

## ANNEX 6

### of the Commission Implementing Decision on ENPI East Regional Action Programme 2013 Part II Action Fiche for European Union Border Assistance Mission to the Republic of Moldova and Ukraine (EUBAM-10)

#### 1. IDENTIFICATION

Title/Number	European Union Border Assistance Mission to the Republic of Moldova and Ukraine - Phase 10 (EUBAM-10) CRIS number: ENPI/2013/024-857		
Total cost	Total estimated cost: EUR 21 million Total amount of EU budget contribution: EUR 21 million		
Aid method / Method of implementation	Project Approach Joint management with the International Organisation for Migration (IOM)		
DAC-code	15220	Sector	Civilian peace-building, conflict prevention and resolution

#### 2. RATIONALE AND CONTEXT

##### 2.1. Summary of the action and its objectives

EUBAM contributes to a peaceful settlement of the Transnistria conflict through monitoring and advice on the management of the Ukrainian-Moldovan state border. This 10<sup>th</sup> phase of the Mission gives particular emphasis to sustainability of the results on improved border management, finalisation of the demarcation process, increased support to the settlement of the Transnistria conflict and enhanced implementation of the rule of law.

##### 2.2. Context

###### 2.2.1. Regional context

###### 2.2.1.1. Economic and social situation and poverty analysis

After the demise of the Soviet Union in early 90's of the past century, Ukraine and the Republic of Moldova (hereinafter Moldova) have encountered similar development challenges, namely: limited economic growth, poverty, corruption, etc. Moldova and Ukraine are, reportedly, among the poorest countries in Europe.

The region of Transnistria unilaterally proclaimed independence from 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 Dniester River in a self-proclaimed Republic of Transnistria. Since then, the conflict has been "frozen". Since September 2005, the EU and the United States (US) have been participating as observers in the negotiation process in the enlarged format "5+2".

Following a request from 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 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, 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 proved that much needs to be done in order to bring border and customs control procedures in line with EU standards.

The general pattern of cross-border crimes has not changed and the following risks will continue to have the greatest relevance: cigarette smuggling; smuggling of alcohol; illegal introduction of vehicles by means of forged vehicle documents; irregular migration by use of forged documents and facilitation of illegal border crossings; customs violations, including non-declaration, mainly of meat, sugar and other consumable goods, mis-description, undervaluation and IPR infringements and drug trafficking.

#### **2.2.1.2. Regional development policy**

Moldova and Ukraine are partner countries of the European Union within the European Neighbourhood Policy (ENP). The EU-Moldova and EU-Ukraine ENP Action Plans, signed in 2005, lays out the strategic objectives based on commitments to shared values and effective implementation of political, economic and institutional reforms.

#### **2.2.2. Sector context: policies and challenges**

A decisive step in upgrading EU bilateral relations with each of the partner countries was reached with the conclusion of the negotiations on Association Agreements and Deep and Comprehensive Free Trade Area (DCFTA) with Ukraine in 2011 and with Moldova in June 2013. These new contractual relations foresee stronger engagements for the partner countries in approximation of legislation and practice with EU standards.

The EU's involvement increased trust and cooperation between Moldova and Ukraine and led to remarkable results: (i) a Joint Declaration signed by the Prime Ministers of Moldova and Ukraine on 30 December 2005, set in place the May 2003 bilateral customs agreement which enforcement started on 3 March 2006; (ii) 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 5<sup>th</sup> Trilateral meeting in Brussels on 21 November 2006; (iii) Moldova simplified the registration of Transnistrian enterprises with the State Registration Chamber in March 2007 and extended access to preferential trade certificates of origin to temporarily registered Transnistrian-based companies which has been an important step forward towards Transnistria economic integration. In December 2009, important progress was made with the start of the demarcation of the central segment of the Moldovan-Ukrainian state border.

In Ukraine, the cabinet of Ministers of Ukraine approved the Integrated Border Management (IBM) Concept on 27 October 2010 and its Action Plan on 5 January 2011. By listing its five main dimensions, the IBM Concept contains a clear reference to the EU IBM Strategy approved by the Council Conclusion on 4-6 December 2006. According to the Concept the Ukraine State Border Guard Service (UA SBGS) has the overall responsibility for implementation of the tasks contained therein.

The action plan on the implementation of the IBM Concept consists of a list of specific tasks in the field of enhancement of the legal framework (national and international as well), creating a four-tier control system for entry and stay in Ukraine of foreigners and stateless persons, enhancing cooperation with national and international stakeholders, creating a single information system of subjects of integrated border management, bringing the procedure of border crossing of persons, vehicles and goods in line with EU standards, improving the system of border protection, improving the professionalism of personnel and ensuring cooperation and coordination of activities of subjects of IBM. Improving the engineering arrangements and maintenance of state border line, completing the deployment of border guard subunits and ensuring their technical equipment, monitoring facilities, automobiles and radiolocation facilities are objectives followed continuously by UA SBGS according to the Development Concept of the UA SBGS for the period up to 2015.

The IBM Concept of Ukraine is very closely linked to the implementation of the action plan on visa liberalization (in particular block II of the visa liberalization action plan “Illegal Migration including Readmission”), as well as to the Development Concept of the State Border Guard Service of Ukraine for the period till 2015.

In Moldova, the Government approved the National Strategy on Integrated State Border Management<sup>1</sup> by a decision on the 27 December 2010 for the period of 2011-2013. The Action Plan for the implementation of the National Strategy on Integrated State Border Management was approved by a government decree on 16 May 2011. The IBM Strategy clearly refers to the dimensions of the EU IBM Strategy.

The overall responsibility to implement tasks arising from the Strategy and action plan is vested in the National Council on IBM, which coordinates the activity of the agencies involved in the implementation of the IBM. The Border Police of Moldova annually presents an assessment report on implementation of the Strategy and Action Plan. Five working groups have been set up to deal with the specific tasks stipulated in the Strategy and Action Plan: border control and surveillance, customs, visa liberalization, infrastructure and equipment, prevention of corruption. The involved organizations created and approved their own institutional plans.

The action plan lists 92 specific tasks in the field of enhancement of the regulatory framework, improvement of the institutional system, enhancement of the state border control and surveillance, intra-agency, interagency and international cooperation, implementation of the best human resources system, ensuring logistic development and development of the risk analysis system.

In Moldova, the IBM strategy is a part of the visa liberalization process (block II of the visa liberalization action plan), and is strongly linked to the Institutional Development Plan of the Border Guard Service under the Reformation Concept of the Ministry of Internal Affairs<sup>2</sup>.

As a result of the reform process from 1 July 2012 the former Border Guard Service of Moldova has been integrated under the Ministry of Internal Affairs (MoI), remaining a separate authority with the name of MoI Border Police Department. The new agency is carrying out its tasks based on the new law on State Border and law on Border Police, which entered into force on 1 July 2012.

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<sup>1</sup> Approved by Government Decision No 1212 from 27.12.2010

<sup>2</sup> Resolution of the Government of Moldova No. 476 as of 28.06.2011

Both parties' IBM Concept papers prioritise the enhancement of the cooperation with neighbouring countries, which can contribute to the improvement of border management and border security along the common border.

Both Ukraine and Moldova 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 their satisfaction with EUBAM's work and the assistance which is provided by the Mission on numerous occasions; this resulted in a tripartite agreement to extend the Mission's mandate for further two years until November 2011. Moldova and Ukraine indicated their interest in an extension focused on a number of issues, most of which are already covered by the current mandate. Consequently, the mandate of the Mission was extended until November 2015. 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.

Support to EUBAM was identified as one of the priorities of the Regional East Strategy Paper 2007-2013 and the Regional East Indicative Programme 2010-2013.

The '5+2' negotiation on the resolution of the Transnistrian conflict resumed one and a half years ago, although no significant outcome has been seen so far. The situation in the field remains very much as it has been for the last few years. The need for practical confidence-building measures is recognised by all parties and EUBAM is probably the only entity able to continue proposing such measures.

### **2.3. Lessons learnt**

1. 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 EEAS, and the enhanced border team which includes personnel seconded directly by EU Member States has provided an excellent framework for the Mission.
2. EUBAM benefits from the mix of professional and national backgrounds and their authentic experience. Increased contextual awareness and attention to linguistic and cultural integration into the communities where mission members live and work may pay dividends in future.
3. 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.
4. 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. In phase 10, the EUBAM organisational structure and the number of the staff will be updated to correspond to the specific objectives and to optimise the usage of the Mission's human resources.
5. After the re-establishing of the May 2003 customs agreement based on the Joint Statement 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 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 Moldova and temporarily registered in the Moldovan State Registration Chamber. Continued EU technical support to the implementation of the Joint Declaration is required (*inter alia*, through facilitating dialogue between the two countries, facilitating the exchange of information, risk analysis).

6. EUBAM has successfully contributed to the resumption of customs cooperation between Chisinau and Tiraspol customs structure, and the railway freight traffic across Transnistria, by providing technical analyses and proposals to both sides. Upon an EUBAM/OSCE initiative, the representatives of the customs structures from Chisinau and Tiraspol participated in a joint study visit to the German-Swiss border on 12-13 March 2013. On 21 March 2013, a working meeting of customs representatives from both banks of the Dniester River with the participation of the representatives of OSCE took place in Odessa. Possibilities for the implementation of joint customs control and ideas on means of cooperation in the prevention of smuggling of goods and other illegal activity were examined.

EUBAM developed an opinion in a paper entitled “Moldova-Transnistria towards the implementation of a ‘Common Economic Space’” on 20 November 2012. The paper suggests initial steps towards the creation of a so-called common economic space over the two banks of the Dniester River, covering at first areas such as customs, common external tariff, sharing of taxes and elimination of the technical barriers between the two banks. Progress in this field would lead to the creation of conditions for fair trade and competitiveness of the right and left banks and at the same time allowing the fulfilment of international obligations set out in multilateral and bilateral trade agreements.

Since autumn 2012, EUBAM has attended several expert meetings of the WG on Road Transport, advising the sides in the registration process of the Transnistrian number plate. On 14 March 2013, both sides agreed on the design of the number plate bearing a neutral character having no political symbols. However, the registration process, which is the most crucial aspect, still needs agreement from both sides.

7. 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.
8. The Mission’s logistic set-up has been managed by UNDP for the last seven years. 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. IOM confirmed their agreement on all requirements submitted by the EU Delegation, including on the status of senior staff and visibility issues. As this is a European Union mission, the visibility of the implementing partner is extremely limited. Only EU flags are displayed on stationery and publications of EUBAM, as well as on vehicles and premises.

9. An evaluation of the EUBAM was conducted in the late 2012. The evaluation was very positive towards the EUBAM achievements but also raised the issue of its cost effectiveness as regards administrative and financial management.
10. Therefore the EU Delegation to Ukraine launched in February 2013 a consultation for managing EUBAM as the implementing partner for phase 10 (December 2013-November 2015) to EU Member States Agencies and international organisations. IOM provided the most convincing proposal and was selected as the implementing partner for phase 10.

#### **2.4. Complementary actions**

The Commission has been financing EUBAM-flanking measures under the Regional Action Programmes (RAPs) 2003, 2005 and 2006 as well as under the Cross Border Cooperation (CBC) 2006 with a total of EUR 11.5 million; furthermore, under the Annual Action Programmes (AAPs) 2007 and 2008 in favour of Moldova and Ukraine amounting to EUR 19 million and EUR 5 million 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 was funding IOM implemented and U.S. co-funded projects aiming at reforming the Ukrainian State Border Guard Service's human resources management (AAP 2003, EUR 4.3 million; AAP 2006, EUR 1 million; HUREMAS projects). The projects targets border management legislation, as well as recruitment, training and career development of border guard personnel. The projects were supported by the Border Guard Services from Hungary and Poland.

At the Ukrainian-Moldovan state border, the US 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 AAP 2010 in favour of Ukraine, a EUR 66 million Sector Policy Support Programme is implemented in the field of border management, in support to the improvement of the sector's management in Ukraine, in particular of the integrated border management strategy. As complementary measures, a Twinning project for the State Border Guards Service and one for the customs are under preparation. Several supply contracts for both the customs and the border guards are ongoing.

As part of the 2013 AAP in favour of Moldova and in line with the priorities of the EU - Moldova political dialogue, EU allocated EUR 21 million through the Sector Policy Support Programme for the implementation of the EU – Moldova Visa Liberalisation Action Plan (VLAP). The overall objective of this programme is to contribute to the improvement of the mobility of Moldovan nationals, while ensuring public order and security, consolidating the rule of law and strengthening human rights protection in line with European standards and best comparative practices.

The Integrated Border Management (IBM) Flagship Initiative under the Eastern Partnership is now in its implementation phase, with a large regional training project (IBM FIT) and six pilot projects on Border Management, three of which involve Ukraine and two involve Moldova. EUBAM will pay special attention to coordination of activities with the follow-up EaP IBM regional capacity building project. Additionally, the launch of more pilot projects is considered for implementation over the next few years. Two large projects on Integrated

Border management between Moldova and Ukraine are being launched under the 2012 IBM budget, on joint patrolling and a jointly operated BCP at Palanca.

## **2.5. Donor coordination**

The EU started developing a long-term policy in the field of justice, freedom and security with both countries since at least 2000. Besides the EU, the international actors involved in border-related assistance in Moldova and Ukraine include the Organisation for Security and Co-operation in Europe (OSCE) and the United States (including a programme to support customs and border guards in the Republic of Moldova), as well as IOM and the UN System Agencies (UNHCR and UNDP). The EU and the U.S. are the biggest donors in the border management sphere in both countries. 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 External Coordination meetings.

In Moldova, EUBAM will work with the European Union High Level Policy Advice Mission (EUHLPAM) in particular in terms of supporting the implementation of policies related to the work of the Border Police and Customs Service, National Anti-corruption Centre, Ministry of Economy and others.

EUBAM will strive to facilitate donor coordination in the area of border management capacity-development under national ownership by offering a platform for information exchange. This will not duplicate but assist national efforts of donor coordination.

Moldova and Ukraine were 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. Although the EU support to the Söderköping process has come to an end, the Secretariat of the Eastern Partnership Panel on Migration and Asylum managed by IOM continues acting as a resource centre for all countries and international organisations participating in the process.

## **3. DETAILED DESCRIPTION**

### **3.1. Objectives**

#### **Overall objective:**

Contributing to a peaceful settlement of the Transnistria conflict through monitoring and advice on the management of the Ukrainian-Moldovan state border.

#### **Specific objectives:**

1. To contribute to improve the cooperation on border management in Moldova and Ukraine, in particular Integrated Border Management: to assist partner services in the further development and implementation of integrated border management; to enhance cooperation and coordination; to contribute to compliance and trade facilitation, the implementation of trade policy measures and the modernization of customs procedures and to the fulfilment of EU requirements concerning customs matters in regard to the creation of DCFTA between EU and Ukraine and between EU and Moldova; to enhance cooperation and coordination with partners and donors:
2. To make a positive contribution towards the settlement of the Transnistrian issue: to monitor and advise on the implementation of the Joint Declaration and to monitor

and assist the control of travellers and goods at the central segment along the Transnistrian segment of the border with UA and the boundary line between the two banks of the Dniester; to support the EU and international organisations in regard to the settlement of the Transnistrian issue; to support confidence building measures;

3. To enhance institutional capacity: to assist in implementation of good governance and anti-corruption; to assist in training related developments for enhancing sustainable capacity of the partner services;
4. To enhance operational capacity: to contribute to the prevention and fighting of trans-national organised and cross-border crime; to enhance analytical capacity; to enhance the public awareness among civil society by the provision of information on the EU, the mandate and achievements of EUBAM and its partners and to increase EU visibility.

### **3.2. Expected results and main activities**

1. Professional capacity of border, customs and law enforcement officials enhanced: EUBAM found clear indications that the Moldova-Ukraine border is frequently used for illegal activities, in particular smuggling. EUBAM experts also identified, together with their national partners, a number of 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 implementation of effective border control and surveillance measures in Moldova and Ukraine with particular attention to the entire Moldova-Ukraine border by strengthening the Ukrainian and Moldovan border guard and customs capacity, with a special focus on the implementation of good governance concepts and the development and implementation of training systems..
2. Cross-border cooperation between border, customs and law enforcement authorities increased: a safe environment in which trade and people-to-people contact can flourish is also essential in border management. At the same time, cross-border cooperation between border, customs and law enforcement authorities is crucial to fight the activities of criminal groups. Therefore, EUBAM will provide assistance in the further development and implementation of the Integrated Border Management Concept. EUBAM will continue supporting Moldova's and Ukraine's authorities to strengthen bilateral and international cooperation through, among others, supporting the development, implementation and monitoring of border control legislation in relation to the Schengen Acquis; assistance to the customs services in the development, implementation and monitoring of customs legislation related to the EU acquis, WTO requirements, Kyoto conventions and other agreements; assistance in the development and implementation of jointly operated border crossing points; monitoring the implementation of joint patrols and the one-stop-shop concept, joint border control operations, joint assistance exercises; assistance in the implementation of the single window concept; assistance in the implementation of the visa liberalisation action plan, assistance in the improvement of the investigation process including the role of the Office of the Prosecutor's authority; etc. These

activities will lead to improved cross-border cooperation to facilitate the legal movement of people and goods across the border while at the same time fighting cross-border related crime..

3. Analytical overview on border security and cross-border movement of goods and persons improved: keeping an analytical overview to detect trends and risks in border related issues related to the movement of persons and goods is essential for a border related agency. In this regard, EUBAM will submit analytical reports and assessments such as special reports, alerts, etc, to the partner services, EEAS, European Commission, Committees of the European Council, EU Member States and other involved partners. EUBAM will also monitor the production of the common border security assessment reports and information exchange on statistical, analytical and tactical data. Data will also be collected based on visits and inspections to relevant locations, including along the green and blue border through joining border surveillance activities. These monitoring activities will encourage partner services to take serious counter-measures when criminal activities are detected regarding irregular migration, trafficking in human beings, trafficking in drugs and weapons, smuggling of goods and customs fraud. As a result, these efforts 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.
4. Contribution to the settlement of the Transnistrian issue: Several positive contributions have been made in the recent years. The 2003 Customs Protocol concluded between the Customs Service of Moldova and the State Customs Service of Ukraine on mutual recognition of shipping, commercial and customs documents supply was reinforced in 2006 by the Prime Ministers of Moldova and Ukraine in the Joint Declaration signed on 30 December 2005. EUBAM is permanently and closely monitoring the implementation of the Joint Declaration, including registration and reimbursement mechanisms for Transnistrian-based companies in Chisinau. EUBAM will continue to monitor, advise and inform on the implementation of the Joint Declaration. In this regard, particular attention will be given to systems and procedures for reporting, registration and reimbursement and inspection of cargo and the issuing of certificates of origin. EUBAM will also monitor the border activities at the central segment of the Ukrainian-Moldovan border related to the control of travellers and goods, in particular focussing on irregular migration and smuggling. EUBAM will support the EU and international organisations through the provision of assistance to the EU Delegation to the Republic of Moldova and analysis and reporting to the EEAS, EU Member States, the governments of the Republic of Moldova and Ukraine, the OSCE and other international partners. Upon partners' commitment and / or request, confidence building measures will be undertaken. They will lead to, amongst other things enhanced movement and control of goods and people into/from Transnistria via road and rail.
5. 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 including special attention to the central segment as well as foster the settlement of open questions. Specific and necessary support may be continued upon the grounded request of the parties.

6. Corruption of border guards and customs officials at operational / tactical level decreased: corruption in both partner countries remains a challenge. Partner services demonstrate willingness to fight corruption within their service, which is the first step to obtain positive results. The permanent cooperation with EUBAM experts and on-going monitoring at local level conducted by EUBAM will motivate partner services' personnel to carry out their duties objectively and according to existing laws. EUBAM will assist in the implementation of good governance concepts and monitoring the implementation of anti-corruption measures. By giving specific attention to the development and implementation of human resources management systems, relevant training, transfer of knowledge from EU Member States, and increasing public awareness and involvement of civil society, EUBAM will support partner services to reduce the border and customs staff preparedness to demand or accept bribes.
7. Public awareness in the local population of EUBAM's activities, cross-border crime risks, and the partner services' efforts increased: the general public is not always well informed on the issues related to the EU and in particular on the activities of EUBAM and the border crossing related issues. Public awareness among elements of civil society and local population on, for instance, the scale of smuggling and health risks, as well as the losses for the State budget when consuming smuggled food stuffs, needs great attention. By informing the population of Moldova and Ukraine on EU institutions and the EUBAM mandate, supporting Europe Day celebrations, the dissemination of information materials, conducting outreach events with local communities along the Moldova–Ukraine border and deepening partnerships with civil society, EUBAM will strongly contribute to EU visibility and public awareness on EU institutions, EUBAMs and partner services' achievements.
8. Public relations capabilities of partner services enhanced: effective public communication by partner services is an essential element in today's management of a public organisation. Therefore, EUBAM will continue its support to enhance the public relations / communications capacities of its partners. Relevant training, methodologies and tools will be provided. Such an approach will contribute to a positive image of the partner services as well as providing accurate information on border and customs issues to the citizens

### 3.3. Risks and assumptions

#### 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, Moldova, and the Commission, as well as by the agreement of all parties to extend the Mission's mandate until November 2015. Continued commitment and cooperation at the level of services was good during the seven years of implementation.

*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 - 2013 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 management of the border between 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 e.g. all 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. 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 on 30 December 2005 as well as the adoption of Decrees of the Moldovan Government allowing companies located in the Transnistrian region of Moldova and temporarily registered in the State Registration Chamber fully benefiting from Moldova’s preferential trade certificates of origin.

## **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 supports 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 planned anti-corruption project in Ukraine with the Council of Europe.

## **Other challenges include**

- Political situation in Ukraine.
- Frequent changes of the Moldovan Government that result in frequent changes of the leadership in the partner services.
- The economic crises.
- The Russian political influence on Ukraine and Moldova to further expand the Customs Union / Eurasian structures.

### **3.4. Cross-cutting issues**

The programme has a strong good governance dimension since prevention of, and fight against corruption is targeted. EUBAM has placed a special focus on providing advice to the partner services in this area as well as engaging such important development agents as civil society, academia and the media. Proper border management allows a better protection of victims of trafficking, and proper compliance with human rights standards.

### **3.5. Stakeholders**

The project priorities are based on the Memorandum of Understanding signed between the European Commission, Moldova and Ukraine in October 2005 and have been discussed with the national stakeholders in the EUBAM Advisory Board meetings held twice a year, as well as in the meetings between the Head of Mission and national partners in Ukraine and since October 2009 with the authorities in Moldova.

EUBAM will continue supporting the EU strategy in the region, in particular the Eastern Partnership Flagship Initiative on IBM and closely liaise with the EU Delegations to Moldova and Ukraine in order to avoid duplication, and develop synergies with other technical assistance projects.

#### **3.5.1 Border Police of the Republic of Moldova**

The Border Police of the Republic of Moldova is an autonomous national authority subordinated to the Ministry of Interior. The Border Police was created on basis of reorganization of the Border Guards Service of Moldova (from 1 July 2012). It has a staff of 3,553 persons who were demilitarized and granted a special status. Since 2012, the activities of the Border Police of the Republic of Moldova have been focused on further institutional reform by amending the legal framework and transformation of the Border Guard Service into a competent law enforcement body and integration into the Ministry of Internal Affairs. The main achievements of this period are the two new laws approved by the Parliament, the Law on State Border and the Law on Border Police, both of which entered into force on the 1 July 2012. EUBAM substantially contributed in the preparation of the aforementioned legal acts.

The structure of the Border Police changed significantly. Presently it contains the following main elements: Department of the Border Police; regional units of the Border Police; National College of the Border Police. The Border Police has investigative powers since the changes in the legislation in 2012. Passport controls at border crossing points (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.

#### **3.5.2 Customs Service of the Republic of Moldova**

The customs service is structured in a central administration and, after a reform in 2007, eight subordinate offices. The structure of the customs departments should be the main target for further improvement. EUBAM assisted the Moldovan Customs Service in implementing a new restructuring program.

Within the Strategy for Business Regulatory Framework Reform (2013-2020) and the associated Action Plan (2013-2015), specific actions have been set in the customs field, aiming to improve the legislation and streamline the administrative procedures. Elaboration of a draft Customs Code of Moldova in line with the EU customs legislation and WCO

standards (Revised Kyoto Convention) is stated as one of the main priorities that is to be achieved in short term perspective.

Moldova is a member of the WTO, UN and WCO and is obliged to incorporate into its legislation the standards of treaties and conventions of those organizations that it signs. Moldova is a Contracting Party to numerous international treaties and conventions that promote trade facilitation, including: WTO Agreement on Implementation of the General Agreement on Tariffs and Trade; UN Customs Convention on the International Transport of Goods under cover of TIR Carnets and the Convention on the Contract for the International Carriage of Goods by Road (CMR); UNECE International Convention on the Harmonization of Frontier Control of Goods; has acceded to WCO Conventions, such as: Istanbul Convention on Temporary Admission, the International Convention on the Harmonized Commodity Description and Coding System, and the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences. It has also expressed its intention to implement the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE).

Moldova has not acceded to the WCO International Convention on the Simplification and Harmonization of Customs Procedures, known as the Revised Kyoto Convention. However, there are a number of important practices that are still not compliant with these agreements. Recognizing these difficulties, EUBAM actively supports the MDCS with analysing the procedures and processes to identify problem areas and to recommend and assist with implementing instruments to streamline and modernize the procedures. EUBAM supports MDCS in the elaboration of the legislation related to the human resources management and all relevant regulations for its implementation.

For enhancing cooperation and ensuring more effective and structured dialog on customs matters, the Strategic Framework for Customs Cooperation (SFCC) was signed by the EU with Moldova (October 2011). Its implementation is supported by a working group and a road map defining the specific measures to be undertaken during the period 2012-2014. These recent important documents identify the priorities of cooperation, namely: safe and fluid trade lanes; risk management and fight against fraud; investment in customs modernization, and outline the specific objectives to be achieved within each priority.

To date, despite the commitments for adopting a new Customs Code Moldova has still not advanced in its elaboration due to the unclear division of tasks between the Customs Service and the Ministry of Finance. EUBAM will assist the Customs Service in realisation of the organisational changes based upon the specific needs and reflecting best practice models and recommendations.

### **3.5.3 State Border Guard Service of Ukraine**

The State Border Guard Service (UA SBGS) is structured into regional directorates, with the Odessa one in charge of nearly the entire border with Moldova. The UA 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 UA 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 (about 50,000 persons) 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 is supported by satisfactory means but could be significantly improved. There is a need to revise legislation related to the delegation of investigative powers.

According to the Decree of the President of Ukraine No.726/2012 “On some measures to

optimize the system of central executive bodies” of 24 December 2012, the activity of State Border Guard Service of Ukraine is coordinated by the Ministry of Internal Affairs. The Central Administration of the UA SBGS has elaborated a draft internal regulation of the administration and coordination of the UA SBGS by the Minister of Internal Affairs of Ukraine.

The UA SBGS is undergoing a process of transformation to a modern European-type law-enforcement agency. The main plan according to which this transformation is being conducted is the Development Concept of the State Border Guard Service of Ukraine for the period to 2015, approved in June 2006. Multi-annual development is, and will be, carried out by improving the legal framework of border security, optimising the structure and management of the organisation, creating a modern and integrated system of border protection, improving staff relations, enhancing the logistics, developing cooperation and democratic civil control.

EUBAM continues to assist and advice in the development of the legal acts and orders using the knowledge on EU Schengen standards, bringing Ukrainian national legislation closer to relevant EU legislation

#### **3.5.4 Ministry of Revenues and Duties of Ukraine**

At present, the State Customs Service of Ukraine (UA SCS) is undergoing reform in accordance with the Decree of the President of Ukraine as of 24 December 2012. By reforming the UA SCS and the State Tax Service of Ukraine, the Ministry of Revenues and Duties of Ukraine has been created.

The former 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 former 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.

Ukraine is a Member of the WTO, WCO, UN and has acceded to WCO Conventions, such as: the Istanbul Convention on Temporary Admission, the International Convention on the Harmonized Commodity Description and Coding System, and the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences, as well as recently - to the Revised Kyoto Convention (RKC) and WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE); WTO Agreement on Implementation of Agreement on Tariffs and Trade; UN Customs Convention on the International Transport of Goods under cover of TIR Carnets and the Convention on the Contract for the International Carriage of Goods by Road (CMR); UNECE International Convention on the Harmonization of Frontier Control of Goods.

A new Customs Code was adopted and entered into force in June 2012. Most of the essential principles of the RKC are reflected in the Code’s provisions, like: the application of information technology to enhance customs control, processes and trade facilitation, including use of e- declarations and digital signature, based on the international standards for the electronic exchange of data; the use of risk management extensively in applying all controls (including controls over goods and means of transport which enter or leave the UA customs territory, as well as audit based control over documents); introduction of some

special procedures for authorized persons (AEOs and the respective certificates); providing all relevant information of general or specific nature, including decisions and binding rulings; lodgement of preliminary/advance custom declaration prior to the arrival of goods for speeding up the process of customs clearance, as well as introduction of provisional/temporary (for release on minimum information) and supplementary declaration. EUBAM provided assistance in the drafting process within its specific areas of its expertise.

However, in terms of the trade facilitation principle contained in the RKC and EU legislation, a few key elements are still absent. EUBAM will continue supporting partners in further alignment to international and EU standards.

For enhancing cooperation and ensuring more effective and structured dialogue on customs matters, the a Strategic Framework for Customs Cooperation (SFCC) was signed by the EU with Ukraine (June 2012). Its implementation is supported by a working group and a road map defining the specific measures to be undertaken during the period 2012-2014. These recent important documents identify the priorities of cooperation, namely: safe and fluid trade lanes; risk management and fight against fraud; investment in customs modernization, and outline the specific objectives to be achieved within each priority.

### **3.5.5 Security services and other stakeholders**

EUBAM has established working relationships with both the Security Service of Ukraine and the Security and Information Service of Moldova, other law-enforcement agencies and Offices of the Prosecutor General, Ministries of Justice, local and regional authorities, universities, media and schools, which are benefitting from the permanent information and support on disseminating best practice in border management.

## **4. IMPLEMENTATION ISSUES**

### **4.1. Financing agreement**

In order to implement this action, it is not foreseen to conclude a financing agreement with the partner country, referred to in Article 184(2) (b) of the Financial.

### **4.2. Indicative operational implementation period**

The indicative operational implementation period of this action, during which the activities described in sections 3.2. and 4.3. will be carried out, is 24 months, subject to modifications to be agreed by the responsible authorising officer in the relevant agreements.

### **4.3. Implementation components and modules**

Joint management with an international organisation as it is considered that only an international organisation can offer the specific capacity required for the management of such large and specialised mission.

Accordingly, this action with the objective of contributing to a peaceful settlement of the Transnistria conflict through monitoring and advice on the management of the Ukrainian-Moldovan state border will be implemented in joint management with IOM.

This implementation is justified because IOM offers the specific capacity required for the management of such a specialised project. This is justified by their strong sector expertise (not only on migration but on most related matters of border management) and regional

experience, including on bi-national projects involving Ukraine and/or Moldova, their access to appropriate level of authorities in both countries and their neutral status recognised by all stakeholders.

Joint management with this international organisation in accordance with Article 53d of Financial Regulation 1605/2002 is possible because the organisation is bound by a long-term framework agreement (Framework Agreement between the Commission and IOM of 8 November 2011). Furthermore the project will be elaborated jointly between the organisation and the European Commission.

IOM will be in charge for the management of EU funds, payments (liquidation of eligible costs), recovery and cancellation of debts. IOM will perform such budget implementation tasks as launching calls for tenders and proposals, awarding contracts and financial instruments, concluding and managing contracts, carrying out payments.

If negotiations with IOM fail, this action may be implemented in joint management with UNDP, one of the other organisations which have been initially considered for implementing EUBAM 10.

This implementation would be justified because UNDP offers the specific capacity required for the management of such a large and specialised project. This organisation has a regional experience, including on bi-national projects involving Ukraine and/or Moldova and their strong sector expertise. UNDP has been running EUBAM since its outset (including the management of EUBAM during the last seven years), their neutral status recognised by all stakeholders and their access to appropriate level of authorities in both countries.

Joint management with this international organisation in accordance with Article 53d of Financial Regulation 1605/2002 is possible because the organisation is bound by a long-term framework agreement (FAFA) and the project would be elaborated jointly between the organisation and the Commission.

The change of method of implementation constitutes a substantial change except where the Commission "re-centralises" or reduces the level of budget-implementation tasks previously entrusted to the international organisation.

The Commission authorises that costs incurred by IOM may be recognised as eligible as of 16 July 2013. This will allow IOM to duly prepare for its role as the new implementing partner, and to launch EUBAM Phase 10. In order to ensure a smooth transition from the previous implementing partner to the new implementing partner, and uninterrupted activity implementation by EUBAM, transition arrangements will be developed by IOM, UNDP and the EU Delegation in close consultation with EUBAM. These arrangements will, inter alia, address the exact modalities of transfer of responsibilities, human resources contracts, common services contracts, assets, IT equipment and licences, and training of staff. These transition costs are to be foreseen under the EUBAM Phase 10 budget.

#### **4.4. Scope of geographical eligibility for procurement in direct centralised and decentralised management**

Subject to the following, the geographical eligibility in terms of place of establishment for participating in procurement procedures and in terms of origin of supplies and materials purchased as established in the basic act shall apply.

The responsible authorising officer may extend the geographical eligibility in accordance with Article 21(7) of the ENPI Regulation on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the

eligibility rules would make the realisation of this action impossible or exceedingly difficult.

#### 4.5. Indicative budget

<b>Module</b>	<b>Amount in EUR</b>	<b>Third party contribution (indicative) in EUR</b>
Joint management with IOM	19,800,000	54 Customs and Border Police officers seconded by some 19 Member States
Contingency provisions (to cover capacity building activities during the second year in case of need)	1,200,000	
<b>Totals</b>	<b>21,000,000</b>	<b>4,000,000</b>

EUBAM Phase 10 covers the last two years of the third extension of the Mission’s mandate. The total estimated cost of EUBAM 10 as EU budget contribution is 21,000,000 EUR. During the period of 1 December 2013 – 30 November 2014 the estimated cost in total is 10,500,000 EUR. The estimated cost of 1 December 2014 – 30 December 2015 in total is 10,500,000 EUR, of which the total amount of 1,200,000 EUR is a contingency as most capacity building activities are expected to be covered by EU regional and bilateral assistance initiatives, in particular the planned EaP IBM Flagship Capacity Building Project, intended to provide support to IBM capacity building and visa liberalization in the EaP Region, including for Moldova and Ukraine in the coming years<sup>3</sup>. The EUBAM Phase 10 Action Plan (as endorsed by the EUBAM Advisory Board in April 2013 in Chisinau), with a focus on the December 2014-November 2015 timeframe, could be amended, following joint review and together with the input of the Moldovan and Ukrainian beneficiaries, to better ensure synergies and complementarity with such initiatives and thereby bolster the impact of EU assistance to Moldova and Ukraine. Presumptive changes could draw on the funds to be earmarked as contingency to extend necessary support to Moldova and Ukraine pursuant to the changing environment, especially as regards, inter alia, the Transnistria issue, Association Agreements and DCFTAs.

#### 4.6. 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.

#### 4.7. Evaluation and audit

An ex-post / impact evaluation will be undertaken within a year after the end of the Mission’s mandate. Where applicable, the provisions included in the framework agreement signed with the international organisation will apply.

<sup>3</sup> Including on these areas related to integrated border management and visa liberalization: Curriculum development and train-the-trainers activities; anti-corruption measures, trafficking in human beings-related aspects, stolen vehicles, document integrity and security trainings; fundamental rights trainings as integral component of IBM; risk analysis activities/enhancing analytical capacities (related to customs and border security); customs capacity building activities.

#### **4.8. Communication and visibility**

EUBAM and the European Commission's implementing partner will follow the communication and visibility strategy already in place, as mentioned under 3.2. Since the outset of the mission, UNDP accepted and respected carefully the "100 % EU visibility" concept, and so will IOM. All EUBAM outputs sport the EU flag with the mention "EUBAM is an EU mission fully funded by the European Union".

EUBAM is particularly active on Europe Days; it developed a comprehensive EU visibility strategy including lectures in local schools and universities, workshops and seminars at regional, national and international levels, visits by Member States representatives, European Parliament members and high-ranking EU officials. The mission enjoys a special status under the aegis of the EU Delegation to Ukraine.

Where applicable, the provisions included in the framework agreement signed with the international organisation will apply.