

## ANNEX 4: ACTION FICHE FOR ENPI REGIONAL EAST ACTION PROGRAMME 2009

### 1. IDENTIFICATION

Title:	European Union Border Assistance Mission to the Republic of Moldova and Ukraine – EUBAM 7 CRIS N° ENPI/2008/20643		
Total cost:	EUR 12 million		
Aid method / Management mode:	Project approach – joint management		
DAC-code:	15220	Sector:	Civilian peace-building, conflict prevention and resolution

### 2. RATIONALE

#### 2.1. Sector context

The region of Transnistria proclaimed its 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.

The arrival in power of the administration of President Yushchenko in Ukraine in 2005, and the launching of the so-called “Yushchenko Plan” created a window of opportunity for further advance the resolution of the “frozen” Transnistria conflict. Since September 2005, the EU and the U.S. 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’s President Voronin and Ukraine’s President Yushchenko 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 activities. 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. In October 2008 EUBAM came up with revised 41 recommendations on measures required to improve control standards and to approximate them to those of the EU.

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, Tarlev and Yekhanurov, set in place the May 2003 bilateral customs agreement which enforcement started on 3 March 2006; two Protocols on mutual exchange of pre-arrival, analytical, operational and statistical information on goods and persons were signed between the Customs services and between the Border Guard services at the 5<sup>th</sup> Trilateral meeting in Brussels on 21 November 2006; the Republic of Moldova simplified the registration of Transnistrian enterprises with the Moldovan Chamber of Commerce 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.

Both countries showed 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 2009. A request for further extension until 2011 is currently being handled by the Commission. All relevant authorities fully cooperate with the Mission which is an important indicator regarding the project's consistency with the partner Government's policies and strategies.

In line with the Commission communication of December 2008, the European Council of March 2009 welcomed the establishment of an ambitious Eastern Partnership as a specific Eastern dimension of the European Neighbourhood Policy, to promote stability and prosperity among the EU's Eastern partners and to accelerate reforms, legislative approximation and economic integration. It endorsed the launch of Flagship Initiatives in order to give momentum and concrete substance to the Partnership. This project to be financed in the present Action Programme will support the operation of the Eastern Partnership multilateral framework and advance the development of the Flagship Initiative on Integrated Border Management.

## **2.2. Lessons learnt**

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 provide technical advice and assistance, while maintaining awareness of, and responsiveness to, the context in which it operates. The enhanced credibility that EUBAM has gained through the employment of seconded, serving officers from EU Member States has been complemented by a cohesive, supranational culture on the Mission.

EUBAM has benefited from dynamic, ambitious and imaginative leadership, which would help any mission, but this needs to be backed up with sufficient managerial, analytical, planning and organisational capacity from the outset. The creation of mission "start-up kits" including readymade management reporting systems and products may help to enhance the institutional learning process and prevent unnecessary reinvention of wheels.

EUBAM benefits from the mix of professional and national backgrounds, taking in both "older" and "newer" EU Member States, enabling it to give practical expression to the phrase "United in Diversity". Increased contextual awareness and attention to linguistic and cultural acclimatisation and integration into the communities where mission members live and work may pay dividends in future.

The effectiveness of non-executive missions could be increased by improving the mechanisms for escalating issues, and particularly obstacles, from the technical level to the political. If this were explicitly clear to all parties, it would leverage the influence of the Mission in its dealings with counterparts, through the creation of a credible and empowered accountability mechanism.

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.

The nature of the tasks of a non-executive mission such as EUBAM are challenging, particularly in scenarios where there is no immediate accession perspective, and careful framing of the role of a mission as a partner, not an auditor and as an opportunity, not a threat needs to inform all dealings with host countries. The increasingly systematic approach to capacity building has paid dividends, particularly in tandem with the newly streamlined planning process, which creates clearer objectives for each unit, while enhancing the possibilities for devolved decision making, with improved quality management facilitating the necessary supervision and support from the headquarters.

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) amending 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., facilitating dialogue between the two countries, facilitating the exchange of information, risk analysis). EUBAM has been providing this technical support.

Targeting only border guard and customs services in the fight against smuggling has proven being not sufficient. Smugglers have been released and the smuggled goods were returned to the smugglers. Corruption continues to be a serious issue. This calls for including the Prosecutor's offices, the courts and the Ministry of Justice either in EUBAM activities or in accompanying technical assistance projects. For this purpose, an Investigation Advisory Unit was established under EUBAM 4, and will continue under EUBAM 7, corruption will be tackled more prominently. However, there is also a need to include these topics regularly at political-level meetings between the EU and the Republic of Moldova and Ukraine.

Implementation and practical backstopping of the Mission's logistic set-up by UNDP proved to be an effective way to manage complex operations of this nature. In particular, the flexibility and organisational capacity of UNDP proved to be of essence to the Mission of this size and nature. It has to be noted that both the EU and UNDP showed commendable flexibility in finding a compromise that combined adherence to procedure, while reflecting the unique character and needs of the Mission, which made this arrangement workable.

### **2.3. Complementary actions**

The Commission is financing EUBAM-flanking measures (BOMMOLUK projects) 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 for the Republic of Moldova and Ukraine amounting to € 11 million and € 5 million respectively. These interventions build upon EUBAM's 41 recommendations of May 2006 and October 2008 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 which could have a certain impact on EUBAM's work.

### **2.4. Donors' coordination**

Under the Paris Pact Declaration, a sub-working group on border management issues has been established in which donor activities are being coordinated. As regards border management improvement, apart from the EC, the U.S. is the only other serious donor active. U.S. assistance covers the period from 2005 - 2010, amounting to USD 39 million<sup>1</sup>. A follow-up project is under consideration. The programme is implemented by U.S. consultancy Raytheon.

Close cooperation and coordination of activities are ongoing on a permanent basis in order to ensure synergy effects. Coordination is also achieved through semi-annual EUBAM Advisory Board and monthly EUBAM Coordination meetings.

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<sup>1</sup> 2005 - 2007: 7 MUSD, 2008: 7 MUSD; 2009: 10 MUSD; 2010: 15 MUSD). Effectively only 50% of the funds mentioned above covers assistance to the border guards, the rest covering Raytheon's project management costs).

### **3. DESCRIPTION**

#### **3.1. Objectives**

##### **3.1.1 Overall objectives**

To contribute to enhancing the overall border and customs management capacities and the abilities of the Republic of Moldova and Ukraine to fight against cross-border and organised crime and to approximate the border and law enforcement authorities' standards to those of the EU.

To assist the Republic of Moldova and Ukraine in fulfilling their commitments under the European Neighbourhood Policy Action Plans (ENP AP) and the Partnership and Cooperation Agreements (PCA).

To contribute to a peaceful resolution of the Transnistria conflict.

##### **3.1.2 Specific objectives**

- a) Enhancing the effectiveness of border guard and customs controls: To build up appropriate tactical, operational, administrative and institutional capacity in the Republic of Moldova and Ukraine to ensure effective border and customs 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.
- b) Confidence building and contribution to the Transnistria conflict settlement process: 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, close cross-border cooperation, support to the border demarcation process, and development of 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.
- c) Public relations: 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 (in order to complement anti-corruption measures), health risks of purchasing smuggled food (in order to complement consumer protection measures), etc.

#### **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 counterparts, a number of cases of large-scale cases related to drug trafficking, trafficking 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 therefore continue providing on-the-job training and coaching to border guard, customs and law enforcement personnel at operational / tactical level at relevant locations (at border crossing points, inland customs houses, and main transit points) with a view to upgrade the personnel's skills and make them acquainted with EU standards and best practices regarding border and customs controls and the investigation of crime. Furthermore, EUBAM will pay particular attention to the partner services' middle management which management knowledge will be increased through advice and mentoring.
- 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 use this circumstance to their advantage. EUBAM will continue supporting Republic of Moldova's and Ukraine's authorities to strengthen bilateral 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

5<sup>th</sup> Trilateral meeting on border issues on 21 November 2006 in Brussels, has improved customs controls and the fight against smuggling and undervaluation; once efficiently used, it will 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) 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 Commission and the United States.
- e) Level of information in the local population of EUBAM's activities 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.
- f) 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**

#### **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 be completed by 2010. It still includes a proportion of conscripts, being gradually replaced by professional border guards, with staffing number generally adequate. 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 or in search methods to fight smuggling or illicit products. Surveillance of the green and blue border is generally inadequate, due also to a lack of means (communication network, vehicles, and patrol boats).

#### **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 subordinate offices. Currently EUBAM assists the Moldovan Customs Service in implementing a new restructuring program and developing its Strategic Development Action Plan 2009-2011. There exist 113 customs points across the country. The customs service employs 1,550 customs officers. 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.

### 3.3.3 State Border Guard Service of Ukraine

The State Border Guard Service is structured into five regional departments, 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 goods, 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 mostly 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 disposal but could be significantly improved.

### 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 has developed an advanced level of risk management and is able to produce high quality analysis. EUBAM is of the view that this advanced capacity is not fully 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, however the effectiveness of risk analysis depends above all on the extent and quality of information and intelligence which is available to customs officers. 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 two 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 is considering 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 during 2006 and 2007 for EUBAM and a healthy 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 alongside counterpart operational services along this border 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 two years of the Mission's operation demonstrated the counterparts' sincere interest to improve the effectiveness of border and customs controls. All services cooperate closely with the Mission and implement their recommendations. The practitioner-to-practitioner training 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. These activities will be coordinated with an EC-funded anti-corruption project, as well as with an U.S.-funded anti-corruption initiative financed under the Millennium Challenge Cooperation. However, without a clear commitment from Ukrainian and Moldovan Authorities in carrying out anti-corruption measures a decrease in the level of corruption of border guards and customs staffs is extremely difficult, thus a high level of ownership of programme activities by beneficiary countries is needed.

#### **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 six phases, or the International Organization for Migration (IOM).

#### **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.

#### **4.3. Budget and calendar**

Indicative breakdown of overall amount by main components:

Supplies (in EUR)	Services (in EUR)
1,000,000	11,000,000

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 EC 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 carried out 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 a high degree of visibility of EU intervention.