

ANNEX 8: ACTION FICHE FOR ENPI EAST REGIONAL ACTION PLAN 2010 PART I

1. IDENTIFICATION

Title:	European Union Border Assistance Mission to the Republic of Moldova and Ukraine – EUBAM 8 (CRIS ENPI/2010/22193)		
Total cost:	EUR 12 million		
Aid method / Management mode:	Project approach – joint management		
DAC-code:	15130	Sector:	Legal and Judicial Development

2. RATIONALE

2.1. Sector context

The region of Transnistria self-proclaimed independence from the Republic of Moldova in 1992, one year after the dissolution of the Soviet Union. A short conflict ensued, with some 1,000 casualties. A ceasefire brokered with Russian mediation left Tiraspol in control of the region east of the Dniestr River in a self-proclaimed Republic of Transnistria. Since then, the conflict has been “frozen” in place.

Since September 2005, the EU and the USA participate as observers in the negotiation process in the enlarged format “5+2”; the EU is represented by the EU Special Representative for the Republic of Moldova.

Following a request from the Republic of Moldova and Ukraine in June 2005, the EU decided to launch an EU Border Assistance Mission (EUBAM) which was inaugurated on 30 November 2005 after the Commission had signed a Memorandum of Understanding with the Republic of Moldova and Ukraine on 7 October 2005. Since then, EUBAM enjoyed high political support from all stakeholders. Importantly, the Mission has also enjoyed continued attention and political and financial support from the EU side, including not only the Commission but also EU Member States. The latter’s active involvement as stakeholders in, and contributors to, EUBAM, has been a key element in the Mission’s success to date. This has enabled EUBAM to operate effectively and help achieve improvements in cross-border cooperation and the fight against cross-border criminal activities, especially against large-scale smuggling and fraud. EUBAM’s activities also evidenced that indeed much needs to be done in order to bring border and customs control procedures in line with EU standards.

The EU’s involvement increased trust and cooperation between the Republic of Moldova and Ukraine and led to remarkable results: a Joint Declaration signed by the Prime Ministers of the Republic of Moldova and Ukraine on 30 December 2005, set in place the May 2003 bilateral customs agreement which enforcement started on 3 March 2006; two Protocols on mutual exchange of preliminary, analytical, operational and statistical information on goods and persons were signed, one between the Customs services and another between the Border Guard services at the 5th Trilateral meeting in Brussels on 21 November 2006; the Republic of Moldova simplified the registration of Transnistrian enterprises with the State Registration Chamber in March 2007 and extended access to preferential trade certificates of origin also to temporarily registered Transnistrian-based companies which has been an important step forward towards Transnistria’s economic integration. In December 2009, an important step forward was the start of the demarcation of the central segment of the Moldovan-Ukrainian state border.

Both countries show continued commitment to a peaceful settlement of the Transnistria conflict and the effective implementation of the 2003 bilateral customs regime. Moreover, both countries expressed at a

number of occasions their satisfaction with EUBAM's work and the assistance which is provided by the Mission; this resulted in a tri-partite agreement to extend the Mission's mandate for further two years until November 2011. All relevant authorities cooperate with the Mission which is an important indicator regarding the project's consistency with the partner Government's policies and strategies.

2.2. Lessons learnt

- a) EUBAM has demonstrated that the innovative institutional compromise under which it was established is able to deliver significant results. The integrated interface between this European Commission Mission and the Council, through the EUSR, and the enhanced border team which includes personnel seconded directly by EU Member States (which also constitutes a considerable equivalent financial contribution), has provided an excellent framework for the Mission to deliver technical advice and assistance, while maintaining awareness of, and responsiveness to, the context in which it operates
- b) EUBAM benefits from the mix of professional and national backgrounds and their authentic experience, enabling it to give practical expression to the phrase "United in Diversity". Increased contextual awareness and attention to linguistic and cultural integration into the communities where mission members live and work may pay dividends in future.
- c) Excellent public relations, as EUBAM has had, are essential in promoting the role of the Mission, maintaining momentum and ensuring that publics and customers are aware of the value of such a mission, which also supports the confidence building process with partner services.
- d) The tasks of a mission such as EUBAM are challenging, particularly in scenarios where there is no immediate accession perspective. The framing of the role of a mission as a partner was carefully created to make it perceived as an opportunity, not a threat. The Mission has an advisory nature and is assisting the partner services. The creation of the new Capacity Building Unit and the Liaison Office of EUBAM in the Republic of Moldova is an answer to this need, that is also understood by the partner services in both countries
- e) After the re-establishing of the May 2003 customs agreement based on the Joint Statement of the Republic of Moldova's and Ukraine's Prime Ministers, dated 30 December 2005 and enforced as of 3 March 2006, another major success in the settlement process was the issuing of Decree no. 301 by the Republic of Moldova Government on 17 March 2007 (later replaced by Decree no. 743/2007, establishing more favourable implementing procedures). This new decree amended the Decree no. 815 of 2 August 2005 extending access to preferential trade certificates of origin to companies located in the Transnistrian region of the Republic of Moldova and temporarily registered in the Moldovan State Registration Chamber. Continued EU technical support to the implementation of the Joint Declaration is required (i.a., through facilitating dialogue between the two countries, facilitating the exchange of information, risk analysis). EUBAM has been providing this technical support.
- f) Targeting only border guard and customs services in the fight against smuggling has not proved to be sufficient. Smugglers have been released and the smuggled goods were returned to the smugglers. Corruption continues to be a serious issue. This calls for involving the Prosecutor's offices, the courts and the Ministry of Justice either in EUBAM activities or in accompanying technical assistance projects. Furthermore, EUBAM re-organised its structure in particular to assist partners in improving the whole investigation process. Anti-corruption Advisor, Risk Analysis Specialists and Investigation Specialists positions as well as other positions have been established within the EUBAM Capacity Building Unit and Analytical and Operational Support Unit.
- g) The Mission's logistic set-up was so far managed by UNDP. Both the EU and UNDP had to find a compromise that combined adherence to procedure, while reflecting the unique character and needs of the Mission. In July 2009, UNDP confirmed their agreement on all requirements submitted by the EC

Delegation, including on the status of senior staff and visibility issues. As this is a European Union mission, the visibility of the UN is limited. Only EU flags are displayed on stationery and publications of EUBAM, as well as on vehicles and premises.

2.3. Complementary actions

The Commission has been financing EUBAM-flanking measures under the RAPs 2003, 2005 and 2006 as well as under the CBC 2006 with a total of € 11.5 million; furthermore under the ENPI NAPs 2007 and 2008 for the Republic of Moldova and Ukraine amounting to € 19 million and € 5 million respectively. These interventions build upon EUBAM's Needs Assessment and Recommendations Report (NARR) recommendations of May 2006, October 2008 and November 2009 respectively. The major objective of these projects is to support Moldovan and Ukrainian partner services in their efforts to approximate to EU standards.

From 2006 to 2010, the Commission is funding IOM implemented and U.S. co-funded projects aiming at reforming the Ukrainian State Border Guard Service's human resources management (NAP 2003, € 4.3 million; NAP 2006, € 1 million; HUREMAS projects). The projects target border management legislation, as well as recruitment, training and career development of border guard personnel. The projects are supported by the Border Guard Services from Hungary and Poland.

At the Ukrainian-Moldovan State border, the U.S. Defence and Threat Reduction Agency is funding a programme amounting to USD 28 million targeting the fight against proliferation of weapons of mass destruction, nuclear material and components of dual use. Under the U.S. Millennium Challenge Account, USD 46 million was made available for anti-corruption measures in Ukraine until the end of 2009.

Under the ENPI 2010 Annual Action Programme for Ukraine, the Commission is planning to finance a budget sector support programme in the field of border management, which will have an impact on EUBAM's work and require further coordination in such field.

2.4. Donor coordination

In the frame of the Paris Declaration agenda, a sub-working group on border management issues was established by the Government to coordinate donor assistance. As regards border management, besides the EC, there is only one major donor active, the U.S. Close cooperation and coordination of activities are ongoing on a permanent basis in order to ensure synergy effects. Coordination with beneficiaries and donors is also achieved through EUBAM Advisory Board and EUBAM Coordination meetings.

Republic of Moldova and Ukraine are among the countries involved in the Söderköping process, aimed at facilitating cross-border co-operation between EU Member States and the Western NIS on asylum, migration and border management issues. The Secretariat acts as a resource centre for all countries and international organisations participating in the process. It provides a forum for discussion, expert services, advice on asylum and migration management issues, and facilitates experience and information sharing in this field. The Secretariat also publishes a quarterly newsletter and compilations of conference materials.

3. DESCRIPTION

3.1. Objectives

3.1.1 Overall objectives

To assist the Republic of Moldova and Ukraine in fulfilling their commitments under the European Association process, thus also contributing to a peaceful resolution of the Transnistria conflict.

3.1.2 Specific objectives

- a) Enhancing the effectiveness and efficiency of border and customs clearance and controls, including the correct collection of customs revenues: To build up and sustain appropriate tactical, operational, administrative and institutional capacity in the Republic of Moldova and Ukraine to ensure effective and efficient border and customs clearance, controls and surveillance as well as effective fight against criminal cross-border activities and organised crime with particular attention to the Moldovan-Ukrainian state border, including relevant inland areas and locations, as well as at the administrative / internal boundary along the two banks of the Dniestr River in the Republic of Moldova.
- b) Enhancing the fight against corruption: To support partner services' anti-corruption efforts at central, regional and local level by underlining the integrity of managers, the need of anti-corruption strategies and action plans, ethics, training, infrastructure and methodologies / technologies relevant to the prevention of and fight against corruption.
- c) Provision of information on EUBAM and border and customs-related issues to the public: To contribute to improve public relations skills and capabilities of the partner services' public relations sections, and to provide objective information to the local population in the Republic of Moldova and Ukraine regarding EUBAM's tasks and assistance provided to the countries, ongoing activities at the border of which travellers and/or the local population benefits, rights and responsibilities of persons crossing the border (e.g. to complement anti-corruption measures), health risks of purchasing smuggled food (e.g. to complement consumer protection measures), etc.
- d) Confidence building and contribution to the Transnistria conflict settlement process: To monitor and advise on the implementation of the Joint Declaration of the Prime-Ministers of Ukraine and the Republic of Moldova of 30 December 2005; to help promoting cooperation between the agencies involved in border and customs controls and fight against crime in the Republic of Moldova and Ukraine through transparency, exchange of analytical and tactical information, and cross-border cooperation; to assist and support the border demarcation process; to assist developing an atmosphere for extended economic relations; as well as to promote post-conflict consolidation in case of a settlement within the duration of this action.

3.2. Expected results and main activities

- a) Professional capacity of border, customs and law enforcement officials enhanced: EUBAM found clear indications that the Moldovan-Ukrainian border is frequently used for illegal activities, in particular smuggling. EUBAM experts also identified, together with their national partners, a number of large-scale cases related to drug trafficking, trafficking in persons and of stolen vehicles, cigarette smuggling, etc. which remained undetected before the Mission's operation due to a lack of professional skills of the competent authorities. EUBAM will contribute to the development of the Moldovan and Ukrainian border guard and customs authorities' administrative capacity and will contribute to the implementation of effective border control and surveillance measures in the Republic of Moldova and Ukraine with particular attention to the entire Moldovan-Ukrainian State border by strengthening the Ukrainian and Moldovan border guard and customs capacity.
- b) Cross-border cooperation between border, customs and law enforcement authorities increased: Criminal groups still benefit from a lack of cross-border cooperation between border, customs and law enforcement authorities (though cooperation improved considerably since EUBAM's operation and EUBAM helped both countries to establish proper risk analysis systems). EUBAM will continue supporting Republic of Moldova's and Ukraine's authorities to strengthen bilateral and international cooperation and information exchange on statistical, analytical and tactical data through a variety of measures such as initiating/ participating in joint cross-border operations, facilitating the exchange of liaison officers in such operations, offering training for conducting joint border and customs controls, drafting of joint border security assessment reports, etc. In particular the installation of an automatic information exchange on the pre-arrival of goods, based on an agreement signed at the 5th Trilateral

meeting on border issues on 21 November 2006 in Brussels, has improved customs controls and the fight against smuggling and undervaluation; being actively used it has become an important tool to fight smuggling and undervaluation effectively. All measures will lead to an improved fight against cross-border crime and will, at the same time, facilitate legal movement of persons and goods across the border. Border and customs services will also get an increased understanding of an integrated approach to border management.

- c) Analytical overview on border security and cross-border movement of goods and persons improved: EUBAM will perform visits and inspections to relevant locations including along the green border by joining border surveillance activities. This monitoring activity will encourage partner services to strictly implement the 2003 customs regime agreed between Ukraine and the Republic of Moldova as well as to take serious counter-measures when criminal activities are detected. This will lead – in the mid-term – to a considerable reduction of illegal cross-border activities due to the increased risk of being detected, apprehended and prosecuted.
- d) Border demarcation at the common Moldovan-Ukrainian State border progressed: The Moldovan and Ukrainian parties, represented by their Ministries of Foreign Affairs and the Joint Moldovan-Ukrainian Commission on Border Demarcation will benefit from EUBAM's expertise and advice regarding European best practices in border demarcation. EUBAM's intervention will promote progress on the completion of demarcation works as well as foster the settlement of open questions. Specific and necessary support, including the provision of maps, can be provided if requested by parties.
- e) Corruption of border guards and customs officials at operational / tactical level decreased: The permanent cooperation with and being monitored by EUBAM experts will motivate partner services' personnel to carry out their duties objectively and according to existing laws. This will reduce the border and customs staff preparedness to demand or accept bribes. All activities will be coordinated with other anti-corruption initiatives, in particular those initiated by the EU and the United States.
- f) Public awareness in the local population of EUBAM's activities, cross-border crime risks, and the partner services' efforts increased: Awareness in the local population of, for instance, the scale of smuggling and health risks, as well as the losses for the State budget when consuming smuggled food stuff, is extremely low. Targeted and objective information shall help the local population and policy makers to better understand the dimension of the scale of illegal activity and the results of the assistance rendered to the partner countries.
- g) Public relations capabilities of partner services enhanced: Border Guard and Customs Services will be further familiarised with public relations methodologies and tools as well as with the principles of public information. This will, on the one hand, promote a positive image of the services and, on the other hand, help the services to inform citizens professionally about border and customs related issues. The intervention will be completed by supporting partner services in drafting technical specifications for related equipment for the services' public relations sections and, if appropriate, by supplying such equipment.

3.3. Stakeholders

The project priorities are based on the Memorandum of Understanding signed between the European Commission, the Republic of Moldova and Ukraine in October 2005 and have been discussed with the national stakeholders in the EUBAM Advisory Board meeting of 16 November 2009 as well as in the meetings between the Head of Mission and national partners in Ukraine and in October 2009 with the new authorities in the Republic of Moldova.

3.3.1 Border Guard Service of the Republic of Moldova

The border guard service of the Republic of Moldova is structured into four regional departments, and its transformation from a military structured entity into a fully professional law enforcement service should continue. It still includes a proportion of conscripts, being gradually replaced by professional border guards, with staffing number that is not adequate. The service has no investigatory powers and there is a need for amendment of the existing legislation. Passport controls at BCPs appear to be carried out in a satisfactory manner, but there seems to be little expertise in the identification of forged documents. Surveillance of the green and blue border is generally inadequate, partially due to a lack of means (communication network, vehicles, and patrol boats). Installation of a modern IT based communication system is on-going. EUBAM will continue to assist the Border Guard Service in realisation of the organisational changes based upon the specific needs and reflecting best practice models and recommendations.

3.3.2 Customs Service of the Republic of Moldova

The customs service is structured in a Central Administration and, after a reform in 2007, 8 sub-ordinate offices. The structure of the customs departments should be the main target for further improvement. Currently EUBAM assists the Moldovan Customs Service in implementing a new restructuring program. The customs service has overall adequate administrative capacity / staffing and adequate knowledge of customs rules; customs procedures appear to be normally in line with international standards (Republic of Moldova is a member of WTO). However processing capacities are low and certain specialised skills are lacking (e.g. the implementation of transit procedures, the use of modern techniques of selectivity or risk analysis, etc). A considerable part of customs clearance of commercial traffic takes place in inland customs houses rather than at BCPs. EUBAM will assist the Customs Service in realisation of the organisational changes based upon the specific needs and reflecting best practice models and recommendations

3.3.3 State Border Guard Service of Ukraine

The State Border Guard Service is structured into regional directorates, with the Odessa one in charge of nearly the entire border with the Republic of Moldova. The SBGS has been – to a large extent – demilitarised but, in addition to classical tasks of control and surveillance of persons, and the fight against cross-border crime and irregular migration, still also has the function of defending the state border. The SBGS has the overall responsibility for border management, including coordinating the work of customs and other law enforcement agencies present at the border, and green and blue border surveillance. Staff numbers and professional capacity appear as adequate. Passport controls appear to be carried out in a satisfactory manner, with some specific problems noted due to short control time of trains. Surveillance of the green / blue border has generally better means at its disposals but could be significantly improved. There is a need to revise legislation related to the delegation of investigative powers.

3.3.4 State Customs Service of Ukraine

The State Customs Service is generally adequately staffed, but comparably less well equipped than border guards. The overall border management responsibility lies with the border guards, with daily meetings taking place. The State Customs Service lacks investigative powers and is only allowed to handle administrative offences. Criminal cases have to be transmitted either to the State Security Service or to the police. The State Customs Service is developing its risk management capacity. EUBAM is of the view that the existing capacity is not adequately used for assisting customs clearances and in addition could be used to provide more assistance to strategic decisions. Risk management including risk analysis at custom house level needs to be developed. It is important to note that access to information is restricted and the ability to use it effectively is on a rather low level.

3.4. Risks and assumptions

3.4.1 Assumptions underlying the project intervention

Assumption 1: *Ukrainian and Moldovan authorities will remain committed to the reform of their border and customs services, the fight against corruption, and bilateral co-operation, and will accept (at central, regional and local level) the presence and tasks of the Mission personnel throughout its duration.*

The realisation of this assumption is likely, as the countries' political commitment emanates from the highest political level and was confirmed by the signature of the Memorandum of Understanding on the Border Assistance Mission between Ukraine, the Republic of Moldova, and the Commission, as well as by the agreement of all parties to extend the Mission's mandate for further two years. Continued commitment and cooperation at the level of services was good during the four years of implementation, and will continue being regularly reported on by the Mission. Moreover, the President of Ukraine adopted the State Border Guard's development strategy up to 2015 in June 2006, a reform document aiming at achieving Schengen standards within the set time horizon. A similar reform strategy is underway for the Moldovan Border Guard Service. Also the State Customs Service of Ukraine started elaborating a strategy paper for the service's development for the next decade.

Assumption 2: *EU Member States customs and border police administrations will accept to prolong the secondment of the staff currently engaged in the Mission as well as to suggest further suitably qualified personnel for reinforcing the Mission and will continue contributing towards the successful operation of this Mission, notably through exchange of information.*

The realisation of this assumption is likely. EU Member States demonstrated strong support in 2006 - 2009 for EUBAM and an interest in continuing / enhancing their contribution to this joint EU endeavour, through seconding own personnel as "field personnel" of the Mission, and accepting to allow continued detachment from national service of the contracted "core" personnel of the Mission.

Assumption 3: *The presence of the Mission personnel at all levels of the partner services organisation will improve the border management of the border between the Republic of Moldova and Ukraine and will contribute to improving the effectiveness of controls towards EU standards and best practices, to diminishing risks of corruption, and to curbing the main illegal cross-border flows.*

The previous years of the Mission's operation demonstrated the partners' sincere interest to improve the effectiveness of border and customs controls. All services cooperate closely with the Mission and implement their recommendations. The assistance in the implementation of the training concepts in a live work environment is proving to be the right approach. This logic has underpinned all EC twinning projects deploying Member States practitioners in the pre-accession context.

Assumption 4: *Improved border and customs controls and border surveillance along the whole border is a crucial element in the peaceful resolution of the Transnistrian conflict.*

This assumption intervenes at the level of wider / overall objectives. Clearly the realisation of this overall objective is beyond the remit of this Mission alone and depends also on other external factors. There is already a clear indication that the expected results and the achievement of specific objectives will significantly contribute to this overall objective. Moldovan-Ukrainian relations improved considerably after the signing and implementing of a Joint Declaration of both countries' Prime Ministers dated 30 December 2005 and implemented since 3 March 2006 as well as the adoption of Decree no. 301/2007, later replaced by Decree no. 743/2007, by the Moldovan Government allowing companies located in the Transnistrian region of the Republic of Moldova and temporarily registered in the State Registration Chamber fully benefiting from the Republic of Moldova's preferential trade certificates of origin.

3.4.2 Risks

The evident high level of corruption in all services could reduce the positive impact of EUBAM's operation. EUBAM is addressing this challenge through assisting the partner services in implementing anti-corruption strategies.

EU will support Ukraine and Moldova on their anti-corruption efforts through the Eastern Partnership initiative, as one of the thematic panels is dedicated to the anti-corruption issues, as well as through a possible anti-corruption project in Ukraine with the Council of Europe, which is currently under preparation.

3.5. Crosscutting Issues

The programme has a strong good governance dimension since prevention of, and fight against corruption is targeted.

4. IMPLEMENTATION ISSUES

4.1. Implementation method

Joint management through the signature of an agreement with an international organisation, either the United Nations Development Programme (UNDP) who was the Commission's implementing partner for the previous seven phases or the International Organization for Migration (IOM), in case changes in the contracting procedures of UNDP arise. The two organisations are well established in the Republic of Moldova and Ukraine and have sufficient expertise in the implementation of European Commission-funded and border management-related projects. In case the action is implemented jointly with the IOM, a standard contribution agreement will be signed.

The Commission has ensured, on the basis of the prior audit conclusions as foreseen in article 53 d) of Council Regulation (EC, Euratom) No 1605/2002, that the management systems set up by UNDP and by IOM offer guarantees equivalent to internationally accepted standards in their accounting, audit, internal control and procurement procedures.

In addition, UNDP is party to the Financial and Administrative Framework Agreement between the European Commission and the United Nations (FAFA).

Consequently joint management with UNDP or with IOM can be envisaged.

4.2. Procurement and grant award procedures

All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the International Organisation concerned.

Upon request of the parties detailed maps may be procured in support of the border demarcation process between the Republic of Moldova and Ukraine.

4.3. Budget and calendar

The total amount of the action is EUR 12 million.

The project is planned to be implemented within 12 months after conclusion of a joint management agreement, with the possibility of an extension of up to 6 months, if required.

4.4. Performance monitoring

Performance will be monitored by the EU Delegation and the ENPI Monitoring Team. The implementing partner will have to submit regular progress reports.

4.5. Evaluation and audit

An ex-post / impact evaluation will be undertaken within a year after the end of the Mission's mandate.

4.6. Communication and visibility

EUBAM and the Commission's implementing partner will follow the communication and visibility strategy already in place. No additional measures will be required since EUBAM ensures the highest EU visibility possible.