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**THE EU INITIATIVES FOR BORDER MANAGEMENT
IN THE EASTERN NEIGHBOURHOOD OF THE EU**

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Introduction

Current approaches of European Union in the area border management initiatives in the close abroad are conceptually based upon Commission's policy paper "Wider Europe - Neighbourhood: A New Framework for Relations with EU Eastern and Southern Neighbours" published on March 11, 2003 and related documents. This paper, states that the EU's aim is to work in partnership to develop a zone of prosperity and a friendly neighbourhood – a 'ring of friends' – with whom the EU enjoys close, peaceful and cooperative relations. Ultimately, the EU is offering to extend to its neighbours the 'four freedoms' of its internal market (in the movement of goods, people, capital and services). These goals clearly cannot be achieved soon, in order to do it European Neighbourhood Policy (ENP) Action plans were developed with neighbouring countries in order to shape preparatory work on legislative approximation and institutional adjustment.

An important component for the European Neighbourhood Policy is border management and sub regional cooperation. The Commission's view on these issues was formulated in a paper, published in July 2003, called 'The New Neighbourhood Instrument'. This defines the financial mechanisms that will help to set up enhanced cooperation along the border of the enlarged EU. In fact, the ENP programmes are to be inspired by the experience of cross-border cooperation among border regions within the EU, as well as among the border regions of the current EU Member States and future members. The focus is concentrated on four areas of cooperation: *promoting sustainable economic and social development; addressing common challenges, such as the environment, health, the fight against organised crime, ensuring efficient and secure borders and promoting local, 'people-to-people' actions*¹. Together, the political, economic and regional cooperation objectives pursued by the EU are meant to counter the reasoning that contrasts the countries on the 'inside' with those on the 'outside'. The idea is to strengthen relations with old and new neighbours in the east and south, and to make sure that EU enlargement benefits not only the EU, but all the Union's friends and neighbours. As *Vincent Piket* expects, proximity policy will be flexible in its implementation, adapting to the different level and character of the EU's relations with each of its neighbours².

¹ Vincent Piket EU Enlargement and Neighbourhood Policy .- Russian regional Perspectives journal. –Volume 1, Issue 3.

² Ibid

Borders have to operate efficiently at the same time not being an obstacle for ordinary people to cross and communicate. They should be friendly, but transparent and secure as well. This is important for combating international cross-border problems, such as illegal migration and trafficking in human beings, and organised crime in general. These common challenges have become increasingly important in international cooperation, and in the EU's relations with its neighbours in the east. Border management is becoming increasingly important as the EU's borders expand.

New Eastern neighbours of the EU have their specific border problems. Among them are incomplete legal framework, unfinished delimitation and demarcation processes, lack of efficient infrastructure, and existence of so-called "frozen conflicts". The EU has provided technical assistance to upgrade and modernise border crossings, and is committed to continuing to furnish such assistance.

Since ENP emerged, the EU increasingly pays an attention to political component of border related issues, not only technical one. Due to EU's growing interest to "frozen conflicts" agenda, and involvement in Transnistria solution process some specific policies and initiatives were proposed by the EU especially for Ukraine and Moldova. The EU Border Assistance Mission is the most important one.

In the frames of this analysis author is going to concentrate on some newly emerged components of the EU policy dealing with sub-regional cooperation in the sphere of border management.

Author's primarily interests here are following: The EU role in Transnistrian conflict solution process, and the EU Border Assistance Mission to Ukraine and Moldova (EUBAM), Moldova-Ukraine new customs regime (established due to the EU support), and its role in fighting against smuggling and trafficking at the border, especially on its Transnistrian segment.

Söderköping Process

European Union has an experience of policies and practices in the sphere of multilateral efforts in border management and cross-border co-operation. One of them, known as 'Söderköping process' was launched in early 2001 to address the cross-border co-operation issues arising with the EU enlargement eastwards and to promote dialogue on asylum and irregular migration issues among the countries situated along the EU eastern border, a pro-active initiative. The process encompasses Belarus, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovakia, and Ukraine, and is supported by the European Commission, the Swedish Migration Board, the United Nations High Commissioner for Refugees, and the International Organization for Migration.

The Cross-Border Co-operation/Söderköping Process (CBCP) Secretariat was established in May 2003 by the European Commission project to act as a service and co-ordination centre on behalf of countries and organisations participating in the Söderköping process³.

Since 2001, the Söderköping process has grown to include now ten countries situated along the enlarged EU border: Belarus, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovakia, and Ukraine. The process is supported by the EC, IOM, the SMB and UNHCR.

³ <http://soderkoping.org.ua/>

EU role in Transnistrian conflict solution process: border aspects

Transnistrian conflict is a challenge to security of borders as the nature of the conflict itself is strongly linked to the major border security threats, as defined by the EU Commission and other international institutions namely: *smuggling, trafficking, including humans, weapons and drugs, organised crime, illegal migration, corruption at borders*. According to the EUBAM Initial Assessment Report, in particular, much of the smuggling across Moldova-Ukraine border is undertaken by organised criminal groups using a sophisticated modus operandi. These groups make use of the territory of Transnistria to smuggle goods back out to Ukraine and also into the Moldovan domestic market. It appears that the Transnistrian authorities are either unwilling or unable to take effective action to counter

Transnistria remains an important instrument of international black and grey markets, false export-import operations in the Eastern Europe. For example, according to General Ferenc Banfi, Head of EUBAM, in the six months from October 2005 to March 2006, there were almost 40 thousand tonnes of chicken meat imported into “Transnistrian Moldovan Republic”. This is the equivalent of 67 kilogrammes per person; the average consumption in Germany is almost 5.6 kilogrammes per person. It is likely that meat imported into Transnistria on the understanding that Transnistria is the final destination point, is being smuggled back out again to Ukraine or to a third destination. While the so-called Transnistrian authorities have not been able to discover any illegal activities, the Ukrainian border guards and other law enforcement agencies have found nine cases of smuggling involving 68 tonnes of chicken meat.⁴

The recent enlargement of NATO and the European Union changed the geopolitical map of Europe and made the Transnistrian conflict, with its actual and potential security threats, closer to the borders of the member states. This resulted in increased interest in Transnistrian issues on the part of these and other major international institutions, including the EU.

At the regional level, the situation has changed in favour of establishing a more homogenous political space, comprised of countries sharing common European values, and moving – although with quite a different pace – in a common direction, namely, towards joining the EU and NATO.

Changes mentioned above, determined the political will of the EU elites to re-evaluate assessments and commitments in view of the risks and security threats that the ‘frozen’ conflict in Transnistria represents for the EU member states and the region as a whole. These changes gained impetus in 2004 – 2005 after the last round of elections in Ukraine, Romania and Moldova. All of them demonstrated that the people strive for more freedom and democracy, thus confirming their European choice. One of the impacts of these events has been the essential improvement of bilateral and trilateral relations between Ukraine, the Republic of Moldova, and Romania. Although not all of the previously accumulated tensions are already diffused, and a number of yet unsolved questions remain, an obvious improvement in the regional atmosphere is evident.

⁴ Statement by the Head of the EU Border Assistance Mission to Moldova and Ukraine, Brigadier-General Ferenc Banfi at the Joint briefing on the situation at the Ukrainian-Moldovan Border with General-Colonel P. Shysholin, First Deputy Head of the State Border Service <http://soderkopong.org.ua/site.php/page9216.html>

Further and deeper involvement of the EU in the processes aimed at a peaceful and sustainable solution to the Transnistrian problem would be beneficial for the eventual result. The first encouraging steps already taken include agreement by the EU and US to participate in the negotiations (although only in the status of observers), and the Border Assistance Mission established by the EU, which started its operations on 1 December 2006.

EU Border Assistance Mission to Moldova and Ukraine

EU Border Assistance Mission to Moldova and Ukraine (EUBAM) is an example of new kind of the EU policy aimed to share positive experience of old and new member states in the area of border and customs control with Ukraine and Moldova with special stress on contribution to Transnistria solution joint efforts. EUBAM was established as a reaction to the joint letter of the presidents of Moldova and Ukraine dating from 2 June 2005 calling for additional EU support in overall capacity building for border management, including customs, on the whole Moldova-Ukraine border. On 7 October 2005, a Memorandum of Understanding on the Border Assistance Mission was signed⁵. The official opening ceremony of the EU Border Assistance Mission to Moldova and Ukraine took place on 1 December 2005.

According to the Memorandum of Understanding, Mission is an advisory, technical body. It has no executive powers. Its aims are:

- to assist Moldova and Ukraine to harmonise their border management standards and procedures with those prevalent in EU member states;
- to assist in enhancing the professional capacities of the Moldovan and Ukrainian customs official and border guards at operational level;
- to improve risk analysis capacities;
- to improve co-operation and complementarity between the border guard and customs services between each other and with other law enforcement agencies.

The Mission is likely to last around two years. The Mission has its headquarters in Odessa, and currently has five field offices. It currently includes 70 experts seconded from a number of EU Member States: Belgium, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, the United Kingdom. The Mission provides on-the-job training and advice to Moldovan and Ukrainian officials, reinforcing their capacity to carry out effective border and customs controls and border surveillance. Through its work, the Mission will contribute to building confidence and strengthening cross border co-operation. Border co-operation and efforts to seek a solution to the conflict in Transnistria featured in the ENP Action Plans agreed with both Moldova and Ukraine last year. Under the EU's Neighbourhood Policy, the EU is reaching out to its neighbours in order to promote prosperity, common values and security as well as to help break down trade barriers.

The EUBAM Advisory Board includes high-level representatives of Moldovan and Ukrainian customs and border guards authorities, the European Commission, the UNDP (as implementing partner), the EU Special Representative for Moldova, the EU Presidency, as well as the Organisation for Security and Co-operation in Europe

⁵ http://www.eubam.org/files/0-99/73/memorandum_of_understanding_en.pdf

(OSCE). The Foreign Ministers of both states also have the right to attend the Advisory Board Meetings. The EUBAM acts as Secretariat to the board.

At the time more than 40 recommendations to Ukraine and Moldova services were made in the Initial Assessment Report and other documents available at EUBAM web site. Among them are following:

Structural Issues: a major effort is required in all services to actively promote information exchange. IT is a key element, but equally important is an institutional willingness to exchange information. This is the only way to stay one step ahead of organised criminals who adopt increasingly sophisticated methods. Good information exchange cuts across almost every aspect of a modern system of border management.

Building up a modern **Risk Analysis System** for deploying resources effectively in order to meet threat of illegal activities. This is a major area of focus in the Assessment Report and is one of the objectives set out in the Memorandum of Understanding signed between Moldova, Ukraine and the EU;

All the services need to have **investigatory powers** (currently these are only enjoyed by the Moldovan Customs Service). This will preserve information within the services so that it can be used for improving risk analysis, will create more interest and incentive in making detections. Improving risk analysis should improve targeting, result in more detections and thereby creates a virtuous circle;

Infrastructure: The most of border crossing points require infrastructural work to bring up them up to standard. One of the key needs is IT and communications equipment, but some of the requirements are more basic, such as a proper lighting. This is to ensure proper, effective border control in a safe environment for border professionals and customers;

Working practices: even within the available resources in terms of manpower and equipment, border control is not as good as it could be. While there are some exceptions, for the most part the controls carried out do not meet EU standards;

Training: there are some training gaps which need to be addressed. In particular, EUBAM sees a need for more expertise in the identification of false documentation (especially documents purportedly from EU states) and linguistic skills.

Illegal Activities on the border. In the Initial Assessment Report, EUBAM says that the issue of illegal border crossings should be urgently addressed and supervision should be stepped up. Mission welcomed the measures taken by the Ukrainian authorities to increase control of the green border by deployment of more staff and the erection of physical obstacles. EUBAM further recommends the use of trained mobile teams used to target illegal crossings⁶;

Based on EUBAM's observations, it is clear that improved co-ordination and co-operation needed in order to meet present challenges, there must be the best possible co-operation and co-ordination between the border guards, customs officers and other national agencies involved with border issues. This also applies to the bilateral and international level.

EUBAM is a first EU mission of this kind. It is too early to assess its impact, however at the time being it is a real element of regional political process which substantially contributes to the 'securitisation' of the region by dealing with the problems going beyond narrow border agenda. This EU initiative may be efficient only if regional players like Ukraine and Moldova continue to follow consistent political will to search

⁶ EUBAM website <http://www.eubam.org/>

for the political solution on the basis of mutually commitment oriented approach on the basis of European values and principles.

One of good examples of such a policy, introduced recently with the support of the EU is new Ukraine-Moldova new customs regime.

The EU and Ukraine-Moldova new customs regime

By Joint Declaration of December 30, 2005, premier ministers of Ukraine, Jury Yekhanurov, and the Republic of Moldova, Vasile Tarlev, committed themselves to introduce a new customs regime on the basis of practical recognition of the integrity of Moldova's customs territory. According to new regulation all Transnistrian economic agent are obliged to receive a registration in Chisinau in order to conduct foreign trade via Ukraine-Moldova border.

Similar regime existed before: during period May 2003 – August 2004, then was cancelled after Moldova suspended a process of issuing licenses due to Transnistrian attempt to close Chisinau governed schools on the left bank of Dnister river. Ukraine then gave permission to Transnistrian enterprises to trade without Moldovan customs stamps.

After the change of regime in Ukraine in late 2004 Moldovan government resumed efforts to return Ukraine back to the track of 'normal' customs regulation. On May 25, 2005 premier minister Yulia Tymoshenko agreed to implement new customs regime, however president Yushchenko suspended it because of the strong pressure of business people involved in Transnistria affairs.

Joint Declaration of 30th of December became a new step ahead. EU's support for new customs regime was evident for Ukrainian diplomats, involved in the negotiations with Brussels on different levels. Implementation of the new regime was initially scheduled for January 18. However, because of lack of preparatory work of Moldovan side and due to strong pressure from Transnistrian lobbyists in Kyiv on the eve of implementation Ukrainian government postponed it without setting a new date. This decision provoked strong criticism from the EU. In the early February Javier Solana at the meeting in Brussels with Ukrainian foreign minister Boris Tarasyuk expressed serious concerns about Ukraine's reluctance on custom regime issue.

Additional consultation allowed to solve the most of technical problems and finally new customs regime was implemented on March 3. Transnistrian authorities, fully supported by Russia, immediately blamed Ukraine in making a "blockade" in order to prevent Transnistrian business from any kind of legal foreign trade possibilities and by that set an economic pressure to Tiraspol to get political concessions. Transnistrian authorities organized physical blockade of the border, not allowing all cargos and even local trains to cross the border.

European Union, on its part, fully supported new customs regime. In the official declaration of the presidency it was said: "The EU fully supports the implementation of the Joint Declaration on Customs Issues of the Ukrainian and Moldovan Prime Ministers of 30 December 2005. The EU attaches great importance to transparent and secure borders. The implementation of the Joint Declaration reinstalls a transparent and legitimate customs regime on the Moldovan-Ukrainian state border."⁷

⁷ Declaration by the Presidency on behalf of the European Union on the implementation of the Joint declaration on Customs issues of the Ukrainian and Moldovan Prime Ministers http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/cfsp/88802.pdf

Several days before Javier Solana personally expressed his satisfaction "I welcome that the Joint Declaration of the Ukrainian and Moldovan Prime Ministers of 30 December 2005 is now being implemented, whereby Ukraine only recognizes Moldovan customs stamps and Moldova facilitates the registration of Transnistrian enterprises in Chisinau. I call on the economic agents of the Transnistrian region of Moldova to register with the relevant authorities in Chisinau in order to promote the unimpeded flow of goods across the border. I also call on the self-proclaimed Transnistrian authorities not to block this registration"⁸.

EUBAM has become the most evident beneficiary, as previous uncertainty with customs rules really prevented the Mission from efficient work: it was not possible to identify clearly what is smuggling, what is not. According to EUBAM official, "the new customs regime in place since March has created a step-change in the effectiveness of the border control system. There is more transparency about import and exports flows to and from the so-called Transnistria".

European Union also expressed on 14 March 2006 a strong message in response for Tiraspol's attempts, supported by Russia, to establish self-blockade and present new customs regime as a mean of making "humanitarian catastrophe" in the region. "We call on the self-proclaimed Transnistrian authorities not to block this registration. We condemn any efforts by the self-proclaimed Transnistrian authorities to impede the free flow of international trade, which harms the interests of Transnistrian economic agents, which are thus deprived of their export possibilities. The EU expresses her hope that in the future the conditions will be put in place for Moldova to grant all registered Transnistria companies access to the trade preferences for the EU that other Moldovan companies now enjoy"⁹.

New customs regime between Ukraine and Moldova is an example of efficient policy coordination of EU institutions, member states and European "aspirant countries" such as Ukraine and Moldova. However it is just a first step towards efficient co-operation of the EU and new neighbours in the area of border management, anti-corruption policy and frozen conflict solution.

Conclusion

Border problems in the Newly Independent States in East of Europe, are an integral component of incomplete state and institution building of those states, and represent the whole spectrum of key regional problems such as corruption, poverty, "frozen conflicts", lack of infrastructure and good political practices, poor governance etc.

The EU should provide complex assistance to help Eastern Neighbours in solving border problems in the frames of ENP and beyond. A new financial perspective for 2007-2014 gives more instruments to make this assistance efficient.

Dealing with the regional and border issues in the Western NIS the EU should be prepared to the fact that any kind of substantial policy in this area will lead to open or at

⁸ Javier Solana, EU High Representative for the CFSP, welcomes implementation by Moldova and Ukraine of Joint Declaration on Customs

http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/declarations/88621.pdf

⁹ Declaration by the Presidency on behalf of the European Union on the implementation of the Joint declaration on Customs issues of the Ukrainian and Moldovan Prime Ministers http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/cfsp/88802.pdf

least hidden confrontation with Russian positions and interests. Debates on Ukraine Moldova new customs regime and Transnistria solution as a whole proved it clearly.

EU needs to implement fully the mandate of the EU Border Assistance Mission with special emphasis on site inspections to be conducted without any kind of prior announcement. The next step may lead to extending the EU Border Assistance Mission mandate in order to monitor all illicit border trade according to international law and the new Ukraine – Moldova customs regime introduced on the 3rd of March of 2006.

Not only the inspection part is important in EUBAM activity, but also the capacity-building aspect in order to increase the popularity of the Mission, thus enhancing cooperation between the border guards and customs police personnel and gain the support of Ukrainian and Moldovan societies as a whole.

European Union may learn from existing experience that only complex involvement in the regional, as well as border related problems in the EU new neighbourhood might bring a positive outcome. Combination of firm political standing, direct involvement, mediation and technical, consultative and financial assistance may contribute to sustainable solution of border problems, which usually are just an element of larger set of political/structural issues actual for the Newly Independent States in the East of Europe.