



# EU SUPPORT FOR THE RULE OF LAW IN POST- CONFLICT RECONSTRUCTION THE CASE OF KOSOVO:

LESSONS LEARNED AND WAYS FORWARD

ANA COJOCARU

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EULEX Police Officer distributing leaflets and fact sheets on the EU and EULEX in north Zvečan Zvecan  
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## SUMMARY

In recent years, the EU's renewed focus on rule of law and common democratic values has not been limited to matters concerning member states – rather, the Union has been acting as an exporter of norms and democratization in its close neighbourhood, particularly in candidate and potential candidate states. Such an example is the European Union Rule of Law Mission in Kosovo (EULEX), which acted as a test of the EU's normative power – one that the Union seems to be struggling with for the past 12 years.

This paper aims to analyse the impact EULEX has had in the consolidation of rule of law in Kosovo, to review the lessons learned from the Kosovar example, and to develop a set of recommendations for policy makers, which can be extrapolated to other post-conflict situations.

## CONTENTS

- The EU as an exporter of norms
- Context
- EULEX activity & impact
- Ways forward

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## THE EU AS AN EXPORTER OF NORMS

The European Union has been described as a “[sui generis entity, in which policy transfer shapes the relationships between supra-national institutions and domestic actors across different contexts](#)”, in a process known as Europeanization.

Initially, Europeanization only referred to the consolidation and integration process the EU and its members states were going through. It has since evolved from a purely institutional perspective to a complex, multifaceted process, which includes a wide range of public and private stakeholders. Nowadays, a strong case can be made of Europeanization not being limited to the EU borders, but also becoming apparent in other states in the European neighbourhood, particularly in candidate and potential candidate states.

However, some controversy surrounding the states’ motivation to comply with EU rules persists. Some have argued that have argued that (potential) candidate states’ compliance with Union-proposed rules is the result of “[short-term, interest-based policy serving very specific economic purposes](#)”, rather than a transformation of rationale and decision-making processes. Others went a step further, arguing that political elites in (potential) candidate states are promoting policies that seem to comply with the EU’s standards when there is a clear reward in sight. However, [this apparent compliance is not necessarily reflected in, and may even be contradicted by, the states’ internal policies](#).

In the following, this paper shall examine the role of the EU as an exporter of norms, particularly in the field of rule of law, by using EULEX’s activity in Kosovo as a case study.

## CONTEXT

Since Kosovo’s declaration of independence in 2008, the fight against corruption has been among the priorities of both the international community and of its own government. [Corruption within the political and electoral process remain some of the greatest challenges](#) faced by Kosovar authorities.

However, corruption is not the only obstacle on Kosovo’s accession course. Whilst its declaration of independence was acknowledged by the Council, it was only under the specification of the EU’s belief that Kosovo was a *sui generis* case. Whilst most member states recognized its independence, several others objected to the process – most notably Romania, Slovakia, Greece, Cyprus and Spain. To this date, the 5 do not recognize Kosovo as an independent state, which is cause for continued division among the EU block.

Despite the non-recognizers, there seems to be a common understanding that the Kosovar path towards EU accession is primarily dependent on the normalization of its relations with Serbia and on its compliance with EU values. The 2017 EU enlargement strategy only refers to it in the context of the dialogue with Serbia, as a benchmark for the latter’s accession. This, however, [gives Kosovo the possibility to secure a legally binding argument that resolves all facets of its dispute with Serbia](#), especially full membership of the United Nations.

Even considering all these factors, the European institutions have been treating Kosovo as a territory separate from Serbia for a variety of actions – including a “special trade and customs zone”, during its interim administration. Moreover, the Commission issues individual reports for Kosovo, [just as if it was any other candidate country](#).

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The EU remains [the largest donor aiding Kosovo and its largest trading partner](#), whilst also being strongly involved in its the reconstruction effort. It is what the Union itself has described as being a “[sticks and carrots](#)” approach. One of the main tools the EU uses is EULEX – the European Union Rule of Law Mission in Kosovo.

Launched in 2008 as a complete novelty for the EU’s foreign policy instruments, EULEX is the largest civilian mission ever launched under the European Security and Defence Policy. Its aim is to assist the Kosovar authorities in the [area of rule of law](#), particularly in the law enforcement, judiciary and customs systems. Beginning with 2018, the Mission was mostly stripped of its executive functions, which were replaced with monitoring and support activities.

Ever since its establishment, EULEX has been a test of the European Union’s ability to export norms and democratization outside its external borders. However, the provisioned reforms to the Kosovar justice system seem to be stagnating, whilst anti-corruption measures appear to have had limited effect. These factors not only cast doubt upon the EU’s ability to become a normative power, but also have the potential to become major obstacles in Kosovo’s already frayed path towards EU accession.

## EULEX ACTIVITY & IMPACT

In the following, we will take a look at the impact EULEX has had in Kosovo, according to a set of quantitative and qualitative indicators – including indictment rates, public perceptions, and reforms passed.

**Anti-corruption.** According to measurements done by Transparency International, Kosovo has been on an overall upwards trend in the [Corruption Perception Index](#) between 2012 and 2019 (see **Fig. 1**). However, throughout the testing period, Kosovo has remained slightly under the global average.

While these scores are not out of the ordinary compared to the rest of the Western Balkans region, [they remain far lower even than the ones of the worst-performing EU members](#). Thus, convergence with EU values may be perceived as limited. Moreover, between 2017 and 2019, Kosovo has experienced a decrease in its score and [fell several places in global rankings](#), although its score remains higher than 2012-2015 levels.

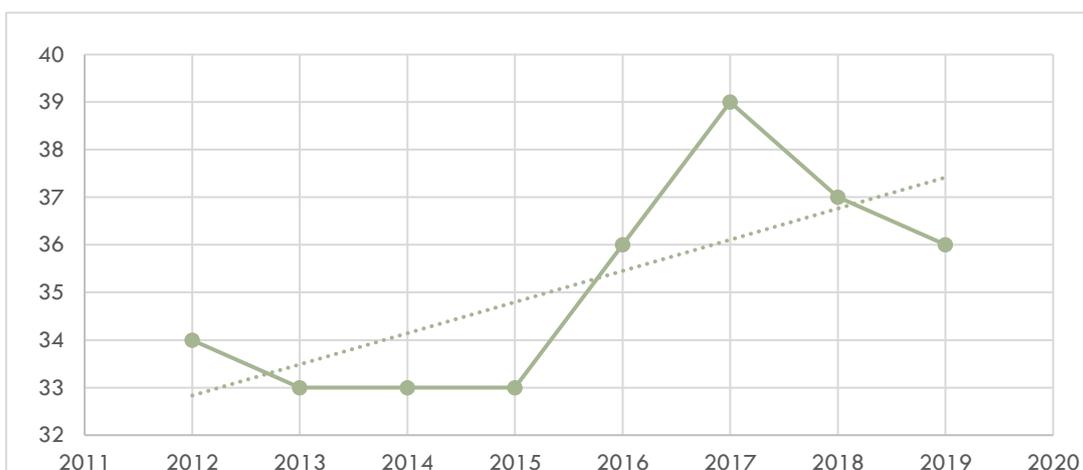


Figure 1 Public perception of corruption in Kosovo, 2012-2019. On a scale from 0 (very clean) to 100 (highly corrupt), Kosovo scores consistently below the global average, although on a slight trend upwards.

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At the same time, [corruption pressure has been rising steadily](#), with 31.1% of Kosovars stating they have been asked for a bribe in 2019, compared to 27% in 2016 and 23% in 2014. EULEX’s own prosecutorial efforts have had limited quantitative results. In 2016, out of the almost 400 investigations performed by EULEX to that date, only approximately 6% ended up in indictment. Critics have also argued that the Mission’s focus on stability translated to a lack of so-called *controversial* indictments – among leading political elites.

In 2014, a coalition of 11 Kosovar civil society organizations signalled that [“Trust in the work of EULEX is significantly diminished recently, as a result of insufficient performance in fighting organised crime and corruption, especially in high levels”](#). Surveys among the local Kosovar community have showed that EULEX is generally perceived as spending [“too much time examining alleged war crimes and not paying enough attention to organised crime and corruption”](#).

Lastly, EULEX has also struggled to maintain credibility after a [2014 scandal](#), involving allegations of bribe-taking by its own staff and attempts to silence whistle-blowers and the press.

**Reform of the justice system.** EULEX has had limited political and popular support in pushing for the reform of the Kosovar justice system. Despite that, the Kosovar political and justice system have undergone some major legal reforms, including:

- Amendments to the legislation on political party financing;
- Amendments to the legislation on conflict interest and asset declaration;
- Implementation of justice package laws;
- Integration of Kosovo Serb judges and prosecutors into the judicial system;

The actual implementation of these legal provisions is limited. [During the 2019 elections](#), for example, only part of the running political parties has disclosed campaign costs. Political appointments in state-owned enterprises continue to be a common practice. The current ruling party, Vetëvendosje, is declaredly both anti-corruption and anti-EU involvement in Kosovo, which makes the next steps in policy difficult to predict.

According to the EU itself, Kosovo’s **judicial system** remains at an early stage of development, with slow and inefficient administration of justice. According to the European Commission, [“The judiciary is still vulnerable to undue political influence and rule of law institutions need sustained efforts to build up their capacities”](#) .

Civil society organizations in Kosovo have argued that the apparent stagnation in the reform of the justice system is due to a series of factors, concerning both EULEX and the national judicial system.

**Table 1 - Challenges faced in the reform of the justice system by EULEX and the national judicial system, as identified by Kosovar civil society organizations.**

Kosovar justice system	EULEX
<ul style="list-style-type: none"> <li>• Lack of political support and leadership</li> <li>• Lack of effective management / oversight</li> <li>• Low salaries compared to executive and legislative counterparts</li> <li>• Anti-corruption mechanisms exist but prove ineffective.</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of political support</li> <li>• Lack of know-how regarding the region and its specificities</li> <li>• Disproportionately high salaries compared to the Kosovar counterparts</li> <li>• Excessive interest in stability, wariness in tackling high-level corruption head-on.</li> </ul>

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Lastly, EULEX also faces a lack of credibility due to the mission often being perceived as foreign, even imposed on the local community and governance structures. Political parties such as Vetëvendosje (Self-Determination), have built their programmes and political actions on insisting that EULEX and other international organizations should withdraw from Kosovo, as international actors only prolong the dependence of Kosovo and block its independent development.

According to some scholars, the EU's credibility is primarily affected by the uncertain position Kosovo is in. The lack of a common EU position concerning Kosovo's status and the lack of a credible concrete timeline for its EU accession [make it difficult for any kind of incentives & conditionalities to be placed](#), in exchange for compliance with rule of law principles.

## WAYS FORWARD

Scholars have previously highlighted that the instruments currently being used by the EU in order to ensure members states' adherence to rule of law principles [are not efficient in the face of governments determined to challenge them](#). The same can be said about attempts to "Europeanize" and/or to export EU norms in neighbouring states.

The evolution of EULEX, as well as the obstacles the mission has faced, provide great insight as to what can be improved in the EU approach. A "sticks and carrots" (incentive and conditionality) type of approach may be useful in cases such as Kosovo, but has its limitations. The uncertain status of many neighbouring states [makes it difficult for system based on well-determined, efficient, and credible conditionalities to be put in place](#). Moreover, such a system is highly susceptible to political putting up a front of compliance, whilst [internally contesting the EU norms they pledged to implement](#).

Therefore, I would argue that it is time for a change in paradigm – towards empowering national stakeholders to take ownership of the reform process. In my view, consulting with, and ensuring the support of, the local communities and elites is key to creating sustainable reforms. In the following, I have developed a set of recommendations that can be used both in the Kosovar context, and in other post-conflict situations in the European neighbourhood.

Table 2 Recommendations to address existing to the rule of law reform process.

Existing challenge	Recommendations on tackling the challenge
<b>Lack of political support in the local community</b>	<ul style="list-style-type: none"> <li>• Empower local elites (political, from the judicial system etc.) to take ownership of the reform process;</li> <li>• Raise awareness among the local community about the provisioned changes and their expected impact;</li> <li>• Consult with local community and (in)formal leaders.</li> </ul>
<b>Ineffective national mechanisms</b>	<ul style="list-style-type: none"> <li>• Provide quality capacity building and training to local authorities;</li> <li>• Set shorter, clear timelines for expected changes;</li> <li>• Prioritize structural / systemic changes.</li> </ul>

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**Low levels of trust in your organization / institution among the local community**

- Be clear and consistent in communication;
- Practice transparency in all your activities;
- Practice a policy of no tolerance to corruption and abuse; encourage whistleblowing;
- Train international staff regarding the specificities of the country/region they're stationed in;
- Engage often with the local community and leaders.



FIND OUT MORE

- Bindi, F. (2010). European Union Foreign Policy: a historical overview. *The Foreign Policy of the European Union: assessing Europe's role in the world*, 13-41.
- Economides, S., & Ker-Lindsay, J. (2015). "Pre-accession europeanization": the case of Serbia and Kosovo. *Journal of Common Market Studies*, 1027-1044.
- Elbasani, A., & Selo Sabic, S. (2017). Rule of law, corruption and democratic accountability in the course of EU enlargement. *Journal of European Public Policy*, 1-19.
- FOL Levizja. (2016). *EULEX: anti-corruption and the limits of a quantitative assessment*. Prishtina.
- Kmezić, M. (2014). Rule of Law Reforms within Kosovo's European Integration Process: Progress and Remaining Challenges. In M. Kmezić, *Europeanization by rule of law implementation in the Western Balkans* (pp. 91-134). Skopje: Institute for Democracy SOCIETAS CIVILIS .
- Palokaj, A. (2013). *Kosovo-EU Relations: the history of unfulfilled aspirations?* Prishtina: Kosovo Foundation for Open Society.
- Troncotă, M. (2016). *Post-Conflict Europeanization and the War of Meanings. Challenges to EU Conditionality in Bosnia-Herzegovina and Kosovo*. Bucharest: Tritonic.
- Zupančič, R., & Pejič, N. (2018). EULEX Kosovo: Projecting the EU's Normative Power via a Rule-of-Law Mission. In *Limits to the European Union's Normative Power in a Post-conflict Society*. (pp. 65-107). Springer.