

Exploring European Union-assisted Police Reform in Bosnia-Herzegovina

A Preliminary Assessment of the European Union Police Mission to Date

Isabelle MARAS

isabelle.maras@yahoo.fr

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Abstract

The European Union's crisis management policy forms the background for decision-making regarding European Security and Defence Policy (ESDP) missions and relies on various elements of the European Union (EU) foreign, security and development policy. ESDP police missions, in particular, are the spearhead of its civilian component.

The modalities of implementation of the ESDP police missions and their achievements in post-crisis settings are understudied and still require a thorough evaluation. The proposed research will explore one facet of the European Union's engagement in police reform, preparing the way for an assessment of the effectiveness of the European Union Police Mission (EUPM) in Bosnia-Herzegovina, with a particular emphasis on EUPM II (carried out from 2006 onwards following the revision of the mandate). Furthermore, this paper will question whether guidelines for "European policing" can be identified or have been enriched by past operational practice.

Key-words: European Union (EU), European Security and Defence Policy (ESDP), EU police missions, police reform, Bosnia-Herzegovina, Western Balkans

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Remarks and comments are welcome.**

Isabelle Maras is a doctoral student in European security studies at the Institute for Peace Studies and Security Policy (Institut für Friedensforschung und Sicherheitspolitik - IFSH) at the University of Hamburg (Germany).

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INTRODUCTION

At the dawn of the 1990s, the wave of independence claims emanating from the former members of the Yugoslav Federation brought about one of the most bloody ethnic-based civil conflicts to mark the last decade of the 20th century: Bosnia and Herzegovina (hereafter 'BiH') originates from this seismic political occurrence in the Western Balkans.

Western Europe's failure to properly estimate the scope of the break-up of Yugoslavia and its possible disastrous consequences, its undoubted powerlessness when confronted with the escalation of the conflict and the absence of an effective coordinated military answer from the West European powers as a whole led to a loss of credibility and a lasting suspicion regarding the genuineness of the European Union's political and operational leverage capacities.

Seeking to compensate for its failings when facing the violent disintegration of Yugoslavia, the EU strived to develop instruments and capabilities that would enable it to appear as a leading security actor in the Balkans¹.

Following the European Union's 2004 enlargement, the Western Balkans still lies right on its doorstep and constitutes a key strategic challenge for the Union², both in terms of neighbourhood and regarding more distant settings for intervention. Furthermore, the Western Balkan area still represents a "test zone" for a maturing common foreign and security policy (the two EU military and civilian missions are first generation ones)³.

Since the 1990s, the crisis management capability that the European Union has developed within the framework of its European Security and Defence Policy (ESDP) has developed rapidly. Its overall goals of ensuring security and stabilization by responding coherently to the whole spectrum of crisis management tasks in post-conflict settings link up with the objectives of international post-conflict peacebuilding⁴.

In Bosnia and Herzegovina, in particular, the international community and especially the European Union became deeply involved in the post-conflict peace-enforcement, peacebuilding and stabilization measures, through multiple stakeholders.

In the early years following the conflict, the EU presence in BiH was somewhat fragmented, with the various EU actors arriving successively. The EC Monitoring Mission (later the EU Monitoring Mission, EUMM) was deployed in BiH "to monitor human-rights and other security-related issues", while the European Commission had been providing first humanitarian aid and then technical assistance through the Stabilisation and Association Process (SAP) since the war period (1992). The EU's presence in the country was later strongly reinforced by the arrival of the EUPM and of the EUFOR Althea military mission, which was the latest EU component to be deployed in Bosnia-Herzegovina. This growing involvement of the EU in the country testifies to both the development of the EU as "crisis manager" and its support for BiH's future prospects of membership⁵.

¹ Mühlmann, Thomas (2008), "The Police Mission EUPM in Bosnia, 2003-2005", in Michael Merlingen, with Rasa, Ostrauskaite, *European Security and Defence Policy. An implementation perspective*, London: Routledge, p.59.

² The Balkans were therefore singled out as a "high importance" area in the 2003 European security strategy. See Council of the European Union (2003), *A Secure Europe in a Better World, European Security Strategy*, 12 December.

³ Gross, Eva (2007), "Civilian and Military Missions in the Western Balkans", in Michael Emerson and Eva Gross (eds), *Evaluating the EU's Crisis Management Missions in the Balkans*, Brussels: Centre for European Policy Studies, p.128. See also Solana, J. (2000), "The development of the CFSP and the Role of the High Representative", speech given at the Institute of European Affairs in Dublin, 30 March.

⁴ They consist in preventing a further crisis while enforcing sustainable peace. For further details, see: Caparini, Marina, *Police Reform: Issues and Experiences*, pp. 85-95, Bryden, A., Fluri, P. (eds.) (2003), *Security Sector Reform: Institutions, Society and Good Governance*, Baden-Baden: Nomos Verlagsgesellschaft, p.85.

⁵ Juncos, Ana E. (2007), "Coherence and effectiveness of EUPM in Bosnia and Herzegovina: What lessons for the EU's civilian crisis management policies?", in Emerson & Gross (eds), op.cit., p.54.

Moreover, the 2003 EU-Western Balkans summit held in Thessaloniki affirmed the prospects of EU integration for the countries of the Western Balkans⁶. The formal step opening the door towards EU accession, namely the signing of a Stabilization and Association Agreement (SAA), was conditional upon an agreement on police restructuring, which formed one of the conditions laid down by the European Commission in 2005 (see further).

Thus the EU has deployed a wide range of foreign policy instruments, initially to facilitate post-conflict institution building, but thereafter rapidly contributing to upgrading the country's institutional and economical structure to prepare for future EU accession.

In the aftermath of a conflict, international stakeholders such as the European Union that intervene are usually confronted with partially destroyed or weak legal structures.

Within a democratic state, police forces are part of the 'law and order *triad*' that also comprises an independent judiciary and penal system: they represent the State and its values (such as justice and accountability) in guaranteeing public order and justice. By doing so, they impact directly on the well being and feeling of security of individuals and communities⁷.

As a consequence, the reform of the police forces is necessary to avoid or fill any kind of "vacuum" of the rule of law⁸. As part of security sector reform in the broader sense, police reform, if it is to be effective, needs to be integrated with reform of the defence sector, the intelligence services, and the judicial and penal systems⁹. This is the case in Bosnia-Herzegovina, where the legislative framework has been distorted, and where the proper functioning of the judiciary and the police have been impeded by protracted political divisions, political interference and lack of means or personnel.

Police missions may therefore be seen as the spearhead of the civilian external intervention of the European Union. In the aftermath of the launch of the EU Police Mission (EUPM) in Bosnia-Herzegovina in 2003, the number of operations and the geographical scope of ESDP civilian intervention has expanded¹⁰. This might show that the ESDP is striving to position itself as an operational leverage of the Common Foreign and Security Policy (CFSP), with operational activities seen as instruments that lend credibility to the political influence of the CFSP¹¹.

Despite strategic and tactical underpinnings developed over the years in the realm of police reform performed within the ESDP framework, the shaping of "EU policing" as the normative and strategic engine of operational police reform can still be called into question.

According to CFSP/ESDP objectives, ESDP police missions are generally designed for short-term crisis management - aiming to maintain peace and security - rather than for long-term peacebuilding and democratization¹². The delineation of instruments and competencies for police reform among the

⁶ Emerson, Michael, Gross, Eva (2007), "Introduction", in *ibid.*, p.8.

⁷ Caparini (2003), *op.cit.*, p.85.

⁸ According to the UN Secretary General, the rule of law refers to a principle of governance in which all persons (public and private institutions, including the state) are accountable to laws that are publicly promulgated, enforced on an equal footing and independently adjudicated, and which are in line with international human rights norms and standards (REF., date?).

⁹ OECD (2007), *The OECD DAC Handbook on Security Sector Reform (SSR). Supporting Security and Justice*, p.163.

¹⁰ The European Union has carried out seven police missions to date: EUPOL Proxima and EUPAT (FYROM – Macedonia), EUPOL Kinshasa and EUPOL RD Congo (Democratic Republic of Congo), EUPOL COPPS in Palestine, EUPOL Afghanistan and EUPM in Bosnia and Herzegovina. The final four missions are still operational. Furthermore, EULEX Kosovo was deployed in December 2008 as an integrated mission with strong policing and rule of law components. See the updated ESDP mission chart for further details: ISIS Europe (2008), *European Security Review*, n°41, November; and Gros-Verheyde, Nicolas (2008), "Douze missions civiles ou militaires sur trois continents", *Europolitique*, 18 November.

¹¹ Yet numerous official documents have so far addressed the challenge posed by their limited capacities, such as the Civilian Headline Goals 2008 and the 2010 Headline Goal. Refer to Penksa, Susan E. (2006), *Policing Bosnia and Herzegovina 2003-2005. Issues of Mandates and Management in ESDP Missions*, CEPS Working Document No. 255, December, p.2.

¹² The poor conceptualisation of what EU civilian crisis management refers to opens the door to a broad interpretation of their tasks.

EU pillars has, however, become blurred. To date, most missions have seen their mandates extended while their scale and size has been reduced. In line with official provisions, the activities carried out insert themselves within the overall rule of law and security sector reform framework set up by the EU. The tasks of the ESDP police missions have so far been performed in close cooperation with Community activities and military or SSR missions simultaneously carried out under the ESDP. This is clearly the case with regard to EUPM, whose achievements are closely interlinked with the activities carried out by other EU institutions such as the EU Special Representative and the European Commission.

The European Union Police Mission (EUPM) is particularly significant: As the first civilian and police mission ever launched in the Balkans in 2003, it constituted a test case and an “important learning experience”¹³ for the newborn ESDP and the subsequent EU capacities as a “civilian crisis manager”.

Some scholars have proposed that the implementation modes and procedures of the ESDP operations have been “under-studied”¹⁴. Our contribution thus modestly intends to review the existing literature and give a preliminary assessment of the progresses achieved by EUPM II so far, referring to the shortcomings and lessons learned that have been singled out to date – bearing in mind that further empirical research is needed to “flesh out”, complete and sharpen our analysis.

Before getting onto the main topic of our contribution, it is worth describing the political context of Bosnia and Herzegovina where the police reform process has been conducted in an environment containing many enduring post-war structure features.

Since 1995, the political system of BiH has been structured by the Dayton General Peace Agreement¹⁵, which has been erected on a complex, multi-level ethno-political power sharing system between the Bosniaks, the Bosnian Serbs and the Bosnian Croats¹⁶. This results in a struggle for power and political influence over the entities’ competencies, which undermines state-level institutions. The agreement establishes a fairly weak central government while most competencies - including in the area of policing - are assigned to the two entities, each of them disposing of its own political structure and administration. The more centralized Republika Srpska (49% of the territory) set up a unified police body with regional subdivisions, while the Federation of Bosnia-Herzegovina (51% of the territory) created eleven distinct and autonomous (independent) police forces (10 at cantonal and one at Federation level) with different regulations. In addition, the Brčko district is an autonomous administrative entity under international supervision and has its own legal system¹⁷.

Since the Dayton Peace Agreements, which laid down a new structure in the country in 1995, the two entities have been unable to cooperate effectively due to an enduring political rivalry reinforced by ethnic tensions.

Echoing the above-mentioned problems resulting from the post-war constitutional arrangements, BiH has had to cope with the communist legacy in the realm of policing, which interferes with “imported” West European practices that emphasize respect for human rights and independence from political influence. The policing *habitus* in Bosnia indeed featured “institutional fragmentation, ethno-political interference, a dysfunctional organizational culture and a symbiosis between crime and political extremism”, this vacuum of standards leading to a multi-faceted boom in organized crime¹⁸.

¹³ For further details, see Council of the European Union and European Commission (2003), *Lessons from the planning of the EU Police Mission in Bosnia and Herzegovina (EUPM)*, Autumn 2001-December 2002, Joint Paper, Brussels, 29.04.2003, p. 1.

¹⁴ Penksa, Susan E. (2006), op.cit., p.2.

¹⁵ The text of the GFAP (the 11 annexes included) can be consulted at the website of the Office of the High Representative (OHR) in Bosnia and Herzegovina: <http://www.ohr.int>

¹⁶ Mühlmann, Thomas (2007), “Policing Restructuring in Bosnia – Herzegovina: Problems of Internationally-Led Security Sector Reform”, in *Inside the Bosnian Crisis: Documents and Analysis. Journal of Intervention and Statebuilding*, Volume 1, Special Supplement, 1 December, p. 38.

¹⁷ Ibid.

¹⁸ Mühlmann (2008), op.cit., p.45.

Two structural difficulties can be singled out, namely political influences observed interfering in operational policing practices, and the remnants of the pre-war organizational culture within the police, where “over-centralized police decision-making” and a “lack of responsibility and initiative” within the hierarchy prevailed¹⁹.

Our paper addresses the effectiveness of implementation, with an emphasis on the EUPM’s “second phase” (hereafter “EUPM II” - following the revision of its mandate from end 2005 onwards; to differentiate from EUPM I [2003-2005]²⁰).

The EU Police Mission has gained a considerable experience to date that allows for an evaluation of its achievements, focusing on the second phase (EUPM II) of implementation.

How effective has the EUPM actually been? What lessons have been drawn from the first phase of implementation? To what extent have they been integrated in the operationalization of EUPM II’s strategic objectives? How concrete have its supposed achievements been? To what extent can these achievements have resulted from or enriched guidelines for “European policing”? At the current point in time and given the current context, what areas can be identified where the EU Police Mission can be improved?

The purpose of this article is to prepare the way for an assessment of how effective the European Union Police Mission’s achievements have been in Bosnia and Herzegovina, with a particular focus on EUPM II (from 2006 onwards). Looking back to the difficulties and shortfalls that impeded EUPM I and to the main lessons learned in its aftermath, this contribution evaluates whether and to what extent they have been integrated in the structure and practice of EUPM II to date²¹.

The first part of our contribution will provide an overview of the rationale and mandate of EUPM I while reviewing the first steps of the police restructuring process and the main achievements and shortcomings of the EU Police Mission in the first phase of its mandate (2003-05). The second part will detail the transition from EUPM I to EUPM II and will sketch out a way to conduct a preliminary assessment of the mission’s achievements - namely against the strategic objectives that the EUPM is intended to fulfil.

The third part will be dedicated to an assessment of the achievements of EUPM II to date with reference to former lessons learned and will review the latest political achievements pertaining to the political reform process. The fourth part will elaborate on possible guidelines for “European policing” reference while presenting important contextual factors likely to have influenced the mission’s implementation in 2008 and 2009.

1. EUROPEAN UNION-LED POLICE REFORM IN BOSNIA-HERZEGOVINA: A PERPETUAL PANDORA’S BOX?

1.1 The EUPM “first generation”: rationale and mandate (2003-05)

Following an official invitation from the Bosnian authorities, the EU launched the European Union Police Mission in Bosnia-Herzegovina (EUPM) on 1 January 2003 with an initial mandate lasting

¹⁹ Ibid., p.45.

²⁰ After the police mission completed the first three years of its initial mandate, it was revised and extended for two additional years. See Council of the European Union (2002), Council Joint Action of 11 March 2002 on the European Union Police Mission (2002/210/CFSP), Official Journal of the European Communities, L70/1-6, Brussels, 13 March; Council of the European Union (2005), Council Joint Action 2005/824/CFSP of 24 November 2005 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH), Official Journal of the European Communities, L307/55-58, Brussels, 25 November.

²¹ Juncos (2007), op.cit., p. 46.

three years, with the support of the UN Council and the Peace Implementation Council (PIC) Steering Board²². It took over from the UN-led International Police Task Force (IPTF)²³, which was the first international civilian mission to be deployed in BiH in order to carry out the reform of the local police since 1995.

A number of factors made this transition a logical step, and not least because it provided the occasion for the European Union to translate its nascent and ambitious ESDP into concrete achievements. First of all, the European Union had security interests to safeguard in the Western Balkans but could intervene in a stable context after eight years of international presence. Furthermore, policing had been clearly identified as a priority for the strengthening of the EU capabilities in the field of civilian ESDP²⁴. Another argument was that the EUPM would be able to “capitalize” on the initial results already achieved by the IPTF²⁵.

Adopted on 11 March 2002, the Council Joint Action (which includes the mission statement as an annex) outlines the rather general and unfocused but ambitious goals set in the EU Police Mission’s mandate, according to the following provisions: “The EUPM, supported by the Commission’s institution building programmes, should, as part of a broader rule of law approach, aim, in line with the general objectives of Annex 11 of the Dayton Agreement, to establish sustainable arrangements under BiH ownership in accordance with best European and international practice, and thereby raising current BiH standards”²⁶.

Far from being conceived as a short-term intervention, EUPM endorsed a long-term approach featuring an underlying conception of policing that goes well “beyond the provision of basic security to citizens to include the redesigning of social order through the transformation of police practices from non-liberal to best international practices”²⁷. Its overarching goals were indeed focused on institution and capacity building and strengthen the police of BiH in the long term²⁸.

²⁹

Whereas the IPTF had executive powers, the EUPM’s remit was performed according to the principle of local ownership and sustainability with “monitoring, mentoring and inspecting” activities focusing on mid- and senior management levels of local police. However, EUPM did not have a mandate to directly engage in police restructuring³⁰.

According to a programmatic methodology, four strategic priorities were identified including: the development of police independence and accountability, the fight against organized crime and corruption, financial viability and sustainability and the development of institution and capacity building at management level³¹. Seven reform programmes, under which 120 projects were implemented, aimed at performing the overarching objectives (crime police, criminal justice, internal affairs, public administration, public order and security, State Border Service (SBS) and State Information and Protection Agency (SIPA, the main police body in BiH in charge of the fight against organized crime).

²² The Peace Implementation Council (PIC) is a body created by the Dayton agreement made up of a coalition of 55 states and international organisations in charge the GPA’s implementation. A Steering board comprises the US, Canada, Russia, Germany, the UK, France, Italy, Japan, the Presidency of the EU, the EC and Turkey.

²³ At the same time, the EU military mission EUFOR replaced NATO’s military mission (SFOR).

²⁴ See Presidency Conclusions (2000), European Council of the Santa Maria da Feira of 19-20 June, SN 200/100, Brussels.

²⁵ Mühlmann (2007), op.cit., p.47.

²⁶ Council of the European Union (2002), op.cit.

²⁷ Martinelli, Marta (Autumn 2006), “Helping Transition: The EU Police Mission in the Democratic Republic of Congo (EUPOL Kinshasa) in the Framework of EU Policy in the Great Lakes”, *European Foreign Affairs Review*, Vol.11, p.381. Also see: Merlingen, Michael with Ostrauskaite, Rasa (2005), “ESDP police missions: meaning, context and operational challenges”, *European Foreign Affairs Review*, Vol.10, N°2, pp. 215-235.

²⁸ Juncos (2007), op.cit., p.63.

²⁹ Ibid, p.47-49.

³⁰ Collantes Celador, Gemma (2007), *The European Union Police Mission: The Beginning of a New Future for Bosnia and Herzegovina?*, IBEI Working Paper No. 2007/9, Institute Barcelona d'Estudis Internacionals, Barcelona: CIDOB Edition, October, p.13.

³¹ Penksa (2006), op.cit., p.4.

Apart from the huge scope of its tasks, the mandate of EUPM I had to be carried out in the context of the complex and unwieldy institutional structure and politico-ethnic accommodations established in post-Dayton BiH. The mission concretely employed around 500 police officers and local personnel through 33 co-locations at State level (at the BiH Ministry of Security, INTERPOL, SIPA and SBS), at entity level (Ministry of Interior, Entity Police Academy, Cantonal Police [Federation], Public Security centres/Stations [RS]) and in the Brčko district³².

Labelled the first ESDP intervention, the EU Police mission constituted the first civilian crisis management operation to be planned by DG E of the Council Secretariat; this was a first in terms of learning experience for the officials of DG X and the Police Unit and involved a new sharing of responsibilities among DG IX, the Police Unit and EUPM's officials in BiH³³.

The formation and establishment of this strengthening mission was impeded by the ineffective handover process from the IPTF mission to EUPM I, lasting delays in procurement and personnel recruitment and new programs to be developed "in a rush" in complex post-conflict settings.

Turning to the mission's mandate, a political and strategic controversy – stemming from the thwarted plans the United States originally had pushed for, backed by some EU member states – emerged about whether the mandate should entail executive powers. Notwithstanding this debate and according to EUPM's viewpoint, the primary objective pursued at operational level was centred on monitoring, mentoring and inspecting specific targets, according to a programme-based approach that aimed at fostering local ownership and capacity. A UN-inspired peacekeeping approach pervaded the planning team's design of the mission, which, however, would have been presumably detrimental to a strengthening mission devoted to the above-described tasks. It led to a poor definition of tasks within the Concept of Operations (CONOPS) and the Operation Plan (OPLAN), according to some EUPM I officials³⁴.

1.2 The saga of the EU-led police restructuring process

At the time of the EUPM's deployment, the objective was to improve both the efficiency and the effectiveness of the Bosnian policing system.

The then High Representative, Lord Ashdown³⁵, embraced the reform of the whole security sector encompassing defence, the judiciary and the intelligence services. However, truly comprehensive security sector reform also required the issue of the institutional fragmentation characterizing the Bosnian police to be simultaneously addressed.

Following the launch of the EUPM on 1 January 2003, the mission developed various concepts of police restructuring, in coordination with the Office of the High Representative (OHR). This issue rapidly became part of the international agenda³⁶.

Financed by the European Commission, a Functional review of the police agencies in BiH was released in July 2004. BiH's police forces were called on to establish "basic public security services of acceptable quality" and to reach "a level of classic crime lower than in the EU" and "a quite high percentage of solved crimes".

The publication of the 2003 Feasibility study by the European Commission led *de facto* to an enhancement of the EUPM's role in BiH³⁷. The document indeed assessed whether the country was in

³² Ibid.

³³ Ibid., p.5.

³⁴ Ibid., p.6.

³⁵ Lord Ashdown was the international High Representative and EU Special Representative for BiH from September 2002 to January 2006.

³⁶ Mühlmann (2008), op.cit., p.51-52.

³⁷ See European Commission (2003), Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union („Feasibility Study“), Brussels, COM (2003) 692 final, 18.11.2003, <http://www.eusrbih.org/policy-docs/pdf/ec-feasibility-study-report-692.pdf>, (Access date: January 30, 2009).

the adequate situation to begin the SAA negotiations: it singled out the issue of police reform as a compulsory requirement before negotiations on the Stabilisation and Association Agreement could begin³⁸. In October 2005 the Commission assessed the progress of Bosnia & Herzegovina in addressing the priorities set out by the Feasibility Study. Furthermore, the European Commission laid down three criteria to guide police restructuring in BiH: the creation of an independent and sustainable police force (in order to ensure that all budgetary competencies are attributed at state level), the elimination of political interference and the principle according to which functional local police areas must be determined by technical policing criteria, while operational command is exercised at the local level. Following many unsuccessful and lengthy political attempts to reach a consensus, the representatives of the three entities (and notably the Republika Sprska) eventually reached an agreement on police restructuring on 5 October 2005³⁹.

It should be noted that responsibility for negotiating the 2005 agreement on police reform primarily lay in the hands of Office of the High Representative (OHR)/EU Special Representative (EUSR) and the Commission⁴⁰. At that time, the police reform process belonged to OHR/EUSR⁴¹ and not to EUPM-I, which provide only technical - and not political - expertise⁴².

Moreover, as observers have noted, the first relevant proposal for constitutional change since Dayton was made in early 2006, after many initiatives had failed at earlier stages.

In March 2006, the BiH Presidency proposed four amendments to the Constitution to the BiH Parliamentary Assembly. Unfortunately, the constitutional amendments did not receive the two-thirds majority in the BiH Parliamentary Assembly that they needed for approval and were finally rejected after a lengthy debate⁴³. Representatives of the international community reacted by blaming the opponents for their obstruction of BiH's progress towards European integration.

Police reform has thus proved to be a complex and difficult process so far, since police restructuring affects the basis of the complex ethno-political power-sharing model that has governed the country since Dayton.

1.3 EUPM I: achievements and main shortcomings

To put it in a nutshell, EUPM I contributed significantly to the reform of the police in BiH in a number of areas. However, and in reference to the original debate pertaining to the nature of the EUPM I mandate (executive powers or advisory capacities), the police mission was continuously criticized by officials from the EU member states and international community representatives for its weak interpretation of its mandate regarding its monitoring, inspection and advising tasks, but also for not taking the lead in BiH police reform and in the fight against organized crime⁴⁴.

Police reform-related tasks and police restructuring. During this phase of the mandate, a Police Restructuring Directorate was established (see earlier developments on the police restructuring process) to be co-chaired by the EUPM and local authorities. The EUPM also emphasized the strengthening of community-based policing activities during the 2003-2005 period. According to the Mission's programme "Public Order and Security", the EUPM would "improve the 'community policing' capabilities and capacities of the Uniform Police to build trust of the community towards the

³⁸ The Feasibility Study set out 16 priorities for BiH for which "significant progress" should be made to open the negotiations of a SAA.

³⁹ Juncos (2007), op.cit., p.62.

⁴⁰ Penksa (2006), op.cit., p.15.

⁴¹ The OHR/EUSR was integrated in the chain of command of EUPM.

⁴² Personal interview, Sarajevo, EUPM Official, 2008.

⁴³ Haupt, Christian (2006), "Dayton - Bosnia and Herzegovina at a Crossroads". In: "International Peace Plans for the Balkans - A Success?", 12th Workshop of the Study Group "Regional Stability in South East Europe", (Series) BMLV/PfP Consortium Study Group Information, Vienna: Austrian Federal Ministry of Defence (BMLV), Austria, p.43-46.

⁴⁴ Penksa (2006), op.cit., p.6.

Police”⁴⁵. For instance, the Mission got engaged in community building activities such as the Returnee Forums, which allowed returnees to meet local police and the Bosnian authorities to deal with their security concerns⁴⁶.

Establishment of state-level agencies. During this first three-year period, the SIPA (BiH State Investigation and Protection Agency) was expanded to give it the capability to fight organized crime; the development of state-level agencies such as the State Border Service (SBS) and the Ministry of Security (MoS) was fostered.

EU coherence and inter-institutional relationships. During the first mandate of the EUPM, general problems of coherence affected the whole of the EU’s external operation in BiH, thus infringing sometimes seriously upon the EUPM’s activities, even though the Mission considered to have logical priority on them.

Indeed, in the 2003-05 period, the EUPM was not endowed with an executive mandate, whereas EUFOR Althea could intervene in the policing field. Indeed, the Integrated Police Unit (IPU) was granted executive powers in the fight against organised crime⁴⁷.

The weakness of its mandate led to the EUPM gaining a poor reputation, but it also caused a lack of motivation among personnel. At the same time, EUFOR soldiers carried out police tasks they had never been trained to perform. This resulted in a lack of overall coordination and a blurring of boundaries in the delineation of tasks between the civilian and military missions⁴⁸. Lessons regarding the proper coordination between the police (EUPM), military (EUFOR Althea) and the EU special representative (EUSR) were learned from this difficult case as the three counterparts agreed on a set on seven operating principles, whose responsibility for overall coordination was endorsed by the EUSR⁴⁹.

The excellent cooperation that pertained between the Mission and the Commission is worth emphasizing. According to its mandate, EUPM I supported the rule of law component of the EU’s policies in BiH as well as the related Community projects managed by the Commission and financed through the budget for the CARDS programme (Community Assistance for Reconstruction, Development and Stabilization).

Recruitment, expertise and standards. As some previous scholarly reviews have underscored, appropriate expertise is vital to perform the tasks foreseen within a multinational team. Yet it is clear that police officers cannot be expected to have all the expertise required in terms of programme development and evaluation, survey research and the politics of the Western Balkans. EUPM I lacked adequate specialized expertise in the fields of organized crime, financial crime and humane trafficking, according to the civilian and police staff located at the HQ in Sarajevo⁵⁰. But, contrary to received opinion, experts endowed with highly specialized knowledge and field experience are not always the most expensive and sought-after staff within the member states⁵¹.

Moreover, technical reforms were introduced in order to harmonize police standards and procedures⁵².

⁴⁵ For further insights into the debate on the concept among the EUPM’s staff, see: Ibid., p.16.

⁴⁶ Penksa (2006), op.cit., p.4.

⁴⁷ Collantes Celador (2007), op.cit., p.17; also Mühlmann, Thomas (2006), “The EUPM in Bosnia”, in Merlingen, Michael with Ostrauskaite, Rasa, *European Union Peacebuilding and Policing Governance and the European Security and Defence Policy*, London: Routledge, p.75.

⁴⁸ Emerson & Gross (2007), op.cit., p.9.

⁴⁹ Ibid., p.11. See EU Police Mission (EUPM), EU Military Force in Bosnia and Herzegovina (EUFOR) and EU Special Representative (EUSR) (2005), *Guidelines for Increasing Cooperation between EUPM–EUFOR and EUSR*, Sarajevo.

⁵⁰ Penksa (2006), op.cit., p.6.

⁵¹ Hansen, Annika (2004), “Security and Defence: The EU Police Mission in Bosnia-Herzegovina”, in W. Carlsnaes, H. Sjurson and B. White (eds), *Contemporary European Foreign Policy*, London: Sage Publications, p.179.

⁵² Collantes Celador (2007), op.cit., p.6.

Assessment and lessons learnt. The implementation of such a “strengthening mission” raised many operational difficulties, since both inspection tasks and mentoring activities carried out at middle to senior levels of management were requested.

The dependence of the Council Secretariat (and of the DG IX) on the mission’s presence in the field to learn practical lessons should also be emphasized. In addition to a requirement for an increase of personnel to provide “adequate mission oversight and strategic planning capacity”, the need also emerged for independent analysts tasked with supporting program development and assessment (both in Brussels and in the field, to provide comparative “lessons learned” for instance). It also became clear that greater contact was needed between experts with field experience from previous ESDP operations and officials preparing future missions⁵³.

Ultimately, an assessment of the achievements of EUPM I paints a picture of contrasts. One cannot deny that the EU mission “fell short of expectations”, as the author Collantes states, during the period 2003-05. At the end of the first three-year mandate, the local police forces – and their European instructors – were still far from having achieved the European and international standards stated in the original mission mandate⁵⁴. Furthermore, one can object that those standards do not refer to solid normative foundations at EU level, which results in somewhat blurred interpretations and references. However, many factors contributed to a number of failings and shortcomings in the mission’s achievements, particularly the setting of conflicting and overambitious goals that sought to transform the policing culture in the country within three years by means of a mandate that was ill suited to the local political context at that time, as well as the difficulties resulting from a somewhat elusive definition of what so-called “European best practices” referred to (see paragraph on guidelines for “European policing”)⁵⁵.

According to some scholars, the most visible lesson to be drawn is not that the programmatic approach failed completely, but rather that “the implementation and assessment criteria for ESDP operations need further development in the light of field experience”⁵⁶.

2. TOWARDS EUPM II: OVERCOMING PRIOR SHORTCOMINGS

A number of failures and shortcomings drawn from EUPM I have been singled out over the course of the implementation. This allows for a first assessment of the extent of EUPM II’s achievements towards the objectives embodied in the revised mandate.

To what extent have these lessons learned been integrated so far? What remains to be done and what room for improvement can still be identified at this stage? Building on former lessons learned from EUPM I, we will propose some steps towards conducting an assessment of the EUPM II so far.

2.1 The transition from EUPM I to EUPM II

In 2006, a number of tangible events proved that the European Union had learned from the difficulties experienced in the past and, in particular, that a willingness prevailed among Mission officials to effectively integrate the lessons learned from EUPM I into the second mission. The High Representative and the Council, together with the European Commission, launched advance planning for a further EU engagement in the country in view of the impending closure of the OHR (Office of the High Representative) (initially planned for mid-2007) and the reduction of the EUFOR Althea’s military forces⁵⁷.

⁵³ Penksa (2006), op.cit., p.7.

⁵⁴ Collantes Celador (2007), op.cit., p.20.

⁵⁵ Ibid.

⁵⁶ Penksa (2006), op.cit., p.9.

⁵⁷ Ibid., p.15.

Finalized in March 2006, the revised version of the OPLAN for EUPM II contained instructions as to how EUPM II should operate, on its relationships with other EU institutions and instruments in BiH as well as “indicators for mission success”. For instance, relations between EUPM and EUFOR have improved considerably since 2005.

The so-called “EUPM-II” focuses on three new pillars: supporting the local police in the fight against organized crime; conducting inspections and monitoring police operations; and supporting the implementation of police restructuring⁵⁸.

Building on the co-location principle intensively applied during the former mandate, the new structure of EUPM II has three levels: EUPM headquarters⁵⁹; the regional offices and border police/SIPA headquarters and finally the co-locations and border police/SIPA field offices. It is also based on a regional approach: EUPM staff are based at four regional centres corresponding to SIPA’s regional offices (located in Banja Luka, Tuzla, Mostar and Sarajevo). Launched in January 2006, the “new look” mission has a mandate that appears to be pragmatic given that the focus has been placed on assisting with police reform, the fight against organized crime and supporting capacity-building in the SIPA and SBS. It is characterized by a significant reduction in terms of personnel as well as rationalized objectives⁶⁰.

In the transition phase from the first to the second and re-focused mandate, a Memorandum of Commitment was signed between EUPM and BiH on the occasion of the Police Steering Board Meeting in February 2006 to finalize projects that were still being implemented at the end of EUPM I⁶¹. By doing so, the BiH Police Authorities showed their good will and commitment to implement outstanding projects that had been agreed formerly. Further projects were then developed in the second half of 2006 under the consolidation phase of EUPM II’s implementation.

2.2 The challenge of effectiveness through re-focused goals

We will strive to provide a provisional assessment of the 2006-2008 period of EUPM II – referring to the empirical material gathered so far – before highlighting significant features and elements of the political context characterizing the implementation, the EU inter-institutional relationships and the political and structural factors that have marked 2008 and need to be taken into account for 2009.

However (and as previously mentioned) we emphasize that our contribution is a work in progress: conducting such an evaluation requires considerable further field research to obtain comprehensive data and improve accuracy and consistency.

One can actually question what “success” refers to in the framework of ESDP missions, since it has so far never been quite clear what variables or criteria should be used to measure success and how they should be interpreted⁶². In addition, the need for an “objective” evaluation of the missions’ achievements is blurred by the political interests of the European Union (with EU institutions and the EU member states sometimes pursuing conflicting views according to domestic interests) to present missions with an European flag as successful.

From an administrative point of view, the minimal criteria for success could be the achievement of the police forces’ operational deployment with the appropriate personnel and material resources. Another crucial criteria would be to determine “whether the peace has been guaranteed and enforced in a

⁵⁸ See Council of the European Union (2002), Council Joint Action of 11 March 2002 on the European Union Police Mission, op.cit.

⁵⁹ The EU Police Mission headquarters comprise the Head of Mission’s office, the Police Reform department, the Inspection department, the Anti-Organised Crime department and the Administration and Support department.

⁶⁰ Mühlmann (2008), op.cit., p.15.

⁶¹ Penksa (2006), op.cit., p.16.

⁶² Emerson & Gross (2007), op.cit., p.12.

sustainable way in theatres where civil wars occurred or where there are still “serious threats of inter-ethnic violence”⁶³, in line with the broad objectives pursued by EU civilian crisis management. Far from elaborating a methodological model for assessment encompassing these above-mentioned criteria, we would like here to propose a modest assessment of some EUPM achievements so far against the objectives derived from the mission mandate.

According to the methodological approach endorsed in our contribution, drawing a preliminary assessment of EUPM II’s achievements to date requires having an overview of the achievements expected to be reached on the basis of the mandate.

Against the revised mandate’s strategic objectives, the four outcomes to be reached during the term of the two-year mandate are the following: a) to have the police restructuring process becoming self-sustainable (‘police restructuring’ being considered as the institutional process related to the Stabilisation and Association Agreement with the EU, and ‘police reform’ referring to technical measures likely to be implemented ahead of, and in accordance with the police restructuring process); b) to complete the setting up of fully operational state-level agencies, particular with the border police and SIPA conforming to BiH’s commitments and obligations in the field of international cooperation; c) to obtain sustainable progress towards bringing the overall performance of policing in line with European and international standards; d) for the Bosnian authorities to have developed sustainable and effective capabilities in the field of the fight against organized crime (comprising a proper exchange of information between law enforcement agencies in BiH, inter-regional cooperation and coordination with the police authorities of the EU member states, EUROPOL, EUROJUST and INTERPOL and other international police coordination mechanisms).

3. ASSESSING EUPM II’S IMPLEMENTATION: SEVERAL STEPS FORWARD AND ONE STUMBLING BLOCK

As far as the mandate’s strategic objectives and the related institutional relationships with the other EU institutions are concerned, many changes were introduced from 2005 onwards and then during the 2006-2007 period (the so-called ‘EUPM II’ phase) drawn from lessons learned, the institutional experience gathered and improved perception and understanding of the local political context during the first phase of the EUPM mandate.

Our purpose here is to measure the major elements of progress and achievements of the 2006-08 period against the objectives laid down in the EUPM II mandate in the light of previous lessons learned.

3.1 EUPM II: new leverages (tools) for more realistic objectives?

In line with the “first phase” mandate, EUPM II’s objective is “to establish in BiH a sustainable, professional and multi-ethnic police service operating in accordance with best European and international standards”. In pursuing these goals, its efforts aim at contributing to the global peace implementation process in the country in the aftermath of the General Peace Agreement of Dayton and to the implementation of the EU policy framework in the whole region.

After EUPM I’s mandate ended on 31 December 2005, the EUPM was then extended for two more years with a refocused mandate concentrating on police restructuring and the fight against organized crime.

In line with EUPM II’s revised objectives, the mandate was extended for an additional period of one year (until 31 December 2009). This introduces some significant changes and strengthens the efforts already undertaken from January 2006 in the three key sectors: supporting the police restructuring process and police-reform efforts; assisting the local police services in the fight against major and

⁶³ Ibid., p.13.

organized crime; and reinforcing and strengthening internal and external control, inspecting capability and the accountability of the police in Bosnia and Herzegovina⁶⁴.

A. Following up on “lessons learned”: effectiveness and coherence (2006-08)

Police reform-related efforts and police restructuring process. A number of achievements have been made in accordance with the provisions of EUPM II’s revised mandate.

Concrete outcomes have resulted from the advice on the planning and conduct of major and organized investigations and operations provided by EUPM personnel, which has contributed to improving the cooperation among police forces in BiH.

In addition, EUPM has made a crucial contribution to the work of the Directorate for the Implementation of Police Restructuring (DIPR) (the police mission continues to play a significant advisory role ahead of a future agreement on police restructuring).

It should be emphasized that the setting up of the Police Steering Board (co-chaired by the EUPM and local authorities) has allowed for a significant increase of local ownership of the reform process. This Board is playing an important role in the overall harmonization and coordination efforts.

Fight against organized crime. Two initiatives can be singled out among the numerous activities carried out in the first six months of EUPM II. Originally constituted to set up SIPA with the participation of both EUPM and OHR/EUSR, the Rule of Law project management working group was expanded to cover a wider range of issues addressed by a rule of law programme for BiH (personnel and recruitment for SIPA and SBS, police reform, Interpol). Moreover, the EU Police Mission took on a leadership role on several bodies, in particular the Criminal Justice Interface Unit, which resulted in strengthened ties between the prosecutorial sector and police and improved exchanges of intelligence with BiH police⁶⁵.

The mission contributed to turning confrontational behaviour into accommodating behaviour, improving the quality of investigations. The mission’s targeting of organized crime has also positively influenced practical coordination at local level.

It should also be noted that the Criminal Justice unit is reinforced within the Anti-Organized Crime Department: it is primarily in charge of improving the coordination and cooperation between the police and prosecutorial authorities in coordination with the EUSR.

Consolidation of State-levels agencies. A further achievement, made in cooperation with the European Commission, is the development of effective state-level institutions comprising the Ministry of Security and the BiH border police, as well as the consolidation of the State Investigation and Protection Agency (SIPA) into an operational agency with improved powers to fight major and organized crime.

Moreover, EUPM has supported the participation of the BiH law enforcements agencies in international cooperation mechanisms, in particular for the implementation of the BiH EUROPOL strategic agreement signed in February 2007.

Inspection and accountability. An inspection methodology that seeks to strengthen the accountability of the police has also been developed.

EU inter-institutional relationships. A direct lesson drawn from the difficulties experienced in 2005 between EU operations dealing with organized crime is that the mandates and programmes of the ESDP missions that have areas of operation responsibility in common must “reflect a distinct conceptual strategy for how each instrument is to be used in relationship to other EU missions”, as Penksa states⁶⁶. Indeed, a “triangulated strategy for organized crime” has developed between EUSR/OHR, EUPM and EUFOR Althea, building on the previous improvements in terms of

⁶⁴ See Council of the European Union (2007). Joint Action 2007/749/CFSP of 19 November 2007 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH), op.cit.

⁶⁵ Penksa (2006), op.cit., p.16.

⁶⁶ Ibid., p.22.

coordination. Logically, those adjustments occurred during the phase of political negotiation (including negotiations over the appointment of the new Heads of Missions for EUPM and EUFOR) as for the mandate revision of EUPM II.

As mentioned above, the EUPM II mission endorses a reinforced and active role in combating organized crime as it is tasked with assisting the local authorities in planning and conducting organized crime investigations in line with the coordination principles agreed in 2005 between the EUPM, EUFOR and the EUSR to solve the tensions between the EU civilian and military operations⁶⁷. Indeed, EUPM II took over the chairmanship of the EU-ESDP Targeting Board from EUFOR in March 2006 while EUPM II and EUFOR formally agreed on Common Operational Guidelines in support of the fight against organized crime on May 11, 2006⁶⁸.

Recruitment, expertise and training. The expertise required within the mission is closely related to its mandate. For instance, the focus placed on the fight against organized crime has led to an increased role for prosecutors, prosecution officers and judges in the mission's activities. Their recruitment raises some difficulties, since it is quite unusual for those experts to work in multinational teams, while police officers are more acquainted with such an experience⁶⁹.

The Civilian Crisis Response Teams (CRTs) do not constitute a system to which the EUPM regularly refers for national secondments. Yet they have been used for new field activities, such as the penal service⁷⁰.

Shortly after their arrival on site, police officers and experts participate in "induction training" providing them with information about the functioning, partners and procedures within EUPM, which has proven to be useful in helping them adapt and perform their work afterwards. Prior to their secondment, some member states provide police officers with suitable pre-training⁷¹.

Capacity and institutional aspects, chain of command, standards. A step forward was made with the adoption by the Council of Guidelines for Command and Control Structure for EU Civilian Operations in Crisis Management in June 2007. Those guidelines clarify the role of the Civilian Operation Commander, who will have command and control at the strategic level of the planning and conduct of all civilian crisis management operations, under the political control and strategic direction of the Political and Security Committee (PSC) and the overall authority of the Secretary General/High Representative (for the CFSP), Javier Solana. Further, the guidelines provide that for each civilian operation, the Director of Civilian Planning and Conduct Capability (CPCC) which has been established within the Council Secretariat will be the Civilian Operation Commander. Established in August 2007, the CPCC is located in the Council Secretariat General in Brussels and constitutes an instrument responding to the need for civilian operations to have a single chain of command. This new Capability aims to support the daily conduct of the mission, and bring about qualitative improvements in the planning and the conduct of the missions⁷².

Whereas "mentoring, monitoring and inspecting" activities had been defined since the earlier stages of the Mission, the understanding of what "European and international standards of policing" refer to within the Mission was explicated from 2007 onwards with five principles - although they remain quite elusive⁷³.

⁶⁷ See EU Police Mission (EUPM), EU Military Force in Bosnia and Herzegovina (EUFOR) and EU Special Representative (EUSR) (2005), *Guidelines for Increasing Cooperation between EUPM-EUFOR and EUSR*, Sarajevo.

⁶⁸ EU Police Mission (EUPM), EU Military Force in Bosnia and Herzegovina (EUFOR) (2006), *Common operational guidelines for EUPM – EUFOR support to the fight against organised crime*, May.

⁶⁹ Personal interview, Sarajevo, EUPM Official, 2008.

⁷⁰ Personal interview, Sarajevo, EUPM Official, 2008.

⁷¹ Sweden, Austria and Germany, for instance.

⁷² Council of the EU (2008), "Introducing CPCC", ESDP Newsletter, Issue 6, July.

⁷³ "European and international standards of policing" are understood as requiring police services: 1) to be structured in accordance with the criteria of effectiveness and efficiency, 2) to be based on the rule of law, 3) to be adequately protected from improper political interference, 4) to operate in accordance with democratic values and human rights standards, 5) to have the aim of protecting citizens' rights and property.

Assessment and benchmarking. As for effectiveness and benchmarking, mission success indicators have been established in cooperation with the EU Special Representative and the European Commission to measure the achievement of the objectives of the police mission in the course of its mandate. In the realm of the fight against organized crime, the EUPM refines the process using four levels of success indicators. As far as indicators for improvements regarding police restructuring and police reform efforts are concerned, they depend on the political context and the willingness of local authorities to pass the required regulatory and legislative acts.

B. Room for improvement

EUPM's concrete achievements have closely depended so far on the poor level of cooperation with the Bosnian authorities at State level to pass the laws required (internal affairs, police officers for instance). The key variable allowing for significant improvements as regards the police reform-process and other rule of law related measures appears the political willingness.

Despite some improvements, problems of expertise persist according to some officials, and this in turn impacts on the daily behaviour adopted in the framework of the EUPM tasks performed in Bosnia. Police officers sometimes have difficulties grasping the sensitive character of the policing activities they are conducting in Bosnia, especially when they touch upon painful memories related to the war⁷⁴. Beyond the objectives pursued in the framework of the mandate *stricto sensu*, we would finally like to make a remark on EUPM itself based on the examination of the mission's activities that have been carried out to date. The absence of an executive mandate could be said to restrict policing activities to "purely intellectual support": ESDP police missions predominantly appear to contribute *de facto* to the reinforcement of the rule of law applied in the country rather than aiming directly at peace enforcement in post-conflict settings, which is far from the original role that the European Council of Feira foresaw for them⁷⁵.

3.2 The police reform process (2007-08)

A. A difficult path towards police restructuring

However, lasting shortcomings related to the complex political arrangements and local situation in the country have kept impeding the primary goal pursued by the EU Police Mission, namely to establish and foster the development of law enforcement structures according to the principles of local ownership and sustainability. The obstacles met by the police restructuring process, in particular in 2007, confirmed this problematic feature of the Bosnian political landscape⁷⁶.

The winding path leading to the partial reform of the Bosnian policing organization (police restructuring as such has not been conducted so far) also shows that abandoning deeply rooted practices of political intervention and interference in policing decision-making takes time. The protracted stalemates - originating in "heavy-handed" reform processes and political obstructions (see the section on the police restructuring process) - confirm that ways of thinking cannot be changed at the same speed as institutions can be reformed⁷⁷. At the end of October 2007, the Bosnian political leaders adopted the Mostar declaration on implementation of police reforms⁷⁸ as well as an Action Plan on Police Reform with clear deadlines, which was seen as a strong collective commitment⁷⁹.

⁷⁴ Personal interview, Sarajevo, EUPM Official, 2008.

⁷⁵ Vahlas, Alexis (2007), "À la recherche d'un concept européen des missions de police internationales", *Annuaire français de relations internationales*, t. 8, p.507.

⁷⁶ Collantes Celador (2007), op.cit., p.20.

⁷⁷ This echoes what a former EUPM official noted: "[...] When institutional changes are introduced or imposed by the international community, changes in political culture tend to lag behind". See Mühlmann (2008), op.cit., p. 54.

⁷⁸ See European Union Special Representative (EUSR) (2007), Mostar Declaration on Police Reform, Declaration on honouring the commitments for implementation of the police reform with aim to initial and sign

Eventually, the Police Reform Laws (Law on the Directorate for Coordination of Police Bodies, Agencies for support of police structure of BiH and the Law on independent and supervisory bodies of the police structure of BiH) were adopted by the BiH Parliamentary Assembly on 16 April 2008. They foresee the establishment of a structure comprising seven bodies (four of which are new), aiming to improve the coordination of the two police forces at State level⁸⁰. From now on, their implementation must be initiated by the BiH parliamentary Assembly, the BiH Council of Ministers (CoM) and the BiH Ministry of Security (MoS).

The EU immediately welcomed this “step in the right direction”, while the reform was widely and harshly criticized in Sarajevo. A few months later, Bosnian political leaders estimated, for instance, that some of the new coordination and support institutions were redundant and useless since some of the bodies already existed with another form⁸¹, while representatives of the international community expressed their scepticism and even characterized the laws passed as a symbol of the failure of the whole process⁸².

Neither was the EUPM itself, which had provided advice on the content of the reform, satisfied with the final outcome: Brigadier General Vincenze Coppola admitted that this was not a police reform, and that the result obtained was far from matching the original expectations⁸³.

Though the European Union considered this limited achievement as sufficient to meet the conditions set for the Stabilisation and Association Agreement (SAA). In the aftermath of the agreement on police reform legislation, the signature of the (SAA) coupled with an interim agreement on trade and trade-related matters finally took place in Luxembourg last June 2008. EU Commissioner for Enlargement Olli Rehn welcomed it as “a turning point” opening a new phase in the relations between the EU and Bosnia-Herzegovina⁸⁴.

In the course of 2004, the European Commission’s 2003 “Feasibility study”⁸⁵ had expressed the view that “Bosnia and Herzegovina should be able to fulfil priority requirements, if constant efforts are made in that direction”. The SAA negotiations⁸⁶ were opened in November 2005 and their technical

the Stabilisation and Association Agreement (unofficial information) (website), 28 October; European Union Special Representative (EUSR) (2007), Action Plan for Implementation of the Mostar Declaration with aim to fulfill commitments needed for initialling and signing the Stabilization and Association Agreement (website), 22 November.

⁷⁹ Miroslav Lajčák highlighted its main elements: “The elements of the Mostar Declaration are that the police reform complies with the three European principles, second, that it will be divided into two stages. The first stage is the state level and the second stage is the local level. The state level should be resolved straight away, while the local should be organized in accordance with the constitution of this country. The current constitution is followed now, and after the adoption of a new constitution, the situation will change in accordance with the new constitution. Another key element is that this was the first document that finally received the support of all six political parties. This constitutes a platform” (Interview for the newspaper START with Miroslav Lajčák, High Representative/EU Special Representative in BiH (28 December 2007): “In BiH, nobody is telling the whole truth”, http://www.ohr.int/ohr-dept/press/pressi/default.asp?content_id=41069 (accessed January 15, 2009).

⁸⁰ The Police Reform Laws (or PR Laws) consist of four new coordination and support institutions (1. Directorate for Coordination of Police Bodies of BiH, 2. Agency for Forensic Examinations and Expertise, 3. Agency for Education, 4. Advanced Training of Personnel Police Support Agency) as well as three supervisory and oversight bodies (1. Independent Board, 2. Board for Complaints of Police Officials, 3. Public Complaint Board).

⁸¹ Derived from an interview with a BiH political representative, Sarajevo, 2008.

⁸² Personal interviews, Sarajevo, IC representatives, 2008.

⁸³ Sopinksa, Joanna (2008), “La réforme de la police est très critiquée à Sarajevo”, *Europolitique*, N°3524, Wednesday 7 Mai.

⁸⁴ European Union Police Mission (EUPM) (2008), “BiH Ties the Knot with EU”, *Mission Mag*, N°44, 19 June, p.1.

⁸⁵ European Commission (2003), ‘Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union’, Brussels, 18 November. <http://www.eusrbih.org/policy-docs/pdf/ec-feasibility-study-report-692.pdf>. (Access date: January 30, 2009).

⁸⁶ European Commission (2005), ‘Communication from the Commission to the Council on the progress achieved by Bosnia and Herzegovina in implementing the priorities identified in the “Feasibility Study on the

provisions were finalized in December 2006, but the initialling (finally held in December 2007 in Sarajevo) and signing of the SAA was postponed in the absence of appropriate political conditions. Finally, a widespread feeling among the international community in Sarajevo was that the EU was pushing for an agreement on police reform, of whatever quality, so that BiH could rapidly sign the SAA.

If BiH is confronted with problems that are typical for countries in transition, an important difficulty relates to the fact that there is a gap between the “declarative support” towards European integration expressed by BiH members of parliament and their amendments of or opposition to the adoption of the legal acts required. Although BiH is no more a newcomer in the EU integration process⁸⁷, the political leaders’ behaviour conveys an image of unwillingness to adopt the necessary reforms, which raises serious concern in the international community.

B. Towards a “bottom-up approach”: a late answer to a protracted political crisis?

During a seminar on police reform held in June 2008, the former EUPM head of Mission Brigadier General Vincenzo Coppola asserted that the EU Police Mission “would play a central role in monitoring the implementation of the two police reform laws”. He also underlined that a change of approach was needed to correspond to the country’s realities, officially highlighting a turning point in the method: “We will move from the ‘top-down’ to the ‘bottom-up’ approach which enables the existing structures to work better”⁸⁸. This method had yet already been informally enforced in the framework of the Commission in charge of preparing the Police Reform Laws’, in which the EUPM had participated⁸⁹.

4. WHICH WAY AHEAD FOR EUPM?

Institutional learning has thus occurred within the EU since the launch of the EUPM, building upon an exchange of good practices between ESDP missions, both at institutional and operational level, and on the outcomes of prior benchmarking processes and reviews.

Meanwhile, a number of European guidelines pertaining to policing have been developed. However, can one speak of nascent “European policing guidelines” at this point in time?

We will thus shortly assess to what extent guidelines for “European policing” have been fleshed out to date. We will then review important factors related to the overall political context in 2009 that might impact the achievements of EUPM II and its follow-on activities beyond December 2009.

4.1 Police reform in Bosnia-Herzegovina at the crossroads of the EU’s three-pillar policy: at the dawn of “European policing guidelines”?

In the aftermath of the ambitious European Council in Feira held in 2000⁹⁰, a number of concepts were developed for strategic planning and operationalization and gradually adjusted to civilian purposes. In the aftermath, Sweden declared the development of policing as crisis management tool a priority for

preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association agreement with the European Union, (COM (2003) 692 final)”, Brussels, 9 November. http://ec.europa.eu/enlargement/pdf/bosnia_and_herzegovina/com_en.pdf. (Access date: January 30, 2009)

⁸⁷ Bender, Kristof, Knaus, Gerald (2007), “The Worst in Class: How the International Protectorate Hurts the European Future of Bosnia and Herzegovina”, in *Inside the Bosnian Crisis: Documents and Analysis. Journal of Intervention and Statebuilding*, Volume 1, Special Supplement, 1 December, pp. 24-37.

⁸⁸ EUPM in BiH and the Slovenian presidency of the EU 2008 (2008), Press release, *Sarajevo: Seminar on Police Reform Ends*, 6 June).

⁸⁹ Personal interview, Sarajevo, EUPM Official, 2009.

⁹⁰ Presidency Conclusions (2000), op.cit., Annex I, Presidency report on strengthening of the Common European Security and Defence Policy: “(d) (...) Furthermore, work will be pursued to develop EU guidelines and references for international policing”.

her Presidency following the conclusions of the 2001 Gothenburg Council. However, to date it remains hard to identify consistent European policing guidelines⁹¹.

Similarly, the European Union is pursuing police reform in line with the “best European and international standards”, as often stated in the police missions’ mandates as well as a number of official documents. However, no further precise details about what those standards rely on can be found or provided by officials or experts. The only partial policing guidelines to be found largely refer to “best practice” and the accumulated experience of member states⁹².

Despite some developments, an overarching “EU policing doctrine” that aims to streamline a common reform process within the EDSP police missions or to clarify common objectives in the policing sector has so far been lacking: this may impact on the missions’ implementation as it may lead to diverging policing methods and practices⁹³. Indeed, the efforts relating to this sector are simultaneously pursued – and often in a coordinated manner - through the first pillar (European Commission through its Community activities), second pillar (CFSP/ESDP) and the third pillar (Justice and Home Affairs through the fight against organized crime, border management).

Though significant policing guidelines and official documents (notably relating to the characteristics of substitution or strengthening missions) are contained in the Standard Operating Procedures (SOP), which are handed on to all officers in EU police missions who are deployed in civilian crisis management missions in order to enhance their operational effectiveness. The SOP constitutes a key internal document within EU-led missions since it contains all reference documents relating to the missions’ functioning, structure, norms and logistic – as well as context-related aspects⁹⁴.

Moreover, many experts and practitioners argue that such “comprehensive guidelines” would be neither possible to develop at European level due to the reluctance of many member states to agree on common principles relating to policing nor necessary due to the set of current operational and strategic tools addressing strictly policing matters but also transversal issues such as rule of law or the fight against organized crime⁹⁵.

4.2 Perspectives beyond 2009

A. The EUPM II: revised strategic objectives for 2009

The new EUPM Head of Mission, Brigadier-General Stefan Feller⁹⁶, described the six strategic priorities developed in the first weeks of his mandate to effectively tackle the three major objectives set during the last year of the EUPM mandate. By the end of 2009, one of the objectives in the realm supporting the fight against organized and other serious crime is to see “the capacities of the law enforcement agencies on state and entity level [...] sufficiently developed to jointly fight organised and other serious crime”. Police and judiciary at state level should “have developed mechanisms and the capability to conduct investigations in the fight against organised and other serious crime consistently and in close cooperation with police and judiciary on all other levels”.

⁹¹ Emerson & Gross (2007), op.cit., p.10.

⁹² For more details on this aspect, see: Ioannides, Isabelle (2007), ““European Policing”? A Critical Approach to European Union Civilian Crisis Management with Special Reference to Macedonia”, Association for Studies of Nationalities Conference Proceedings “Globalisation, Nationalism and Ethnic Conflicts in the Balkans and Its Regional Context”, Belgrade: Forum for Ethnic Relations.

⁹³ This refers to the conceptual controversy and divergence in policing methods and practices covering the core tasks of social peacekeeping and crimefighting to be performed in the rehabilitation of disrupted societies. In: Merlingen, M., Ostrauskaite, R., op.cit., p.217.

⁹⁴ Personal interview, Sarajevo, EUPM Official, 2008.

⁹⁵ Personal interviews, Sarajevo, EUPM officials and IC representatives, 2008.

⁹⁶ Stefan Feller was formerly Head of the Police Unit in the Council of the European Union (2004 - 2007) and then Head of the “Conduct of Operations” Unit in the Civilian Planning and Conduct Capability (CPCC) (2007 - 2008).

As regards police reform, the institutions and mechanisms laid down in the Law on Directorate for Coordination of Police Bodies and on Agencies for Support and the Law on Independent and Supervisory Bodies of Police Structure in BiH should have been established and reached a state of “initial functionality”.

In addition, harmonized laws on police officials and laws on internal affairs should have been adopted at all levels in Bosnia. Thirdly, the EUPM efforts will also address the communication, coordination and cooperation issues between police and prosecutors at all levels, both in the country and regarding international cooperation⁹⁷.

B. An uncertain path towards a complete police restructuring

Although precise objectives have recently been set by the new Head of Mission with regard to police reform, informed sources state that there have been no concrete signs that the Police Reform Laws⁹⁸ are soon to be initialled and by the BiH parliamentary Assembly, the BiH Council of Ministers (CoM) and the BiH Ministry of Security (MoS). Persistent difficulties also affect the adoption at all state levels of the Laws on International Affairs.

Meanwhile, the political leaders of BiH have reached some agreements whose concrete impact on the Bosnian reform agenda should be assessed in the coming months.

On 8 November 2008, the leaders of the three major parties in Bosnia and Herzegovina⁹⁸ met in Odžaci and reached an agreement on how to proceed with constitutional reforms⁹⁹. This first step could be taken as a sign of political maturation, opening the way to arrangements necessary to pursue the required reforms.

More recently, Miroslav Lajak, OHR/EU High Representative announced on January 23 that he would leave his post in Sarajevo to take on the position of Minister for Foreign relations of Slovakia.

At almost exactly the same moment, an agreement on a project for a new partition of Bosnia was signed on January 26 between the leaders of the three nationalist parties (the Bosniak Muslim SDA, the Serb SBS and the Croat HDZ) that foresees the establishment of four regions (Bosniak, Serb, Croat, and a federal district of Sarajevo) and three administrative levels. There has been no official reaction from the international community to date, although this agreement is not seen as a positive sign by some EU stakeholders in a broader context where political leaders repeatedly obstruct the adoption of necessary laws (for instance the Law on Internal Affairs).

The coming year raises many expectations as well as questions with the expected closure of the Office of the High Representative (OHR)¹⁰⁰ and the upcoming endorsement of broader tasks by the European Union Special Representative (EUSR) from mid-2009 onwards¹⁰¹.

At this stage, no concrete plans regarding the transfer of competencies to the EUSR - and notably the endorsement of the police restructuring tasks - have been developed, and the extension of the EU Police Mission beyond December 2009 looks very likely¹⁰².

⁹⁷ EU Police Mission (2008), *Mission Mag*, No 55, 22 December, p.2.

⁹⁸ Namely Milorad Dodik (SNSD), Sulejman Tihić (SDA), and Dragan Čović (HDZ BiH).

⁹⁹ “Bosnian leaders agree on reforms”, BE92, source Beta, 8 November 2008, http://www.b92.net/eng/news/region-article.php?yyyy=2008&mm=11&dd=08&nav_id=54849 (accessed 16 January 2009).

¹⁰⁰ The PIC set a series of conditions for closing the OHR in February 2008. The five objectives are: 1. Acceptable and sustainable resolution on state property; 2. Acceptable and sustainable resolution of defence property; 3. Completion of the Brčko Final Award; 4. Fiscal sustainability; 5. Entrenchment of the Rule of Law. In addition, the PIC imposed two conditions: signing of the SAA (imminent) and a “positive assessment” of the situation in Bosnia and Herzegovina by the PIC Steering Board. It must be noted that there is no identified funding for OHR beyond June 2009.

¹⁰¹ See Council Conclusions on the Western Balkans (10-11 November 2008), 2903rd External Relations Council meeting, Brussels.

¹⁰² Personal interview, Sarajevo, EUPM Official, 2009.

4.3 The transition towards stabilization activities

In the current context of the persistent difficulties experienced by the international stakeholders, and especially the EU Police Mission, in pushing forward crucial reforms, it is necessary to raise the question of the future transition to stabilization activities in the country.

In line with its mandate, the EUPM has been fostering a number of projects and initiatives to encourage local ownership, with relative success.

The sustainability of some initiatives in the long run is sometimes threatened by poorly adapted legal and institutional arrangements. For instance, the EUPM had successfully set up a community-based policing project during its first mandate, before leaving its implementation to bilateral stakeholders supporting local police officers. If the community-based policing activities have been carried out since 2005 under the current financial and organizational *modus vivandi*, the challenge relates to this local ownership issue, since no legal mechanisms or concrete institutional arrangements at State level could allow for the sustainable financing of the activities without external funds. In these conditions, it is hard to see how the switch from NGO or bilateral support towards a self-sustaining structure financially supported at state level can be made¹⁰³.

Some experts also called into question the effects of efforts that aim to foster local ownership of policing activities. For certain experts, the extent to which community policing can prevent emerging conflicts by fostering a reconciliation process between ethnic groups remains to be assessed, since most Bosnian communities endorse mono-ethnic behavioural, political and organizational patterns¹⁰⁴.

Regarding the transfer of competencies and tasks from ESDP missions to EU stakeholders or local institutions, the Council has addressed the crucial issue of the “transition and follow-up for those civilian operations which will come to an end” in an Operational Programme drafted by the Presidencies in 2006, as the author Eva Gross underlined¹⁰⁵.

However, a recent book focusing on the operational aspects of EU civilian crisis management through a number of case studies highlighted the challenges the ESDP missions were confronted with. Indeed, an overarching concept specifying the division of the responsibilities between the first and the second pillar and “regulating the transition from an ESDP operation to European Commission good governance projects” is still missing¹⁰⁶.

For local policing authorities and in the realm of EU support for police reform carried out in the ESDP framework, the use of harmonized guidelines is required by the prevailing need to ensure that police entities and local authorities will benefit from “strategic and operational know-how” commonly agreed with their European monitors and that, once the mission closes, they will rely on adequate legal instruments to guarantee security in this specific sector, but also in relation to the broader framework of rule of law activities¹⁰⁷.

¹⁰³ Personal interview with a local practitioner, Sarajevo, 2009.

¹⁰⁴ Collandes Cellador (2007), op.cit., p.16 .See also Merlingen & Ostrauskaite (2005), op.cit.

¹⁰⁵ Gross (2007), op.cit., p.8. See Council of the European Union (2005), Operational programme of the Council for 2006 submitted by the incoming Austrian and Finnish presidencies, 16065/05, Brussels, 22.12.2005.

¹⁰⁶ Merlingen, Michael, Ostrauskaite, Rasa (2008), “The Implementation of the ESDP. Issues and Tentative Generalizations”, in Michael, Merlingen with Rasa, Ostrauskaite (2008), *European Security and Defence Policy. An Implementation Perspective*, London: Routledge, p. 191.

¹⁰⁷ See Vité, Sylvain (2005), “Re-establishing the Rule of Law under Transitional Administration”, pp. 187-208, in: Bryden, Alan, Hänggi, Heiner (eds.), *Security Governance in Post-conflict Peacebuilding*, Geneva Centre for the Democratic Control of Armed Forces (DCAF)).

CONCLUSION

As this contribution demonstrates, an evaluation of the EUPM's achievements cannot be properly conducted without taking into account both the relevance of the criteria used to evaluate the mission's effectiveness and the political context and institutional arrangements that have prevailed in the post-Dayton Bosnia and Herzegovina.

In that regard, it is worth highlighting the discrepancy – both in terms of the perception of what has been performed but also as regards the reality of the changes expected to be brought about – between the mission's "technical" achievements and the broader objectives that civilian operations conducted in the framework of the ESDP are intended to pursue. In line with the objectives entrenched in EU civilian crisis management, the EU police missions aim indeed to prevent further crisis, to ensure security and stabilization and thus to contribute to a sustainable peace while "promot[ing] democratic and efficient rule of law"¹⁰⁸.

At a technical level, most strategic objectives pursued by the Mission have been satisfactorily achieved with significant results, at least on paper, and not least thanks to the valuable contribution of local police, whose quality of work and improved practices have been repeatedly highlighted by our interlocutors. However, it appears that the major enduring obstacles to the implementation of State-level reforms, as regards police restructuring and police reform-related measures in particular, are primarily of a political nature. As many past and current cumbersome political negotiations and processes already discussed in this paper testify, police reform in Bosnia and Herzegovina has indeed been governed so far by political decisions and the interplay of competing interests. This overall context means that it is no easy task to evaluate how effectively the EU Police Mission has performed its duties so far in the absence of clearly measurable goals and delineated competencies among EU stakeholders.

Police reform alone is not sufficient; the reform process has to be carried out in numerous areas pertaining to state-building, all of which BiH needs to undertake to move forward and acquire the adequate and accountable institutions required to continue the pursuit of European integration.

In the Joint Report they released last November, High Representative Javier Solana and Commissioner for Enlargement Olli Rehn summarized the situation well while re-emphasizing that even if the EU keeps supporting BiH with financial means and expertise, the remaining steps of the reform process must be taken by the leaders in BiH themselves¹⁰⁹.

Echoing this assertion, the Council reaffirmed its political commitment in Bosnia and Herzegovina and BiH's European prospects while expressing its deep concern regarding the degraded political situation in autumn 2008. The Council called on the Bosnian authorities to "shoulder their responsibilities, and to renew their efforts to push through the necessary reforms for BiH to progress on the path towards the EU"¹¹⁰.

Despite recent statements and agreements by the Bosnian political leaders that they have a genuine will to get involved in the shaping of BiH's future by conducting the structural and political changes necessary to ensure the good functioning of the political and institutional system (see above), the country's welfare and the well-being of the citizens can be variously interpreted: these "solemn vows" still have to prove their consistency and should be measured against concrete and binding commitments made in the coming months. This constitutes a core issue for the effective and consistent achievement of the police restructuring process and of EUPM police reform-related tasks, the official termination of the EUPM mandate being foreseen for December 2009.

¹⁰⁸ Ioannides (2007), op.cit., p.21.

¹⁰⁹ See Council of the European Union (2008), Summary Note on the joint report by Javier Solana and Olli Rehn, „EU's policy in BiH: the way ahead“, 10 November.

¹¹⁰ See Council Conclusions on the Western Balkans (10-11 November 2008), 2903rd External Relations Council meeting, Brussels.

A lesson to be drawn from the Bosnian case, and in particular regarding the improvement of the EUPM's functioning and achievements, is that the agenda pursued by international civilian police missions strongly depends on what the High Representative calls "enabling and constraining factors", in line with Dominique Wisler¹¹¹. In BiH, the gain in political leverage obtained by the Head of the OHR allowed him, for instance, to push forward restructuring issues once the Bonn conference allocated him new competencies, but the reform of the police sector was not specifically in his official remit. Thus the restructuring efforts of international civilian police missions such as the EUPM reach the following limits: "[...] the mandate itself and, depending on the mandate, the cooperation disposition of the local government"¹¹². This also refers to what some authors have called "Dayton's dysfunctionality" - the problems of designing the complex constitutional structure and the lasting unwillingness of local Bosnian elites to get involved in the political reform process¹¹³. Beyond the crucial role endorsed by the mission personnel, the role of the local elites is thus highlighted¹¹⁴. No one can deny that reform of local police forces cannot be imposed, but it does require broad consent among politicians, citizens and the police forces¹¹⁵.

Another decisive element impacting on the effectiveness of the police missions - namely how successfully they concretely perform their tasks - is affected by the institutional and operational linkages among EU stakeholders, the delineation of competencies and the subsequent balance of powers operating on the ground.

The challenges with which the EU Police Mission and other EU field operations are confronted are similar to those experienced by the United Nations and other international organizations¹¹⁶. In that regard, EU decision makers could take inspiration from past UN experiences and of the way police missions have been structured and organized, in particular regarding the chain of command¹¹⁷.

As a *sui generis* actor endowed with a remarkable range of civilian and military instruments, the European Union should pursue its efforts towards the smooth integration of the aspects given above in its operational practice in order to make progress in the realm of integrated crisis response, notably in the field of post-conflict police reform¹¹⁸.

¹¹¹ Wisler, Dominique (2007), "The International Civilian Police Mission in Bosnia and Herzegovina: From Democratization to Nation-Building", *Police Practice and Research*, Routledge, Vol. 8, No. 3, p.267.

¹¹² Ibid.

¹¹³ Richter, Solveig (2008), "The End of An Odyssey in Bosnia-Herzegovina", *SWP-Aktuell* 2008/A 41, p.1.

¹¹⁴ See Muehlmann, Thomas (2007), "International Policing in Bosnia and Herzegovina: The Issue of Behavioural Reforms Lagging Behind Structural Reforms", *European Security*, Vol.16, No. 3-4, pp. 375-396.

¹¹⁵ Ibid, p.383. See also Bailey, David H. (2001), *Democratizing the Police Abroad*, U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice, Washington, D.C., June, p. 59.

¹¹⁶ Susan Penksa mentions the terms of "complexity", "multidimensionality", and "policy integration".

¹¹⁷ Personal interview, Sarajevo, EUPM Official, 2008.

¹¹⁸ Refer to Penksa (2006), op.cit., p.27.

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