European
Commission

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

Executive Summary
Final Report

2019

Evaluation carried out on behalf of the European Commission

Neighbourhood
and Enlargement
Negotiations

particip

Executive Summary

Evaluation objectives

The purpose of this evaluation is to provide an independent, evidence-based assessment of the scope and performance of implemented and on-going EU support for Rule of Law (RoL). It focuses on interventions funded by the Instrument for Pre-Accession Assistance (IPA I and II), the European Neighbourhood and Partnership Instrument (ENPI) and its successor the European Neighbourhood Instrument (ENI) for the period 2010 to 2017.

Context

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

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

EU commitments to IPA and ENI

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

Methodology

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

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

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

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

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

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

Data collected during this evaluation
Twelve case study notes *were produced in the course of this evaluation. The case studies examined Albania, Montenegro, Serbia, and Turkey (representing IPA beneficiaries); Armenia, Georgia, Jordan, Moldova, Tunisia and Ukraine (representing the ENI region); and the Council of Europe's Horizontal Facility (IPA-related) and EuroMed Justice (ENI-related) as regional cases. An average of 11 individual RoL-related interventions per case study were analysed in more detail.*
More than 200 interviews *were conducted. Some interviewees were spoken to on more than one occasion in order to receive their input at different stages of the evaluation.*
Ten persons responded to the Open Public Consultation (OPC). The small number of responses limits the robustness of the interpretation of the results of this OPC. Similar or poorer response levels have been observed in other recent Consultations for major evaluations in the external action.

Conclusions

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

Strategic framework

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

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

C2. Strategic orientations and EU support's responsiveness

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

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

Results

C3. Overall results

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

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

C4. Civil society participation

The EU has consistently involved civil society in its RoL programmes, but with mixed results The EU has contributed strongly to enhancing the role of civil society in RoL, in particular where it is under threat. Support to civil society is however also necessary as a long-term investment to reinforce accountability and prevent backsliding on RoL and human rights. The European Instrument for Democracy and

Human Rights and the Civil Society Facility have provided essential complementary support to RoL. However, there is little evidence of civil society consultation influencing higher-level policy, nor of civil society stronger implication in sector and donor coordination mechanisms.

C5. Institutional capacity-building

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

Tools and approaches

C6. Engagement in policy dialogue

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

C7. Addressing political resistance

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

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

C8. Learning & monitoring
Experience and information from the field is not sufficiently exploited to enhance programming and action design. The quality of reporting at the operational level is highly variable, and does not always contribute to higher-level policy, strategy and programming. There is inadequate support to the internal promotion of, and training on, existing Guidelines and Tools. Results-Oriented Monitoring (ROM) and other monitoring and evaluation mechanisms were found to have uneven uptake. The design of actions has struggled to develop consistent and appropriate qualitative and quantitative indicators. This hinders the ability to measure results (outputs, outcomes and impacts) and is compounded by an absence of longer-term assessment of impact and sustainability. Programming alignment and sequencing with evaluation is also problematic, with programmes often designed before previous support has been assessed. Learning occurred however where the EU has been engaged over long periods.

Recommendations

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

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

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

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

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

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

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

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

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

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

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

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

RoL. Flexibility should be embedded in programme design, particularly in volatile or complex contexts. The EU should increase the use of "mentoring" and "embedded" capacity building by EU Experts.

R6. The EU should more actively and systematically promote learning

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