

**The EU and Rule of Law  
Reform in Kosovo**

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# Table of Contents

Acronyms .....	i
Executive Summary .....	iii
Introduction .....	1
1. The operational context for the EU in Kosovo: political and economic complexity.....	3
a) The (international) political background of the situation in Kosovo.....	3
b) The domestic Kosovar context.....	5
2. EU actors in Kosovo .....	9
a) European Union Rule of Law Mission: EULEX-Kosovo .....	9
b) EU Special Representative (EUSR).....	13
c) European Commission and European Commission Liaison Office (ECLO) .....	15
3. Coherence of EU support.....	17
a) Complementary mandates .....	17
b) Practical efforts to ensure coherence .....	18
c) Challenges for a coherent EU approach.....	19
d) Intra-EULEX coordination and cooperation .....	20
4. Coordination between the EU and other stakeholders .....	23
a) Coordination with other donors and the Kosovo government.....	23
b) Cooperation with civil society .....	25
5. Implementation of EU support to the rule of law in Kosovo .....	27
a) Structural environment.....	27
b) The legal environment and the Kosovar judicial institutions .....	28
c) Staffing of EULEX .....	29
d) MMA in practice.....	31
e) The Role of the HoM .....	33
f) Interaction between Headquarters and the field .....	33
g) The underemphasized factor: Gender .....	35
Conclusion: the room for improvement .....	37
Coherence of efforts of EU actors .....	38
Practical Challenges.....	39
Annex 1: EULEX in the Kosovo Constitution .....	43
Annex 2: Organigrammes of EULEX .....	45



## **Acronyms**

ACDEI	Agency for the Coordination of Development and European Integration
CPCC	Civilian Planning and Conduct Capability
CSDP	Common Security and Defence Policy
DG HOME	Directorate General for Home Affairs
DG RELEX	Directorate General for External Relations
EC	European Commission
ECLO	European Commission Liaison Office
EIDHR	European Instrument for Democracy and Human Rights
ESDP	European Security and Defence Policy
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
EUPT	European Union Planning Team
EUSR	European Union Special Representative
GBV	Gender Based Violence
HoM	Head of Mission
HQ	Head Quarters
ICJ	International Court of Justice
ICO	International Civilian Office
ICR	International Civilian Representative
IfS	Instrument for Stability
IPA	Instrument for Pre-Accession
ISG	International Steering Group
KFOR	Kosovo Force

KLA	Kosovo Liberation Army
KP	Kosovo Police
KPC	Kosovo Protection Corps
KSF	Kosovo Security Force
MMA	Monitoring, Mentoring and Advising
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organisation
OSCE	Organization for Security and Cooperation in Europe
PISG	Provisional Institutions of Self-Government
PSC	Political and Security Committee
SAP	Stabilization and Association Process
SAPD	Stabilization and Association Process Dialogue
SSR	Security Sector Reform
TAIEX	Technical Assistance and Information Exchange Instrument
UN	United Nations
UNDP	United Nations Development Plan
UNMIK	United Nations Interim Administration in Kosovo
UNSCR	United Nations Security Council Resolution
US	United States

# Executive Summary

## *Introduction*

This paper presents the findings of a case-study carried out in Kosovo in January 2010, which investigated the challenges and opportunities that the European Union (EU) faces when supporting the reform of the rule of law in that country. The study is part of a larger project that examines the EU's set-up for effectively supporting Security Sector Reform (SSR) processes in partner countries. The first phase of this project (for which a report was completed in June 2009) concentrated on the headquarters level for the EU's SSR support and gave an overview of its policies, funding mechanisms, actors and decision-making processes. This initial report also identified a number of tensions and challenges at both the design/planning stage and the implementation stage of SSR support, and pointed to a number of avenues for improvement.<sup>1</sup> To complement this headquarters-perspective with views from the field, two case-studies have been undertaken in settings with one or more Common Security and Defence Policy (CSDP) missions and European Commission (EC) involvement: Kosovo and Democratic Republic of the Congo. In these case-studies, the focus is on identifying those field-level challenges and opportunities that hamper or facilitate effective EU support for SSR – in particular those stemming from the EU's set-up. The following topics were used to guide the field-interviews and loosely frame the content of the case-study:

- The coherence (coordination between different EU bodies and with Member States, sequencing of efforts, etc.) of EU SSR support on the ground.
- Interaction between headquarters (HQ) and the field.
- Structural and operational challenges to effective service delivery faced in the field.
- The impact and effectiveness of EU SSR support as perceived by EU actors, other international actors and partner-country stakeholders.

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<sup>1</sup> The report was published in June 2009: Derks, M. & More, S. (2009). *The European Union and Internal Challenges for Effectively Supporting Security Sector Reform. An Overview of the EU's set-up for SSR support anno spring 2009*. Clingendael Institute: The Hague.

### *EU Actors*

In Kosovo the EU supports the reform of the rule of law through three institutions. First, the European Commission Liaison Office (ECLO) has a large support programme under the Instrument for Pre-Accession (IPA). This programme includes a focus on the rule of law, and has budgeted a total of €56.7 million to its support in Kosovo between 2007 and 2010.

Second, the European Union Rule of Law Mission EULEX-Kosovo – the largest CSDP mission to date and the only one with an integrated approach combining the efforts of police, justice and customs – is mandated to Monitor, Mentor and Advise (MMA) the Kosovar authorities. It also partly has an executive mandate to ensure that serious crime (war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes) is properly investigated.

Third, the European Union Special Representative (EUSR) is mandated to be the EU's liaison with the Kosovo government and public. On paper, the mandates of these three EU bodies complement each other, and the EU should thereby be well positioned to effectively support Kosovo's rule of law reform. However, in practice the overall effect of the EU's efforts has been hampered by a number of issues.

### *Kosovo Context*

First, the study found that contextual issues are a big factor for the effectiveness of the EU's overall support. The unresolved debate on the status of Kosovo is one such factor. Among the EU Member States, five do not recognize Kosovo's independence. This leads the Member States – in particular the non-recognizers – to scrutinize most activities of the EU actors in the field so as to pre-empt any action that might be construed as a de facto recognition of Kosovo. Such scrutiny leaves the field-based institutions very little room to flexibly respond to rapidly changing situations on the ground. Moreover, sensitivity to the status issue encourages a very technical approach to reform and inhibits political engagement, which might be regarded as endorsing Kosovo independence. Other contextual factors that hinder effective support to rule of law reform include the low level of social and economic development, high levels of corruption and organised crime, and Kosovo's isolated position in the region. However, these contextual factors – albeit constraining – should be taken as the framework within which the EU has to operate, since they cannot be changed in the short term.

### *Coherence and Coordination amongst the EU Bodies*

Beyond its contextual dynamics, the Kosovo case provides insight into field-level EU coordination issues. These issues bear potential relevance to wider EU SSR programming, and thus lessons learned may be pertinent outside the Kosovo context. Interviews on the ground testified to sound working relationships and frequent communication between EULEX and ECLO. While coherence and coordination among the EU bodies in Kosovo are generally regarded as strong, working relations were reported to be largely contingent upon personal and informal contacts; thus susceptible to disruption by frequent staff changes or uncooperative individuals. Notably, foresight of the EU Planning Team ensured necessary division of labour and clearly demarcated roles of each of the EU presences. Secondly,

a common goal of facilitating Kosovo's development toward EU standards helps the three EU bodies to maintain a unified message and objective.

Between EULEX and ECLO, specific practices facilitate complementarity, such as designing EULEX's Action Fiches – documents describing the activities of EULEX in detail – to resemble ECLO's project documents, or EULEX's catalogues of action that identify corresponding programmes of other donors (including ECLO). Such practices deserve some credit for the current state of field-level EU coordination. Nonetheless, such measures could be enhanced with formal working-level contact points between the EU bodies.

A more fundamental constraint to EU coordination is EULEX and ECLO's distinct approaches to reform. In theory, both seek to complement the work of the other: ECLO providing project funding and EULEX providing field-level insight into gaps and weaknesses. Yet, their distinct time horizons and priorities make this difficult in practice. ECLO emphasizes long-term projects and continuity, making it somewhat inflexible to answer the needs identified by EULEX field officers, which often focus on day-to-day issues that surface more spontaneously. More flexibility within ECLO programming and project funding could help in this regard.

#### *Intra-EULEX Coordination*

Within EULEX itself, there are certain features of the mission's set up that have impeded coordination at the field level. As EULEX is the first integrated mission - comprising of police, customs and justice personnel - there are new challenges to face and learn from. One issue is balancing the Justice Component's independence with its full integration into a holistic, coordinated mission. The professional reluctance of magistrates to fall under the political direction of the larger mission has made coordination a particularly thorny issue within the Justice Component; and this in turn affects the coherence of the entire mission. Secondly, the vertical structure of internal EULEX communication makes achieving coherence and coordination a cumbersome process. This is somewhat compensated for through informal contact among personnel at the working level. However, as noted previously, such informal arrangements are not as reliable as formal liaising mechanisms could be. Finally, the amount and quality of pre-mission training among seconded personnel was found to be widely inconsistent and contributed to a more general challenge of harmonizing different nationalities' and individuals' approach to MMA.

#### *EULEX and Headquarters Interaction*

Other structural issues affecting EULEX arose between the field-level and headquarters in Brussels. Streamlining communications from the CPCC in Brussels through the Chief of Staff of EULEX in Pristina has helped in developing more effective working relations. More innovation is needed to amend lengthy procurement procedures (stemming from the Commissions management of EULEX's budget), which are ill-equipped to match the urgent and unpredictable needs of the field.

Similarly, the laborious Brussels-based recruitment process for placing secondees among the EULEX staff has contributed to a chronic staff shortage. Interviewees reported the mission

currently operates at around 80% (the Justice Component at an anaemic 60%), but were pessimistic that even these numbers could be maintained.

While understaffing is common among international missions - a symptom of waning enthusiasm and tightening budgets - it can lead to very real problems such as appointing under-qualified staff or causing disruptive hiatuses between staff rotations.

#### *EU and Local Stakeholder Coordination*

Officials from the three EU bodies have stated time and again that coordination with local civil society and the Kosovar government is paramount. Moreover, the oft-heard mantra that “Kosovo is in the driver’s seat” implies an appropriate amount of local leadership is looked for. However, this good intention presumes a certain level of capacity among the Kosovar government and civil society.

The Government has established a few coordination structures, including a Ministry of European Integration and a Joint Rule of Law Coordination Board, which coordinates activities with the Government and EULEX. Yet, overall the Kosovo authorities have only an inchoate capacity to manage the strong - sometimes incongruous - wills of the various foreign donors they host. It appears that, in some cases, international donors’ urgency to achieve results has overwhelmed the Government’s capacity to make strategic or critically-minded choices about the kind of reform they desire. Often, programme approvals and requests are made by local stakeholders according to what donors offer, regardless of whether the project corresponds to previously existing systems or an overarching strategy for the future. In this way, the unchecked enthusiasm of the donors has outpaced the prudent development of a local security vision.

In such circumstances, civil society often steps up and speaks out for local concerns and needs. This is no different in Kosovo, and there is evidence that EULEX has made efforts to listen to these non-statutory actors. Yet, from the point of view of interviewees, EULEX’s initial interest was superficial and has fallen short of actual participation or input into programmes. ECLO’s complex and lengthy funding application process was cited as one clear structural obstacle that kept smaller local Non-Governmental Organisations (NGOs) from contributing to the EU-sponsored rule of law reform. Local gender organisations appeared to be particularly sidelined, despite early attention from the EULEX Planning Team.

#### *Practical Issues*

Staffing issues were a common topic of concern among EULEX interviewees. Beyond staff shortages, there was a noted lack of ‘corporate culture’ that could imbue the mission with more loyalty among its staff, somewhat like the UN. Some reported that secondees seek guidance from their home states, and will disclaim the EULEX position on a matter if they feel that it is inconsistent with the position endorsed by their own country (who signs their pay check). In this way, the various cultural and political backgrounds of the staff are asserted more strongly than their allegiance to a cohesive mission. The irregularity of pre-mission training among staff members does little to alleviate this.

Improved pre-mission and in-mission training could also help set a consistent approach to MMA. Secondees may find the switch from active duty in their home country to the more passive roles as a mentor, monitor and advisor a difficult adjustment to make. The resulting discrepancies in how secondees interpret MMA has encouraged the Best Practices and Training Unit to develop specific courses to harmonize approaches to MMA. In the Justice Component, where the executive mandate compels judges and prosecutors to maintain a more active role, MMA is more elastically interpreted and, thus, adds further complexity to the matter.

Finally, since 2008 the EULEX Heads of Mission (HoMs) have all been retired generals. Some consider such technically-minded figures as an asset to the deployment phase of the mission. On the other hand, it was also contended that military personnel were not always ideally suited to lead civilian missions or to handle diplomatic political affairs, which are to be expected in rule of law reform.

#### *Conclusions and Options for Improvement*

In some instances, field-level challenges confronting EU bodies in Kosovo have been recognized by EU officials and early steps to remedy them have been taken. To supplement these actions or provide further suggestions for improvement, the following recommendations are offered:

- 1) The **integrated approach of EULEX** is hampered by:
  - a) the focus on judicial independence of the Justice Component;
    - Training of justice staff, both pre-mission and within mission, with a focus on the role and place of political guidance and justice – including the meaning of independence – within a larger mission could be beneficial.
    - Earlier recognition of and stronger initial attention to this issue by the management and planning teams of future missions could work to mitigate tensions felt by justice personnel.
  - b) hierarchical and cumbersome intra-EULEX coordination and collaboration.
    - Establishing more formal points of contact between the different components at the working level, where relevant, might be a way to improve the integrated approach of the mission.
- 2) The **coherence of the overall EU approach** is generally good at the practical level.
  - Ensuring more formal coordination mechanisms and mechanisms to ensure proper hand-over in staff changes are clear opportunities to increase the overall effectiveness of the EU's approach.
- 3) The **effective collaboration and sequencing** of EU efforts is hampered by the EU bodies' distinct approaches to reform.
  - Allowing for more flexibility on the part of Commission programming, the Stabilization and Association Process Dialogue (SAPD) and the Progress Reports, while maintaining the necessary continuity of ECLO's programming could further enhance coordination and cooperation.

- Overall EU coherence might be improved by creating a flexible component in the Instrument for Pre-Accession (IPA) or improving the use of the Instrument for Stability (IfS), both of which could be used to address urgent needs (signalled by EULEX) or implement complementary activities.
- 4) The **numbers, quality, harmonization and cohesion of the EULEX staff** is diminished by:
- a) the waning interest and financial constraints of contributing states;
    - Member States and the other contributing states should consider sustaining (and even increasing) their efforts to second sufficient numbers of appropriate personnel.
    - It would be advisable for Member States to make an inventory of the capacity and resources they have for missions, and include this in the EU Council decision-making process on establishing future CSDP missions.
  - b) the meagre incentives offered and narrow criterion put on the pool of recruited justice personnel;
    - The EU should consider offering stronger incentives, such as potential career advancement and professional development, to encourage judicial personnel to value participation in international missions.
    - Opening up recruitment to retired magistrates would serve to significantly widen the scope of qualified and available candidates to staff judicial components of international missions.
  - c) the great variation of the pre-mission training that secondees of different countries receive;
    - Inviting staff members from lower capacity states to participate in joint training offered by other seconding states demonstrates laudable efforts to increase the level of pre-mission training.
    - A greater commitment by seconding states to ensure pre-deployment training is warranted.
  - d) the adjustment needed for staff to shift to their role as a monitor, mentor and advisor;
    - The development of a training course on MMA by the Programme Office, and the subsequent amendment of this course by the Training and Best Practices Unit, are promising steps forward.
    - It could be valuable to explore whether lessons from these courses can be used and adapted for training in other CSDP missions or similar mandates.
  - e) the lack of a corporate identity or staff loyalty towards EULEX and the EU.
    - While this will ultimately require the emergence of an EU identity, a more immediate solution could be to arrange staff remuneration through the EU rather than directly via contributing states.
    - It might be worth exploring the applicability of this finding in the wider context of CSDP.
- 5) The **expertise of the Head of Mission** was also seen as important for the effectiveness of EULEX.
- It is vital to ensure a balance of military and diplomatic expertise in mission management.

6) The tense **relations between the headquarters level and the field** have hampered effective support for reform of the rule of law by:

a) having the Commission manage the EULEX budget, which creates delays for EULEX's work;

- It would be advisable to investigate the option of increasing the number of framework agreements for procurement.
- Setting up a virtual warehouse could ensure items can be quickly ordered and deployed.
- Developing speedier procurement procedures so that free, fair and open competition can be guaranteed, while ensuring that the needs of missions on the ground can be met.

b) the tendency of the CPCC to micro-manage the EULEX Mission.

- Streamlining all communication from CPCC through the Chief of Staff allowed for more efficient communication, but effective working relationships are still developing.



## Introduction

When it comes to supporting the development of the rule of law in Kosovo, the European Union (EU) seems well placed: the largest CSDP (Common Security and Defence Policy)<sup>2</sup> mission to date – the European Union Rule of Law Mission EULEX Kosovo – has been deployed, in addition to an EU Special Representative (EUSR) and the European Commission Liaison Office (ECLO). This paper reports on the findings of a case-study investigating and analysing the EU’s combined support to the rule of law and security sector in Kosovo and the main challenges and opportunities the EU faces in this area. It focuses in particular on the set-up of the EU in Kosovo – the way the three EU actors and their mandates and characteristics interact – as well as the specific operational and practical situation in which the EU bodies operate.<sup>3</sup> It is based on approximately 30 interviews with key stakeholders in Pristina and Brussels held in December 2009 and January 2010 (including officials from the European Commission and ECLO, EULEX, diplomats from EU and non-EU states, representatives from other international organisations present in Kosovo, representatives of the Kosovo government and several NGOs and think-tanks<sup>4</sup>) as well as a review of the relevant literature.

This study is part of a larger project investigating the EU’s set-up for effectively supporting Security Sector Reform (SSR) in partner countries.<sup>5</sup> An initial phase looked at the Headquarters’ level of the EU’s set up for SSR, and gave an overview of the policies, funding mechanisms, actors and decision-making processes. It also identified a number of tensions and challenges at both the design/planning stage and the implementation stage of SSR support, and where possible gave potential solutions and avenues for improvement.<sup>6</sup>

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<sup>2</sup> The Common Security and Defence Policy (CSDP), formerly the European Security and Defence Policy (ESDP), was renamed under the Lisbon Treaty. In this report, either term will be used as appropriate given the referent time period.

<sup>3</sup> N.B. this report is *not* an evaluation or review of EULEX only, but rather, a study of the rule of law operations of *the EU as a whole* in Kosovo.

<sup>4</sup> Interviews were held under Chatham House rules. Hence, information is not attributed to any specific interlocutor, nor is a list of interviewees provided.

<sup>5</sup> When it comes to Kosovo, the term ‘Security Sector Reform’ is not used very often by EU officials – as the security sector is seen as too closely linked to issues of sovereignty and the status question. The preferred term is ‘rule of law’. Effectively however, the EU supports many activities that fall within the scope of SSR: in terms of reform of the police, customs, the judiciary, prisons as well as security management bodies such as the ministry of internal affairs. As such, it was deemed appropriate to include this case in this larger project. However, in line with the terminology used in Kosovo, this report uses the term ‘rule of law’.

<sup>6</sup> The report of this research was published in June 2009: Derks, M. & More, S. (2009). *The European Union and Internal Challenges for Effectively Supporting Security Sector Reform. An Overview of the EU’s set-up for SSR support anno spring 2009*. Clingendael Institute: The Hague.

However, to have a more in depth understanding of the EU's SSR support activities, it was deemed necessary to complement this Headquarters' perspective with views from the field by examining a number of CSDP Missions and EC programmes on the ground. The following topics were used to guide the field-interviews and loosely frame the content of the case-study:

- coherence (coordination between different EU bodies and with Member States, sequencing of efforts etc.) of EU SSR support on the ground;
- interaction between headquarters (HQ) and field;
- structural and operational challenges to effective service delivery faced in the field;
- impact and effectiveness of EU SSR support as perceived by EU actors, other international actors and partner-country stakeholders.

This paper reports on the results of one such field study, Kosovo.<sup>7</sup> The entire project was undertaken as part of a subsidy agreement between the Dutch Ministry of Foreign Affairs and the Conflict Research Unit of the Clingendael Institute. The paper starts with a brief outline of the context – the political and structural environment – after which section two proceeds with a discussion and analysis of the mandates and characteristics of the different EU actors and their activities. Section three continues with some practical challenges and lessons learned regarding the coherence of the overall EU approach, while section four looks at coordination between the EU actors and other stakeholders. Section five discusses the implementation of EU support to the rule of law, and the practical challenges the EU faces, as well as the solutions that the EU bodies try to find to these challenges. This section looks at personnel issues, the role of justice as a component of programming, the implementation and interpretation of the Monitoring, Mentoring and Advising (MMA) mandate of EULEX, and a lack of focus on gender issues, amongst others.

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<sup>7</sup> The other case-study is the DR Congo.

# 1. The operational context for the EU in Kosovo: political and economic complexity

The context in which the EU institutions operate in Kosovo is very complex. This includes the (geo-) political issues surrounding the status of Kosovo, but also the internal – economic, social and political – situation in Kosovo itself.

## a) The (international) political background of the situation in Kosovo

Kosovo has long been a contested territory. Its population is made up of several ethnic groups, with Kosovar Albanians being the majority of the population and the Kosovo Serbians the most important minority.<sup>8</sup> The territory has historical and cultural significance for Serbia, which sees it as an integral part of its territory. However, the Kosovar Albanians, being the majority of the population and considering themselves the original inhabitants of the territory, instead view Kosovo as their terrain. After the end of the Second World War the territory became part of the Socialist Federal Republic of Yugoslavia, and over time it gained some autonomy. However, this was slowly reversed in the late 1980s and 1990s under the leadership of Slobodan Milosevic, president of the SFR Yugoslavia and after its dissolution, of the Federal Republic of Yugoslavia<sup>9</sup>, of which Kosovo remained a part. Kosovar Albanian resistance to this reversal culminated in armed violence in the late 1990s, with the appearance of the Kosovo Liberation Army (KLA). The response by the F.R. of Yugoslavia under Milosevic was brutal, and triggered an intervention by the North Atlantic Treaty Organization (NATO) to halt the atrocities in 1999.<sup>10</sup>

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<sup>8</sup> The exact numbers on the percentages of the population that belong to the Albanian, Serbian or another ethnic group are very hard to give, as there is no recent census data available, and estimates vary (Judah, T. (2008). *Kosovo. What everyone needs to know*. Oxford University Press: Oxford, p. 2). However, to give a rough idea, the CIA World Factbook estimates that 88% of the population is Albanian, 7% is Serbian, and 5% belongs to another ethnic group (Bosniak, Gorani, Roma, Turk, Ashkali or Egyptian) (CIA World Factbook (2010). *Kosovo*. Online available: <https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>) (accessed 9 June 2010).

<sup>9</sup> This was a federal state succeeding the Socialist Federal Republic of Yugoslavia (the socialist state under Tito) formed by Serbia and Montenegro, established in 1992, after the other former Yugoslav republics became independent. After Montenegro decided for independence in a referendum in 2006, the federation was dissolved.

<sup>10</sup> The UN Security Council could not reach a consensus about intervening to prevent further bloodshed, and therefore NATO decided to intervene on humanitarian grounds but without a UN Security Council Resolution.

After the 1999 crisis and NATO intervention, the international community could not reach an agreement on whether Kosovo should become independent. As an interim solution United Nations Security Council Resolution 1244 (UNSCR 1244) made Kosovo a territory under the administration of the United Nations (UN) and the United Nations Interim Administration Mission in Kosovo (UNMIK) governed Kosovo as of 1999. During this UNMIK administration, powers were slowly transferred to the Kosovar Provisional Institutions of Self-Government (PISG), but a (international) political agreement on the status of Kosovo was not reached, which hampered sustainable progress towards proper self-government.<sup>11</sup> To break the impasse, the UN Secretary General tasked former Finnish President Martti Ahtisaari to explore the possibilities for a settlement regarding the status-issue. After extensive consultations with all stakeholders, Ahtisaari presented his *Comprehensive proposal for the Kosovo status settlement*, also known as the *Ahtisaari Plan* in 2007. In it, he recommended ‘supervised independence’ for Kosovo: Kosovo would become independent, but would have to take measures to guarantee the rights of its Serbian minority, and its independence would be supervised by an International Civilian Representative (ICR). This ICR would have the power to reverse decisions taken by the Kosovo government if they were at odds with the Ahtisaari Plan. He would be double-hatted as EUSR to facilitate relations with the EU, and an ESDP mission would be established to monitor, mentor and advise Kosovo’s authorities on the rule of law. This ESDP mission would also retain (carried over from UNMIK) some executive powers as regards the investigation, prosecution and adjudication of serious crimes.<sup>12</sup>

In spite of all the diplomatic efforts by Ahtisaari, Serbia - and in its wake Russia – opposed the final Plan. As a result the envisioned new UN Security Council Resolution, required to sanction the Plan, never materialized. When it became clear that international agreement could not be reached, Kosovo declared independence on 17 February 2008. It unilaterally followed the recommendations of the Ahtisaari Plan: inviting high-level Dutch diplomat, Pieter Feith as double-hatted ICR/EUSR, and EULEX as the ESDP Rule of Law Mission that Ahtisaari had envisioned. In the absence of a Security Council sanctioning the operations of these actors, their operations in Kosovo are based on formal invitations by the Kosovar authorities, and in the case of EULEX, by its inclusion in the Kosovar Constitution.<sup>13</sup> However, under international law, UNSCR1244 is still in force, which means that the new actors also still have to follow UNSCR1244, creating a tangled web of accountability and authority. For the EU this means that EULEX reports to the EU Council but that in turn the Council needs to report to the UN, in the form of an annex to regular UN Special Representative Reports to the Secretary General on Kosovo.

<sup>11</sup> Grevi, G. (2009). ‘EULEX Kosovo: The EU rule-of-law mission in Kosovo (EULEX Kosovo)’. In: Grevi, G., Damien, H. & Keohane, D. (eds.) *European Security and Defence Policy. The First 10 Years (1999-2009)*. The European Union Institute for Security Studies, Paris, p. 353-368, p.355.

<sup>12</sup> See: UN (2007). *Report of the Special Envoy of the Secretary-General on Kosovo’s Future Status & Comprehensive Proposal for the Kosovo Status Settlement*. Available online: <http://www.icokos.org/d/Ahtisaari%20Comprehensive%20Proposal%20in%20English.pdf>. Accessed 25 May 2010.

<sup>13</sup> See Annex 1 for the exact wording. The Council Joint Action that mandates the activities of EULEX is similarly based on the Ahtisaari Plan, although it is less specific in its wording on tasks.

Up to mid 2010, the status issue had not been resolved. 69 Countries had recognized Kosovo in late August 2010, amongst which only 22 of the 27 EU Member States. The 5 EU Member States that do not recognize Kosovo are Cyprus, Greece, Romania, Slovakia and Spain. Serbia still opposes independence and in late 2009 it filed a case with the International Court of Justice (ICJ), asking the Court's opinion on whether the unilateral declaration of independence of Kosovo violates international law. On 22 July 2010 the Court ruled that the declaration of independence in itself was not a violation of international law.<sup>14</sup> Although in Kosovo this was interpreted as a victory for its independence, the Court's ruling did not immediately convince non-recognizing states, including the five non-recognizing EU Member States, to change their position on accepting Kosovo as a sovereign state.<sup>15</sup> Hence, up until September 2010, the ICJ ruling has not resulted in much change in the geopolitical situation regarding the status of Kosovo – although there seems to be a little more willingness in Serbia to find a negotiated settlement. However, the unresolved debate on the status of Kosovo has an impact on the EU's activities in Kosovo, as we will see in the rest of this report. Meanwhile, within Kosovo, the ethnic situation remains somewhat tense with occasional riots and minor clashes – in particular in Mitrovica in the North of Kosovo – but no major clashes have occurred since the last outbreak of widespread violence in 2004.

## b) The domestic Kosovar context

Beyond the political entanglements plaguing Kosovo, it faces challenging situations in the economic and societal sphere. Unemployment and poverty are endemic (43% and 35% respectively)<sup>16</sup>, factors that Kosovars themselves identify as “paramount problems” that outrank political concerns in public surveys.<sup>17</sup> Moreover, unemployment is especially high among youth<sup>18</sup>, who make up a large percentage of the population.<sup>19</sup> Although some government programmes have focused on addressing the youth bulge by promoting education, this strategy is seen by some as short-sighted, given the lack of opportunities after graduation. Such a combination of unemployment, a young and educated population, and a lack of opportunities can be seen as a risk factor for instability.<sup>20</sup>

<sup>14</sup> For the full text of the ruling see: ICJ (2010). *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. Available online (accessed August 18 2010): <http://www.icj-cij.org/docket/files/141/15987.pdf?PHPSESSID=d6017790908e1a3ae3e5c0ea2cce9e29>

<sup>15</sup> See also: ICG (2010). *Kosovo and Serbia after the ICJ Opinion*. Crisis Group Europe Report No. 206, 26 August 2010

<sup>16</sup> 45% refers to the national unemployment rate, while 35% refers to portion of the population living below the poverty line. See: CIA(2009) *The World Factbook: Kosovo*. Available online: (accessed March 22 2010)

<https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>. For more information on Kosovo Youth Unemployment see: The World Bank (2008) *Kosovo Youth in Jeopardy: Being Young, Unemployed, and Poor in Kosovo*. Report No. 43596-XK. The World Bank. Washington D.C. Available online:

[http://siteresources.worldbank.org/INTKOSOVO/Resources/Kosovo\\_Youth\\_Employment.pdf](http://siteresources.worldbank.org/INTKOSOVO/Resources/Kosovo_Youth_Employment.pdf) (accessed May 10 2010)

<sup>17</sup> UNDP (United Nations Development Programme) (2009) *Kosovo Mosaic: Public Services and Local Authorities in Focus*. USAID & UNDP. Available online: <http://www.ks.undp.org/repository/docs/english%20green.pdf> (accessed April 27 2010);

UNDP (2009a) *Early Warning Report 26: Fast Facts*. p.5. Available online: [www.ks.undp.org/repository/docs/Fast\\_Facts\\_26\\_English.pdf](http://www.ks.undp.org/repository/docs/Fast_Facts_26_English.pdf) (accessed April 27 2010)

<sup>18</sup> Youth unemployment has been estimated to be as high as 75% - Commission of the European Communities (2009). *Communication From the Commission to the European Parliament and the Council. Kosovo – Fulfilling its European perspective*. COM(2009)5343, Brussels, p.9)

<sup>19</sup> Some of our interviewees estimated that upwards of 70% of the population is below the age of 35.

<sup>20</sup> Urdal, H. (2004) *The Devil in the Demographics: The Effect of Youth Bulges on Domestic Armed Conflict, 1950-2000*. Social Development Papers, Conflict Prevention and Reconstruction. World Bank. Washington D.C.

Kosovo's isolation, resulting from political, economic and social barriers – often as a consequence of the status issue, such as Serbia putting up a blockade to travel and trade, but also a lagging visa liberalisation process with the EU compared to other countries in the region – limits the opportunities for growth and development.

However, this isolation does not hamper (international) organised crime, which is a big problem within Kosovo. In addition, corruption within state institutions is rampant. In fact, it was bluntly articulated by several interviewees that the leadership of the government has been compromised and, in some cases, criminalized.<sup>21</sup> Political appetite, both foreign and domestic, for tackling this issue has proven low because catching “big fish”- those most heavily involved in organised crime and corruption – is perceived as a risk to the current stability given that many of Kosovo's current leaders are implicated.<sup>22</sup> There is a fear that investigating them might lead to a destabilization of political life, as well as a backlash given that some key figures are also very popular amongst the Kosovars. As such, investigating links between current government officials and organised crime (as well as former KLA leaders indicted for war crimes) stirs sensitivities at the highest levels.<sup>23</sup>

The political system displays many tendencies of patrimonialism, which reduces its transparency. In addition, because Belgrade does not recognize Kosovo it effectively continues to administrate those areas with a Serb majority and opposes any cooperation with the international community on the rule of law in these areas. This is the case especially in the north of Kosovo, particularly in the northern part of the city of Mitrovica, where the majority of the population is Serbian. As such, de facto there are parallel institutions in Kosovo, in particular in the North.

Finally, as a fledgling state, Kosovo's institutional capacity for meeting the security needs of its population is low<sup>24</sup>, and this has long been a concern for the international community. Kosovo's security force initially consisted of the Kosovo Protection Corps (KPC) – a security structure formed out of the KLA after the end of the Kosovo crisis in 1999, responsible for fire-fighting, emergency response and humanitarian assistance. In 2009 the KPC stood down<sup>25</sup>, while at the same time the Kosovo Security Force (KSF) was set up.<sup>26</sup> The KPC and, subsequently, the KSF have received training from NATO's Kosovo Force (KFOR).

<sup>21</sup> For further elaboration see: Montanaro, L. (2009) *The Kosovo Statebuilding Conundrum: Addressing Fragility in a Contested State*. Working Paper 91. FRIDE: Madrid, p.10

<sup>22</sup> (ibid)

<sup>23</sup> The Prime Minister, Hashim Thaçi, has been accused by several in the international community and Kosovo's Civil Society of tolerating high-levels of corruption, and even blocking investigations. See for example: Economist (May 18<sup>th</sup> 2010). 'Time to go straight. The EU and America are no longer prepared to tolerate graft in Kosovo'. *The Economist*. Available online: [http://www.economist.com/world/europe/displaystory/cfm?story\\_id=15731392](http://www.economist.com/world/europe/displaystory/cfm?story_id=15731392)

<sup>24</sup> See for an overview of the security sector in Kosovo: UNDP (2006). *Internal Security Sector Review*. Available online: [http://www.ks.undp.org/repository/docs/ISSR\\_report\\_eng\\_ver2.pdf](http://www.ks.undp.org/repository/docs/ISSR_report_eng_ver2.pdf). Although this is a slightly older report, it remains the most comprehensive overview of Kosovo's security situation available.

<sup>25</sup> See for details on reasons for the KPC stand-down: International Crisis Group. (2006). *An Army for Kosovo? Europe Report No 174 - 28 July 2006*.

Brussels: International Crisis Group.

<sup>26</sup> The Kosovo Security Force (KSF) acts as a non-military, lightly armed security force. Overseen by NATO, it is trained in civilian protection, humanitarian assistance and crisis response. For more information see: <http://www.rks-gov.net/en-US/Ovrtetaret/Siguria/Pages/FSK.aspx> (accessed May 25, 2010)

The Kosovo Police (KP)<sup>27</sup> meanwhile was built up under UNMIK, and trained by (amongst others) the Organization for Security and Cooperation in Europe (OSCE). Since independence, the EU, and in particular EULEX, has been actively involved in supporting the police. Although the KP is consistently ranked amongst the most trusted rule of law bodies in Kosovo<sup>28</sup>, the KP's performance has been described as 'erratic'<sup>29</sup> and management as well as performance still show serious gaps and weaknesses.<sup>30</sup> The justice sector is weak, due to, amongst others, a lack of qualified judges and prosecutors, as well as a high level of political and criminal interference.<sup>31 32</sup>

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<sup>27</sup> Under UNMIK and the OSCE the name of the police was the Kosovo Police Service, but after independence, the name was changed to Kosovo Police.

<sup>28</sup> UNDP (2010). *Early Warning Report Kosovo, Report #28, May 2010. Fast Facts*. Available online: [http://www.ks.undp.org/repository/docs/English\\_EWS.pdf](http://www.ks.undp.org/repository/docs/English_EWS.pdf)

<sup>29</sup> International Crisis Group (2010). *The Rule of Law in Independent Kosovo*. Available online: <http://www.crisisgroup.org/~media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.ashx>, accessed 3 June 2010

<sup>30</sup> EULEX (2009). *EULEX Programme Report*. Available online: <http://www.eulex-kosovo.eu/docs/Accountability/EULEX-PROGRAMME-REPORT-July-2009-new.pdf>, accessed 14 January 2010

<sup>31</sup> See: International Crisis Group (2010). *The Rule of Law in Independent Kosovo*.

<sup>32</sup> UNDP is another international actor that has projects supporting security and the rule of law in Kosovo, see: [http://www.ks.undp.org/?cid=2\\_90](http://www.ks.undp.org/?cid=2_90), accessed 14 January 2010



## 2. EU actors in Kosovo

The three bodies representing the EU in Kosovo are EULEX, the EUSR and ECLO. The following gives a brief outline of each of their roles as regards the rule of law, with respect to their mandates, characteristics, instruments for implementation, and activities. The section ends with an analysis of the complementarity and overlap of the mandates and work of the three actors.

### a) European Union Rule of Law Mission: EULEX-Kosovo

#### *Mandate*

The planned capacity of EULEX is 3200 people: 1950 international and 1250 national staff.<sup>33</sup> The international staff is provided by states that have promised to contribute – the EU Member States plus the US, Canada, Turkey, Norway, Switzerland and Croatia – although in practice the mission is understaffed by about 20%. Its budget, covering operating costs, is €265 million up until 14 October 2010. This is the largest budget of a CSDP mission to date.<sup>34</sup> With these resources, EULEX is mandated to:

“[...] assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices. EULEX Kosovo, in full cooperation with the European Commission Assistance Programmes, shall fulfil its mandate through monitoring, mentoring and advising the competent Kosovo institutions, while retaining certain executive responsibilities.”<sup>35</sup>

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<sup>33</sup> EULEX website, [www.eulex-kosovo.eu/?id=2](http://www.eulex-kosovo.eu/?id=2), accessed 24 March 2010

<sup>34</sup> EULEX's first mandate and budget ran until 14 June 2010. On June 8<sup>th</sup> 2010 the mandate was extended with two years, until June 14 2012. The budget was budget-neutrally extended until 14 October 2010. See Council Decision 2010/322/CFSP. Available online: <http://www.eulex-kosovo.eu/docs/info/20100608council%20decision.pdf>

<sup>35</sup> Mission Statement according to Council Joint Action 2008/124/CFSP

The Joint Action further specifies the tasks of EULEX as:

- monitoring, mentoring and advising the competent Kosovo institutions on areas related to the wider rule of law (including a customs service);
- maintaining and promoting the rule of law (including reversing or annulling operational decisions taken by the Kosovar authorities, where necessary and in coordination with the International Civilian Authorities);
- helping to ensure that there is no political interference in Kosovo's rule of law bodies;
- ensuring that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced (where appropriate, by or with support of international investigators, prosecutors and judges);
- contributing to strengthening cooperation and coordination throughout the whole judicial process;
- contributing to the implementation of the Kosovo Anti-Corruption Strategy and Anti-Corruption Action Plan;
- contributing to the fight against corruption, fraud and financial crime;
- assuming other responsibilities to ensure the rule of law, public order and security;
- and ensuring that all of this is done while respecting international standards concerning human rights and gender mainstreaming.

In summary, EULEX is mandated to carry out two broad tasks: one is to monitor, mentor and advise (MMA), the other is executive, in particular carrying out judicial processes. In practice however, many interviewees mentioned that they feel that EULEX tends to emphasize the (technical) MMA element at the expense of its executive tasks, perhaps particularly in the North.<sup>36</sup> This emphasis on the MMA element is in part due to the priority that is given to the sustainable development of the Kosovar rule of law institutions, which cannot be attained if EULEX does all the work. On the other hand, the focus on MMA was often explained by the fact that executive powers are considered to be potentially destabilizing – there is a fear that investigating and prosecuting high profile crimes could lead to (political) instability. Also, there is a feeling that the EU has been treading lightly (particularly in the North) because of internal EU dynamics with regards to the disagreement amongst the EU Member States on the status of Kosovo. As such EULEX has had to be careful in undertaking any activity that might be perceived as an implicit recognition of Kosovo. As a result, as International Crisis Group puts it: “EULEX’s main task was to maintain EU unity, and this trumped any policy goal in Kosovo”.<sup>37</sup> Finally, EULEX uses its executive powers sparingly because the Kosovar government is sensitive regarding interference in its newly gained independence, especially while the memories of UNMIK are still fresh.

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<sup>36</sup> See for a critique of EULEX's cautious approach to establishing the Rule of Law in the North: ICG (2010). *The Rule of Law in Independent Kosovo*. Available online: <http://www.crisisgroup.org/~media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.ashx>, accessed 30 August 2010.

As of May 2010 EULEX has been more active in its executive role, for more information see below.

<sup>37</sup> ICG (2010). *Kosovo and Serbia after the ICJ Opinion*. P. 20

*An integrated Mission*

EULEX is the EU's first integrated mission, addressing three pillars of the security and rule of law system – police, justice and customs – simultaneously. In this sense it goes some way towards recognizing the holistic nature of the security and rule of law system. Moreover, even within the components there is an integrated approach, as each component consists of several different departments that support sub-sectors of the three pillars. For example, within the Justice Component prosecutors, judges and penitentiary service personnel and forensic experts all work towards supporting the development of the justice sector in Kosovo. EULEX was designed this way because the EU Planning Team – the team tasked with preparing the ground for EULEX – understood that sustainable and lasting reform of the rule of law sector in Kosovo requires simultaneous and coordinated attention to the different sub-sectors. For instance, the KP may be functioning fairly well, but without a proper justice system rule of law cannot be established in full, since suspects caught by the police would not face appropriate judicial measures. For this reason, EULEX was set-up as an integrated mission.

The Police Component – by far the largest – consists of 1.400 international staff. This includes four anti-riot units stationed in Pristina and Mitrovica which are on stand-by to respond to riots as a second line of response (the KP is the first line of response, KFOR the third).<sup>38</sup> The rest of the staff mentor, monitor and advise the KP, and are co-located with their KP counterparts in the different departments of the KP: Operations, Border, Crime and Administration. The Justice Component – consisting of judges; prosecutors; legal, forensic and penitentiary experts – works both in an MMA and an executive capacity with the Kosovar judiciary<sup>39</sup>: in district courts in both criminal and civil law, in the Judicial Council, in the Ministry of Justice (including the Office on Missing Persons and Forensic Medicine) and in correctional services (with an EULEX presence in detention centres). The Customs Component, the first and only one to date in a CSDP mission, works mostly in mobile teams with Kosovo Customs both at border gates as well as at headquarters level.<sup>40</sup>

Apart from the departments that execute the mandate directly, EULEX also has more managerial departments that are of importance for the content of EULEX's activities. They fall mostly under the Chief of Staff Office and include the Programme Office, responsible for developing the programmatic approach (discussed below); the Policy Office, which advises the mission on political issues that may affect the mission's mandate and on the impact of its activities on the Kosovar political context; the Human Rights and Gender Office; the Training and Best Practices Unit; the Property Rights Coordination Unit; and finally an anti-corruption expert.<sup>41</sup>

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<sup>38</sup> That they are second in line does not mean however that they never need to respond. During a Clingendael field visit in May 2010, EULEX riot police responded to disturbances on the bridge in Mitrovica on 30 May 2010, in full riot gear and using tear gas.

<sup>39</sup> A number of EULEX judges and prosecutors have a purely executive role, including those in the Special Chamber of the Supreme Court of Kosovo, the EULEX judges appointed as judges of the Supreme Court to hear appeals from the decisions of the Kosovo Property Claims Commission and, finally, the EULEX appointed international members of the Kosovo Property Claims Commission. They carry out their executive tasks alongside their Kosovo counterparts in the Kosovar institutions, and consequently are dependent on the capacity and willingness of the local Kosovar authorities for the successful implementation of their mandate.

<sup>40</sup> EULEX Customs also mans checkpoints at gates 1 and 31 at the border with Serbia, which do not have a Kosovo Customs presence because they are highly contested.

<sup>41</sup> For a complete overview of all EULEX's departments, units etc., please refer to ANNEX 2: Organigrammes.

### *Instruments and implementation*

Like all civilian CSDP missions, EULEX is financed by the CSDP-budget, which is managed by the European Commission's (EC) Directorate General for External Relations (DG RELEX). This budget only covers operation costs and not projects. Staff costs for seconded staff members are born by the seconding states, making human resources EULEX's primary instrument for implementation. To ensure effective support to Kosovo's rule of law bodies it is important to use these human resources in a structured and systematic way. Therefore the mission employs a 'programmatic approach', which aims to organise the MMA activities. The first step in this programmatic approach was an assessment of the state of the rule of law bodies in Kosovo. Thus, during its first six months, the mission put an emphasis on monitoring the rule of law sector. The results of this phase were published in the Programme Report in July 2009, after which actions to address the identified gaps and weaknesses were designed.

To systematize and facilitate these actions the Programme Office developed so called Action Fiches. These are project documents based on the format for project-descriptions used by the European Commission. The Action Fiches describe the desired outputs, required key activities to reach those outputs, and tasks to be accomplished within each activity. They were developed in close cooperation between the Kosovar authorities and the EULEX teams in the field, with leadership from the Kosovar authorities. They are 'living documents': although the outputs are more or less fixed, activities and tasks can be modified as the need arises. The Action Fiches are also used as a clear framework for tracking progress – as was done in the EULEX Programme Report 2010<sup>42</sup> – as well as a possibility for easy transfer of duties in the case of staff rotation.<sup>43</sup> Given the fact that EULEX's budget only covers operating costs, the actions it can undertake itself only entail those that can be achieved through mentoring and advising by EULEX staff. To address gaps that require solutions other than MMA, EULEX uses its Action Fiches to try to engage other donors, including ECLO, to carry out or support projects.

EULEX itself<sup>44</sup> and some researchers<sup>45</sup> judged its achievements in its first year of operations fairly positively. Indeed, the first year allowed EULEX to set up a well thought through programme. However, this research project found a large gap between the expectations of EULEX that many Kosovars had and what it had accomplished so far.<sup>46</sup> In particular, there seemed to be discrepancy between EULEX's interpretation of its mandate and the way many

<sup>42</sup> See: EULEX Kosovo (4 June 2010). *EULEX Programme Report 2010. Building Sustainable Change Together*. Available online: <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf> (accessed 7 June 2010)

<sup>43</sup> EULEX has published a catalogue of the actions online at: <http://eulexkosovo.net/docs/tracking/EULEX%20MMA%20ACTIONS%2020102904.pdf>

<sup>44</sup> See: EULEX (2010) *EULEX Programme Report 2010. Building Sustainable Change Together*.

<sup>45</sup> See: Dijkstra, H. (2010). 'Eén jaar EULEX Kosovo: Resultaten en Uitdagingen'. *Internationale Spectator*, Vol. 64, Nr. 6, juni 2010.

<sup>46</sup> This is confirmed by the UNDPs Early Warning Reports for Kosovo, which apart from a spike in June 2009 have shown a decreasing trend in satisfaction rates with EULEX amongst the Kosovar population, with a slight improvement in April 2010 (see. UNDP (2009). *Early Warning Report Kosovo. Report #25, April – June*. Available online: [http://www.ks.undp.org/repository/docs/EWS\\_25\\_eng.pdf](http://www.ks.undp.org/repository/docs/EWS_25_eng.pdf); UNDP (2010a). *Early Warning Report Kosovo, Report #27, 27 March 2010. Fast Facts*. Available online: [http://www.ks.undp.org/repository/docs/Fast\\_Facts\\_27\\_ENGEDitedFinal-1.pdf](http://www.ks.undp.org/repository/docs/Fast_Facts_27_ENGEDitedFinal-1.pdf); and UNDP (2010b). *Early Warning Report Kosovo, Report #28, May 2010. Fast Facts*. Available online: [http://www.ks.undp.org/repository/docs/English\\_EWS.pdf](http://www.ks.undp.org/repository/docs/English_EWS.pdf). Also see a report of the Balkan Policy Institute of April 2010 that describes the dissatisfaction of the Kosovo population with the performance of EULEX: Balkan Policy Institute (2010). *EULEX: Still in Search of an Identity. Follow-up Report Assessing the Work of EULEX*. Available online: [http://policyinstitute.eu/images/uploads/EULEX\\_Still\\_in\\_search\\_of\\_identity\\_English.pdf](http://policyinstitute.eu/images/uploads/EULEX_Still_in_search_of_identity_English.pdf) (accessed 1 June 2010).

Kosovars perceived its role. Kosovars articulated especially high expectations of the executive role of EULEX – yet at the same time this is the part of the mandate that EULEX implements sparingly. As a result, within the interviews conducted during the January 2010 field mission, several Kosovar representatives expressed clear frustration that EULEX was not seen to act against ‘the big fish’ (of organised crime, corruption etc.). A related frustration was EULEX’s inactivity in the North of Kosovo. This was seen as especially problematic because the Commission, in its Progress Reports, criticizes the fact that the rule of law has not yet been established in the North. Some of our interlocutors felt however that since EULEX is included in the Kosovar constitution – which according to these interviewees makes it part of the Kosovar rule of law bodies – EULEX should at least be held co-responsible for solving the problems in the North. Thus, they felt that the Commission unfairly criticized Kosovo’s progress towards EU standards for something that was a failure of EULEX.

Whether this is a fair judgement or not – after all it is always easier to put the blame for inactivity on an international actor – all this goes to show that among the Kosovar population EULEX’s credibility was rather low at the time of the interviews. As of early May, it appears more action is being taken under the executive mandate, with the investigation of a number of high-level government officials on the grounds of money laundering and corruption, including a raid on the offices of the Minister of Transport, Fatmir Limaj.<sup>47</sup> Additional investigations into corruption and graft since then have focused on (in some cases former) high up officials from the ministry of health, the central bank, a district court, and the post and telecom company. Also, war crimes were investigated, and one suspect was arrested for war crimes.<sup>48</sup> This may well have improved EULEX’s image, however, at the time of writing (in August 2010), no up-to-date data was available to confirm this.<sup>49</sup>

## **b) EU Special Representative (EUSR)**

### *Mandate*

The second major EU actor in Kosovo is the EU Special Representative to Kosovo. Council Joint Action 2008/123/CFSP of 4 February 2008 appointed Pieter Feith, a seasoned Dutch diplomat, to fulfil this role. He is mandated to:

- offer the EU’s advice and support to the Kosovo Government in the political process;
- promote overall political coordination of EU presences in Kosovo;
- ensure consistency and coherence of EU action towards the public;
- provide local political guidance to the Head of the European Union Rule of Law Mission EULEX in Kosovo; and
- contribute to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo.

<sup>47</sup> Marzouk, L. (7 May 2010), *EULEX: Limaj could face a long jail term*. Balkan insight.com, available online: <http://www.balkaninsight.com/en/main/news/27936/>.

<sup>48</sup> See: <http://www.eulex-kosovo.eu/en/news/000250.php> (accessed 18 August 2010)

<sup>49</sup> Information on the satisfaction of Kosovars with rule of law institutions, including EULEX, is mostly available through the UNDP’s Early Warning reports. However, the most recent of these reports was published in May 2010, and it gives the results of a survey held in April 2010. Although this latest report shows a slight increase in satisfaction with EULEX compared to January 2010, the April 2010 poll does not cover the period in which EULEX became more active, and hence, no information is available regarding satisfaction levels after EULEX became more actively engaged in the investigations of serious crimes.

The EUSR's role as such is mostly political and diplomatic; he represents the EU in Kosovo and in this capacity liaises between the EU and the Kosovo government and public. At the time of the interviews, the EUSR headed a small office of about 4 staff.<sup>50</sup> His advising role towards the Head of Mission (HoM) of EULEX includes communicating political assessments and analysis as well as EU policy and guidelines. Importantly, the EUSR is not perceived to be hierarchically placed above the HoM<sup>51</sup> and thus this task encompasses giving political guidance and advice, not instructions or orders. In practice therefore, the EUSR only gives political advice on an as-needed basis, mostly at the – infrequent – request of the HoM. Moreover, because EULEX also has its own policy office – which advises on political issues – the role of the EUSR as a political advisor is a lot more limited in practice than his mandate suggests.

#### *The EUSR's other hat*

The EUSR is double-hatted as International Civilian Representative (ICR) – without a UN Security Council resolution, but in accordance with the Ahtisaari Plan. For this, he is mandated by an invitation from the Kosovo Government and the International Steering Group (ISG)<sup>52</sup> and is tasked with ensuring the full implementation of the Ahtisaari Plan. The International Civilian Office (ICO) – with around 200 staff – supports him in carrying out this task. The ICR has the power to overturn or revoke any decisions by the Kosovar authorities that go against the Ahtisaari plan – a power that, to date, has not been used.

The double-hatting of the EUSR as ICR creates some advantages as well as disadvantages. It allows close contact with the member states of the ISG as well as with the Member States of the European Union, which can provide more leverage with the Kosovar authorities. On the other hand however, it risks creating confusion and opportunities for misinterpretation. While the ICR position is explicitly pro-independence, the EUSR's position is status neutral. As such, the EUSR/ICO always has to make very clear in what capacity he is speaking, and in extreme cases in meetings has to explicitly state that he is 'switching hats'. Although in most cases Kosovar interlocutors understand which hat the EUSR/ICO is wearing in a particular situation, it creates room for (on occasion deliberate) misunderstandings. For example, the ICO drafted a 'Strategy for the North of Kosovo', which was subsequently leaked and appeared in the press as an EU document – causing some diplomatic difficulties for the EUSR.

<sup>50</sup> In July 2010 it was reported that the office was expanding however, approaching 10 staff members in Pristina, including support staff.

<sup>51</sup> The EULEX mandate states that: "The Head of Mission shall, without prejudice to the chain of command, receive local political guidance from the EUSR, including with regard to the political aspects of issues related to executive responsibilities." (Council Joint Action 2008/124/CFSP)

<sup>52</sup> Following the Declaration of Independence, Kosovo's leaders requested that a group of pro-independence states form an International Steering Group (ISG) to promote good governance, multi-ethnicity and the rule of law in Kosovo. The ISG supervises the implementation of the Ahtisaari Plan. Its members are: Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Slovenia, Switzerland, Sweden, Turkey, the United Kingdom, and the United States of America. For more information see: <http://www.ico-kos.org/?id=3> (27 April 2010)

### c) European Commission and European Commission Liaison Office (ECLO)

#### *Mandate*

The Commission's assistance to Kosovo is part of the Stabilization and Association Process (SAP) for the Western Balkan countries and therefore, Directorate General Enlargement manages the EC's relations with Kosovo. An EC representation, the 'European Commission Liaison Office' (ECLO), manages the SAP in country.<sup>53</sup> The SAP is part of the EU's Enlargement Policy and it aims to assist countries of the Western Balkans in their efforts towards meeting the criteria for EU accession – the so-called 'European Standards' officially known as the Copenhagen criteria – which entail that a country that wishes to apply for EU membership needs to have stable institutions guaranteeing democracy, the rule of law, human rights and respect for /protection of minorities, amongst others.<sup>54</sup>

Under the SAP, the Commission and the governments of the Western Balkan countries identify priorities for reform. Progress is monitored through tracking mechanisms – in the case of Kosovo called the Stabilisation and Association Process Dialogue (SAPD)<sup>55</sup> – and reported on in Progress Reports. According to the Commission, "EU approximation continues to be the driving force for reform in Kosovo"<sup>56</sup> and it uses the SAPD to maintain a political dialogue with the Kosovar authorities on the reform processes towards European standards.<sup>57</sup> However, it can be argued that the relationship between Kosovo and the EU under the SAP is complicated. The disputed status of Kosovo and the division amongst EU Member States on this issue, means that EC activities are closely monitored by the Member States in order to ensure that they do not implicitly entail recognition of Kosovo as a sovereign state. Besides leading to practical challenges of micromanagement by Member States from Brussels, this could also hamper the effectiveness of the EC dialogue with Kosovo and reduce the leverage the EU has to push for reform, since without recognition by all Member States, the 'carrot' of accession is not always credible. However, the EC and ECLO find leverage through other means: for example, the discussion prior to starting an official dialogue on visa liberalization for Kosovo proved to be an engine for reforms in the rule of law sector.

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<sup>53</sup> In any other country that the EU has relations with, these representations are called 'EC Delegation' and since the entry into force of the Lisbon Treaty 'EU Delegations'. However, due to the division amongst the EU Member States on the status of Kosovo, an EC Delegation could not be established in Kosovo, and instead the office was named ECLO. This name was also not changed into 'EU' office after the Lisbon Treaty. ECLO is the successor to the European Agency for Reconstruction. This Agency had managed the EU's assistance for reconstruction efforts but was closed down in December 2008, after the EU's relations with Kosovo transferred to the Stabilisation and Association Process for the Western-Balkans.

<sup>54</sup> Other criteria include needing to have: a functioning market economy and the capacity to cope with competition and market forces in the EU; the capacity to take on the obligations of membership, including adherence to the objectives of political, economic and monetary union;

and to have adopted the Acquis Communautaire. From: ECLO (s.d). *Understanding Enlargement*. Available online: <http://www.delprn.ec.europa.eu/?cid=2,24> (Accessed: 23 March 2010).

<sup>55</sup> Formerly the Stabilisation and Association Tracking Mechanism (STM)

<sup>56</sup> COM(2009)5343 p.4

<sup>57</sup> From: ECLO (s.d). *Stabilisation and Association Process (SAP)*. Available online: <http://www.delprn.ec.europa.eu/?cid=2,133> (accessed: 23 March 2010).

### *Instruments and implementation*

To assist Kosovo in its reform process, the Commission provides support through the Instrument for Pre-Accession (IPA).<sup>58</sup> This programme allows the EU to give financial support to projects related to reform, such as provision of equipment, infrastructure etc. For example, ECLC budgeted a total of €56.7 million in support of the rule of law in Kosovo between 2007 and 2010. Projects have included capacity-building and reform programmes as well as technical and equipment projects, such as provision of equipment for the Kosovo Border and Boundary Police, or the construction of a Palace of Justice building and a maximum security prison.<sup>59</sup> IPA can also be used to provide expert technical advice to local counterparts regarding specific reforms, by co-locating (“twinning”) European experts with their Kosovar counterparts for a specific period of time. For the rule of law, twinning projects have included assisting the Kosovo Border and Boundary Police in adopting and implementing European standards, and a project on strengthening the same standards for the Ministry of Justice, amongst others. Support for meeting EU standards is furthermore available through the Technical Assistance and Information Exchange Instrument (TAIEX), which allows short term expert assistance and advice in those matters that relate to the approximation, application and enforcement of the *acquis communautaire*.

Finally, the EC assists Kosovo’s rule of law sector through the Instrument for Stability (IFS).<sup>60</sup> Funds from this source support a project for the vetting of judges and prosecutors on merit, professional qualifications and experience, as well as integrity.<sup>61</sup>

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<sup>58</sup> The Community Assistance for Reconstruction, Development and Stabilization (CARDS) 2006 programme also supported the Rule of Law in Kosovo, but most projects under this were already finished at the time that this research was conducted (for example the installation of the Case Management Information System, Renovation of parts of the Dubrava Prison, support to the Kosovo Special Prosecutor’s Office, support to the Kosovo Police and the support to the development of a juvenile justice system). Ongoing projects in 2009 included: support to the Ministry of Internal Affairs (including a new building), support to justice institutions – amongst which staff training for the Court Management Information System, and a feasibility study for a housing/holding facility for asylum seekers.

<sup>59</sup> For more specific information on all programmes and projects under IPA 2007, 2008, 2009 see: ECLC (s.d.). *Overview of the EC assistance in the Rule of Law Sector in Kosovo*. Available online:

[www.delprn.ec.europa.eu/.../060809EU%20assistance%20in%20the%20Judiciary%2027%2007%20200...](http://www.delprn.ec.europa.eu/.../060809EU%20assistance%20in%20the%20Judiciary%2027%2007%20200...)

<sup>60</sup> Although the IFS is used for other projects than the Rule of Law too.

<sup>61</sup> This project was started under UNMIK – before independence – and is co-financed by the United States Office in Pristina and implemented by the United Nations Office for Project Services (UNOPS).

### 3. Coherence of EU support

#### a) Complementary mandates

A coherent overall EU approach requires the different EU bodies to coordinate as well as cooperate (in the sense of making activities complementary and sequential for example). In some cases, both at Brussels and field level, the Commission and the Council's CSDP missions clash over who has competency to do what, which hampers the ability to ensure such a coherent approach.<sup>62</sup> Although some tensions over competencies could be found in the case of Kosovo<sup>63</sup>, our interviewees indicated that in practice ECLO and EULEX coordinate and collaborate, rather than compete. This is in part the result of the work of the EU Planning Team<sup>64</sup>, which, when drafting the EULEX mandate, ensured that each EU actor had a clearly demarcated and complement roles and mandates. As one interlocutor said: 'the idea is that EULEX works on the commitment to ensure the rule of law, ECLO focuses on longer-term reform and alignment with EU standards, while the EUSR takes care of the political aspects of the EU's relations with Kosovo.' More specifically, the respective mandates give EULEX a detailed role in the monitoring, mentoring and advising of Kosovar rule of law bodies (in addition to EULEX's executive role to maintain the rule of law), the EC a role as funder and supporter of longer-term reform activities, and the EUSR the task to maintain the overall coherence in the EU's message towards the Kosovo public and government. Thus, the mandates, at least on paper, are finely tuned and little overlap or competition exists; the division of labour facilitates coordination and collaboration, even in the absence of formal coordination and cooperation mechanisms.

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<sup>62</sup> See for example: Derks, M. & More, S. (2009), p. 5-6.

<sup>63</sup> For example, former Deputy head of office of ECLO Mr. Wolfgang Koeth, who was in charge of implementing the European Commission Rule of Law programme, asks: "However, strengthening the rule of law in a potential candidate is a task usually carried out by the Commission through its Instrument for Pre-Accession and the Instrument for Stability. Looking at the EC's different annual progress reports of the Western Balkan countries, it could be argued that the situation in Kosovo is not necessarily in a much worse state than in some of the other potential candidates. So, if the supervision of Kosovo's conditional independence is left out, how could one justify to have 2,000 EU police, judges and prosecutors on the ground?" (Koeth, W. (2010). 'Statebuilding without a State: The EU's Dilemma in Defining its Relations with Kosovo'. *European Foreign Affairs Review*, Vol. 15, p. 227-247) (p. 237). Although this is in the first place questioning the necessity of a rule of law mission, it also maintains that RoL is in the first place a task to be carried out by the Commission, not the CSDP. This matches similar sentiments heard at the Brussels level over whether or not the CSDP is allowed to work on the Rule of Law (or justice, or police), or whether this is solely a Commission task.

<sup>64</sup> The EU team that planned the EULEX Mission in situ.

## b) Practical efforts to ensure coherence

In practice, efforts to ensure coherence in the activities of the EU are made. Interestingly, our interlocutors did not mention that the EUSR played a major role in this.<sup>65</sup> Instead, they stated that regular as well as ad hoc meetings between EULEX and ECLO<sup>66</sup> take place in a rule of law forum, but that much of the coordination and collaboration of activities is done through personal interaction. In particular, personal contacts between staff of the EULEX Programme Office and ECLO programme and policy officers was mentioned as important for ensuring effective and coordinated EU efforts in the area of rule of law. They regularly discuss how the activities and programmes of ECLO and EULEX can reinforce one another by drawing upon each other's strategic advantages. For example, given that EULEX works very closely with the Kosovar authorities and its MMA staff has contact with their local counterparts on a daily basis, EULEX staff has a clear picture of the gaps and needs in Kosovo's rule of law sector. By involving ECLO it can be discussed how best to address these: either through mentoring and advising, or through financial support from ECLO or others. Facilitating this cooperation is one reason why the EULEX programme office has modelled its Action Fiches on the Commission's Project Documents. Thus, the level of coordination and cooperation at the programming level was deemed adequate by most interlocutors. However, at the same time coordination and cooperation is highly dependent on informal and personal contacts, making it rather vulnerable to staff changes and personal enmities.

Other means for cooperation exist. For example, EULEX and the EUSR are asked to give input for the Commission's Progress Reports. Since the Progress Reports are an important tool in the political dialogue that the EC holds with Kosovo on its progress toward meeting EU standards (and thereby are an important tool to put political pressure on the Kosovar government) this allows both EULEX and the EUSR to be a part of this political dialogue – albeit indirectly. In these ways, in Kosovo a *modus operandi* seems to have been found whereby the CSDP mission carries out MMA activities that focus on reform of the rule of law sector, the EC can benefit from these activities and follow-up on them or support reform by funding longer term (or complementary) reform projects while putting pressure on the Kosovo government through the SAPD. At the same time EULEX and the EUSR can benefit from the political leverage that the European Commission has with the government of Kosovo. The fact that according to our interviewees, the three EU bodies have a common understanding of the objective of the overall EU support to Kosovo - development towards EU standards - facilitates a coordinated approach too. As a result, in general, the EU approach to the rule of law in Kosovo is often hailed as a good example of internal EU collaboration.

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<sup>65</sup> This is striking, since ensuring coherence of the EU's action towards the public is an explicit part of the EUSR's mandate.

<sup>66</sup> These meetings also involve non-EU actors involved in the rule of law, such as the ICO and the US.

### c) Challenges for a coherent EU approach

Still, at first glance EULEX and ECLO's activities might be expected to overlap or even duplicate each other. First, both ECLO and EULEX work on the Rule of Law with the same actors: police, customs and the judiciary. Second, EULEX and ECLO, at least in part, have similar working methods: the EC's twinning projects bear a lot of resemblance to EULEX's MMA activities. Both involve co-locating experts with Kosovo counter-parts. However, in spite of these similarities, the actual activities of ECLO and EULEX reportedly avoid duplication. According to our interviewees the EULEX Programme Office and ECLO have active discussions to ensure that ECLO's projects and EULEX's actions complement rather than overlap or leave gaps. A clear indication of this effort to coordinate can be found in EULEX's catalogue of actions, which per action states whether any complementary activities by ECLO (or another donor) exist.<sup>67</sup> In addition, informal and personal contacts reportedly are a key ingredient that ensures collaboration, coordination and sequencing of the EU's efforts. Whether these efforts also mean that overlap is avoided in practice was difficult to judge at the time of the research, as EULEX had only started to implement its programmatic approach fairly recently. The catalogue of actions was presented to the Joint Rule of Law Coordination Board<sup>68</sup> in September 2009, and most actions were not started until a few months after that. As such, at the time of the research there was not much evidence or experience of how twinning projects and MMA actions complemented (or duplicated) each other in practice.

In spite of these reported methods of ensuring coherence, certain obstacles stand in the way of ensuring more systematic complementarity between ECLO and EULEX assistance. One is the lack of flexibility in the Commission's priorities and consequently the activities it is willing to fund. When needs identified by EULEX do not fit within the stated programmes and priorities of ECLO, it was reported that they could not always be included in ECLO's programmes, even if they were deemed highly relevant and important for the development of the rule of law in Kosovo.<sup>69</sup> As such, the rigidity in the ECLO approach in some cases was seen as an obstacle to effective streamlining of work between ECLO and EULEX. This suggests that for systematic coordination and sequencing between ECLO and EULEX to function smoothly, some flexibility is required on the part of ECLO to allow attention to be given to issues that fall outside of its immediate priorities. Yet this is not easily achieved because much of the assistance and support given through ECLO, in particular under the IPA, as well as the priority areas for reform, have been decided upon through lengthy consultation processes with the Kosovar government, and cannot be easily adapted (although room for adaptation exists at mid-term reviews). Moreover, effective reform and capacity-building in the rule of law sector requires long term engagement and consistency in projects. Therefore ECLO's long-term and consistent approach is necessary. As such, there is a

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<sup>67</sup> See for an example: the EULEX Programmatic Action on Intelligence-led policing, which states that a complementary action is being taken in the form of the European Union Twinning Project on Implementation of intelligence led policing within the border police, as well as other Action Fiches in the EULEX Programmatic Action Catalogue at: <http://eulexkosovo.net/docs/tracking/EULEX%20MMA%20ACTIONS%2020102904.pdf>

<sup>68</sup> This is a body established to coordinate efforts in the rule of law sector between EULEX and the Kosovar government. For a further description, see the section 'Coordination between EU and non-EU actors' below.

<sup>69</sup> Similarly, in seeking input for the Progress Report, the format and topics for input are set in advance by the Commission, and there is little room to address issues that fall outside the scope of the areas specified in the Progress Report. This limits the opportunities for EULEX's input into the EU's dialogue with the Kosovar government.

tension between on the one hand the need for some flexibility on the part of ECLO in order to allow for complementarity between activities of ECLO and EULEX and the needs and obligations for long-term and stable engagement that ECLO faces on the other. As a result, streamlining the activities of EULEX and ECLO faces some practical challenges due to the characteristics of ECLO's working methods.

Another practical challenge pertains to the fact that ECLO's mandate focuses on preparing Kosovo for potential future EU accession by bringing it up to EU standards. EULEX supports this effort and agrees to this objective, but EULEX's personnel is not always aware of what those EU standards are, particularly as EULEX staff includes a small contingent of non-EU secondees. This hampers the harmonization of the efforts between EULEX and ECLO.

#### **d) Intra-EULEX coordination and cooperation**

To be effective, EULEX's integrated approach (of police, justice and customs) requires a great deal of coordination, both within the EULEX components and among them. EULEX has methods in place to ensure this coordination, yet in general this can be said to face two major challenges. First, formal coordination mechanisms between the different components are rather rigid and vertical: issues have to make their way up to the head of a component first, and, after discussion with other heads of components and the Head of Mission, decisions are then top-down disseminated to other components. This is a cumbersome process. Secondly, while high level cross-component meetings for coordination exist, horizontal coordination between components at the working level is contingent on personal relations and informal contacts. These types of informal coordination mechanisms have developed over time – as people work in the field longer they become better acquainted with their colleagues – and help in the coordination of the overall activities of the mission. Unfortunately, staff rotation disrupts these informal coordination mechanisms.

#### *The Justice Component*

More in particular, the focus on independence of the Justice Component leads to challenges of coordination and collaboration between this Component and the rest of the mission. The EULEX Mission operates in a politically-charged context to which it needs to respond and adapt as a holistic mission. This requires political guidance and coordination between each of the components. However, some in the mission felt that judges and prosecutors tend to be reluctant to coordinate or follow mission-wide guidance, given their tendency to closely guard their autonomy as magistrates. Moreover, the insistence on independence of the magistrates was seen by some interlocutors as hampering the mission's ability to be transparent, thereby limiting the level of accountability of EULEX towards the Kosovo public. This incongruity between independence of the magistrates in the Justice Component and accountability of the mission as a whole has become an apparent point of agitation for officials in other Components, some of whom feel that there is a lack of understanding amongst the people working in the Justice Component of what it means to be part of a mission.

The challenges stemming from the insistence on judicial independence of the magistrates in the Justice Component was seen as a potentially reoccurring issue in future missions. As the incorporation of a justice component in international missions is a relatively new development – and EULEX is the first CSDP mission that incorporates a justice component into a larger mission<sup>70</sup> – an effective *modus operandi* for a truly integrated approach that alleviates the fears of judicial interference still has to be found. In addition, it may require a cultural shift for magistrates, so as to understand how to operate within a wider mission while maintaining their integrity. Both of these aspects will require time to be resolved. Strategic attention should be paid to developing a more nuanced perspective on respecting judicial independence while maintaining accountability and integration of a justice component's magistrates within a larger mission.

#### *Coordination within the Components*

The coordination within each component was generally described as adequate and effective, although there are some challenges for ensuring a common MMA approach as a result of the many different nationalities – each with their own institutional cultures and professional working methods – of the mission's staff. This is particularly pronounced amongst the magistrates of the Justice Component. Again because of their insistence on independence, it can be challenging to harmonize different approaches and attitudes into one common approach, in spite of the fact that they all work under the applicable law in Kosovo<sup>71</sup> and within the mandate of EULEX. Although the Police and Customs Components also have people coming in from different backgrounds, the hierarchical ranking structure and *modus operandi* of the police, and the small size of the Customs Component as well as the less stringent focus on independence of customs professionals, makes the harmonisation of efforts less challenging in these Components.

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<sup>70</sup> EUJUST Themis in Georgia was a CSDP mission that focused on criminal justice reform as is EUJUST LEX in Iraq. However, these missions only focused on criminal justice, and were not integrated missions (i.e. they were singularly focused on individual components of the security system, and did not attempt a comprehensive approach).

<sup>71</sup> However, this in itself is problematic: the question is what the applicable law is – see below.



## 4. Coordination between the EU and other stakeholders

### a) Coordination with other donors and the Kosovo government

An overall effective reform of the rule of law sector depends on coordination and cooperation with other donors, the Kosovar government as well as civil society. Although the EU has the largest international presence involved in the rule of law in Kosovo, other important actors include the United States of America (USA), United Kingdom (UK) and Sweden as well as the United Nations Development Programme (UNDP), OSCE and KFOR, the latter particularly when it comes to the KSF. Unfortunately, coordination on activities in the security sector and the area of rule of law amongst all these donors and international actors, including the EU, leaves much to be desired. For example, when the KSF was established, there was no discussion between the Kosovo government, KFOR, the EU and the KP as to what the KSF's mandate should be. As a result, at the time of the field research in January 2010 some of the KSF's tasks – such as emergency response – overlapped with the KP's, which reportedly might undermine the right of existence of the KSF in the future. To address this issue, both the international community and Kosovo's authorities are undertaking efforts to more clearly delineate the tasks of each actor.<sup>72</sup>

A factor hampering attempts at overall coordination is the fact that the major donors do not always have the same ideas regarding the objectives of reform of the rule of law sector. Several interviewees mentioned the role of the USA in this regard, which is seen as often at odds with the EU's approach, objectives and views. Because the Kosovar government often still looks for guidance from the United States - which they regard as their most important and influential ally – this hampers a coherent overall donor approach to the rule of law in Kosovo.

Still, efforts to coordinate all the activities on the rule of law exist. For example the 'Joint Rule of Law Coordination Board' was established to coordinate between the Kosovar authorities and EULEX. It is co-chaired by the Deputy Prime Minister (Kuçi) and the Head of Mission of EULEX, and includes the heads of the different EULEX Components, as well

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<sup>72</sup> For example, the KSF and KFOR are included in the working group of the Joint Rule of Law Coordination Board (see below) dealing with this issue, and the Ministry of Internal Affairs is preparing a National Reaction Plan (expected to be approved in November 2010) that will clearly delineate the tasks of KSF and Police.

as the ministers of the different line ministries, such as the Ministry of Justice, the Ministry of Internal Affairs, and the Ministry of Economy and Finance. The EUSR and ECLO attend as observers, so as to ensure that they are informed of the state of affairs on the rule of law activities of EULEX as well. It meets regularly, approximately every six weeks. However, so far, the Joint Rule of Law Coordination Board has not been as effective as it could be. In part this can be explained by the fact that the meetings can be confrontational between the mission and the Kosovar government, and, as a few interviewees mentioned, because it is a challenge for the chairs, and in particular the Kosovar authorities, to maintain a consistent agenda. There have been efforts to improve its functioning, for example by setting up sectoral working groups on justice, police and customs, but at the time of writing the effectiveness of these efforts was still unproven.

Secondly, the Kosovar authorities set up an Agency for the Coordination of Development and European Integration (ACDEI) in October 2008, which upgraded into the Ministry of European Integration in 2010. This Ministry's task is to coordinate different donor efforts in all areas, including rule of law. They are currently preparing a regulatory framework for donor co-ordination, which sets out coordination structures at different levels from a High Level Forum, to Sector and sub-sector Working Groups. For the rule of law a Sector Working Group and three sub-sector working groups (judiciary; anti-corruption and organised crime; and visa, asylum, border management, customs and police) are in the process of being set-up. They were not functional yet in January 2010.<sup>73</sup>

Thus, on the part of the Kosovar authorities, there were only inchoate structures to coordinate donor efforts. Moreover, the Kosovar government seemed to lack not only capacity, but also sufficient interest to coordinate donor efforts. As in many post-conflict countries that receive assistance for their rule of law sector, Kosovo often accepts what is offered, irrespective of whether the offered assistance fits in with equipment and systems that are already in place, or with an overarching strategy.<sup>74</sup> At the same time, several other interviewees emphasized that the Kosovar authorities have a tendency to put requests for support for a particular project to several different donors at the same time. Besides raising the irritation of donors, this seems to be at odds with stated Kosovar intentions to coordinate donor support, and instead requires that donors coordinate more tightly with each other to avoid duplication of efforts.<sup>75</sup>

These attitudes towards working with donors also reveal a lack of vision and transparent strategy on rule of law the part of the Kosovar government. Several interviewees indicated that they felt there was a lack of ownership over some of the policies, strategic choices and drafting of laws. This clashes with the EU's mantra that Kosovo is "in the driver's seat", since the driver does not appear to know where he wants to go. Uncertainty and indecision are not atypical of emerging/post-conflict states, and one support strategy under such circumstances is to allow local structures time to adapt, while supporting efforts to develop

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<sup>73</sup> It was reported by one of our interviewees that the first meeting of the Rule of Law Working Group took place in March 2010.

<sup>74</sup> Other interviewees maintained that such a strategy is precisely what is lacking, particularly when it comes to the Kosovo Police. In spite of the existence of a Police Strategy, the Kosovar authorities were seen as still accepting any support offered by different donors, regardless of whether the support fits in with the Strategy – leading to a patchwork of different police systems and management styles.

<sup>75</sup> Donors have coordination meetings independent of the Kosovar authorities as well.

local strategies and visions. However, in Kosovo the EU faces additional challenges when it comes to supporting the authorities to develop their own visions and strategies. On the one hand there is a great amount of pressure to show results quickly, due to the scale of the EU's efforts in Kosovo and its vested interest in showing the effectiveness of the EU's external relations. On the other hand, the EU's neutrality on status and the resulting inability to develop such support on anything but the attainment of EU standards forms an obstacle to effectively supporting Kosovo's efforts to reform its rule of law sector and achieving quick results. In addition, the sometimes contradictory input of the US further complicates the hurdles for coherent reform (as well as coordinated support for this reform).

### **b) Cooperation with civil society**

Finally, civil society should play a key role in efforts to develop the rule of law, both as domestic watchdog of the rule of law institutions and as a link between state and local communities (as well as with the international community). Recognizing this, both EULEX and ECLO have involved civil society in developing their approaches to rule of law reform. Amongst other things, this has entailed meetings and dialogues to exchange ideas and allow civil society input on programmes and activities. For example, EULEX attempts to involve local civil society organisations through meetings to discuss the role of civil society in developing Kosovo's rule of law sector. The Programme Office has also held meetings to receive civil society input for programmatic MMA actions. Similarly, the EC and ECLO hold regular dialogue meetings with civil society – including as part of the SAPD – and support the empowerment of civil society with the European Instrument for Democracy and Human Rights (EIDHR).

In spite of all these efforts, some representatives of civil society organisations claimed that cooperation with civil society was not sufficient. With regard to dialogue meetings, it was argued that although they may have allowed for civil society to express their opinions, this did not always lead to actual participation or even input in programmes. Other remarks of our interviewees indicated that only certain Non-Governmental Organisations (NGOs) and civil society organisations were selected for cooperation and empowerment, and that these did not involve many smaller, older civil society organisations. The interviewed representatives of civil society indicated that in their view, the reason for this was that it was not seen to be in Europe's best interest to recognize the existence of all of local civil society, but to only engage with a specific, internationally-minded few. It was suggested that recognizing the potential of a local force for reform and government accountability somewhat undermines the role international actors can assume. In two cases where partnerships between EU actors and local NGOs did exist, the relationship was mediated by an international (Europe-based) NGO. This contributes to the perception of EU actors as reluctant to trust and engage with local actors. Moreover, other local NGOs view this kind of arrangement (albeit perhaps enviously) as the EU actors choosing preferred NGOs that they may easily control with funding, while at the same time being able to showcase engagement with civil society.

However, the reason that there are fewer relationships between ECLO and smaller local NGOs can also be found in another frustration of civil society, namely that the ECLO funding application process is overly complex and therefore virtually inaccessible to smaller local organisations.

## 5. Implementation of EU support to the rule of law in Kosovo

### a) Structural environment

The most frequently mentioned practical challenge that impedes effective EU support to reform processes in the rule of law sector was the status issue and the EU's division on it. The non-recognizing Member States tend to monitor any programme and activity by the EU bodies very closely, in order to prevent initiatives in the area of rule of law – an attribute of a sovereign state – that might be seen as de facto recognition of Kosovo. As a result, most programmes are of a very technical nature and there is a gap in addressing the (difficult) political questions that surround effective reform for security, justice and the rule of law. Most respondents candidly recognized that “everything” in Kosovo is political, but at the same time this admission puts many EU actors on a tightrope, carefully treading between effectively supporting Kosovo's rule of law bodies and maintaining staunch neutrality. Although some interviewees were optimistic about the possibility that some of the non-recognizers will eventually recognize Kosovo, it can be expected that this situation will remain the challenging context that the EU will have to operate within for the foreseeable future.

The political, social and economic circumstances in Kosovo were also often mentioned as putting practical limits on what can be achieved in the area of rule of law. The low level of economic development and opportunities, the on average very young population, the permeation of organised crime in many aspects of Kosovar life, the lack of a culture of good governance and rule of law, and the clientelism engrained in Kosovar society<sup>76</sup>, create a difficult environment for effective support to the rule of law. Because of the way crime and society are interwoven in Kosovo, local ownership is difficult to attain in a transparent and responsible way. This is another reason for many programmes to stick to a very technical approach. Again, this is a challenge that will remain a limiting factor for any efforts in the area of the rule of law, given that these socio-economic circumstances are unlikely to change in the near future.

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<sup>76</sup> See also: Pond, E. (2008). The EU's Test in Kosovo. *The Washington Quarterly*, Vol. 31, No. 4, p. 97-112

Beyond these structural (geo-)political and socio-economic challenges that are unlikely to change, many practical challenges pertaining to the EU's set-up hamper effective implementation of SSR and reform of the rule of law.<sup>77</sup> The rest of this section discusses these practical challenges as well as suggestions for improvement, where appropriate.

## **b) The legal environment and the Kosovar judicial institutions**

One of the more daunting stumbling blocks currently facing the EULEX is the lack of clarity on which laws are to be applied in Kosovo. The general picture of Kosovo's current legislative state appears to be a very complex historical layering of several jurisdictional eras, without clear ideas of which law is applicable or takes precedence in what case. Yugoslav, Serbian, UNMIK, and Kosovo laws are all referenced as needed or as status neutrality dictates, without consistency or clarity in practice on which laws are currently to be applied in Kosovo courts. This complicates the work of the Justice Component – especially those magistrates with a purely executive function – but also of the mission as a whole. For example: EULEX customs officers are not able to fulfil all the tasks required by their position, such as checking private vehicles, due to uncertainty about the jurisdiction under which EULEX Customs operates.<sup>78</sup>

For the Justice Component, the incomplete and, sometimes, incorrect translations of laws complicates the situation further. Parliamentary negotiations are mostly done in Albanian and (draft) laws are typically not translated into Serbian. This leads to inconsistencies between the two language versions of laws, impeding equal application of laws to both ethnic groups. On top of this comes the international community's need to have English translations and court interpreters, over which many expressed concerns regarding reliability. Such doubt was considered by some to be a rather ominous indictment of the low level of trust between the international community and its local partners, even after 10 years of their cooperation.

Finally, the judicial system in Kosovo to a large extent fails to deliver justice services.<sup>79</sup> It is overloaded by a large backlog of cases, which in part is the result of UNMIK's legacy<sup>80</sup>, but which can also be attributed to a lack of will and capacity of the Kosovar judicial institutions to address the backlog. In addition, the judicial system lacks sufficient numbers of qualified magistrates. The recent vetting procedure (financed by the IfS) reduced the number of Kosovar judges deemed fit to sit on the bench even more and because the vetting process created anxiety amongst Kosovar judges, productivity slowed down during the months their

<sup>77</sup> See: Derks & More (2009).

<sup>78</sup> The debate is between applying 1999 UNMIK Customs Code, which is UN/SC/Res1244 compliant but outdated as it is not in accordance with EU standards, or applying 2004 Kosovo Customs Code, which is more aligned with EU standards but establishes reporting to the Kosovo Government, incurring questions of status recognition.

<sup>79</sup> See for a detailed description: ICG (2010). *The Rule of Law in Independent Kosovo*. Available online: <http://www.crisisgroup.org/~media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.ashx>

<sup>80</sup> In late 2004, UNMIK advised the Kosovo Supreme Court not to address the 23,000 some cases of property damage that were filed after the crises in 1999 and 2003-'04, on the grounds it would overwhelm the courts. The moratorium was lifted by 2008, which required the Kosovar judicial authorities (responsible for civil cases) to address the backlog. Due to a lack of will and capable magistrates, there is little movement on these cases however. Since property rights is one of the areas where EULEX magistrates have an executive mandate, this situation hamstrings EULEX's ability to effectively implement its mandate.

professional status was pending, adding to the inadequacies in the judicial sector. All of this creates a difficult environment for EULEX judges to operate in, particularly for those with an executive role, which has to be carried out in conjunction with Kosovar magistrates. The time of uncertainty during the vetting process moreover created an uncomfortable dynamic between the local judges and their EULEX counterparts. EULEX refrained from engaging in the vetting because the perception that EULEX staff could strip a judge of his/her authority was not deemed conducive for building a collaborative MMA relationship with local counterparts. However, the quality of the local judges passing through the vetting process directly impacts on EULEX's ability to support the development of the justice sector – making EULEX a perceived stakeholder in the outcome of the process. The combination of all these factors created a situation in which the legal environment posed a challenge both for effective EULEX support to reform in the justice sector as well as for the carrying out of its executive mandate on justice issues.

### c) Staffing of EULEX

#### *Staff numbers*

Finding the appropriate staff for CSDP missions to support rule of law reform is difficult.<sup>81</sup> EULEX is no exception, and, as many other international (EU and non-EU) missions, it is chronically understaffed. Interviewees maintained that only about 80% of the positions are filled<sup>82</sup> and expected that this lack of staff would persist or even worsen.<sup>83</sup> Although initial response from the contributing states was high, the eagerness to second people dwindles as the mission carries on. As the first wave of secondments is leaving after their year-long service in the mission, it is proving increasingly hard to find the appropriate new staff to fill vacancies. Our interviewees attributed this to a general decline in interest to second as the novelty of the mission wears off, as well as to the increase of competing claims from other missions and financial constraints as a result of the global financial crisis. Not only is there a staff shortage, but in some cases, the difficulty in finding appropriate staff also leads to junior people assigned to monitor, mentor and advise senior Kosovar civil servants. Since they have little experience, and therefore often command little respect from their Kosovo counterparts, this hampers the effectiveness of EULEX as an MMA actor.

Adding further frustration to the shortage is the long and laborious recruitment process, which can take four to six months. When an appropriate candidate cannot be found, the process has to be re-started, which again leads to long delays. Even when a selected candidate withdraws, the selection procedures will not allow the second on the list to be appointed – instead the selection procedure reportedly must be run all over again. Thus, the recruitment process does not facilitate quick (re-) placements either. In addition, the scarcity of secondments and the protracted recruitment process leads to lapses between departing staff and their replacements. To prevent this, EULEX has requested seconding states to

<sup>81</sup> See: Derks & More (2009), p. 28

<sup>82</sup> According to EULEX's website, approximately 1633 international staff (out of 1950 planned), and 1100 local staff (out of 1250 planned) is employed by EULEX (see: <http://www.eulex-kosovo.eu/en/info/StaffInfo.php>). This would put the missing staff levels slightly lower than the estimations from our interviewees, at approximately 13% understaffing. However, these figures are not dated, so it is impossible to establish when this snapshot was taken.

<sup>83</sup> Admittedly, this understaffing for EULEX is mild, compared to many other EU missions.

extend the contracts of their secondees by a few months, in what are called “technical extensions”, in order to avoid this hiatus.

The lack of staff is especially dire for judges and prosecutors in the Justice Component, where the staff levels fall short by about 40%. This larger gap has several explanations. First, because the inclusion of the justice sector in a mission is a relatively new development (UNMIK, in fact, was the first international mission with such a component), there is very little culture amongst justice personnel, and in particular magistrates, of participating in international missions. For them, taking part in a mission is often seen as a distraction from their work and careers at home, and there are no rewards or credits for those who decide to temporarily work within an international mission. A linked issue is the general scarcity of justice components within CSDP missions. The unlikelihood of justice personnel being redeployed means that competencies gained in mission have a narrow scope of future career relevance. As such, there are few incentives for justice personnel to participate in a mission. According to our interviews, the additional fact that EULEX can only recruit active judges and prosecutors (as opposed to retired ones) restricts the recruitment pool as it excludes drawing from a potentially large and qualified pool of retirees. Moreover, active judges and prosecutors, even those who are interested in secondment, have pending cases on their hands that they cannot simply leave behind to go and work for an international mission.

#### *Staff characteristics*

Seconded staff differs greatly in terms of the level of pre-mission training and levels of knowledge. Although each secondee is supposed to receive generic pre-mission and mission specific training in preparation of deployment from their home state, not all contributing states honour this. The result is that staff arrives with greatly differing levels of knowledge of the concept of the rule of law, EULEX and the Kosovo context. Moreover, not all staff members have an equally well developed understanding of the EU and the EU standards<sup>84</sup>, which makes coordination with the Commission and the objective of supporting Kosovo to attain EU standards less easy. To ameliorate this situation, EULEX has established a Best Practices and Training Unit which provides basic training as well as more specialized courses in mission. It is the first such unit in a CSDP mission, and stands as a positive development. Furthermore, there have been initiatives to send secondees to join trainings hosted by other Member States when their own states are not able to provide comprehensive pre-deployment training. These solutions demonstrate well-placed efforts to increasingly harmonize EULEX’s work and approach of staff arriving within different components and from different Member States.

Moreover, as mentioned above, staff members come into EULEX with experience from many different justice, police and customs systems and cultures. This leads to differences in opinion as to what is ‘proper policing’, or how to ‘do’ customs, for example, and consequently different and sometimes conflicting types of advice being given to the Kosovar authorities. This is an issue that often plagues multinational missions, but it does draw attention to the fact that even within a tightly knit organisation such as the EU maintaining a common approach is challenging. Although EULEX is supposed to support Kosovo’s

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<sup>84</sup> As mentioned, this is particularly problematic for those secondees from the non-EU contributing states.

authorities to work towards ‘EU standards’, and this gives some common guidelines, these standards are very general, and can be attained in many different ways. For example, the relevant European standards for rule of law reform state that Kosovo needs to have ‘stable institutions guaranteeing democracy, the rule of law, human rights and respect for protection of minorities’. This however does not specify *how* this should be attained – even within the EU itself many countries have different systems that guarantee these issues. Thus, although the focus on the attainment of European standards facilitates the development of a (at least somewhat) coherent approach between the different EU bodies, it does not provide EULEX as a mission with a common police, customs and justice concept, which would facilitate the harmonization of the working methods within the mission.

In addition, within all components it is noticed that sometimes staff members lack loyalty towards the EU Mission. Within the UN and its missions, staff members feel they are part of the UN, even if they are seconded. Several interviewees argued that this type of ‘corporate culture’ is missing in the EU. A partial explanation is the fact that in CSDP missions, staff members continue to be paid by their seconding home state. Consequently, it has been noted that some staff members look towards their home states for guidance, and will not always accept the EULEX position on a matter if they feel that this is not consistent with the position their own country endorses. Thus, the mission remains an amalgam of people from different cultural and political backgrounds, making it difficult to develop a cohesive mission identity. In short, the mission lacks a clear corporate identity. Through general induction training for all arriving staff members, and by having the same performance evaluation reports for all staff categories, EULEX tries to enhance its identity as a mission– however, it remains to be seen whether these measures are sufficient to override incentives that tie staff to their sending states.

Finally, staff rotation is a challenge to the effective implementation of the mandate. MMA requires consistency and continuity, and the programmatic approach is an attempt to ensure this when staff changes. However, MMA also requires a certain level of trust between EULEX staff and their Kosovar counterparts, which takes time to build. The average one-year rotation schemes often interrupt this type of personal relationships, hampering effective implementation of the mandate.

#### **d) MMA in practice**

Despite it being the primary function of EULEX, implementation of the EULEX MMA mandate turns out to be challenging in practice. The most common obstacle is that secondees tend to be accustomed to taking action. Shifting this mentality toward a more passive MMA role requires a great deal of learned restraint and adapting to this role can reasonably take a few months to get accustomed to. Particularities of each component affect whether this transition is more or less smooth. For example, in the large Police Component, police secondees arrive and leave in large groups, which can lead to gaps in deployment and lapses in activities. To minimize the effects of these rotations, EULEX police in-mission training tends to be short and EULEX police often are quickly co-located with their counterparts in the field. However, this means that they get very little time to adjust to their

MMA role. This is different in the smaller justice and customs components, where tasks of individual new staff members can be more easily covered by a colleague for a period, while the new secondee gets time to understand their MMA role.

However, police, and to a similar degree customs officers, are conscious of the limits to their mandate, and tend to observe an MMA approach with little to no actual actions taken by EULEX personnel, except as part of their executive role. Within the Justice Component's MMA personnel however, a different interpretation of MMA is common. Those secondees tasked with an MMA role in this component take on more "active" roles in the collaboration with their counterparts. They are, in practice, able to – and, given the dire state of the Kosovo justice system, required to – maintain a certain level of functioning authority.<sup>85</sup> For example, while EULEX police may observe the actions of their local counterparts, in some instances offering advice, EULEX judges work with Kosovar judges in mixed panels adjudicating cases. In a sense, the adjustment that justice staff must make is less drastic than what customs and police secondees experience. But the elastic interpretation of the MMA mandate in the Justice Component leads to a blurring of the MMA role and executive powers. As a result, the activities of MMA and the executive mandate, which were carefully separated in the Joint Action, are not always as distinct in day-to-day practice.

However, even amongst staff within the different Components, there are discrepancies between the interpretation of the roles as mentors, monitors and advisors that individual staff members have. Depending amongst others on their level of experience (for example in people management), the working cultures they are accustomed to from their home states, as well as the working culture within their Component – some may take a somewhat 'teacher-pupil' approach to the relationship with their Kosovar counterparts, whereas others may use a more coaching style.

To assist people in the interpretation of their MMA role, in the first months of EULEX's operations the EULEX Programme Office has designed a training course on MMA for staff in the Police Strengthening Department engaged in delivering EULEX Programme activities. This two-day training course was delivered in close cooperation with the Best Practices and Training Unit from late 2008 onwards. In summer 2009 the course content was amended to focus primarily on implementation of MMA within the programmatic approach (i.e. on the Action Fiches). It is the intention of the Best Practices and Training unit to further amend this training, in order to instruct EULEX staff more on their MMA role in terms of cooperation with counterparts, reporting on dissent, and the more social and psychological aspects of MMA. At the time this research was conducted, the latter course was not yet up and running, so experiences cannot be reported on yet. However, it is an interesting development that has the potential to streamline and harmonize MMA activities.

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<sup>85</sup> i.e. apart from the justice personnel that has an executive role, discussed above.

### **e) The Role of the HoM**

The EULEX Heads of Mission have been retired generals with a KFOR background since the start-up of the mission in 2008.<sup>86</sup> Having a military professional leading a civilian mission has both advantages and drawbacks. Initially, having a general as HoM was very valuable, as it was imperative to have someone with a technically-minded approach ready and able to lead during the deployment phase. However, the evolution of the mission has meant a shift away from technical deployment, towards political management and civilian mission management; and it is within these spheres, some of our interviewees argued, that a military background may be less suitable. When it comes to contacts with the local authorities for example, it was maintained by some that the technical, military approach towards diplomatic affairs was not always appropriate to overcome the political challenges and obstacles that Rule of Law reform inevitably encounters.<sup>87</sup> When it comes to managing a civilian mission, the military, hierarchical style of command was seen as problematic for a mission consisting of civilians, accustomed to less commanding management styles. Though this was reportedly less of an issue for the Police Component – which is more used to a hierarchical command structure and style – it was seen as a challenge for the functioning of the Customs and Justice Components, as well as for some of the more managerial departments under the Chief of Staff. Reportedly, the military command style is a particularly sensitive issue for the Justice Component, since they allegedly feared receiving commands for reasons of judicial independence. Regardless of whether such fears are justified, many interviewees emphasized that putting a military general at the head of an integrated mission could be an obstacle to the cohesion of such a mission.

A second critique centred on the notion that a military HoM – particularly one with a KFOR background – would promote a military approach to security, focused on the promotion of stability and the reduction of violence, at the expense of potentially destabilizing, but necessary reforms. However, such an approach would not suffice to accomplish the mission's mandate of promoting the development of the rule of law in Kosovo. For example, EULEX's apparent reluctance to investigate and prosecute those involved in serious crime was interpreted by some interlocutors as internationals' (and in particular military) trepidation that such action might lead to instability.

### **f) Interaction between Headquarters and the field**

The Member States in Brussels-based EU bodies – the Political and Security Committee in particular – tend to follow any activities of the EU bodies in Kosovo with great attention, because the EU's engagement in Kosovo is regarded as a test of its capacity to have a foreign and security policy. Therefore, the pressure on the EU to make this a successful intervention is very high. In addition, the non-recognizing Member States watch the EU's activities even

<sup>86</sup> Specifically, he is a retired French general, Yves de Kermabon. As well as being a former Special Advisor to Javier Solana, De Kermabon was previously a KFOR commander (2004-2005). On 27 July 2010, it was announced that on 15 October 2010, he is to be succeeded by another French retired general, Mr Xavier Bout de Marnhac, who also previously served as KFOR commander (2007-2008).

<sup>87</sup> There was no universal agreement on this point, as some interviewees contended that rising to the level of General does indeed require great political skill.

more closely, and try to intervene when these activities are deemed too close to a *de facto* recognition of Kosovo. As a result, many of the actions undertaken by the EU's bodies in Kosovo are discussed by the 27 Member States in Brussels, who have to agree on any (change of) approach. This allows for little flexibility or room for quick response in the EU bodies' policies and activities towards Kosovo. In a rapidly changing political environment such as Kosovo and the Western Balkans, this 'supertanker' approach in relations between Brussels and the field may not always be the most effective.

In daily practice, EULEX interacts with Headquarters at Brussels at several levels. First, the HoM reports to the Political and Security Committee (PSC) once a month on the progress of the mission. Secondly, the Civilian Planning and Conduct Capability (CPCC)– the operational headquarters for all civilian CSDP missions, including EULEX – takes care of the day to day management of the mission. It deals with political and strategic issues, but not with the financial management of the mission, which is done by the Commission's DG RELEX. For ECLO, DG Enlargement is the port of call at the Brussels level although there is also direct and intensive cooperation with DG HOME (Home Affairs).<sup>88</sup>

Although the relationships between DG Enlargement (and HOME) and ECLO were reported to be rather smooth and effective, this was less so for the relationships of EULEX with both DG RELEX and CPCC. Firstly, the impractically slow and bureaucratic procurement procedure was often mentioned as a practical issue limiting EULEX's functional capacities. Because DG RELEX manages the finances, any procurement for EULEX needs to follow Commission tendering regulations, and consequently an item may take as long as nine months between deciding something is needed and seeing it delivered. Although it is understandable that fair and open competition for bids need to be ensured, the lengthy tendering procedures clash with the needs faced by an operational mission in a capricious environment having to respond quickly to situations as they develop on the ground. Exceptions to this sluggish process are only made for computers and four-wheel vehicles, which have framework agreements that greatly expedite the process. Instating more framework agreements for commonly needed items, such as materials to repair buildings was mentioned as one possible solution to this tension. Another was the creation of a virtual warehouse, where resources could be ordered online and deployed quickly. However, these solutions do not necessarily meet the requirements for transparent and fair tendering, and therefore other options need to be considered too. This could include finding ways to speed up procurement procedures that still meet the needs for transparency and fairness – for example by expanding thresholds for what can be procured outside of the rendering procedures, or by simplifying the tendering procedures so that only quotes are required, rather than entire tenders. Beyond revealing room for improvement, however, the issue of procurement is a practical allusion to the diverging needs of management in Brussels – in this case the Commission, with its thorough accounting procedures - and activities of missions in theatre.

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<sup>88</sup> The EUSR is a special case, as he does not have an agency in Brussels that supports him from a headquarters level. He reports directly to the Political and Security Committee (PSC). The EUSR only has office space in Brussels, which he and his staff can use when they are in Brussels.

Relations between the CPCC and EULEX were also reported to be tense at times. As mentioned above, the sensitivity surrounding the unresolved status of Kosovo leads to very close monitoring of any action or activity undertaken by EULEX by the Member States and by extension the CPCC. This leads the CPCC to almost micro-manage EULEX, with a desire to be able to instruct EULEX personnel in a detailed manner and on a day-to-day basis. For example, interviewees recalled an instance where EULEX riot police were deployed to contain a crisis situation, after which the CPCC called EULEX headquarters, complaining that such an activity should have been decided on in, or at least discussed with, Brussels. This is not conducive to efficiently executing a proper response to rapidly emerging situations.

In addition, it was sometimes felt that the CPCC (as well as other Brussels based actors) issued instructions and operated on the basis of a 'Brussels blueprint', which did not always coincide with the needs and realities on the ground. Moreover, it was reported in the interviews the fact that CPCC is dominated by police and military personnel, leaving a gap in the areas of customs and justice, also hampers effective collaboration. Moreover, the many instructions and requests the CPCC directed on a day-to-day basis at different levels of EULEX proved an impediment to effectively carrying out the mission's work. The latter situation has improved considerably since communication was streamlined by deciding that all daily communication from CPCC should be directed to the Chief of Staff, who then ensures that it reaches the appropriate EULEX staff member.

### **g) The underemphasized factor: Gender**

A final practical challenge noticed in the EU's approach to the reform of the rule of law sector in Kosovo was the lack of a focus on gender, in spite of a great necessity of reform in this area.<sup>89</sup> Local gender experts expressed great concern about the relatively low priority gender issues receive among rule of law bodies in Kosovo. For example, a focus on Gender Based Violence (GBV) has not been thoroughly incorporated in most security and rule of law bodies, domestic or international. UNDP was mentioned as the only international organisation that conducted research and issued a report on violence against women.

In addition, local gender experts expressed a great deal of frustration in general over how international actors have responded to local women's organisations. One particularly condemning example given was the distinction international leaders repeatedly made between "women's issues" and topics of security, socio-economic development, or political stability. Interviewees reported that when they were, after great effort, granted meetings with international representatives, they were told they could only discuss "women's issues", which, apparently, did not include matters of security, rule of law and development. The

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<sup>89</sup> See for a detailed discussion of the role of women and gender in statebuilding in Kosovo: Qosaj-Mustafa, A. (2010). *Strengthening Women's Citizenship in the Context of State-Building: Kosovo Security Sector and Decentralisation*. Available online: <http://www.fride.org/publication/793/strengthening-women's-citizenship-kosovo-security-sector-and-decentralisation>, accessed 6 September 2010.

inability or refusal to recognize that such matters *are* issues that women deal with was identified as a prominent obstacle to development and progress in Kosovo.<sup>90</sup>

That the EU<sup>91</sup>, and in particular EULEX, itself is not gender neutral was seen as an obstacle to addressing gender issues. Interviewees perceived EULEX's make-up as gender imbalanced since Member States do not typically second women. EULEX was also criticized for being completely male dominated at the decision-making levels. Despite the existence of a Gender and Human Rights Office within EULEX, its position within the organisation and the power and influence of its staff were considered very weak, and invisible at the field level. Interviewees strongly felt that the inclusion of gender issues was an aesthetic, 'box ticking' exercise, paying lip service to UN Security Council Resolution 1325<sup>92</sup> but failing to take significant action.

Where good cooperation between local stakeholders and the EU on gender had been accomplished, individual champions of the cause were credited, not the EU's programming or structure. It was noted that the EU Planning Team (EUPT)<sup>93</sup> started with good intentions, consulting local women's groups and NGOs, but follow-up was found lacking. Still, some indications of progress were acknowledged, notably the inclusion of a gender perspective within a security questionnaire contributing to the National Security Strategy. However, such singular successes are less impacting than would be systemic changes, such as strengthening the power of the Gender and Human Rights Office within EULEX, supporting gender balanced entrepreneurial programmes, or promoting legislation on GBV, discrimination or women's property rights.<sup>94</sup>

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<sup>90</sup> Another concern regarding gender and the security sector, not directly related to the EU's efforts, is that the representation of women within some Kosovar security forces is meagre at best. Within the KSF, for example, it was estimated that only 3% were women. This contrasted starkly with the strong representation of women within the KP, or even within the KLA, which interviewees took as an indication that the gender imbalance of the KSF was a result of discrimination or prejudiced recruitment, rather than a lack of interest among women.

<sup>91</sup> In the summer of 2010, the EUSR Office was also joined by a political advisor with a focus on Human Rights, including women's rights and gender issues.

<sup>92</sup> This refers to the resolution passed in 2000 urging for the full and active participation of women within peace processes, as well as attention and respect to be paid to the rights of women in conflict.

<sup>93</sup> This was the team that prepared the ground for EULEX – including its mandate – before its deployment in 2008.

<sup>94</sup> Montanaro (2009) p.12

## **Conclusion: the room for improvement**

Kosovo makes an interesting case to study the effectiveness of the EU's overall set-up for supporting reform of the rule of law, given the grand and comprehensive commitment of human and financial resources that the EU has made to it. Kosovo hosts EULEX, the largest CSDP mission to date with an overall planned capacity of 3200 staff, with a monitoring, mentoring and advising role and/or an executive mandate. EULEX is also the EU's first integrated mission, covering the police, customs and the justice sector.<sup>95</sup> An EU Special Representative has been appointed to manage the EU's political relations with Kosovo, while Kosovo also receives assistance from the European Commission's DG Enlargement through the IPA and the Stability Fund. What this case-study demonstrates is that there are still many challenges remaining for the EU as a whole to effectively support the development of security and rule of law bodies in Kosovo. At the same time, in Kosovo the EU is finding some innovative ways to resolve some of the internal challenges for effective support to rule of law reform that it faces, which could serve as wider lessons-learned. This conclusion summarizes the challenges and lessons-learned, and gives some opportunities for further improvement.

For the case of Kosovo, the main challenge for effective EU support to the rule of law is the issue of the unresolved (international) status of Kosovo, which creates a thorny political environment – both in the region as well as within the EU – that leaves the EU's actors in the field little room to flexibly respond to changing circumstances on the ground. Additional environmental factors impeding effective development of Kosovo's rule of law bodies include the low level of economic and social development, as well as high levels of corruption and organised crime, and its isolated position in the region. However, although these factors may make effective support to the rule of law difficult, they cannot be seen as factors that can be improved upon in the short term and thus should be accepted as the constraints within which the EU operates. The remainder of this section therefore takes these factors as a given, and looks at the challenges and opportunities stemming from the EU's set-up in Kosovo.

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<sup>95</sup> N.B. this study is not an evaluation of EULEX – rather it is an investigation and analysis of the overall EU effort.

### **Coherence of efforts of EU actors**

Effective support to the reform of the rule of law requires a coherent approach of all EU actors. This includes coordination and cooperation within and between the different components of EULEX, as well as between the different EU actors – ECLO, EUSR and EULEX.

As regards the **integrated approach of EULEX**, this is hampered by the focus on judicial independence of the Justice Component. Finding ways to better integrate the Justice Component would enhance the comprehensive approach of the mission. Although this might improve as experience of justice staff working in an integrated mission increases over time, the findings of this case-study indicate that EULEX – as well as perhaps other missions with a justice component - might benefit from:

- training of justice staff, both pre-mission and within mission, with a focus on the role and place of political guidance and justice – including the meaning of independence - within a larger mission.
- Earlier recognition of and stronger initial attention to this issue by the management and planning teams of future missions could work to mitigate tensions felt by justice personnel.

Intra-EULEX coordination and collaboration – between the components – is a hierarchical and cumbersome process. Working level contacts between the components are rare, and dependent on informal and personal contacts, and these suffer from staff changes.

- Establishing more formal points of contact between the different components at the working level, where relevant, might be a way to improve the integrated approach of the mission as a whole.

With regards to **the coherence of the overall EU approach**, the mandates of each of the EU bodies are complementary and show little overlap. In practice, in particular ECLO and EULEX have found practical ways of coordinating, through some formal mechanisms (ECLO attends the Joint Rule of Law Coordination Board meetings; EULEX – as well as the EUSR – is asked to provide input for the EC’s Progress Reports etc.) but mostly through informal contacts at the working level. Although in Kosovo this set-up for coordination works rather well, due to the large informal element depending on personal contacts, it is vulnerable to staff changes. Thus, ensuring more formal coordination mechanisms and mechanisms to ensure proper hand-over in the case of staff changes are clear opportunities to increase the overall effectiveness of the EU’s approach.

Additionally, **effective collaboration and sequencing** of efforts is hampered by the fact that ECLO is fairly inflexible in its programming approach, thereby limiting the opportunities for sequencing and complementarity, since ECLO cannot always (immediately) follow-up when needs are noticed by EULEX in the field. Thus, coordination and cooperation could be further enhanced by allowing for more flexibility on the part of Commission programming, the SAPD and the Progress Reports, while at the same time maintaining the necessary continuity of ECLO’s programming. Practically, overall EU coherence might be improved upon by:

- creating a flexible component in the IPA or improving the use of the IfS, both of which could be used to address urgent needs (signalled by EULEX) or to implement necessary complementary activities.

## Practical Challenges

Practical challenges to effective implementation of the support to the reform of the rule of law include personnel issues within EULEX, both in terms of quantity and characteristics of staff. In terms of **quantity of staff**, the mission as a whole is understaffed by about 20%, while the Justice Component falls short by 40% - as a result from missing incentives for justice personnel to partake in a mission. In addition, staff rotation often leads to gaps between staff departure and arrival. Although EULEX has found a way to tackle the latter issue by asking Member States to ‘technically extend’ contracts of existing secondees by a few months, there was a feeling that overall staff shortages might increase as a result of waning interest in the mission and the financial crisis. Moreover, it was felt that it was increasingly difficult to find the appropriate staff – in terms of experience and seniority – required to effectively implement the MMA mandate. Thus, this case-study indicates that to maintain and improve the capacity of EULEX, Member States and the other contributing states need to:

- sustain (and even increase) their efforts to second sufficient numbers of appropriate personnel;
- increase staff numbers in the Justice Component by offering stronger incentives, such as potential career advancement and professional development, encouraging judicial personnel to value participation in international missions; and
- open up recruitment to retired magistrates to significantly widen the pool of qualified and available candidates to serve in judicial components of international missions.

In general, however, it would be advisable for the EU - and in particular the Member States – to base choices as to what missions, and what type of missions, to engage in on available capacity. In other words, it is important for the EU Member States to make an inventory of the capacity and resources they have for missions<sup>96</sup>, and to include this in the EU Council decision-making process on establishing future CSDP missions.

The **staff characteristics and quality** varied greatly, notably in terms of knowledge and understanding of the EU, the mission and the Kosovar context. This was in part ascribed to a great difference between the **pre-mission training** that secondees received. Efforts are underway to increase the level of pre-mission training by inviting staff members from states that do not have the capacity or resources to organise trainings themselves to participate in training offered by other seconding States. Here too, greater adherence to the commitment to train secondees in the pre-deployment phase would help harmonize the efforts of EULEX in the field.

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<sup>96</sup> Incidentally, this inventory should involve the relevant line ministries that have to deliver the manpower for civilian missions – i.e. the ministries dealing with police, customs and justice. Currently, it is the Foreign Affairs Council, made up of the Ministers of Foreign Affairs, which takes the decisions on CSDP Missions. They decide on types and size of civilian missions, but if they do so, they need to have a clear picture of what the ministries that have to provide the manpower can deliver.

Thus based on this research, it seems that:

- a speedy implementation of joint training efforts by seconding states;
- and a greater commitment by seconding states to ensure pre-deployment training would allow for a more effective EU approach to supporting the rule of law in Kosovo.

Secondly, the fact that staff come from **different national systems** with different working methods makes it difficult to harmonize EULEX's MMA approach towards Kosovar counterparts. This creates the risk of sending inconsistent messages. Moreover, there is a need to assist staff in understanding their MMA role, given that staff members come from action oriented backgrounds, and often need to adjust to their more passive role as a monitor, mentor and advisor.

- The development of a training course on MMA by the Programme Office and the subsequent amendment of this course by the Training and Best Practices Unit are promising steps forward.

Additionally, it might be worth exploring to what extent lessons from these courses can be used and adapted for pre-deployment or in-mission training in other CSDP missions with similar mandates.

A final issue of staff characteristics concerns the lack of a **corporate identity** or staff loyalty towards EULEX and the EU. The continuing salary relations between contributing states and their secondees give little incentive for staff members to develop loyalty towards the mission. This hampers the creation of a cohesive mission. Although a solution to this issue ultimately requires the development of an EU identity – something that will need a lot of time to grow and a great deal of effort to promote – it seems that in the short term, it might be beneficial to:

- arrange staff remuneration through the EU rather than directly via contributing states.

It might be worth exploring the applicability of this finding in the wider context of CSDP, rather than the narrow context of Kosovo and EULEX only.

The **role of the Head of Mission** was also seen as important for the effectiveness of EULEX. The initial deployment phase of EULEX benefited from the military approach taken, but it was argued by some that, at this stage, the Head of Mission has a more political role to play. Moreover, the focus on security and stability that a military general tends to take was, in some cases, seen to be at odds with effective rule of law reform. Finally, the military approach to management was not necessarily considered the best way to ensure coherence within the mission. Thus, it was seen as important to ensure a proper balance between military and diplomatic efforts in the mission's management.

Finally, the **relations between the headquarters level and the field** do not always allow for effective support for reform of the rule of law, although this was more of an issue for EULEX-Brussels relations, than for ECLO-Brussels relations. Firstly, **the Commission managing the EULEX budget** creates delays for EULEX's work. Procurement procedures are slow, which is not conducive to implementing quick responses to situations developing

on the ground. To allow for more effective procurement and hence more timely response to issues on the ground, it might be useful to:

- see whether the number of framework agreements for procurement, such as those in place for computers and vehicles, could be increased or to set up a virtual warehouse from which items can be quickly ordered and deployed, although this needs to be carefully balanced with the need to ensure transparent and fair competition;
- look into developing speedier procurement procedures (for example by limiting the number of steps for tendering and procurement for missions), so that free, fair and open competition can be guaranteed, while the needs of missions on the ground can be met.

**EULEX and the CPCC** also have a tense relationship. The CPCC closely watches EULEX's every move due to the dispute over Kosovo's status. As a result, CPCC was perceived as micro-managing the mission from Brussels. Streamlining correspondence from CPCC through the EULEX Chief of Staff allowed for more efficient communication, but effective working relationships are still developing.

The EU's investments to support reform of the rule of law in Kosovo since 2008 have been large. The research carried out in Pristina in January 2010 found that overall, EULEX, ECLO and the EUSR have demonstrated a great willingness to find ways to carry out an EU-wide intervention as effectively as possible. However, it has also shown that the EU still faces many challenges in its efforts to support the development of Kosovo's rule of law bodies. By necessity, these findings are limited to the case of Kosovo. Although it is suggested that some of the avenues for improvement mentioned above may be applicable as lessons-learned for other cases where the EU is engaged in supporting efforts to reform of the rule of law or security sector, the actual wider validity of these findings needs to be corroborated with investigations into other cases. Nevertheless, the case of Kosovo does provide interesting insights and ideas for how the EU's engagement on supporting reform of the rule of law sector in partner countries could be improved.



## **Annex 1: EULEX in the Kosovo Constitution**

The Kosovar constitution is heavily based on the Ahtisaari Plan – in fact parts of it have been literally incorporated. EULEX is included in article 146.1 in Chapter IX ‘Transitional Institutions’ of the constitution, which states that: “The International Civilian Representative and other international organisations and actors mandated under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 have the mandate and powers set forth under the said Comprehensive Proposal, including the legal capacity and privileges and immunities set forth therein.”

The Comprehensive Proposal (Ahtisaari Plan) describes the roles and duties of the ESDP mission as follows:

Under the direction of the EUSR, the ESDP Mission shall have the following powers in the field of the rule of law, including, in particular, in the judiciary, police, border control, customs and correctional services; with modalities to be determined by the Council of the European Union in accordance with this Settlement:

- a) Authority to ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes, and other serious crimes are properly investigated according to the law, including, where appropriate, by international investigators acting with Kosovo authorities or independently;
- b) Authority to ensure that cases described in Article 2.3a of this Annex are properly prosecuted including, where appropriate, by international prosecutors acting jointly with Kosovo prosecutors or independent. Case selection for international prosecutors shall be based upon objective criteria and procedural safeguards, as determined by the Head of ESDP Mission. International prosecutors shall serve in accordance with Kosovo law;
- c) Authority to ensure that cases described in Article 2.3a of this Annex and property related civil cases are properly adjudicated, including, where appropriate, by international judges sitting independently or on panels with Kosovo judges in the court which has jurisdiction over the case. Case selection for adjudication involving international judges shall be based upon objective criteria and procedural safeguards, as determined by the Head of the ESDP Mission. International judges shall enjoy full independence in the discharge of their judicial duties and shall serve within the Kosovo judicial system in accordance with the law;
- d) Responsibility to ensure that decisions cases described in Article 2.3a of this Annex are properly enforced in accordance with the law by the competent Kosovo authorities;

- e) Authority to assume other responsibilities independently or with the competent Kosovo authorities to ensure the maintenance and promotion of the rule of law, public order and security;
- f) In consultation with the ICR, authority to reverse or annul operational decisions taken by the competent Kosovo authorities, as necessary, to ensure the maintenance and promotion of the rule of law, public order and security;
- g) Authority to monitor, mentor and advise on all areas related to the rule of law. The Kosovo authorities shall facilitate such efforts and grant immediate and complete access to any site, person, activity, proceeding, document, or other item or event in Kosovo;
- h) Authority to ensure efficient implementation of this Settlement through the execution of tasks accorded to the ESDP Mission in other parts of this Settlement;
- i) Authority to appoint ESDP mission personnel to perform the functions accorded to the ESDP Mission.

## Annex 2: Organigrammes of EULEX

(Source: <http://www.eulex-kosovo.eu/docs/info/Organigramme.pdf>)

### Overall mission:







