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EU Initiatives for Border Management in the EU's Eastern Neighbourhood

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The current approaches of the European Union's border management initiatives in its "near abroad" are conceptually based upon the Commission policy paper "Wider Europe – Neighbourhood: A New Framework for Relations with EU Eastern and Southern Neighbours"¹ published on 11 March 2003 introducing the European Neighbourhood Policy (ENP). This paper states that the EU's aim is to work in partnership to develop a zone of prosperity and a friendly neighbourhood – a "ring of friends" – with whom the EU enjoys close, peaceful and cooperative relations. Ultimately, the EU is offering to extend to its neighbours the "four freedoms" of its internal market (in the movement of goods, people, capital and services). These goals can clearly not be achieved soon; in order to pursue them, the

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¹ <http://ec.europa.eu/world/enp/pdf/com03_104_en.pdf>.

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European Neighbourhood Policy Action Plans have been developed with neighbouring countries to shape preparatory work on legislative approximation and institutional adjustment.

An important component of the European Neighbourhood Policy is border management and sub-regional cooperation. The Commission's view on these issues was formulated in a paper, published in July 2003, called "The New Neighbourhood Instrument",² which defines the financial mechanisms that will help to set up enhanced cooperation along the border of the enlarged EU. In fact, the ENP programmes are to be inspired by the experience of cross-border cooperation between border regions within the EU, as well as between border regions lying along the EU's external border. The focus is concentrated on four areas of cooperation: "promoting sustainable economic and social development; addressing common challenges, such as the environment, health, the fight against organised crime, ensuring efficient and secure borders and promoting local, 'people-to-people' actions".³ Together, the political, economic and regional cooperation objectives pursued by the EU are meant to counter the reasoning that contrasts the countries on the "inside" with those on the "outside". The idea is to strengthen relations with old and new neighbours in the east and south, and to make sure that EU enlargement benefits not only the EU, but all the Union's friends and neighbours. As Vincent Piket, Deputy Head of the Delegation of the European Commission to Russia, predicts, proximity policy will be flexible in its implementation, adapting to the different levels and nature of the EU's relations with each of its neighbours.⁴

Borders should be friendly, but transparent and secure as well. They should not constitute an obstacle to people crossing and communicating, but at the same time have to operate efficiently to combat international cross-border problems, such as illegal migration and trafficking in human beings, and organised crime in general. These common challenges have become increasingly important in international cooperation, and in the EU's relations with its neighbours in the east. Border management is becoming increasingly important as the EU's borders expand.

The EU's new eastern neighbours have their specific border problems.

² <http://ec.europa.eu/world/enp/pdf/com03_393_en.pdf#search=%22The%20New%20Neighbourhood%20Instrument%22>.

³ V. Piket, "EU Enlargement and Neighbourhood Policy", *Russian Regional Perspectives Journal*, vol. 1, no. 3 <<http://www.iiss.org/publications/russian-regional-perspectives-journal/volume-1---issue-3/eu-enlargement-and-and-neighbourhood-policy>>.

⁴ *Ibid.*

Among them are incomplete legal frameworks, unfinished delimitation and demarcation processes, a lack of efficient infrastructure, and the existence of so-called "frozen conflicts". The EU has provided technical assistance to upgrade and modernise border crossings and is committed to continuing to furnish such assistance.

The European Union has experience in policies and practice in the sphere of multilateral border management and cross-border cooperation. The "Söderköping process", for example, was launched in early 2001 to address cross-border cooperation issues arising from EU enlargement eastwards and to promote dialogue on asylum and irregular migration issues among the countries situated along the EU's eastern border.⁵ This pro-active initiative encompasses Belarus, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovakia and Ukraine, and is supported by the European Commission, the Swedish Migration Board, the United Nations High Commissioner for Refugees, and the International Organisation for Migration.

Since the ENP was launched, the EU has been paying increasing attention to the political – not only the technical – component of border-related issues. Due to its growing interest in frozen conflicts, and its involvement in the conflict-resolution process in Transnistria, some specific policies and initiatives have been launched by the EU especially for Ukraine and Moldova. Of these, the EU Border Assistance Mission (EUBAM) is the most important.

This article will concentrate on some of the newly emerging components of EU policy dealing with sub-regional cooperation in the sphere of border management in the case of Ukraine-Transnistria-Moldova. It will look into the EU's role in the Transnistrian conflict resolution process, the EU Border Assistance Mission to Ukraine and Moldova, the new Moldova-Ukraine customs regime (established with EU support), and the EU's role in fighting smuggling and trafficking at the border, especially along the Transnistrian segment.

Transnistria conflict: new opportunities for EU involvement

Moldova is a divided country. The self-proclaimed and internationally unrecognised Transdniestrian Moldovan Republic (TMR, or Transnistria) lying along the border with Ukraine seceded from Moldova in 1992 with the open support of Russia. While a ceasefire in 1992 put an end to the short

⁵ <<http://soderkoping.org.ua/>>.

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war, Transnistria is still considered a "frozen conflict" region. Legally a part of Moldova, the Transnistrian government based in Tiraspol has taken *de facto* control over the left bank of the Dnestr River and Bender city on the right bank. The Tiraspol government has sought international recognition and has tried to establish its own customs in order to conduct independent foreign economic relations. At the same time, lack of recognition of the quasi-state has permitted Tiraspol to turn a blind eye to international trade rules and European security concerns.

The Transnistrian conflict is a challenge to border security since the nature of the conflict itself is strongly linked to the major border security threats as defined by the EU Commission and other international institutions, namely smuggling, trafficking of humans, weapons and drugs, organised crime, illegal migration, corruption. According to the EUBAM Initial Assessment Report, much of the smuggling across the Moldova-Ukraine border is undertaken by organised criminal groups working through the territory of Transnistria as the Transnistrian authorities are either unwilling or unable to take effective action to counter it. Consequently, Transnistria remains an important locus of international black and grey markets and false export-import operations into Eastern Europe. For example, according to Brigadier-General Ferenc Banfi, Head of EUBAM, in the six months from October 2005 to March 2006, almost 40,000 tonnes of chicken meat were imported into the "Transdnestrian Moldovan Republic". This is equivalent to 67 kg per person (the average annual consumption in Germany is just under 5.6 kg per person). It is likely that the meat imported into Transnistria is being smuggled out to Ukraine or a third destination. Indeed, in the same period Ukrainian border guards and other law enforcement agencies found nine cases of smuggling involving 68 tonnes of chicken meat.⁶

The recent enlargement of NATO and the European Union changed the geopolitical map of Europe and brought the Transnistrian conflict, with its actual and potential security threats, closer to the borders of the member states. This has resulted in increased interest in Transnistrian issues on the part of these and other major international institutions.

At the regional level, the Orange revolution in Ukraine (2004) and gradual westernization in Moldova under president Voronin have changed

⁶ Statement by the Head of the EU Border Assistance Mission to Moldova and Ukraine, Brigadier-General Ferenc Banfi at the Joint briefing on the situation at the Ukrainian-Moldovan Border with General-Colonel P. Shysholin, First Deputy Head of the State Border Service <<http://soderkoping.org.ua/site.php/page9216.html>>.

the balance in favour of establishing a more homogenous political space, comprised of countries sharing common European values, and moving – although at quite different paces – in a common direction, namely, towards joining the EU and NATO or at least closer relations with these organisations. These changes gained impetus in 2004-05 after the last round of elections in Ukraine, Romania and Moldova. All of them demonstrated that the people are striving for more freedom and democracy, thus confirming their European choice. The controversial situation in Ukraine after the March 2006 parliamentary elections has not changed this trend: even though pro-Western parties failed to create a homogeneous government, bringing the Party of Regions led by Victor Yanukovych to power, Ukraine has generally confirmed its move towards strengthening democratic institutions and building a pluralistic democracy. One of the results of these events has been an improvement in bilateral and trilateral relations between Ukraine, the Republic of Moldova and Romania. Although not all of the previously accumulated tensions have been diffused and a number of unresolved questions remain, an obvious improvement in the regional atmosphere is evident.

The changes mentioned above have generated the political will in the EU to re-evaluate assessments and commitments in view of the risks and security threats that the frozen conflict in Transnistria represents for its member states and the region as a whole. In 2005, the EU took a decision to upgrade EU-Moldova relations by opening a delegation in Chisinau (previously the delegation to Ukraine also covered Moldova). On 6 October 2005, European Commissioner for External Relations and ENP, Benita Ferrero-Waldner, opened the new Delegation of the European Commission to Moldova, to be headed by Cesare De Montis.⁷ In addition to this, Adriaan Jacobovits de Szeged was appointed Special EU Representative for Moldova in order to strengthen the EU's contribution to the resolution of the Transnistria conflict. The EU has participated in the multilateral 5+2 (Russia, Ukraine, the Organisation for Security and Cooperation in Europe-OSCE, Moldova, Transnistria, plus the United States and the EU as observers) negotiations on Transnistria as of summer 2005, and the Border Assistance Mission established by the EU started its operations on 1 December 2005.

Border cooperation and efforts to seek a solution to the conflict in Transnistria featured in the ENP Action Plans worked out with both

⁷ <<http://www.delmda.cec.eu.int/en/index.htm>>.

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Moldova and Ukraine last year. Under its Neighbourhood Policy, the EU is reaching out to neighbours to promote prosperity, common values and security as well as to help break down trade barriers.

EU Border Assistance Mission to Moldova and Ukraine

EUBAM is an example of the new kind of EU policy aimed to share the positive experience in border and customs control of old and new member states with Ukraine and Moldova, with special stress on contributing to a solution of the Transnistria conflict. EUBAM was established as a reaction to the joint letter of the presidents of Moldova and Ukraine dated 2 June 2005 calling for additional EU support for improving border management capabilities, including customs, along the entire Moldova-Ukraine border. On 7 October 2005, a Memorandum of Understanding on the Border Assistance Mission was signed between Moldova, Ukraine and the EU.⁸ According to the Memorandum of Understanding, the Mission is an advisory, technical body with no executive powers. Its aims are:

- to assist Moldova and Ukraine to harmonise their border management standards and procedures with those prevalent in EU member states;
- to assist in enhancing the professional capacities of the Moldovan and Ukrainian customs official and border guards at operational level;
- to improve risk analysis capacities;
- to improve cooperation and complementarity between the border guard and customs services and with other law enforcement agencies.

The official opening ceremony of the EU Border Assistance Mission to Moldova and Ukraine took place on 1 December 2005 and is likely to last two years. The Mission has its headquarters in Odessa, and currently has five field offices. It includes 70 experts seconded from a number of EU member states: Belgium, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, the United Kingdom. The Mission provides on-the-job training and advice to Moldovan and Ukrainian officials, reinforcing their capacity to carry out effective border and customs controls and border surveillance. Through its work, the Mission is supposed to contribute to building confidence and strengthening cross-border cooperation.

The EUBAM Advisory Board includes high-level representatives of Moldovan and Ukrainian customs and border guard authorities, the

⁸ <http://www.eubam.org/files/0-99/73/memorandum_of_understanding_en.pdf >.

European Commission, the United Nations Development Programme (UNDP, as implementing partner), the EU Special Representative for Moldova, the EU Presidency, as well as the OSCE. The Foreign Ministers of both states also have the right to attend the Advisory Board Meetings.

More than 40 recommendations have been put forward to Ukrainian and Moldovan services in the Initial Assessment Report and other EUBAM documents. They include, among other things:

Structural Issues: A major effort is required in all services to actively promote information exchange. Information technology is a key element, but equally important is an institutional willingness to exchange information. This is the only way to stay one step ahead of organised criminals who adopt increasingly sophisticated methods. Good information exchange cuts across almost every aspect of a modern system of border management.

Risk Analysis System: A modern Risk Analysis System must be built up in order to deploy resources effectively to meet the threat of illegal activities. This is a major area of focus in the Assessment Report and one of the objectives set out in the Memorandum of Understanding.

Investigatory Powers: Both services need to have investigatory powers (currently these are only enjoyed by the Moldovan Customs Service). This will provide information for risk analysis; improving risk analysis should improve targeting, result in more detections and thereby create a virtuous circle.

Infrastructure: Most border crossing points require infrastructural work to increase their capacity. One of the key needs is IT and communications equipment, but some of the requirements are more basic, such as a proper lighting. This is to ensure proper, effective border control in a safe environment for citizens and operators.

Working practices: Even with the available resources in terms of manpower and equipment, border control is not as competent as it could be. While there are some exceptions, for the most part the controls carried out do not meet EU standards.

Training: There are some training gaps which need to be addressed. In particular, EUBAM sees a need for more expertise in the identification of false documentation (especially documents purportedly from EU states) and linguistic skills.

Illegal activities on the border: The issue of illegal border crossings has to be urgently addressed and supervision stepped up. The Mission welcomed the measures taken by the Ukraine authorities to increase control of the green

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border by deployment of more staff and the erection of physical obstacles. EUBAM further recommends the use of trained mobile teams to target illegal crossings.⁹

Based on EUBAM's observations, it is clear that in order to meet present challenges the best possible cooperation and coordination must be established between border guards, customs officers and other national agencies involved with border issues both at the bilateral and the international level.

EUBAM is the first EU mission of its kind. It is too early to assess its impact, yet, it is now an element of the regional political process and substantially contributes to increasing the security of the region by dealing with problems that go beyond the border agenda itself. The EU initiative will be efficient only if regional players like Ukraine and Moldova are consistent in their political will to search for a political solution on the basis of mutual commitment to an approach based on European values and principles.

Another good example of such a policy is the new Ukraine-Moldova customs regime, recently introduced with support (read pressure) from the EU.

The EU and the new Ukraine-Moldova customs regime

With a Joint Declaration of 30 December 2005, the prime ministers of Ukraine, Jury Yekhanurov, and the Republic of Moldova, Vasile Tarlev, committed themselves to introducing a new customs regime based on practical recognition of the integrity of Moldova's customs territory. According to the new regulations, all Transnistrian economic agents are obliged to register in Chisinau in order to conduct trade across the Ukraine-Moldova border. A similar regime had already existed before, from May 2003 to August 2004, but had been cancelled after Moldova suspended the issue of licenses in retaliation for Transnistria's attempt to close down Chisinau-governed schools on the left bank of the Dnestr River. Ukraine then gave Transnistrian enterprises permission to trade without Moldovan customs stamps.

After the Orange revolution and the change in government in Ukraine in early 2005, Moldova resumed its efforts to bring Ukraine back on track to "normal" customs regulations. On 25 May 2005, Prime Minister Yulia Tymoshenko agreed to implement a new customs regime, but President

⁹ <<http://www.eubam.org/>>.

Viktor Yushchenko suspended it because of strong pressure from business people involved in Transnistrian affairs.

The Joint Declaration of 30 December 2005 was a new step ahead. EU support for the new customs regime was evident to the Ukrainian diplomats involved in negotiations with Brussels on different levels. Implementation of the new regime was initially scheduled for 18 January 2006. Due to a lack of preparatory work on the Moldovan side and strong pressure from Transnistrian lobbyists in Kyiv on the eve of implementation, however, the Ukrainian government postponed it without setting a new date. This decision provoked strong criticism from the EU. In early February, Javier Solana, the EU High Representative for CFSP, at the meeting in Brussels with Ukrainian Foreign Minister Boris Tarasyuk, expressed serious concern about Ukraine's reluctance to act on the customs regime issue.

Additional consultation made it possible to solve most of the technical problems and the new customs regime was finally implemented on 3 March 2006. Javier Solana personally expressed his satisfaction:

I welcome that the Joint Declaration of the Ukrainian and Moldovan Prime Ministers of 30 December 2005 is now being implemented, whereby Ukraine only recognizes Moldovan customs stamps and Moldova facilitates the registration of Transnistrian enterprises in Chisinau. I call on the economic agents of the Transnistrian region of Moldova to register with the relevant authorities in Chisinau in order to promote the unimpeded flow of goods across the border. I also call on the self-proclaimed Transnistrian authorities not to block this registration."¹⁰

Nevertheless, Transnistrian authorities, supported by Russia, immediately blamed Ukraine for blocking the border to prevent Transnistrian business from having any kind of legal foreign trade possibilities and thereby to put economic pressure on Tiraspol to change its political position in favour of reintegration with the rest of Moldova. Transnistrian authorities organised a border blockade, impeding all cargo and even local trains from crossing the border.

On 14 March 2006, the European Union sent out a strong message in response to Tiraspol's attempts to establish a blockade and present the new customs regime as the cause of a "humanitarian catastrophe" in the region.

¹⁰ Declaration by Javier Solana, EU High Representative for the CFSP, Brussels, 5 March 2006 <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/declarations/88621.pdf>.

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We call on the self-proclaimed Transnistrian authorities not to block this registration. We condemn any efforts by the self-proclaimed Transnistrian authorities to impede the free flow of international trade, which harms the interests of Transnistrian economic agents, which are thus deprived of their export possibilities. The EU expresses her hope that in the future the conditions will be put in place for Moldova to grant all registered Transnistria companies access to the trade preferences for the EU that other Moldovan companies now enjoy.¹¹

Tiraspol continued such a policy until May 2006, when the self-blockade was substantially relaxed. According to an EUBAM official, "the new customs regime in place since March has created a step-change in the effectiveness of the border control system. There is more transparency about import and exports flows to and from the so-called Transnistria."¹²

At the moment, after the formation of the new government in Ukraine in August 2006, the customs regime remains in force. Although the Party of Regions (now the most influential party in the government coalition) criticised this regime while it was on the opposition, it is unlikely that the new government will abolish it as it has proved to be a reliable instrument of trade harmonisation and security protection at the border.

The new customs regime between Ukraine and Moldova is an example of efficient policy coordination of EU institutions, member states and European "aspirant countries". However it is just a first step towards efficient cooperation between the EU and its new neighbours in the area of border management, anti-corruption policy and frozen conflict solution.

Conclusions

Border problems in the newly independent states in the east of Europe are an integral component of the incomplete state and institution building of those states, and reflect the whole spectrum of key regional problems such as corruption, poverty, frozen conflicts, and the lack of infrastructure, of good political practices and of good governance.

The EU must try to provide the complex assistance needed to help eastern neighbours solve their border problems in the framework of the

¹¹ Council of the European Union, Declaration by the Presidency, Brussels, 14 March 2006 <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/cfsp/88802.pdf>.

¹² The European Union Border Assistance Mission to Moldova and Ukraine Press Pack, June 2006, p. 11, press release of 11 May 2006 <www.tvlink.org/pdf/EUBAM_press_pack.doc>.

ENP. The new financial perspective for 2007-14 provides for more instruments to make this assistance effective.

Dealing with the regional and border issues in the western newly independent states, the EU should be prepared to face the fact that any kind of substantial policy in this area will lead to some kind of confrontation – be it open or disguised – with Russian positions and interests. Debates on the new Ukraine-Moldova customs regime and the Transnistria problem as a whole have clearly provided evidence of this.

EU needs to implement fully the mandate of the EU Border Assistance Mission with special emphasis on site inspections to be conducted without any kind of prior notice. But inspection is not the only important aspect of EUBAM activity. Equally important is building capacity in order to increase the Mission's popularity and enhancing cooperation between the border guards and customs police personnel to gain the support of the Ukrainian and Moldovan societies as a whole.

The European Union may learn from this experience that only complex involvement in the border-related and regional problems in the EU's new neighbourhood can lead to a positive outcome. The combination of a firm political stance, direct involvement, mediation and technical, consultative and financial assistance may contribute to a sustainable solution of border issues, which are usually no more than one element of a larger set of political/structural problems of the newly independent states in the east of Europe.