assists in the costing of reforms, and provides key indicators for measuring progress.

The project in support to the parliament of Ukraine, “*Rada za Evropu*”, implemented by UNDP, despite experiencing a changed co-operation context shortly after its commencement (with the departure of the initial champion for parliamentary reform to become Ukraine’s Prime Minister), achieved some results in strengthening the role of the parliament. An E-Parliament Development Strategy was adopted in July 2018, which comprises a set of medium-term reforms, including an e-bill concept, and various digital tools for citizens’ engagement in the legislative process. The project also contributed to the development of a Strategic Plan for the Ukrainian parliament, as well as a Human Resources Strategy.

### 3.1.4 Integration of HR and democracy issues (JC53)

The above-mentioned Council of Europe-implemented project contributed to the drafting of the “Passport of Penitentiary Reform” through expertise and capacity building. The project also adopted a Code of Ethics for the staff of the State Criminal Executive Service, which is in line with Council of Europe standards on ethics for prison staff. The same project contributed to the creation of an Internal Inspection Unit for Human Rights, which has been set up inside the Ministry of Justice, and which reports to the Deputy Minister in charge of the penitentiary service; this unit is fully operational.

An EIDHR project, implemented between 2015 and 2017 by Penal Reform International and Public Advocate, a Ukrainian NGO, worked on capacity building with prison staff and social workers on improving the human rights situation of vulnerable groups of offenders inside and outside of prisons. An on-going EIDHR grant implemented by the Centre for Civil Liberties works with civil society organisations across Ukraine to increase the level of awareness of the public on human rights, as well as to increase the capacities of civil society to monitor state actors’ compliance with human rights standards.

The twinning project in support of the Ukrainian parliamentary ombudsman works on developing the institution’s capacities to monitor the respect for human rights and fundamental freedoms, and to improve the effectiveness of the activities of the institution to eliminate human rights violations, as well as to monitor the implementation of the institution’s recommendations, and its capacity to improve the instruments to restore violated rights. As highlighted above, the controversial appointment process of the new Ombudsperson in Spring 2018 led to a departure of the vast majority of the staff of the institution, throwing into doubt the sustainability of results of not only previous support (the institution has been partner of numerous international assistance projects for several years), but also of the sustainability of some of the capacity building efforts of the existing project.

The Supreme Court twinning project aims at strengthening the court’s capacity “*by forming a uniform judicial practice when administering justice, the correct application of legislation in force and avoiding miscarriages of justice, as well as ensuring the implementation of access to justice and RoL principles in Ukraine.*”

## 3.2 Quality/efficiency of justice systems (EQ6)

<b>EQ6</b>	<b>To what extent has the EU support contributed to enhancing the quality/efficiency of justice systems in partner countries?</b>
<b>JC61</b>	<b>Justice system planning and budgeting improved</b>
<b>JC62</b>	<b>Infrastructures and equipment (e.g. court facilities, IT systems) improved</b>
<b>JC63</b>	<b>Capacities skills and procedures in key RoL entities (e.g. judiciary, courts, public agencies, professional associations) improved</b>
<b>JC64</b>	<b>Legality ensured, harmonisation of domestic law with international law/ jurisprudence promoted, and enforcement of international judgments improved</b>

### 3.2.1 Summary of key findings (EQ6)

The *Justice Sector Reform Project* has contributed to the improvement of justice system planning and budgeting. The project contributed to the transfer, from the Verkhovna Rada to the High Council of Justice of the supervision of the court administration and budget. The project worked with the High Council of Justice on applying a cost-benefit analysis to budget allocation decisions, and linking expenditure to performance. Business Intelligence Dashboards were created and used to guide discussions on how analytics could be used for shaping judiciary policies and rules. Performance-based budgeting and programme budgeting approaches have not yet been rolled out, however the project is credited with stimulating discussion on new budgeting approaches that reflect a departure from traditional justice sector budgeting (cost-based line-budget measuring salaries and costs of goods, as opposed to results and services provided) in Ukraine.<sup>17</sup>

The projects selected for assessment had few components on the procurement of IT systems. The *Justice Sector Reform Project* helped in the improvement and upgrading of the IT infrastructure of the Ministry of Justice, specifically the upgrading of the existing Automated System of Enforcement Proceedings (ASEP), in the development of a Debtor Register and their integration with land and banking registries.

Projects have contributed to increasing the capacities, skills and procedures in key RoL entities. The *Justice Sector Reform Project* contributed to a major restructuring of the Ministry of Justice, based on a 2015 “Report on Strategic Screening of the Role and Key Competences of the Ministry of Justice,” and which analysed the Ministry’s capacities for strategic planning, analysis and research. The screening report, as well as a functional review of the Ministry of Justice, led to internal consolidation of functions in the Ministry of Justice. The project also assisted in the creation and the capacity building of a new Probation Service. The Council of Europe-implemented “Further Support to Penitentiary Reform” increased the Ministry of Justice’s capacities for strategic planning of the reform process in the sector, and which was laid down in the medium-term strategy “Passport for Reform.” The project in support of the parliamentary ombudsperson has a considerable capacity development component; however, the institution has experienced a recent massive staff turnover, and it is uncertain to what extent capacities built as part of previous assistance efforts have been retained.

The Supreme Court twinning project is working on strengthening institutional capacity to apply legislation correctly and avoid miscarriages of justice, and ensuring the implementation of access to justice. It promotes the harmonisation of domestic law with ECtHR jurisprudence. For both projects, attribution of results will ultimately be a challenge, as there are other donors and organisations (e.g. USAID, the Council of Europe) also working with these institutions.

### 3.2.2 Justice system planning and budgeting improved (JC61)

The *Justice Sector Reform Project* has contributed to the improvement of justice system planning and budgeting. As part of its assistance to the development of the 2015-2020 Justice Sector Reform Strategy and Action Plan, a costing exercise for envisioned reforms was introduced, and the project worked on promoting strategic and budgetary planning. The project contributed to the transfer from the Verkhovna Rada to the High Council of Justice of the supervision of the court administration and budget. The project worked with the High Council of Justice on applying a cost-benefit analysis to budget allocation decisions, and linking expenditure to performance. Business Intelligence Dashboards were created and used to guide discussions on how analytics could be used for shaping judiciary policies and rules. Performance-based budgeting and programme budgeting approaches

<sup>17</sup> See draft project evaluation report.

have not yet been rolled out, but the project is credited with stimulating discussion on new budgeting approaches that reflect a departure from traditional justice sector budgeting (cost-based line-budget measuring salaries and costs of goods as opposed to results and services provided) in Ukraine. Its follow-up project, “*Pravo Justice*” is now supporting the improvement of the management of justice sector reforms by strengthening the capacities of justice sector institutions for strategic planning, medium-term budgeting.

### 3.2.3 Infrastructures and equipment improved (JC62)

The projects had limited components on the procurement of IT systems. The “Justice Sector Reform Project” helped in the improvement and upgrading of the IT infrastructure of the Ministry of Justice, specifically the upgrading of the existing Automated System of Enforcement Proceedings (ASEP), in the development of a Debtor Register, and in their integration with land and banking registries. The *Justice Sector Support Project* has financed the procurement of key elements needed for the newly introduced procedure for the appointment of judges to the Supreme Court, including psychological testing services undertaken by second round candidates; there is now a question as to the sustainability of the appointment process in terms of its affordability once donor support ceases. The project *PRAVO-Justice*, which has now commenced (December 2017) is supporting the development and implementation of an IT-strategy in the justice sector and for the piloting or roll-out of e-justice solutions. The *Rada za Evropu* project, implemented by UNDP and supporting the reform of the Ukrainian parliament, procured a limited amount of equipment for the IT department of the Verkhovna Rada, in support of its work on the medium-term IT strategy.

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

The projects reviewed as part of this case note have contributed to increasing capacities, skills and procedures in key RoL entities. The *Justice Sector Reform Project* contributed to a major restructuring of the Ministry of Justice, based on a 2015 “Report on Strategic Screening of the Role and Key Competences of the Ministry of Justice”, and which analysed the Ministry’s capacities for strategic planning, analysis and research. The screening report as well as a functional review of the Ministry of Justice led to the internal consolidation of functions in the Ministry of Justice. This includes the consolidation of the management of subordinate sub-sectors, including the penitentiary, probation, enforcement, notaries, insolvency administration, legal aid, registers, etc., and the handling of international mutual legal assistance. The project advised the Ministry of Justice in the drafting of a Strategic Development Plan. As a result, a Directorate General of Strategic Development and EU Integration was established.<sup>18</sup> The project also “supported improvements including a more regulated legislative process and more evidence-based regulation of the justice sector through the use of M&E, gap analysis, impact assessment and other techniques. In particular, by the end of 2017 the project suggested a closer link between legislation and practice by promoting a monitoring mechanism of new civil and commercial procedural codes, involving MoJ, the Supreme Court, judges, lawyers, scholars, and CSOs.”<sup>19</sup> Also, as a result of the project, the High Council of Justice established a Strategic Planning Unit.<sup>20</sup>

The Council of Europe-implemented project *Further Support to Penitentiary Reform* increased the Ministry of Justice’s capacities for strategic planning of the reform process in the sector, and which was laid down in the medium-term strategy “Passport for Reform.” According to the Deputy Minister of Justice in charge of penitentiary reform, the “Passport for Reform” has become the guiding format for strategic planning documents for sub-sectors, given that the “Passport” contains key performance indicators and a cost analysis of the reforms to be implemented.

The project in support of the parliamentary ombudsperson has a considerable capacity development component. It is mainly focused on training of trainers, and includes modules on common skills and competencies, and notably skills in specific legal areas (data protection, equal rights and non-discrimination, access to public information); the project results are therefore likely to be achieved upon project completion. What is less certain is to what extent capacity built as part of previous support (provided mainly through bilateral donors) has survived the recent mass turnover of staff in the institution, and to what extent projects will have to re-start capacity building of the entire institution.

<sup>18</sup> Unfortunately, the website of the Ministry of Justice is incomplete and a search for the structural set up of the Ministry as well as the work of the above mentioned Directorate General of Strategic Development and EU Integration has been futile.

<sup>19</sup> See draft report “Preparing Assessment of EU ongoing Support to Justice Sector Reforms in Ukraine”, p. 23

<sup>20</sup> A similar comment applies with regard to the High Council of Justice website as to that of the Ministry of Justice in a previous footnote.

The Supreme Court twinning project is working on strengthening business processes and the decisional quality of the Supreme Court.

### **3.2.5 Harmonisation of domestic law with international law (JC64)**

The Supreme Court Twinning project is working on strengthening the institutional capacity to apply legislation correctly and avoid miscarriages of justice, and ensuring access to justice. It promotes the harmonisation of domestic law with European standards of jurisprudence. The project is still on-going and it is too early to assess results.

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence/impartiality/accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence/impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of the judiciary and other RoL institutions is enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

EU support—including technical assistance projects as well as policy dialogue—has made a considerable contribution, clearly identified by stakeholders, to reforms affecting the independence of judicial institutions in Ukraine. The *Justice Sector Reform Project* has been key in this respect—changes to which the project contributed include the transfer of the appointment and removal of judges from the Verkhovna Rada (the parliament) to the High Council of Justice (HCJ). The HCJ is also newly in charge of the disciplinary measures as well as career development of judges.

A key and clearly identified contribution was made by the *Justice Sector Reform Project* to the creation of a procedure for the selection and appointment of judges to the new Supreme Court. The procedure, applied in the appointment of the first 117 (out of an eventual number of 200) judges, was conducted by the High Judicial Qualification Commission (HJQC), and involved a two-stage selection process comprised of written/professional competence tests, as well as psychological testing. A Public Integrity Committee (PIC) – a body made up entirely of representatives from civil society – scrutinised the integrity of candidates. The appointment process to the Supreme Court is widely acknowledged as having been considerably more transparent than any previous procedures, given that candidates had to demonstrate their compliance along several vectors, including professional competence, psychological fitness, and personal integrity. There is also wide acknowledgement that the competition was open to candidates from outside the judiciary, including scholars, journalists, and human rights activists. However, the appointment process was also mired in controversy, and it is widely considered—both within national civil society as well as international experts in Ukraine and internationally—that some 27 candidates have been appointed of whom there are concerns regarding their professional and personal integrity, which led to a withdrawal of the PIC from the process.

#### 3.3.2 Independence/impartiality of the judiciary (JC71)

Calls for reform of what was widely perceived as a judiciary controlled by politicians were among the main demands of the 2013/2014 Revolution of Dignity, and formed one of the key pledges of the newly elected President P. Poroshenko. Expectations to these reforms have thus been high, and reform efforts have received a considerable level of scrutiny by civil society. As pointed out elsewhere in the report, those civil society stakeholders who have followed and participated (see below) in the judicial reform process are highly aware of the role of the EU-funded *Justice Sector Reform Project* and the Council of Europe-led *Consolidation of Justice Sector Reforms* project.

The 2015 to 2020 Justice Sector Reform Strategy, to the development of which the *Justice Sector Reform Project* substantially contributed, and the implementation of which has been at the core of the project, gives the independence, transparency, and accountability of the judiciary highest priority.<sup>21</sup> The *Justice Sector Reform Project* substantially contributed to reforms in support of the independence of the judiciary. Judicial self-governance has been strengthened and been brought closer to European standards. The appointment and removal of judges, hitherto under the competence of the Ukrainian Parliament, has been transferred to a strengthened High Council of Justice, which is also in charge of disciplinary measures (dismissal, temporary suspension, reassignment etc.) against judges.

The *Justice Sector Reform Project* also had a pivotal role in the creation of a process of appointment of judges to the new Supreme Court, which commenced operations in late 2017. The appointment (the first part of which had been completed in late 2017) was preceded by a selection process run by the High Qualification Commission of Judges (HQCJ), and to the development of which the project significantly contributed through expertise and other resources, including assistance to the development of the skills test that was part of the first round of testing, as well as the procurement of a psychological testing module. The selection process has many features that are unprecedented, and which are responses to the high public interest in judicial reform: For the first time, non-judges were

<sup>21</sup> See 2015-2020 Justice Sector Reform Strategy, point 4, Pillars and Stages of Reform. The English version of the Strategy can be found at: <http://jrc.org.ua/strategy/en>

able to apply for the position of Supreme Court judge—a quarter of the first set of appointees had not previously been judges. The process itself was organised in two rounds, and covered professional skills as well as psychological parameters. Crucially, the process included integrity checks, through a cross-check of data held by the National Anti-Corruption Bureau of Ukraine (NABU) and the National Agency on Corruption Prevention, specifically, judges' asset and conflict of interest declarations, which had been introduced as a compulsory requirement in 2015. In order to ensure transparency, the tests were publicly transmitted via YouTube.

A Public Integrity Council (PIC), composed of members of the public and civil society, was established to contribute specifically to the integrity aspects of the process. PIC conducted separate checks on each candidate, and provided the HCJ with opinions on the suitability, from an integrity point of view, of each of the candidates. While in 80% of the cases in which PIC had objections these candidates were not appointed by the HCJ, there is some controversy around 27 candidates, and who, in the opinion of PIC, should not have been appointed. PIC, as a result, suspended its participation in the process; this includes the appointment procedure of the second tranche of candidates to the Supreme Court that will take place in Autumn 2018, as well as the vetting of all sitting judges in Ukraine, which has already started, and where PIC considers that this process is too rushed to amount to proper vetting.<sup>22</sup>

For the process of appointment of judges to the Supreme Court, other reported issues involved the lack of transparency around test results, the suitability of the tests deployed in the first round of the competition, and the format of the psychological test (a loyalty test as opposed to a test on morals and values).<sup>23</sup>

The controversy around the first round of appointments is well documented, and there is consensus that the appointment process was problematic. The overall concern relates to fact that the process was designed to provide a clean break with the past: Civil Society felt that given the questions and opacity around the integrity of 20% of the new appointees, the opportunity for a new start has been missed. A second concern relates to the lack of feedback and communication in this pivotal reform process: PIC members report attempts to obtain clarification from the *Justice Sector Reform Project* itself (and which is seen as very closely associated, by stakeholders beyond the PIC interviewed for this case note, with the process by providing technical assistance to the design of key aspects of the appointment process),<sup>24</sup> but were disappointed with the quality of the responses.

### 3.3.3 Accountability of the judiciary and other RoL institutions (JC72)

The *Justice Sector Reform Project* made a contribution to improving the accountability of the judiciary. As highlighted elsewhere in the report, the project played a pivotal role in the drafting of the Justice Sector Reform Strategy 2015-2020, and where provisions regarding accountability and integrity have been established as priorities in section 5.3 of the Strategy "Increasing the accountability of the judiciary". The project contributed to the development of a system of income and asset declarations, and conflict of interest declarations for judges and other court staff.

As described above, a contribution was made by the project to the support of a transparent and accountable appointment process for judges to the new Supreme Court, including through support in the development of qualification criteria, psychological testing, and the inclusion of integrity checks and asset declarations in the appointment procedure. The establishment and inclusion of the Public Integrity Council in the appointment process for the Supreme Court, and in the vetting of judges (although the Public Integrity Council has suspended its participation in the process for the moment), must also be considered a contribution to increased accountability.."

The *Rada za Evropu* project, implemented by UNDP, helped to draft an "E-Parliament Development Strategy", which includes various digital tools for citizens' engagement in the legislative process. The project also developed a communication strategy for the parliament, the objective of which is to enhance citizens' participation in the legislative process, as well as to engage citizens in a dialogue around the work of the parliament.

<sup>22</sup> There have been numerous statements by members of the PIC, including "Ukraine's Public Integrity Council not to take part in re-evaluation of judges", at <https://www.unian.info/society/10056041-ukraine-s-public-integrity-council-not-to-take-part-in-judges-re-evaluation.html>, assessed 1 August 2018.

<sup>23</sup> See, for example, a recent article in the Kyiv Post (14 September 2018) at <https://www.kyivpost.com/ukraine-politics/few-candidates-apply-for-anti-corruption-court-by-sept-14-deadline.html>. Accessed 17 September 2018.

<sup>24</sup> USAID, which is traditionally the second largest donor to rule of law reform in Ukraine, was at the time in between technical assistance projects, and was therefore not substantially involved in technical assistance in the design of the appointment process.

### 3.4 Broader effects on the RoL (EQ8)

<b>EQ8</b>	<b>To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?</b>
<b>JC81</b>	<b>Access to justice strengthened</b>
<b>JC82</b>	<b>Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened</b>
<b>JC83</b>	<b>Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved</b>

#### 3.4.1 Summary of key findings (EQ8)

An overall assessment of the JC under this EQ is hampered by the comparative novelty of the reforms to which EU support has contributed, as well as the overall novelty of the justice sector reform process, which effectively started only in 2014, and where it would be premature to expect to see the results reflected in any of the public perception researches at this stage. There are diverging assessments as to the level of progress made by Ukraine since the 2013/2014 Revolution of Dignity on rule of law reforms. Stakeholders agree that important reforms have taken place (see above). However, there also appears to be a consensus on the reform momentum having slowed down since mid-2016, and powerful vested interests putting a brake on further reform efforts.

#### 3.4.2 Access to justice (JC81)

The flagship *Justice Sector Reform Project* contained one component dedicated to “Access to Justice and the Right to Defence”, which did not, according to a recent evaluation of the project, achieve its objective. For other aspects of this project, as well as other projects in the sample, the link to improved access to justice is, at best, by proxy. A recent publication by an Italian think tank summarises opinion polls, since 2015, measuring the confidence of the public in the judicial system, and where no improvements have been reported. The paper quotes a summer 2017 opinion poll that shows that fewer than 6% of respondents had confidence in the courts, while an earlier 2017 poll found that 46% of respondents felt that no progress had been made on the reform of the judiciary since the reform process had started.<sup>25</sup> A 2017 poll by the USAID-funded New Justice project found that 12% of respondents trusted the judiciary/courts.<sup>26</sup> This raises questions going to the core of the EU support to Ukraine, i.e.: despite the reforms legally mandated by the Association Agreement between the EU and Ukraine, and considerable investments through political dialogue and technical assistance projects, the effectiveness of these reforms is not being acknowledged by the people of Ukraine. This scepticism is widely shared by the expert community, and which assesses that despite an initial strong reform momentum, the pace of reforms has slowed since 2016, and where powerful vested interests putting a brake on further reform efforts.

#### 3.4.3 Respect for human rights (JC82)

On this JC, too, it would seem to be too early to extrapolate conclusions with regards to meta-level indicators. Penitentiary reforms have been acknowledged by the CPT in its 2017 report; the report on the 7<sup>th</sup> periodic visit, conducted in late 2017, is still outstanding; it is however probably too early for the CPT to observe specific results from recent penitentiary reforms.

The flawed appointment process to the position of ombudsman has been highlighted in various parts of this case note. It would appear to be worrying that the new incumbent is widely seen to having been appointed along party lines, in a move considered to be motivated by pre-election considerations.

#### 3.4.4 Governance and democratic processes (JC83)

The Business Anti-Corruption Portal’s 2017 Ukraine Corruption Report finds that political influence, nepotism, and corruption in the judiciary in Ukraine represent considerable risks to businesses operating in the country.<sup>27</sup> And a late 2017 digest of opinion polls finds that the Ukrainian parliament

<sup>25</sup> See Giardullo, C. (2018). Four Years After: The “Long March” of Justice-Sector Reforms in Ukraine. <http://www.iai.it/sites/default/files/iaip1801.pdf>. Accessed on 18 September 2018.

<sup>26</sup> The National Public Survey regarding Public Trust in the Judiciary, Judiciary Reform and Corruption in the Judiciary can be found at <https://newjustice.org.ua/en/lib/research-and-reports/national-surveys/>.

<sup>27</sup> See 2017 Ukraine Corruption Report at <https://www.business-anti-corruption.com/country-profiles/ukraine/>.

and courts are considered the most distrusted institutions, and that “74 percent of young Ukrainians have a deep distrust of political leaders.”<sup>28</sup>

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<sup>28</sup> See “What Ukrainians Really Think: 10 Key Insights from Ukraine’s 2017 Opinion Polls”. <http://www.atlanticcouncil.org/blogs/ukrainealert/what-ukrainians-really-want-10-key-insights-from-ukraine-s-2017-opinion-polls>. Accessed 18 September 2018.

## 4 Annexes

### 4.1 List of persons/institutions consulted

<i>Position</i>	<i>Organisation</i>
Director	Centre for Civil Liberties
Deputy-Diretor	Center for Political and Legal Reforms
Expert	Center for Political and Legal Reforms
Chief of Party	Chemonics
Deputy Head of Party	Chemonics
Project Manager	CoE
Coordinator	Declarations under Control
Director	De Jure Foundation
Expert	De Jure Foundation
Supreme Court Twinning Project	Deutsche Stiftung fuer Internationale Rechtliche Zusammenarbeit
Legal Counsellor EUD to the CoE	EU
Dir EAST - Russia, Eastern Partnership, Central Asia, Regional cooperation and OSCE, Ukraine desk	EU - EEAS
Political Officer	EU - EEAS, EUD Kyiv
Sector manager (Rada project) "European Integration, Media"; Operations Section 1	EU - EEAS, EUD Kyiv
Justice Sector Task Manager	EU-EEAS, EUD Ukraine
Political Officer	EU-EEAS, EUD Ukraine
Project Manager	EU-EEAS, EUD Ukraine
Support Group for Ukraine, Team Justice and Home Affairs, including anti-corruption	EU - NEAR Support Group for Ukraine
Expert on asset declarations	Freelance consultant
Team Leader Pravo Justice	Justice Coopération Internationale
Deputy Minister of Justice	Ministry of Justice Ukraine
Resident Twinning Advisor	Office of the Parliament Commissioner for Human Rights
Head of IT Unit of the Ukrainian Parliament	Parliament of Ukraine
Member of Parliament	Parliament of Ukraine
Coordinator	Public Integrity Council
Expert	Strategic Advisory Group for Supporting Ukrainian Reforms
Senior Advisor in Parliamentary Development and Political Participation International Team Leader; EU-UNDP Rada for Europe Project; UNDP Ukraine	UNDP

### 4.2 List of documents consulted

#### 4.2.1 EU strategy and programming

European Commission (2007): ENP Ukraine. Country Strategy Paper 2007-2013.

European Commission (2007): ENP Ukraine. National Indicative Programme 2007-2010.

European Commission (2011): ENP Ukraine. National Indicative Programme 2011-2013.

European Commission (2011-2016): Annual Action Fiches Ukraine.

European Commission (2013): EU-Ukraine Association Agenda.

#### 4.2.2 EU reporting

DG External Relations Delegation of the European Commission to Ukraine (2007-2009): Draft Annual Management Plan.

EU (2011-2017): External Assistance Management Report (EAMR). Ukraine.

European Commission (2012, 2013, 2015): European Neighbourhood Policy Progress Report.

### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2010 Support to the Justice Sector Reforms in Ukraine, implemented between 2013 and 2017
- 2011 Twinning project "Increased Effectiveness and Management Capacities of Administrative Courts in Ukraine"
- 2016 Rule of Law in Ukraine– policy and budgetary analysis in the area of police/law-enforcement reform
- 2016 Rada za Evropu: Capacity-Building in Support of the Verkhovna Rada of Ukraine
- 2016 Implementation of best European practices with the aim of strengthening the institutional capacity of the Apparatus of the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson) to protect human rights and freedoms
- 2016 Strengthening the Institutional Capacity of the Supreme Court of Ukraine in the Field of Human Rights Protection at the National Level

### 4.2.4 Evaluation and studies

ADE (2010): Evaluation of the EU's co-operation with Ukraine 2002-2009.

Particip (2017): External Evaluation of the European Neighbourhood Instrument (ENI) (2014-mid 2017).

### 4.2.5 Other

CEPS (2017): Democracy and its Deficits: The path towards becoming European-style democracies in Georgia, Moldova and Ukraine.

Government of Ukraine (2015): National Human Rights Strategy of Ukraine.

Ministry of Justice of Ukraine (2017): Strategic development plan for budget year 2017 and two upcoming budget periods.

National Anti-Corruption Bureau of Ukraine (2016): Report August 2015- February 2016.

Support to Justice Sector Reforms in Ukraine (2014): Ukraine Judiciary Development Strategy 2015-2020.

## Case study note – EuroMed Justice (III/ IV)

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## 1 Introduction

In 1995, the Barcelona Declaration<sup>1</sup>, which launched the **Euro-Mediterranean Partnership**, encompassed in its agenda democratic reforms and human rights, economic prosperity and stability. With the arrival of the ENP in 2004, the so-called Barcelona Process became the multilateral initiative for dialogue and co-operation between the EU and Mediterranean countries. In 2008, the Barcelona Process was replaced by the Union for the Mediterranean. Following the set-up of the Barcelona Process, the objective of enhanced co-operation was reflected at the political level with the first framework document adopted by Ministers of Foreign Affairs in Valencia in 2002<sup>2</sup>, and endorsed the idea of a **regional programme** in the field of justice, freedom and security.

After the **“Arab Spring” unrest**, the EU published two Communications (“*A partnership for democracy and shared prosperity with the southern Mediterranean*”<sup>3</sup> and “*A new response to a changing neighbourhood*”<sup>4</sup>) that outlined how the ENP and other EU instruments could be used to advance democracy in Arab countries. These two communications focus on three main elements: i) democratic transformation, ii) partnership with people and civil society, and iii) sustainable and inclusive growth. Also, in response to the new context, the EU designed the Support to Partnership, Reform and Inclusive Growth (SPRING) Programme in October 2011, as a vehicle for the provision of support to partner countries in the Southern Neighbourhood on the more-for-more basis<sup>5</sup>.

The first “*Mesure d’Accompagnement Justice et Affaires Intérieures*” programme (MEDA JAI I), which included the EuroMed Justice I project (EMJ-I, 2004-2007), was decided in 2004. This aimed through a variety of inter-regional activities to create an inter-professional community of magistrates, lawyers and court personnel; and strengthen the Rule of Law (RoL) and the realisation of human rights.

A second stage of the MEDA JAI programme, which included the EuroMed Justice II project (EMJ-II, 2008-2011), was decided in 2006. This aimed to support the development of partner countries’ institutional and administrative capacity in the justice sector by developing co-operation in improving access to justice, modernising judicial systems, increasing the technical capacities of authorities, developing existing mechanisms of legal co-operation in civil and criminal matters, and supporting the EuroMed Judicial Network and EuroMed Network of Judicial Schools.

The Regional Strategy Paper 2007-2013 and the Regional Indicative Programme 2007-2010 prioritised the themes of co-operation in justice, security and migration and envisaged the preparation of a new regional “EuroMed JHA III programme” (divided into these three components), with EUR 5 million for the justice pillar to consolidate the achievements of MEDA JHA I and II.

**Common challenges** relative to Rule of Law (RoL) (and for the purposes of the current case-study, of justice systems) in the ENI-South region are complex and intricately interlinked. They include general challenges such as:

- Political instability and conflict, in the lead up, during and following the so-called Arab Spring;
- Widespread serious human rights violations and associated impunity, in particular torture, poor prison conditions, issues with fair trial rights, gender, minority and children’s rights;
- General or multiple governance and democratic challenges, which impede regional and national development, hamper legislative and policy reform efforts, and feed into other concerns including human rights abuses and corruption;
- Lack of political will and institutional resistance to change, and related failure to implement existing legislation and policies;
- Inadequate harmonisation of national laws and policies with international conventions and norms, or their inadequate application in practice;
- Poor public confidence in national institutions.

Common challenges also include specific RoL issues such as:

- Lack of judicial and prosecutorial independence, institutional and judicial transparency, lack of adequate access to justice, etc.;

1 Adopted at the Euro-Mediterranean Conference; 27-28/11/95  
[http://www.eeas.europa.eu/euromed/docs/bd\\_en.pdf](http://www.eeas.europa.eu/euromed/docs/bd_en.pdf)

2 5th Euro-Mediterranean conference of Foreign Ministers, Valencia, Spain, 22-23 April 2002, Presidential conclusions; 8254/02

3 “A Partnership for democracy and shared prosperity with the Southern Mediterranean” COM(2011) 200, 8.3.2011

4 “A new response to a changing neighbourhood” COM(2011) 303 final, 25.5.2011

5 “A Partnership for democracy and shared prosperity with the Southern Mediterranean” COM(2011) 200, 8.3.2011, p. 5

- Dualistic systems of justice, where civil jurisdictions often co-exist with a parallel religious or customary systems of justice, which are often the source of various problems, especially with regard to the application of international norms;
- Chronic delays, high costs, and inefficiencies in legal systems;
- Lack of technical skills, resources and capacity of RoL institutions and professionals;
- In the civil justice area, chronic delays and high levels of costs, which seriously impair access to justice of weaker sections of society<sup>6</sup>;
- Limited access to justice at all levels, in particular for women, children, and the rural poor, including a lack of effective legal aid systems;
- Heightened vulnerability within legal systems of certain groups, in particular women, children and minorities;
- Persecution, lack of independence, and limited capacity of civil society, in particular those working on human rights and RoL/ justice issues;
- Insufficient involvement of women actors in the legal and justice areas.

**Common strengths** that can contribute to supporting the RoL include:

- Shared historical, cultural, religious and linguistic roots, which provide a strong foundation for understanding and sharing common concerns and best practices;
- Certain commonalities in legal systems and approaches, which can facilitate the transfer of technical knowledge and skills through a regional approach;
- Significant change in legal systems since the upheavals of 2011, for example judicial training institutions that are increasingly important in the modernisation of legal systems, and provide an opening to international experiences.

**Other key contextual challenges** encountered by the EuroMed projects include:

- While the countries targeted by the projects share many commonalities as indicated above, and the problems addressed are largely overlapping and interacting, they remain quite specific at the country level, with some strongly influenced by the French legal system and others based on Common Law. In addition, given the highly technical nature of the activities, even countries with similar systems can not necessarily benefit from sharing of information, techniques, approaches (EMJ-II Evaluation 2013, p. 54);
- The macro-political context poses challenges (and opportunities) in the implementation of the projects, due to complex tensions between different countries, and in particular relative to the inclusion of Israel in activities (see generally EMJ-II Evaluation 2013);
- Political sensitivities regarding matters related to family, gender and religion, creating objective difficulties in finding a shared approach to the solution of trans-border family conflicts (Action Plan EMJ-III p.22).

The EMJ projects sought to address these common strengths and challenges through a regional approach on specific justice sector themes (see findings related to EQ 2 and 3 below). The objectives of two EMJ projects under consideration are detailed in the table below.

*Table 1 Objectives, stakeholders and target groups of EMJ III and EMJ IV*

<b>Project</b>	<b>Description</b>
EMJ-III (2012-2015) EU allocated amount: EUR 5 m	<p><b>Global objective:</b> To foster co-operation on judicial issues, contributing to Chapters I and III of the Barcelona Declaration.</p> <p>The project aimed to address regional needs with a regional action (nine countries) based on ‘<i>the identification of leading national experiences, an increase in co-operation and sharing of knowledge and best practices, and an effort to move toward the adoption of concerted actions in the field of justice</i>’ (AP III, p. 5).</p> <p><b>Specific objectives<sup>7</sup>:</b> Support modernisation of justice systems, simplification/ speeding-up of judicial proceedings, improved access to justice and legal aid and the quality of justice; develop judicial co-operation in civil matters, in particular in family law with emphasis on cross-border family conflicts; strengthen judicial co-operation in criminal matters and support reform of criminal</p>

<sup>6</sup> The magnitude of this problem is increased by the huge inequalities that still characterise the social structure of many countries of the region.

<sup>7</sup> Outputs: Dialogue at the technical level, with exchange of information and good practices about justice issues; development of mechanisms to improve of the quality and efficiency of judicial institutions; increase exchanges of experiences between legal professionals.

Project	Description
	<p>and penitentiary law by facilitating the transposition of the international conventions into domestic law and their implementation; enhance co-operation in civil and criminal justice and explore possibilities create synergies with EU co-operation; strengthen the community of magistrates and law officials to build open and modern justice systems uphold the RoL and human rights; strengthen contacts established between Judicial Training Centres.</p> <p><u>Stakeholders</u>: Ministries of Justice and other national authorities of the partner countries; European organisations (EuroJust, the European Judicial Network in Criminal Matters, the European Judicial Training Network; International organisations (e.g. UNODC, The Hague Conference, Council of Europe (CEPEJ)); judicial training centres; civil society representatives, particularly those representing vulnerable groups.</p> <p><u>Target groups</u>: Magistrates, lawyers, prosecutors, justice auxiliaries, officials of the Ministries of Justice and other authorities involved in the running and reform of justice systems. The differences in the structure of the legal professions in the different countries do not allow a strict definition of a typical target group. (AP III)</p>
<p>EMJ-IV<sup>8</sup> (2016-ongoing) EU allocated amount: EUR 10 m</p>	<p><u>General objective</u>: To contribute to the development of a Euro-Mediterranean area of effective and democratic justice [and security] systems by strengthening the RoL and continuously progressing towards the alignment to international standards.</p> <p><u>Specific objectives</u>: Support, building upon recent changes and on a flexible and demand-driven approach, relevant reforms of the justice and security systems in ENI SPC; foster effective co-ordination and co-operation between them and with EU Member States in the areas of [police and] justice.</p> <p><u>Stakeholders</u>: Institutions whose core functions are related to justice and subject to the application of democratic principles, RoL, access to justice and civilian oversight, including judicial officers, administrative staff; collaborative links with private sector, professional associations, civil society organisations; media representatives, national human rights institutions; partner countries other than ENI countries, and European agencies and international organisations and institutions</p>

<sup>8</sup> Note: this project was a “merged” project of the two previous projects EuroMed Justice and EuroMed Police; however, they were contracted and are implemented separately, and only the EuroMed Justice component is examined in the context of the current Evaluation. Nevertheless, particular attention is given to synergies between the two components.

## 2 Design and strategic framework

### 2.1 Design process (EQ2)

<b>EQ2</b>	<b>To what extent has EU support to RoL responded to the bilateral and regional contexts?</b>
<b>JC21</b>	<b>Design of specific interventions I: Adequate alignment with national policy frameworks achieved and participatory processes strengthened</b>
<b>JC22</b>	<b>Design of specific interventions II: Needs and opportunities identified and responsiveness to changes in context enabled</b>

#### 2.1.1 Summary of key findings

- The projects have been relevant to national needs and have shown strong alignment and complementarity with strategies and action plans in partner countries.
- EMJ-IV has demonstrated incontestable evidence of the advantages of a bottom-up and flexible approach; this has been a key strength of the projects.
- The projects were designed following considerable consultation, and, in the case of EMJ-IV, this process was repeated during the inception phase and is still ongoing.
- The projects have integrated significant regional challenges and have built directly on the results and relationships developed during earlier phases.

#### 2.1.2 Alignment and participatory processes (JC21)

With respect to **EMJ-III**: A screening of the major policy documents developed in recent years in the countries of the area for the justice field was made, *“reaching the conclusion that the project can potentially give momentum to positive policy trends already developed at the national level”* (AP EMJ-III, p.23). The project emphasised the need for consistency with partner government legal reform policies, and in line with its Action Plan gave particular attention to *“the numerous reform plans in the field of justice recently produced in [the] area, where there is a constant reference to the need to increase access to justice, and improve the efficiency of the judicial organizations”* (AP EMJ-III, see also p.19; Identification Mission Report p.21). Stakeholders highlighted the specific nature of regional co-operation and the important differences between the individual partner countries in the field of justice, and that *“the project [worked] at establishing links between national constraints and regional objectives in a centralised management mode which allows also for close coordination with EC policy”* (AP EMJ-III, p.29). It is considered that the project was complementary with partner countries’ national plans/activities, and demonstrated appropriate engagement, ownership and coordination with domestic sector programmes in each of the participating countries (see also AP EMJ-III, p. 24).

With respect to **EMJ-IV**: There has been considerable effort to align the project to national policies, and legal and institutional structures (for example in Tunisia and Libya), which has been enhanced by not focusing exclusively on the regional level, but also exploring possibilities for a multi-country approach (see also JC 33) based on mutual and common interests in line with national needs and policies, to ensure *“that regional projects take account of country levels needs, strategies and action plans, and sub-regional specificities”*, which was itself a direct integration of the recommendations of the Completion and Ex-post Evaluation of EuroMed Justice II (para. 1.5) (see also Action Document (AD), p.7).

During these preliminary consultative processes, despite the project having been designed to focus on dialogue on and support to transitional justice and redress mechanisms, to be aligned with international human rights standards, *“no great interest was expressed for the issue of transitional justice, which is not considered as a priority by the SPCs”* (ToR EMJ-IV, p.4). This aspect was ultimately dropped from the project objectives, with the accord of the European Commission. While transitional justice is clearly priority for the RoL sector to establish stability and reconciliation in the post-revolution period (and indeed had been identified as such in context analyses contained in the programming documents (see also JC 22)), the evaluator is satisfied that this highly sensitive issue was discussed at length in the early stages of the Inception Phase. At this time it was considered that the issue was not sufficiently “regional” to be addressed, and in any event that other donors and programmes were supporting transitional justice at the national level (e.g. PARJ in Tunisia). As it happens, the project did contribute to transitional justice both directly and indirectly through its support to criminal justice, for example in Tunisia regarding asset recovery from the former regime.

The project conducted an updated and more comprehensive needs and priorities assessment in its inception period (which was exceptionally long). This investment of time and resources has provided a

high level of ownership and relevance of the project, which is strong evidence of the advantages of its innovative bottom-up and demand-driven approach (see also JC 32 below).

**EMJ-III:** The project was designed following considerable consultation, with an “*identification mission with two independent experts to assess the needs of the ENPI South partner countries [...] in all countries of the area (except Algeria)*” (AP EMJ-III, p. 6), and interviews conducted with staff from relevant EC services (e.g. former DG RELEX and former DG JLS). Stakeholders consulted at the country level included civil society representatives and professional bodies (such as Bar Associations), who are often excluded from justice reform processes in the region.

**EMJ-IV:** The project was similarly designed after considerable consultation, with missions to partner countries, and responses sought via *inter alia* questionnaires that explored in depth the country context and specific justice sector needs and challenges. This process was conducted *de novo* during the implementation phase (see JC 32 on “inception missions” below). In addition, stakeholders interviewed indicated that the design of EMJ IV was considerably influenced by the inputs of DG NEAR, which deliberately integrated elements of flexibility into its design and ensured that activities were defined as “indicative” only. The refinement of the approach and content in the inception phase – and beyond – has become the defining element of this project, and is considered by all stakeholders interviewed, including DG NEAR, to be its greatest strength.

### 2.1.3 Needs, opportunities; and responsiveness (JC22)

**EMJ-III:** The RoL needs were termed in project identification/ formulation documents in broader, regional terms, with little discussion of the individual country contexts, and country-based consultations were not conducted. Certain thematic issues were examined as follows:

- The project responded in a strategic manner to the extremely sensitive field of criminal law by focussing on international co-operation, on the logic that this would be facilitated by shared goals, with national authorities highlighting a lack of structured and updated information on the judicial systems of foreign countries, which is generally not in Arabic and is fragmented and misleading or not targeted to the specific needs of co-operation (AP EMJ-III, p. 13).
- Co-operation is also complex relative to family law issues, which can affect trans-border disputes concerning the custody of children, and which in several countries are still under the jurisdiction of religious authorities. This renders the adoption of international conventions and norms (e.g. the 1996 Hague Convention (Parental Responsibility and Measures for the Protection of Children and the 1980 Hague Convention on the Civil Aspects of International Child Abduction) considerably more difficult (AP EMJ-III p. 13).
- The project understood the opportunity inherent in the “*centrality [given] to judicial training institutions [...] which are seen as the primary tool for a swift introduction of new techniques and practices in the judicial systems*” (AP EMJ-III, p.18), and capitalised on existing informal judicial networks, which have a huge practical importance in the communication of best practices and the creation of training institutions for other legal professions.
- The project was coherent with, and built on the results of, relationships and networks established by the two previous projects (EMJ-I and EMJ-II) “*in order to deepen the dialogue started since its inception along the themes of access to justice and legal aid, resolution of cross-border family conflicts and criminal and prison law*” (AP III, p. 13).

The Final Narrative Report highlighted the improvement of the existing inter-professional community of magistrates and law officials of the Euro–Mediterranean Partnership. The project intentionally left activity content relatively open, since considered it “*appropriate to leave [...] an adequate level of flexibility, so that its activities could be adapted to the actual results of the work done under the previous phase*” (AP III, p.11). The Evaluation of EMJ-II (2013) did not observe any significant impacts on the implementation of activities as a result of the 2011 uprisings (although co-operation was suspended with Syria).

**EMJ-IV:** The project seeks to integrate the contextual challenges in the region, and initially focused in part on issues of judicial independence, and the need for redress mechanisms as part of the transitional period to support reconciliation (see transitional justice above; see also JC 21). The project was conceived to build on the results and relationships developed in EMJ-III, but also intended to leverage this beyond the project itself, for example by providing an environment to facilitate co-operation at the bi-lateral level (see JC 32). Following the inception phase, it intentionally narrowed its scope, by focussing activities primarily on the criminal thematic area, and thereby providing greater synergy with the police component of the overall project.

The project focuses on “*nascent democratic transformation and institution-building by addressing the needs of those institutions and actors which are key to build democratic societies*” (see JC 83), assisting justice sectors in developing expertise (see JC 63), accountability and transparency (see JC

73), and professionalisation (see JC 63), all of which were identified at priority needs across the region.

The project design provided an analysis of relevant factors regarding the regional context and certain aspects at the country level, as well as a short assessment of identified gaps, and highlighted the need for differentiation. However, at that stage, there was no real analysis of the specificities of individual country needs (see also discussion of the approach to this at JC 32); this was clearly corrected and supplemented through the highly collaborative inception phase.

The project has been marked by its meticulous examination of individual country priorities and needs through a series of consultations and the preparation of responses to country questionnaires. Some partner countries were more assiduous than others in the timeliness and completeness of their responses. However, the project management team made all possible efforts to engage with national stakeholders and respond in meaningful ways to country-level concerns.

Importantly, the project also engaged in intense dialogue with EU MS and European Agencies to respond to their own high-level priorities of, in particular, legal co-operation relative to anti-terrorism, organised and transnational crime, migration, and human and arms trafficking (which also underscores the logic and added value of joining EMJ IV with EuroMed Police); as well as cross-border family disputes.

It is considered that inadequate attention was given in the design and inception phase to risk assessment, which was presented in a highly summary form (insufficient interest in EuroMed justice processes, lack of ownership, unstable context, continuous changes in participants, lack of willingness in convening activities, and difficulties pursuing common activities). Identified risks were not given any grading (despite these risks being considered as high at the time, and continuing to date), nor were mitigation measures articulated at any stage. Project management consider that subsequent risk analysis has been strong, and progress reports have each provided updated risk assessments, both in annexe and interwoven in their narrative.

The project aims to respond to on-going express requests from partner countries, including importantly from religious courts, to integrate international norms concerning the best interests of the child. Other areas regarding the independence of justice and access to justice were intentionally scaled down; this was so that “*only few priorities [were] retained, following the bottom up approach with SPCs (Southern Partner Countries)*” (AD p.8). Related to this, the project aims to “*adopt a balanced approach*” (AD p.8) towards topics related to the consolidation of the High Judicial Councils (see JC 63) and legal aid (see JC 81), which were priorities identified by certain partner countries.

Overall, therefore, the project has been highly responsive to country- and sector needs and priorities, given the flexible and demand-driven approach adopted by this project (see JC 32); this is of particular significance given that needs have been emerging in a period of considerable and historic flux, and included the need to engage rapidly with entirely new or re-invented institutions (for example the High Judicial Council in Morocco).

## 2.2 Implementation / choice of modality (EQ3)

<b>EQ3</b>	<b>To what extent has the choice of implementation approaches and modalities been appropriate to pursue the intended objectives and enhance EU added value?</b>
<b>JC31</b>	<b>High quality policy dialogue established: frequency, content, synergies between operational (intervention-level) and high-level dialogue, etc.</b>
<b>JC32</b>	<b>Implementation strategies appropriately chosen and combined / complemented</b>
<b>JC33</b>	<b>Synergies and complementarity achieved within the EU RoL portfolio between levels of interventions (e.g., bilateral and regional) and instruments (e.g. ENI/IPA and EIDHR)</b>
<b>JC34</b>	<b>Efficiency aspects of implementation (including choice of implementing partners) taken into account; choice of modality effect on timeliness, transaction (project and programme management) costs, quality of monitoring, and EU visibility taken into account.</b>

### 2.2.1 Summary of key findings (EQ3)

- The benefits of the regional approach have been considerable and have responded to a clear regional and sub-regional need for closer co-operation on justice-related issues, particularly given there is no other comparable mechanism for justice co-operation in the region.
- The approach adopted in EMJ-III was more “activity-driven” and compartmentalised than EMJ-IV, which has greater internal synergy.
- The main components of EMJ-IV are complemented by an innovative Technical Assistance Facility, which aims to provide tailored capacity-building support based on the identification of emerging needs and gaps; it has amply demonstrated its potential as a tool for building regional competence and confidence.
- The demand-driven “flexibility approach” utilised by EMJ-IV, which is evident inter alia in its initial design that allowed “indicative” activities, its highly consultative inception phase, and the project’s ability to adjust activities and content to shifting needs in a volatile context, is a significant strength of EMJ IV.
- Related to this, an innovative implementation approach was the conduct of “Inception Missions” in the EU and partner countries, which clearly contributed to ownership, relevance, and the development of synergies.
- Given these flexible, innovative and clearly effective approaches, EMJ IV represents an example of best practice for regional projects beyond the Euro-Mediterranean context, and beyond the justice sector. Related to this, discussions between project management and DG NEAR on EMJ’s possible permanent institutionalisation are currently underway.

### 2.2.2 Policy dialogue (JC31)

**EMJ-III:** The project did not anticipate active policy dialogue as part of its approach or integrated into activities, although this could arguably have been envisaged as part of national and broader RoL support/ reform efforts. A key observation of the EMJ-II Evaluation was the almost complete lack of implication of EU Delegations within partner countries in project activities (EMJ-II Evaluation, p.32), which was considered an opportunity missed for establishing synergies between initiatives, and amplifying existing policy dialogue RoL issues. However, that ELJ III was already well underway at the time the EMJ II Evaluation was conducted.

**EMJ-IV:** The project aims to create an effective framework for co-ordination, co-operation and exchange of experience through the establishment of a coherent and structured approach with a focus on dialogue, which is intended in turn to provide leverage for the implementation of justice programmes at the bi-lateral level (see JC 32). The previous EMJ project had led to on-going dialogue and exchanges, through which beneficiaries had absorbed considerable technical capacities and expertise. EMJ-IV therefore aims to sustain this coherence and impact, through support of south-south co-operation and tailored-made expertise “*without interfering in the state’s prerogatives*” (AD p.7).

Importantly, it seeks to respond to the “*reality in the region while reducing [the] current focus on organised crime and terrorism, and give priority to political commitment dialogue at [a] high level*” (AD p.7), which, given that the project is being implemented alongside its EuroMed Police twin, represents a strategic move away from a transnational crime-centred approach to justice reform, with a concomitantly heightened focus on dialogue whilst retaining an inherent security-related link.

The role of EU Delegations (EUDs) and DG NEAR in project implementation has been repeatedly underscored, for example in leveraging existing relationships with national authorities, contacting CSOs, developing agenda for activities, selecting national focal options (which had been problematic in previous phases of EMJ), and establishing complementarities and synergies. Importantly, EUDs regularly request information or briefings about the project to feed into their own bilateral dialogue and other high-level political meetings.

### 2.2.3 Choice of implementation strategies (JC32)

The benefits of the regional approach (both projects) are considerable, in particular given the complexity of the regional context, sharing and exchange of knowledge, experiences, models, situations, challenges and solutions is of very high interest, not only for partner countries but also to EU institutions and MS. In addition, the methodologies produced (drafting research reports, handbooks, training) provide valuable regional references and parameters; and facilitate a common regional understanding of legal and procedural concepts and practices. Of considerable importance is that the regional approach has provided a neutral working space on highly sensitive issues in a challenging context (including considerable tensions between certain partner countries) that underwent enormous political and structural changes during the relevant implementation periods.

The regional approach has provided considerable added value since there is no other regional and horizontal mechanism for co-operation in the justice and RoL sector.

**EMJ-III:** A somewhat wordy analysis was provided in the final narrative report regarding the significant benefits of the regional approach, which is considered relevant to the project as a whole, the main ideas of which are therefore incorporated above. There is no analysis or comment regarding the specific implementation strategies; the preliminary observation is made that the overall approach was more “activity-driven”, and there is a stronger sense of compartmentalisation of the components compared with EMJ-IV, which has greater internal synergy.

**EMJ-IV:** The project’s innovative aspects relate to both content and methodology; it aims to support constructive regional dialogue, together with the provision of technical assistance within the justice sector.

As indicated at JC 22 above, the project’s specific approach is to support an environment to facilitate co-operation at the bi-lateral level and in particular through:

- Providing expertise with respect to harmonisation, training & capacity building of RoL actors;
- Addressing whole sector needs by including civil society stakeholders;
- Tackling issues in a differentiated fashion (see JC 22 above), with sub-regional themes and activities to allow “*for better ownership and commitment*” (ToR p.6) (see also JC 52), in addition to exchanges with EU MS (see JC 42).

Assistance is also concentrated on countries where constitutional reforms have paved the way for major justice sector changes (numerous examples are given, including Jordan, Morocco and Tunisia relative to independence of justice and Algeria and Lebanon relative to the separation of powers).

The implementation strategy is based on a single main component focussing on regional co-operation in criminal matters and the protection of the interests of the child. This is complemented by an innovative Technical Assistance Facility (TAF) aiming to provide tailored capacity-building support based on the identification of emerging needs and gaps by the partner countries or the project itself and on exchanges of good practices and expertise, constituting an innovative tool for building regional confidence. A regional co-operation and coordination mechanism linked to permanent structures in the Euro-Mediterranean region has also been established (see JC 42). This represents an ambitious expansion from previous EMJ projects; however, like all initiatives of this nature, its sustainability is dependent upon on-going support.

While activities are to a large extent regional, specific multi-country-grouping activities focus on common interests and needs. The project remains in a constant state of development through building upon emerging needs and using its flexible and demand-driven approach. Given this emphasis on flexibility, activities outlined in the programming documents were intentionally framed as indicative (see *Design* above), and emphasised inter alia the importance of respecting criteria for the identification and selection of activity participants and ensuring their continuity, building on the results of EMJ-III, and prioritising sub-regional activities for common concerns and mutual interests. Stakeholders interviewed unilaterally considered this flexibility to be the main strength of the project, and the responsiveness already demonstrated in the inception phase underscored this (see JC 21 and JC 22 above).

An innovative implementation approach was the conduct of “Inception Missions” in the EU and partner countries. This has contributed significantly to ownership/ engagement, the relevance of activity content, and the development of synergies with other relevant projects. The first progress report noted

at p. 25 that: “*The institutions stressed their connections with the Mediterranean area, welcomed the project, supported its new approach and expressed their willingness to share actions and aims in the framework of the project activities. In addition to this, the missions created personal links, which can contribute to the successful implementation of the project*”. This aspect can be considered as an example of best practice in the implementation of EU regional programmes.

Another strength of the approach adopted has been its focus on encouraging not only counterparts from participating countries to work together, but also individual institutions (judiciary, prosecutors, lawyers, etc.) and civil society within the countries to collaborate. The project has also focussed on strengthening national coordination, in principle relative only to the activities, but with spill-over effects on national sector coordination in general. It has also placed increased emphasis on engaging directly and highly successfully with EU MS institutions, with a heightened outreach and implication of national Bar Associations, prosecutors, etc. Some reserves were expressed regarding the involvement of activities in the CrimEx component of EMJIV, because of the risk of disclosure of criminal investigative techniques; ultimately Bar Associations were included for a range of other activities, such as general procedural and rights-related issues. This can be considered as a strong political achievement, since Bar Associations are generally side-lined and politicised in the southern Mediterranean region. Further to this, the project has engaged EUDs in reaching out to civil society representatives; this proved particularly effective in Egypt, where the national participants were unable to do so directly. Egyptian civil society participants were subsequently put in contact with CSOs in neighbouring countries, of particular importance given their current isolation and rapidly shrinking civil society space.

Project management staff interviewed rightly concedes that it is impossible to achieve a “regional” sense of ownership. However, ownership is considered by stakeholders interviewed to be extremely high in each of the participating countries, and furthermore within participating EU agencies. Acceptance of the unique role played by CrimEx is also very high, for example it is already considered by the Court of Justice of the European Union as a legitimate cross-regional committee on judicial co-operation, and as a network and forum in its own right.

Overall, EMJ IV contains many elements in its approach that contribute to its significant success and make it an example of best practice for regional projects beyond the Euro-Mediterranean context as well as beyond the justice sector. These include the following:

- A management structure relying on both strong technical competencies and strong managerial skills (the team leader does not necessarily have to be justice sector expert, but rather demonstrating cultural sensitivity, diplomacy, proactivity, “reaching out” to stakeholders, and information-sharing reflexes. It is, however, considered to be of considerable added value to have a credible justice professional as part of the core team;
- Flexibility relative to activities, content, and approaches embedded in project design and implementation;
- Building on years of trust that have been developed, and on “lessons learnt” from previous phases;
- Commitment of DG NEAR to supporting the initiative despite early problems;
- Strong implication with EUDs, who were for example actively involved in the inception missions, which ensured early buy-in and a strong alignment with EU bilateral priorities and projects; and
- High-level representation of national authorities and EU representatives in activities and at project events.

Given the similarities between the two initiatives and the EMJ project’s strengths as a regional facility and platform, considerable scope exists for EMJ management and CoE Horizontal Facility management entering into contact at a broad level, to exchange good practices, and explore areas of commonality).

#### **2.2.4 Synergies and complementarity within the portfolio (JC33)**

**EMJ-III:** The project specifically sought to “*contribute to enhance co-operation and explore possibilities to liaise and create synergies/ collaborations with the relevant EU co-operation units and networks such as EuroJust, the European Judicial Network in criminal matters, and the European Judicial Training Network, and find ways of facilitating the role of the liaison magistrates. The general strengthening of the existing contacts among the inter-professional community of magistrates and law professionals, as well as of the existing contacts among the Judicial Training Centres in the ENPI South region, should also be an important outcome of the project*” (AP EMJ-III, p. 23).

The Action Plan also states that “*in addition to the previous and current regional projects on justice, complementarities and synergies should be sought with other EC bilateral or other National funded*

*Programmes undergoing in the region as a whole or based on bilateral co-operation in order to avoid duplications and overlapping activities” (AP EMJ-III, p. 24), and that the project “must be closely coordinated with the activities to be implemented under the umbrella of the other components (Migration and Police) of the MEDA JHA III programme (PF III)”.*

Reasonable synergy and complementarity with relevant EU initiatives (EIDHR, other regional actions such EuroMed Security, Migration, CoE South Programme, Anna Lindh Foundation, etc.) was achieved, and no duplication was observed.

The project was implemented in parallel with a large number of initiatives at the country level, including:

- Tunisia: The EU supported project "*Projet d'appui à la modernisation du système judiciaire*" (completed 2010), and the "*Programme d'appui au secteur de la Justice*" (see also Tunisia case-study);
- Lebanon: The EU funded project "Reinforcing Human rights and Democracy in Lebanon (AFKAR III)" aimed at providing capacity building and support to the public sector and civil society in Lebanon, with one component targeting penitentiary reform (with UNODC); and the EU-Lebanon project on Modernisation of the Lebanese justice system;
- Jordan: The EU funded "Support to Democratic Governance and Justice Reform" (see also Jordan case-study);
- Egypt: The EU funded programme "Support for Modernization of Administration of Justice and Enhancement of Security".

According to the final narrative report, the following parties were all involved in training sessions and other activities: DG DEVCO, DG JUST, key agencies (the European Judicial Network, the European Commission for the Efficiency of Justice (CEPEJ), the Council of Bars and Law Societies of Europe (CCBE), the Consultative Council of European Judges (CCJE), the Consultative Council of European Prosecutors (CCPE), the European Network of Councils for the Judiciary (ENCJ), The Hague Conference, The European Judicial Training Network, The Hague Network of Judges and the Council of Europe etc.

In addition, the final narrative report also states that: "*the participation of a substantial number of experts from the ENPI SPC creates a real network among the participants, however the EMIJN was not formally created*". Nevertheless a substantial number of experts were appointed during the training session phase, which therefore created a "practical network".

**EMJ-IV:** Similarly to EMJ-III, the project interacts with a vast number of entities, and in a context involving multiple parallel interventions at the national and regional level. Many of the intended interlocutors are identical to those targeted in the previous project (see EMJ III above). The Inception phase devoted considerable effort to reach out to EU and other regional and national programmes (see JC 32 above).

EMJ IV has considerably strengthened however its interactions with EUD and other stakeholders, reaching out in an intensively proactive manner (see further details at JC 42 below), and developing fruitful partnerships and synergies at the bilateral and regional level, and initiatives are currently underway to further strengthen these strategic relationships. An essential approach (of both projects, but strengthened in EMJ IV) has been however to "fill gaps" that have occurred at the national level; for example, the Inception Phase clearly identified that transitional justice was only of relevance in a few partner countries, where national programmes were already addressing these issues in a comprehensive manner (for example, Tunisia), whereas support to cross-border family disputes was an evident need across the region, and is also of considerable relevance to EU MS and European institutions (notably the Hague Convention). Similarly, the activities linked to the Access to Justice Handbook have provided a practical and complementary tool to support the extensive support provided to Legal Aid in Jordan (see JC 81 below, and Jordan case-study (JC 81)).

While the overall project (EuroMed Justice and Police) intends to address the two sectors separately through different results-oriented components, their close relationship and interdependence are addressed through joint activities in order to address common challenges and create synergies as part of the broader concept of RoL. The project actively incorporates EuroMed Police into its strategies, with the Inception Report stating (p. 5) that "*EuroMed Justice has criminal matters at its core, therefore judicial and law enforcement co-operation becomes key in the new approach proposed. A close relationship has been established with EuroMed Police*". In addition, the two projects have worked together on several activities, for example the development of a digital evidence manual, and numerous joint events.

In the initial stages of EMJ IV, it was uncertain what the role of the Technical Assistance Facility (TAF) would be, particularly relative to the existing TAIEX instrument. It became clear that, while TAIEX

remains an essential tool at the bilateral level, it is unable to be used in the context of an existing EU project; as a result, the TAF has adapted the TAIEX methodology and has been used to provide assistance to two or three countries on a single issue. EMJ staff indicated TAIEX and Twinning capacities have been actively “promoted” in all EMJ meetings, which has resulted in an increase in requests by beneficiary countries.

### 2.2.5 Efficiency, monitoring and visibility (JC34)

**EMJ-III:** The Action Plan states that annual monitoring and final independent evaluation will be carried out. A lengthy activity-centred report was provided, but there was little qualitative material regarding strategy, results and impact.

The Action Plan foresaw visibility activities, including conferences and the creation of a website. For each activity, different tools were developed and used to maximise visibility of the project, partners, EU MS and EU funding; these are outlined in depth in the final narrative report.

Importantly, it appears there was no mid-term or final evaluation of EMJ III, which would have fed not only into the design of EMJ-IV but also into its on-going activities and approach; however, it is likely that the EMJ II Evaluation was in reality used to this effect.

**EMJ-IV:** EMJ-IV aims to ensure greater efficiency and broad impact by conducting sub-regional and multi-country activities where possible, creating fora for dialogue on specific subjects in line with countries’ practical needs and building up targeted expertise. According to project documents, “*project monitoring and evaluation will be based on periodic assessment of progress on delivery of specified project results and towards achievement of project objectives*” (ToR p.35). An evaluation and monitoring plan was established in the inception phase of the project, with the logical framework considerably revised and indicators updated. The project has its own monitoring and evaluation plan and regular and comprehensive activity and progress reports are produced; the quality of progress reports has steadily increased and their strategic focus improved.

Various visibility-related activities, including high-profile conferences, public web-site, use of Twitter and other social media, development of the project logo and materials, etc., have been implemented pursuant to a communication and visibility plan.

## 2.3 Linkages with EU MS and other international stakeholders (EQ4)

<b>EQ4</b>	<b>To what extent has the EU formed strategic and operational linkages with other international agencies, including MS institutions, active in RoL?</b>
<b>JC41</b>	<b>Partnerships established at global level (e.g., CoE and development partners such as UN agencies, MS bilateral agencies, WB, USAID)</b>
<b>JC42</b>	<b>Mechanisms and processes to ensure coordination / complementarity with EU MS and other donors at country level function well</b>

### 2.3.1 Summary of key findings (EQ4)

- A detailed donor mapping, which concretely highlighted possibilities for synergy and complementarity, of the justice (and related) sector(s), including of EU MS, was conducted for EMJ-IV.
- EU-funded technical assistance instruments (e.g. TAIX) and relevant regional programmes (e.g. EuroMed Migration) were originally targeted by EMJ-IV (see also EQ 3).
- Civil society, which is identified as a cross-cutting element in EMJ-IV, is routinely consulted and involved in activities, and specifically includes Bar Associations, which are routinely excluded from RoL discourse in the region.

### 2.3.2 Partnerships established at global level (JC41)

This higher level JC is examined in the overall analysis in Volume I.

### 2.3.3 Coordination with EU MS / other donors at country level (JC42)

**EMJ-III:** The Regional Indicative Programme 2007-2010 took into consideration activity plans of other donors (RIP p.12). At the EMJ-III design phase, on-going or planned donor-financed projects were identified in nearly all the partner countries, and which encompassed some of the areas addressed by EuroMed Justice II (AP EMJ-III, p. 17).

The reform of the judicial sector is an issue that is a relatively well-targeted by international donors in the region. Examples of relevant interventions existing at the time included:

- Jordan: USAID and American Bar Association projects, in particular “ABA Jordan Rule-of-Law Program” and the “USAID/ Jordan Improved Rule of Law Program”, and other minor projects relative to judicial reform, e.g. British Embassy and UNDP;
- Syria: UNDP project aimed at increasing accountability of the judiciary, with a pilot project implemented in Dara’a (sadly, the infrastructure provided was destroyed in the first days of the conflict); a German co-operation project on RoL and human rights (from 2007); a planned UNDP project on juvenile justice (2010-2012);
- Lebanon: UNODC mandated by the Ministry of Justice to lead support of activities facilitating the transfer of the management of prisons from the Ministry of Interior to the Ministry of Justice;
- Jordan: USAID “Rule of Law Programme (MASAQ)” (2004-2008); American Bar Association through the ABA-CELI project supporting the Judicial Institute of Jordan; UNODC project “Strengthening the juvenile justice system” (ended in 2008).

The need for assiduous monitoring of the donor landscape was highlighted however in the project fiche, which stated that “*the magnitude of the problems addressed is such that these complementary actions are per se very positive and coordination should be sought in order to avoid duplication of activities and benefit from the experiences already gained*” (PF EMJ-III, p.29).

**EMJ-IV:** The project was conceived within a complex co-operation environment, at a time of enormous and historical change. The design clearly stated that common challenges would be addressed through co-ordination and joint activities whenever relevant, and highlighted the possibilities for complementarity and synergy at both regional and country levels.

A detailed donor mapping of the justice (and related) area(s), considered extremely useful in ensuring complementarity at the national level, was conducted; in addition, DG NEAR provided full information on bilateral projects addressing or complementary to justice sector reform.

The formulation documentation and inception phase also provided considerable information about the main projects existing at the time, and while their specific scope was not articulated, allowed a general appraisal of the potential added value of EU support and helped avoid duplication.

The project also specifically took into account the conclusions of the 2015 Neighbourhood Policy review, which emphasised the need to improve judicial co-operation with partner countries, and stated

that “it is imperative that EMJ-IV take into consideration other justice programmes [...] and ensures close coordination” (ToR p.7). Regular and thorough coordination is undertaken with DG NEAR, DG JUST EU Delegations and national focal points.

Importantly, as also indicated earlier, a regional co-operation and coordination mechanism linked to permanent structures, aimed at developing co-operation with justice networks and institutions such as EuroJust, Europol, the European Justice Network, UNODC, and the Council of Europe, has been established; countries and institutions are therefore reporting on their activities in a consistent and regular manner. The need to build partnerships with existing international, regional and national training centres and academies is also emphasised and has been followed assiduously. Relevant on-going regional projects such as the CoE South Programme II are specifically targeted; contact has been established with the CoE “HELP” unit (which provides support and training to legal professionals on a range of topics). It also pays particular attention to countries where justice sector reform programmes are planned.

Furthermore, as indicated at JC 32 above, the project initiates exchanges, which help to enhance coordination and synergies, with EU MS and EUDs. As mentioned above, the project connects its own regional activities with those at the bilateral level to reinforce communication and information sharing. It also coordinates closely with and complements justice sector activities of several EU Member States in the Mediterranean region

Complementarity with other EU-funded technical assistance instruments such as TAIEX are also targeted (see above), as are joint activities and exchanges with other relevant regional programmes, such as EuroMed Migration and relevant initiatives of the Council of Europe.

The project also actively involves EU MS administrations (for example, liaison magistrates), and relies on media and civil society participants to create chains of information and communication with justice stakeholders and the general public. Importantly, civil society is recognised as a cross-cutting element and, as indicated earlier, specifically includes Bar Associations, which are routinely excluded from RoL discourse throughout the region.

Other major donor initiatives were clearly identified ab initio, and EMJ IV has taken a pro-active approach to its interaction with international actors working on justice issues in the area, including having initiated an active co-operation with inter alia the CoE, as mentioned earlier, and the UNODC. The UN's appreciation of the project's work is evident, and has been cited as an example of best practice. As management has pointed out, the project is unique and hence issues of duplication do not arise.

### 3 Effects of the EU support to RoL

#### 3.1 Legal and policy framework for RoL (EQ5)

<b>EQ5</b>	<b>To what extent have EU-supported legal reforms and constitutional change brought ENI countries and IPA beneficiaries into closer line with European norms and values in RoL?</b>
<b>JC51</b>	<b>Legal and constitutional reforms advanced and Parliaments strengthened</b>
<b>JC52</b>	<b>National RoL policy / strategic framework consolidated</b>
<b>JC53</b>	<b>Integration of HR (e.g., inclusion / minority rights / gender) and democracy issues into partner countries' RoL policy</b>

##### 3.1.1 Summary of key findings (EQ5)

While legislation and policy reform have not been the primary focus of the projects, there is some evidence that they have contributed to certain changes, for example by qualitative links between themes addressed and specific legislation amendments, providing entry-points for legislative change and frameworks for implementation, qualitative, and direct contributions to judicial reasoning and hence to case-law and jurisprudence. A number of activities have also contributed indirectly to policy reform processes and dialogue.

##### 3.1.2 Legal and constitutional reforms, and Parliaments (JC51)

**EMJ-III:** An indicator of change in project documents was an increase in the number of amendments to procedures relating to criminal and penitentiary law in the period following the project, however the final narrative report (p. 10) indicated that *“we have not received any detailed information from the ENPI SPC on this issue”*.

The Action Plan stated (p.4) that an improved level of mutual knowledge was *“likely to bring further momentum to the signs of an increased attention for the needs of modernising criminal legislation that can be observed in a number of countries of the area”*. The component relative to the resolution of cross-border family conflicts anticipated the drafting of a Research Report containing an overview, to be made available to authorities in partner countries, of the current situation in the region and a comparative review of national experiences. It also envisaged the organisation of meetings aimed at reviewing obstacles to the adoption of the Hague Conventions (see also JC 52/ 63/ 64); this provided a direct entry-point for legislative reform and established a framework for implementation.

The final narrative report indicated (p.8) that it was not possible to identify the number of legislative reforms or actions initiated as a result of the project activities, since *“reforms or legislative initiatives are the result of several elements”*. It was highlighted, however, that participants noted links between certain reforms and the project (e.g. Jordan's family law amendments and the creation of administrative infrastructures, Morocco's elaboration of the Justice Charter, and impact on reforms in Tunisia regarding procedural, civil and criminal laws).

**EMJ-IV:** The project was conceived to support justice systems to adapt, in line with international standards of RoL, democracy and human rights, to the new constitutional frameworks that had emerged in the post-2011 context; therefore building on legislative and constitutional reform rather than contributing directly to the legal framework. Project management's strategy has not been to modify national laws and constitutions, but to focus on working together, sharing practices, and *“working with the tools and knowledge they have”*, focusing on the practical and practitioner-related aspects rather than adopting an academic approach or *“imposing”* European/international standards. Some impacts on legislative frameworks have, however, been observed; for example, as a result of the project's inputs and support, Algeria has amended its law on cybercrime. Interestingly, members of the judiciary (for example Tunisia) stated that the exchanges have strongly influenced their own judicial reasoning, in terms of the integration of international norms and also through the integration of legal approaches adopted in other countries in the region; in this manner the project has made a concrete contribution to the development of legal jurisprudence at the national level, of particular importance in a region undergoing significant legislative reform requiring interpretation and application.

##### 3.1.3 National RoL policy / strategic framework (JC52)

**EMJ-III:** An opening conference was organised to present Euro-Med Justice III's objectives and activities to the authorities responsible for the administration of justice in the partner countries and the EU member States. Similarly, an intermediate regional conference and a final regional conference were anticipated towards the end of each year of the project. This was intended to take place at the

highest political levels, and hence some impact at the policy or strategic level could be inferred. The component relative to the resolution of cross-border family conflicts anticipated the drafting of a Research Report, to be made available to authorities in partner countries, containing an overview of the current situation in the region and a comparative review of national experiences. This too was presumably intended to feed into reform processes and dialogue.

**EMJ-IV:** As indicated at JC32 above, the project aims to intensify inter-country activities in comparison with previous EMJ projects to improve ownership and commitment; the objective is therefore to feed into broader patterns of strategic and policy reform that have been occurring throughout the region.

As indicated above, activities were intentionally designed to remain flexible enough to adapt and align with National Action Plans and Country Strategies, and thus governments' priorities (see JC 32). Tackling issues in a differentiated fashion was identified as an essential element of the project (see JC22 above), with sub-regional themes and activities to allow "*for better ownership and commitment*" (ToR p.6) (see also JC51), and this appears to have borne considerable fruit. Importantly, training and capacity-building of actors linked directly to law reform have been targeted. Existing large-scale EU initiatives related to justice reform were mentioned as possible areas of synergy, but none appear to have been related to policy reform (instead independence, professionalisation, automation, access to justice, etc.) with the intention being to "*focus on key areas as entry points for broader justice sector reform*" (ToR p.8).

#### **3.1.4 Integration of HR and democracy issues (JC53)**

The EMJ projects have not sought to address human rights and democracy issues in a direct manner. Nevertheless, the nature of the themes addressed in EMJ, encompassing some of the most fraught and complex issues of criminal and civil justice, and key principles of RoL, suggest that at least some contribution to the integration of human rights (and possibly support to democracy) can be inferred (see also EQ 8 below).

## 3.2 Quality / efficiency of justice systems (EQ6)

<b>EQ6</b>	<b>To what extent has the EU support contributed to enhancing the quality / efficiency of justice systems in partner countries?</b>
<b>JC61</b>	<b>Justice system planning and budgeting improved</b>
<b>JC62</b>	<b>Infrastructures and equipment (e.g. court facilities, IT systems) improved</b>
<b>JC63</b>	<b>Capacities, skills and procedures in key RoL entities (e.g. judiciary, courts, public agencies, professional associations) improved</b>
<b>JC64</b>	<b>Legality ensured, harmonisation of domestic law with international law / jurisprudence promoted, and enforcement of international judgments improved</b>

### 3.2.1 Summary of key findings (EQ6)

The projects did not directly target infrastructure and equipment, but a number of activities have involved capacity building relative to IT related components or implications. They have however made considerable contributions to the skills and procedures of legal sector entities; these have been of particular importance where partner countries had already undertaken reform.

Examples of relevant contributions have include training on legislation and international conventions; provision of information on justice co-operation, development of a tool equivalent to "*fiches belges*" to support knowledge of different judicial systems; seminars, study visits and other skills-related events; the production of numerous working documents, some of which have high training potential; multiple real-time results relative to criminal and family law co-operation; and the creation of a platform for dialogue, collaborative work and mutual trust.

While CrimEx appears to have experienced a more enthusiastic uptake, there was a unanimously high level of appreciation of all thematic areas addressed. Obstacles to uptake and absorption of project benefits appear to be linked to the degree of political will existing at the national level.

### 3.2.2 Justice system planning and budgeting improved (JC61)

The projects did not target justice system planning and budgeting.

### 3.2.3 Infrastructures and equipment improved (JC62)

**EMJ-III:** The project did not target infrastructure and equipment. However, it did envisage the establishment of a Working Group on Justice and the New Technologies, composed of ministry officials, members of judicial institutions, statistical departments and publishers of EU and beneficiary countries legal materials, to prepare a handbook describing approaches and best practices regarding the use of technologies for the circulation of materials and data collection in the legal field. Seminars devoted to improving circulation of legal materials, measuring the performance of justice administration, and data collection were to be organised; as were training sessions on technologies aimed at improving access to justice, methodologies for gathering and analysing data, and methodologies for case management. Whilst not directly related to infrastructures and equipment, the project presumably would have contributed significantly to the capacities of legal personnel to utilise existing or planned IT facilities.

**EMJ-IV:** The project does not directly target infrastructure and equipment, but similar to EMJ-III, a number of activities involve capacity building that have IT related components or implications.

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

**EMJ-III:** A number of highly dynamic and collaborative activities were implemented, which made significant contributions to the skills and procedures of legal sector entities. Indeed, the project was primarily centred on capacity building activities, which "*should by definition bring permanent benefits once project goals are attained*" (AP EMJ-III, p.27). The sustainability of the activities is supported by the fact that "*most of the activities concern areas where the partner countries have already undertaken reform of internationalisation processes*" (AP EMJ-III, p.27), since skills would be more readily capitalised, and that the themes addressed were also being supported by other donor initiatives. Some specific examples of contribution to skills and procedures include the following:

- The component relative to the resolution of cross-border family conflicts conducted training sessions on legislation and international conventions, discussed practical cases and techniques of family mediation, and carried out study visits. This contributed considerably to legal sector actors' skills in dealing with these highly complex and sensitive matters;

- Beside component-specific actions, the project conducted activities of more general value to justice systems, including the creation and updating of a freely accessible webpage, which provided a range of relevant information on justice co-operation and was of use to justice sector actors who were unable to benefit directly from capacity-building activities;
- The Working Group on Justice and New Technologies (described above) encompassed a number of activities aimed directly at increasing skills of justice sector actors, and improving procedures;
- Meetings aimed at assessing their added value and strengthening contacts were organised with representatives of the Judicial Training Centres in the region. They were also devoted to continuous training of magistrates and the use of new technologies, and to evaluation and impact assessment of the training of magistrates. These also represent a highly relevant contribution to judicial skills and procedures;
- The project established a working group to prepare a tool equivalent to the so-called "*fiches belges*", to support knowledge of different judicial systems and assess problems of translation to Arabic. It conducted training sessions and study visits on international conventions regarding criminal and penitentiary law. Methods were also planned for the effective exchange of information between national authorities in the context of judicial co-operation.

According to the final narrative report, all the activities carried out "*implied a transfer of knowledge within partner countries s (training seminars, study visits working groups and technical visits*" (p.32). Large numbers of seminars were provided to participants in the targeted fields. Numerous seminars, study visits and other skills-related events were described, and the feed-back from participants was generally positive. In addition, numerous working documents; for example, a research report on procedural simplification, a handbook on best practices to improve access to justice and legal aid, and another on best practices in the use of the new technologies, were produced.

**EMJ-IV:** As indicated at JC32 above, the project aims to support not only dialogue, but also technical assistance. Technical training and workshops on the key thematic fields addressed by the proposed action are based on need-assessments, followed by bespoke national and multi-country activities. Regional and national training institutes and universities are also involved both as partners and beneficiaries.

Indeed, the primary emphasis of the project is on professionalisation in the areas of family and criminal law. For example, stakeholders interviewed confirmed that capacities in investigating and prosecuting complex judicial cases have been enhanced, including strengthened inter-agency co-operation and information sharing between criminal justice actors at the national and regional level.

The documents produced by the project have high training potential, not only in the participating countries, but also in EU MS. Capacity building has been developed in a highly interactive and strategic manner and ownership of these activities is extremely high, since directly aligned with practical needs.

The project has had multiple real-time results. For instance, the relationships developed have led to close professional ties, which in turn have opened up informal channels of co-operation. One example related to a longstanding criminal co-operation case between Israel and Jordan that was legally blocked yet was resolved in a matter of days through the CrimEx network.

CrimEx was conceived as a core group that was intended to not only demonstrate the expertise, diversity, and advancement of participating countries, but also to create a space for dialogue, collaborative work and mutual trust and operate as a professional think-tank and laboratory. It has since developed into a truly regional operational facility. This has triggered discussions for the development of a similar facility in other regions, notably in South America.

Activities linked to CrimEx appear to have experienced a marginally more enthusiastic uptake by beneficiary institutions compared to other themes addressed by the project, and of particular interest is the ownership demonstrated by European co-operation agencies (see JC 22 above), which is clearly linked to the activities' relevance to European and EU MS priorities relative to inter alia security and migration. However, stakeholders across the region expressed a unanimously high level of appreciation of all the thematic areas addressed; it is considered that this was a result of the high level of investment in assessing practical needs during the inception phase. The principal obstacles however to uptake and absorption of the project's benefits appear to be linked to the degree of political will existing at the national level; Egypt for example has reportedly struggled to participate in activities, despite a manifest willingness to do so at the institutional level, and to subsequently integrate benefits. The ability of CrimEx is inherently problematic, since as indicated at JC 31 above, such platform can only exist while financial support is provided; but also because benefits occur in certain contexts where high turnover often dilutes capacities that have been enhanced, and the relationships

established. Certain outputs produced by CrimEx do however have a measure of uptake and hence sustainability, as noted elsewhere in this JC.

### 3.2.5 Harmonisation of domestic law with international law (JC64)

The final narrative report of **EMJ-III** provides a long list of relevant international conventions adhered to during the project period. The component relative to the resolution of cross-border family conflicts envisaged the organisation of meetings aimed at reviewing obstacles to the adoption of the Hague Conventions and the preparation of a handbook on best practices. It also conducted training sessions on legislation and international conventions in the field of cross-border family litigation, facilitated discussion of practical cases and techniques of family mediation; and conducted study visits. Most other activities also had implicit harmonisation objectives. This clearly made direct or indirect contributions to harmonisation in partner countries.

**EMJ-IV** aims to provide custom-built training of trainers on legal drafting and practical processes and requirements for the harmonisation of national legislation with international norms, and for judges and lawyers on the application in national jurisdictions of international and European human rights conventions and jurisprudence (in particular concerning women, children, refugees and displaced persons).

The project also aims to foster regional judicial co-operation on private and criminal law, and specifically to increase co-operation in family law matters through alignment to relevant international private law and to strengthen judicial co-operation in criminal matters. High-level regional and sub-regional conferences are taking place to discuss regional harmonisation and co-operation, as well as the participation of partner countries in the Special Commissions of the Hague Conference on Private International Law.

The overall approach is both explicitly aimed at harmonisation and at broader, and potentially more strategically focused, interventions. In general terms therefore, the project aims to create legal contexts that are propitious to harmonisation, rather than to contribute directly to formal processes.

### 3.3 Independence and accountability (EQ7)

<b>EQ7</b>	<b>To what extent has EU support increased the independence / impartiality / accountability of the judiciary and strengthened other institutions necessary for the RoL?</b>
<b>JC71</b>	<b>Independence / impartiality of RoL institutions strengthened</b>
<b>JC72</b>	<b>Accountability of RoL institutions enforced</b>

#### 3.3.1 Summary of key findings (EQ7)

The two projects did not target independence and accountability issues. However, some indirect contributions may have been made given that the direct beneficiaries were in large part members of the judiciary.

#### 3.3.2 Independence / impartiality of the judiciary (JC71)

**EMJ-III:** This project did not target judicial independence. However, there were perhaps indirect contributions to issues of independence (exposure to international standards, support of the judicial networks, etc.), particularly since this was a project specifically targeting the judiciary.

**EMJ-IV:** While the project originally intended to provide support to the independence of justice, which is broader than judicial independence since it includes that of other justice institutions, notably prosecution and attorneys, it is in reality only targeting capacity building of the region's High Judicial Councils.

#### 3.3.3 Accountability of the judiciary and other RoL institutions (JC72)

These projects did not target accountability of the judiciary. However, there may have been indirect contributions to issues of accountability of the judiciary, for example capacity-building activities, which by implication contribute to the judicial accountability relative to the quality of justice provided.

### 3.4 Broader effects on the RoL (EQ8)

<b>EQ8</b>	<b>To what extent has EU support to RoL contributed to sustainable fundamental improvements in the RoL and related aspects of human rights and democracy?</b>
<b>JC81</b>	<b>Access to justice strengthened</b>
<b>JC82</b>	<b>Respect for human rights including gender equality, minority rights, and fundamental freedoms strengthened</b>
<b>JC83</b>	<b>Governance and democratic processes (elections, public confidence in institutions, business confidence in legal system, anti-corruption, etc.) improved</b>

#### 3.4.1 Summary of key findings (EQ8)

The two projects have made notable contributions to increased access to justice in partner countries and have also, albeit more indirectly, contributed to supporting human rights.

The projects have had entire components devoted to access to justice and legal aid, and related human rights issues, through for example the drafting of comparative research reports, the creation of a Working Group on Access to Justice and Legal Aid, the conduct of seminars devoted to access to justice and legal information and respect for human rights. A handbook on best practices for access to justice was developed, a major output that is being implemented in the current project with practical changes occurring at the national level. The projects have contributed to the respect of human rights in myriad ways including child rights, victims' rights, fair trial rights, prevention of torture, prison conditions, minority rights, gender rights, and the protection of all other political, civil, social and economic rights. The projects have integrated international and European rights standards in their capacity-building activities and provide complementary support to rights-based approaches to bilateral justice reform programmes.

A significant achievement of the projects has been their inclusion of Israel in the group of participating countries; whilst this resulted in early tensions, there is now an acceptance of the important role and contribution of Israeli counterparts, in particular relative to religious courts, and legal co-operation on criminal issues. Providing a forum for exchange and understanding is a small but significant contribution to regional peace and stability, which can serve as an example for co-operation in the region on other themes.

The nature of target groups (judges, policy makers etc.) and the activities (professional skills, information-sharing etc.) means that a contribution to governance and democratic institutions, policy, processes and skills can be implied, and possibly attributed.

#### 3.4.2 Access to justice (JC81)

**EMJ-III:** The project had an entire component devoted to access to justice and legal aid (and hence the equality of arms), which included, for example, the drafting of a research report, provided to authorities of partner countries, containing a comparative review of national experiences of procedural simplification. Support was also provided to the establishment of a Working Group on Access to Justice and Legal Aid, composed of representative of the target groups mentioned above, which prepared a handbook describing approaches and best practices, with special regard to the needs of underprivileged social groups. Seminars devoted to trial lengths and court delays, co-operation between judges and bar associations, workload reduction using methodologies developed by CEPEJ, procedural simplification, ADR, access to legal information, access to justice, and respect for human rights were organised (see also JC82).

These seminars provided the raw material and foundational thinking for the development of a handbook on best practices to improve access to justice and legal aid, which was a major project output and which has since been implemented by partner countries and further developed as part of EMJ IV, and. It is reported that: *"the quality of proposals [...] are [of] high quality [...] based on the reaction of participants in the 5 regional conferences, including the Final Conference"* (Final Narrative Report p. 24). It was also observed that *"the proposals, best practices, conclusions [...] reflect the majority consensus [...] [which was] not conceived in an abstract manner [...] [and] are adapted to the context of their respective countries (ibid. p.26).*

**EMJ-IV:** A major component of the project has been focusing on enhancing effective and fair access to justice, with a focus on vulnerable groups and persons in need of international and specific protection. This element is addressed through seminars on good practice and models in implementing legal aid and directly builds on the series of seminars and the Access to Justice Handbook developed in the previous project, as well as on regional study-visits. The purpose of these activities was to determine strategies to implement the Handbook at the practical level; these are considered by beneficiaries to be very effective, with practical changes in the organisation of legal aid systems

occurring at the national level, for example. Beneficiaries also appreciated the tripartite committees, composed of representatives of Ministries of Justice, Bar Associations and CSOs, which were created for each country to examine legal aid issues.

### 3.4.3 Respect for human rights (JC82)

**EMJ-III:** The project was intended to contribute to “*strengthen[ing] the protection of fundamental rights in respect of vulnerable groups. The active participation of women in the project will be encouraged, and the protection of women's rights will be specifically addressed when dealing with the three different components*” (AP EMJ-III).

The project is likely to have contributed directly to the respect of human rights in myriad ways including child rights, victims' rights, fair trial rights, prevention of torture, prison conditions, minority rights, gender rights, and the protection (through strengthened justice systems) of all other political, civil, social and economic rights.

**EMJ-IV:** The project gives a central place to human rights issues, with international principles and standards being incorporated in all activities and women, children and vulnerable groups being specifically supported. The role and participation of women in justice institutions, as well as the promotion of knowledge of international and regional standards regarding women's rights, is a particular focus. Human rights issues are also reflected in activities related to access to justice. Finally, as indicated at JC 64 above, the project integrates international and European rights standards in its capacity-building activities; it also provides complementary support to rights-based approaches to on-going bilateral justice reform programmes.

The inception phase gave particular emphasis to these cross-cutting issues from its earliest stages, and the third progress report provided the project's “rights-based approach”.

### 3.4.4 Governance and democratic processes (JC83)

A significant achievement of both EMJ projects has been their inclusion of Israel in the group of participating countries; whilst this has resulted in some tensions, notably in previous Phases, there is now an acceptance of the important role and contribution of Israeli counterparts to the issues under consideration, in particular relative to religious courts, and legal co-operation on criminal issues. Given the intensely fraught relationships with Israel in the region, providing a forum for exchange and understanding at a professional level is in itself a small but significant contribution to regional peace and stability, and which can serve as an example for co-operation in the region on other themes, particularly between professionals and relative to technical issues.

**EMJ-III:** The project did not directly target governance and democratic processes, however the nature of target groups (judges, policy makers, ministerial personnel, ministers) and of the activities (specific professional skills, information-sharing on best practices across the region, etc.) means that a contribution to governance and democratic institutions, policy, processes and skills can be perhaps implied, and possibly even directly attributed. This would be primarily relevant to the specific skills of the judiciary (in their role of protecting governance institutions and the RoL more generally) and the perception and transparency of the justice sector.

**EMJ-IV:** In addition to human rights promotion, good governance and democratic accountability were identified at the design phase as key crosscutting issues of the project. Governance, to be addressed through support to government institutions; assistance in enhancing independence, inclusion, transparency, accountability and redress mechanisms and complemented by regional approaches to foster effective co-operation and harmonisation, was identified as an area of significant regional need.

## 4 Annexes

### 4.1 List of persons/institutions consulted

<b>Position</b>	<b>Organisation</b>
Consultant on Private International Law and International Family Law, Mediator and	n/a (independent)
Project Manager	Avocats sans Frontières
Director HELP programme	CoE
Counselor on Legal Co-operation	Embassy of Spain to Morocco
Supervisor – EIPA, lead partner in EMJ III	EuroMed Justice III
Team Leader EuroMed Justice III	EuroMed Justice III
Capacity Building Expert	EuroMed Justice IV
Project Coordinator	EuroMed Justice IV
Team Leader EuroMed Justice IV	EuroMed Justice IV
Director ENCJ office	European Network of Councils for the Judiciary
Director of the Netherlands Council for the Judiciary, Coordinator of the ENCJ Independence and Accountability Project	European Network of Councils for the Judiciary
Human rights and Democracy programme manager,	EU-EEAS, EUD Algeria
Attaché – Programme Manager	EU-EEAS, EUD Egypt
Attaché - Justice, Human Rights and Democracy	EU-EEAS, EUD Lebanon
Justice Programme Manager, Political Advisor	EU-EEAS, EUD Morocco
Rule of Law, Justice Programme Manager	EU-EEAS, EUD Palestine
Programme Manager - EU policies - Regional programmes in the fields of security and civil protection	EU-NEAR
Efficiency, professional development and training Manager	General Council of Lawyers of Spain
Director of the Unit Justice and Security, FIIAPP	General Prosecutor Office
Project Officer. Justice and Home Affairs	General Prosecutor Office
Prosecutor	International Cooperation Chamber
Présidente de la Chambre des Statuts Personnels	Ministère de la Justice
EuroMed Justice National Focal Point in Spain, Chief of the Support Unit	Ministry of Justice, Spain
General Counsel in the General Directorate of Criminal Cases	Ministry of Justice of Tunisia
Magistrate in charge of co-operation	Ministry of Justice, Tunisia
President of the Chamber of Personal Status, Counselor at the Tunis Court of Appeal	Ministry of Justice of Tunisia
Lawyer	Ordre des Avocats
Director of International Relations	Spanish High Judicial Council - Consejo Superior del Poder Judicial
First Secretary	The Hague Conference on Private International Law
Dutch National Focal Point for EuroMed Justice	The Netherlands

### 4.2 List of documents

#### 4.2.1 EU strategy and programming

European Commission (2011): ENPI. Regional Strategy Paper (2007-2013) and Regional Indicative Programme (2007-2010) for the Euro-Mediterranean Partnership.

European Commission (2011): ENPI. Regional Indicative Programme (2011-2013) for the Euro-Mediterranean Partnership.

#### 4.2.2 EU reporting

European Commission (2012, 2013, 2015): Implementation of the European Neighbourhood Policy in 2011. Regional Report: Eastern Partnership.

European Commission (2017): Report on the implementation of the European Neighbourhood Policy Review.

### 4.2.3 Project documentation

The team reviewed the available project documentation (action fiches/TAPs, grant contracts, implementation and monitoring reports, evaluations, etc.) of the following interventions (see also details in the list presented in Table 1):

- 2010 EUROMED III
- 2011 Strengthening democratic reform in the Southern Neighbourhood I
- 2012 Special Measure Support to the European Endowment for Democracy
- 2013 Supporting rule of law compliant investigations and prosecutions in the Maghreb region
- 2014 EU-CoE Programmatic Co-operation Framework in the Eastern Partnership Countries
- 2014 EU-CoE Partnership for Good Governances
- 2014 Strengthening democratic reform in the Southern Neighbourhood II
- 2014 EUROMED IV
- 2017 South Programme III - Support for Institution-building and International Co-operation in the Southern Neighbourhood

### 4.2.4 Other

Bicchi (2014): 'Lost in translation': EU Foreign Policy and the European Neighbourhood Policy Post-Arab Spring. *L'Europe en Formation* 2014/1 (n° 371), p. 26-40.

CEPS (2012): An Arab Springboard for EU Foreign Policy?

CEPS (2017): Democracy and its Deficits. The path towards becoming European-style democracies in Georgia, Moldova and Ukraine.

Council of Europe (2014): Eastern Partnership. Enhancing Judicial Reform in the Eastern Partnership Countries. *Efficient Judicial Systems Report 2014*.

Dalacoura (2011): The 2011 uprisings in the Arab Middle East: political change and geopolitical implications.

ENCJ (2017): Independence, Accountability and Quality of the Judiciary, ENCJ Report 2016-2017

Korosteleva et al. (2017): 'The Political' and the ENP: Rethinking the EU Relations with the Eastern Region.

Sour (2017): Rethinking the Euro Med Policy: A cooperative approach in an increasingly transforming region.