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from: Mr Vítor CALDEIRA, President of the Court of Auditors  
date of receipt: 19 January 2009  
to: Mr Karel SCHWARZENBERG, President of the Council of the European Union

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Subject: Special Report No 9/2008 - The effectiveness of EU support in the area of freedom, security and justice for Belarus, Moldova and Ukraine together with the Commission's replies

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Sir,

I enclose a copy, in each of the official languages of the European Communities, of Special Report No. 9/2008 - "The effectiveness of EU support in the area of freedom, security and justice for Belarus, Moldova and Ukraine".

The Special Report, which is shortly to be published in the Official Journal of the European Union, was adopted by the Court at its meeting on 19 November 2008 and is accompanied by the replies from the Commission, which was notified of the preliminary findings on 20 May 2008.

(Complimentary close).

(s.) Vítor CALDEIRA

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Encl.: Special Report No 9/2008 - "The effectiveness of EU support in the area of freedom, security and justice for Belarus, Moldova and Ukraine".

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## Special Report No 9/2008

(pursuant to Article 248(4), second subparagraph, EC)

The effectiveness of EU support in the area of freedom, security and justice  
for Belarus, Moldova and Ukraine

together with the Commission's replies

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**ABBREVIATIONS**

AENEAS	Programme for financial and technical assistance to third countries in the areas of migration and asylum
BUMAD	Drug Control Multisectoral Assistance and Institution Building in Ukraine, Moldova and Belarus
DG	Directorate-General
DG JLS	Directorate-General for Justice, Freedom and Security
ENP	European Neighbourhood Policy
EUBAM	European Union Border Assistance Mission to Moldova and Ukraine
Europe Aid	Europe Aid Cooperation Office
FIU	Financial Intelligence Unit
NGOs	Non Governmental Organisations
TACIS	Technical Assistance for the Commonwealth of Independent States

## **EXECUTIVE SUMMARY**

I. Following the enlargements of 2004 and 2007, the EU became a direct neighbour of Belarus, Moldova and Ukraine. The Commission made considerable EU funds available to these countries (166 million euro in the period 2000-2005) to improve their capacity in the areas of: border control; migration/asylum management; fight against organised crime; and judiciary and good governance. The Commission limited assistance to Belarus due to a lack of respect for democracy and human rights. The EU has deployed different instruments, the most significant being the TACIS programme and the greater part of the assistance was delivered through international organisations (see paragraphs 1 to 7).

II. The purpose of the Court's audit was to determine the success of the EU support, to establish reasons for possible under-performance and to see to what extent the Commission had a process in place to take into account lessons learned for continued assistance in this field. The audit examined 40 contracts with a total value of 100 million euro (see paragraphs 8 to 10 and **Annex III**).

III. The greater part of the audited support achieved satisfactory results, particularly in the area of "Border Management". Progress was largely unsatisfactory in the area of "Migration and Asylum". Mixed results were achieved in the "Fight against Organised Crime" and "Judiciary and Good Governance" (see paragraphs 11 to 52).

IV. The limited achievements were typically due to a combination of factors involving the Commission, the international institutions and the various authorities of the three countries. External factors such as the continued political instability in Ukraine also diminished the project results. Despite having very competent staff, the Delegation in Kiev was overloaded, dealing with a rapidly growing policy area with projects not only in Ukraine but also in Belarus and Moldova. The Delegation in Moldova, opened in October 2005, took nearly two years to start operational project management. The co-existence of several financing instruments for the same purpose and the lack of coherence between them hampered a quality

approach. There were also certain shortcomings in the joint management with the international institutions. In general the coordination of the EU support with other donors was not developed enough. Finally the Commission has not fully exploited options to learn lessons, and experience gained was not always reflected in newly-started projects (see paragraphs 53 to 62).

V. On the basis of these observations, the Court makes detailed recommendations which could help the Commission to increase the effectiveness of the assistance given to Belarus, Moldova and Ukraine in the field of freedom, security and justice (see paragraphs 63 to 73).

## **INTRODUCTION**

1. One of the fundamental objectives of the European Union (EU) is to offer its citizens an area of freedom, security and justice<sup>1</sup>. This objective has an important external dimension. Following the enlargements of 2004 and 2007, the EU became a direct neighbour of Belarus, Moldova and Ukraine, sharing a common border and facing common challenges in the fight against organised crime, terrorism and other illegal activities (see map in ***Annex I***).
  
2. The EU has been making specific efforts to assist these three countries in improving their capacity in the areas of border control, migration/asylum management, the fight against organised crime and judiciary and good governance<sup>2</sup>. In the period 2000-2005 the Commission financed 89 projects with a total EU contribution of 165,7 million euro (see ***Annex II***).
  
3. The primary channel for EU support has been the TACIS programme<sup>3</sup>. Projects have been financed through its various arms: National Action Programmes, Regional Action Programmes and Cross-Border Co-Operation Programmes. Created in 1991, TACIS' s overall objective was to assist the transition to a free market economy and to reinforce democracy and the rule of law in the partner states. TACIS was phased out in 2006 but payments will continue at least until 2010. From 2007 onwards, assistance to Belarus, Moldova

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<sup>1</sup> The old name used by the Commission for this policy area was "Justice and Home Affairs (JHA)".

<sup>2</sup> Already in 2003, an EU action plan on justice and home affairs was published for Ukraine (OJ C 77, 29.3.2003). This action plan was revised in 2007.

<sup>3</sup> Technical Assistance Programme for the countries of the Commonwealth of Independent States. 12 countries have benefited from TACIS: Belarus, Moldova, Russian Federation and Ukraine in Eastern Europe, Armenia, Azerbaijan and Georgia in Caucasus, Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan in Central Asia.

and Ukraine has been programmed under the new European Neighbourhood and Partnership Instrument (ENPI)<sup>4</sup>.

4. In addition to TACIS the EU has used other instruments to assist these three countries in the area of freedom, security and justice:

(a) Preparatory action for the cooperation on migration (financed by specific budget line).

(b) Programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS)<sup>5</sup>.

(c) Rapid Reaction Mechanism<sup>6</sup>.

(d) European Initiative for Democracy and Human Rights<sup>7</sup>.

5. Following devolution<sup>8</sup> in 2003, the Commission's Delegation in Kiev was given overall responsibility for implementation of EU assistance in all three countries. A new Delegation was opened in Moldova in October 2005 and became responsible for project implementation in summer 2007. The non-TACIS projects are usually managed by the Commission's Headquarters (Europe Aid and DG JLS).

6. The greater part of the assistance in the area of freedom, security and justice is delivered through international organisations: United Nations Development Programme (UNDP), United Nations High Commissioner for Refugees (UNHCR),

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<sup>4</sup> Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument (OJ L 310, 9.11.2006, p. 1).

<sup>5</sup> Regulation (EC) No 491/2004 of the European Parliament and of the Council (OJ L 80, 18.3.2004; p. 1).

<sup>6</sup> Council Regulation (EC) No 381/2001 (OJ L 57, 27.2.2001, p. 5).

<sup>7</sup> Council regulation (EC) No 2242/2004 (OJ L 390, 31.12.2004, p. 21).

<sup>8</sup> Giving management responsibility to the Commission's in-country Delegations.

International Organisation for Migration (IOM) or the Council of Europe (CoE). On the basis of standard contribution agreements signed with the Commission, these international organisations are in charge of certain aspects of project implementation, including procurement and payment procedures (so-called joint management mode).

7. The situation in Belarus was specific. A Partnership and Cooperation Agreement between Belarus and the EU was signed in 1996 but its ratification was frozen due to a lack of respect for democracy and human rights. Thus, during the period covered by the audit, assistance to Belarus was limited to humanitarian, cross-border and regional cooperation projects, support for the needs of the population, and to projects supporting directly and indirectly democratisation and democratic forces (e.g. support to independent media; scholarships for the youth). The freedom, security and justice projects in Belarus are mostly multi-country projects including Moldova and Ukraine.

### **AUDIT SCOPE AND APPROACH**

8. The objective of the audit was to assess the effectiveness of EU support in the area of freedom, security and justice for Belarus, Moldova and Ukraine. The audit addressed three questions:

- (a) To what extent has the EU support for freedom, security and justice projects in Belarus, Moldova and Ukraine been successful?
- (b) What are the main reasons for possible under-performance?
- (c) To what extent has the Commission a learning process in place to take into account lessons for continued assistance in the area of freedom, security and justice?

9. The Court audited 40 contracts, judgementally selected, with a total EU contribution of 99,3 million euro (out of the total of 89 projects<sup>9</sup> covering 165,7 million euro in 2000-2005), comprising 24 completed and 16 on-going contracts (***Annex III***). Most of these on-going contracts followed up earlier EU-funded projects, allowing an assessment of the Commission's learning process (main question (c) above). The audit involved an examination of: the results of the projects and comparison with the stated objectives; factors standing in the way of the achievement of the objectives; and lessons learnt and whether they were taken into account in follow-up projects or programmes.

10. The 40 contracts examined fell within four sub-areas:

- (a) Border Management.
- (b) Migration and Asylum.
- (c) Fight against Organised Crime.
- (d) Judiciary and Good Governance.

The audit team examined the projects on the spot during the period November 2006 to July 2007, including visits to implementing international organisations and national bodies as well as to monitoring units<sup>10</sup>.

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<sup>9</sup> A project is implemented through one or more contracts .

<sup>10</sup> The Commission contracts a consortium to carry out regular monitoring of the projects.

## **OBSERVATIONS**

### ***To what extent has the EU support for freedom, security and justice projects in Belarus, Moldova and Ukraine been successful?***

#### **Border management: satisfactory achievements**

11. Belarus and Ukraine are facing major problems in border management due to the total length of their external borders (about 3 000 km and 7 000 km respectively) and the lack of official border demarcation, in particular with Russia. Hardly any border and customs controls are carried out at the Russian-Belarusian border. This permeability of borders encourages both cross-border criminal activity and illegal migration.

12. Border management between Moldova and Ukraine is complicated by the existence of the self-proclaimed Republic of Transnistria which is not recognised internationally. The Moldova-Ukraine State Border is 1 222 km long of which 472 km on the Moldovan side is under control of the Transnistrian authorities. Transnistrian authorities control the region east of the Dniestr River and are acting de facto independently from the rest of Moldova (see Box 1).

#### **Box 1 - Background to the Transnistria conflict**

In parallel with Moldova's process of emancipation from the Soviet Union, from 1989 onwards, protest movements in the regions with predominantly non-Moldovan populations began to resist Moldova's independence efforts. As a response to Moldova's declaration of sovereignty, a separate Transnistrian Moldovan Republic was proclaimed in 1990. Clashes took place and fighting culminated in 1992, causing several hundreds of deaths and some 100 000 refugees.

Since 1995 Moldova and Transnistria, assisted by the OSCE, Russia and Ukraine as international mediators, have discussed a possible settlement of the frozen conflict. The arrival in power of the administration of President Yushchenko in Ukraine created a window of opportunity for further progress in resolving the conflict. Since September

2005, the EU and the US have participated as observers in the negotiation process. The EU has been represented by a Special Representative for Moldova since March 2005.

13. The Commission has substantially helped to improve the border management capacities of Belarus, Moldova and Ukraine. Border management is the financially most significant area for freedom, security and justice projects. 63,2 % of the EU support (104,7 million euro) under programmes 2000-2005 has been allocated to this field. The Court audited 10 contracts with a total value of 51,8 million euro.

14. Most of the projects audited achieved satisfactory results (see ***Annex III***). The use of modern equipment and improved technology as well as training for border guards led to enhanced border controls and surveillance (see examples in Box 2). The State Border Guard Committee of Belarus in particular showed great commitment, using their military structure to implement strictly all contract stipulations. Major problems, however, were noted in the works contract for the construction of the Koslovichi II Border Terminal<sup>11</sup> (see Box 3).

**Box 2 – Example of satisfactory result: use of modern equipment strengthens border control**

The projects "Border Management Improvement Ukraine" (EU contribution of 4,0 million euro) and "Strengthening Border Management in the Republic of Belarus" (EU contribution of 13,3 million euro) delivered among other things cameras, microscopes, document verification devices, vehicles, IT equipment including automated telephone exchanges for border units and hardware for checking online, e.g., blacklisted persons and stolen vehicles. All investment items checked were in place according to the inventory log-book, properly labelled, operational and used for the intended purpose.

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<sup>11</sup> The Kozlovichi international border terminal (located near Brest in the Republic of Belarus) is the main road crossing for freight vehicles between the Republic of Belarus and Poland (Pan-European Transport Corridor II).

**Box 3 - Example of unsatisfactory result: reduced scope of work and delays**

At the end of 2006, the original completion date, the Koslovichi II Border Terminal (EU contribution of 14,0 million euro) still resembled a huge construction site where most of the buildings were only half-finished and roads, parking areas and pavement still needed to be built. Tax exemption problems, together with an under pricing at tender stage, led to an addendum to the contract which greatly reduced the scope of works (e.g. some buildings will be left incomplete, to be finished only as shells). Substantial extra funding is needed to complete the international border terminal as originally planned and contracted.

15. The financially most significant project in the area of freedom, security and justice, the European Union Border Assistance Mission to Moldova and Ukraine<sup>12</sup> (EUBAM, total EU contribution of 19,1 million euro) contributed greatly to building capacity in the Moldovan and Ukrainian border guard and custom services (see map in **Annex IV**). For example "EUBAM" aided the effective implementation and monitoring of a new customs regime between Moldova and Ukraine, thus helping to combat smuggling and illegal cross-border activity. As a result significant smuggling involving Transnistria was detected. The illegal evasion of taxes and customs duties concerned e.g. vehicles, fruit and vegetables and poultry meat. For poultry meat alone, EUBAM calculated losses of up to 43 million euro for the Ukrainian state budget or up to 18 million euro for the Moldovan state budget (period October 2005 to May 2006).

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<sup>12</sup> EUBAM is in place since 1 December 2005. EUBAM operations are based on a Memorandum of Understanding concluded between the European Commission and the governments of Ukraine and the Republic of Moldova. A motivating factor was security threats originating from the Transnistria region with its assumed high level of cross border criminal activities. EUBAM is implemented by the United Nations Development Programme (UNDP). 16 EU Member States contribute in kind through the secondment of professional personnel to the Mission (about 100 customs and border guards officials). EUBAM established its operational headquarters in Odessa (Ukraine) and has created one field office in Chisinau (Moldova) and a further five field offices alongside the Ukrainian/Moldovan/Transnistrian border as well as a field office/logistics base in Odessa and Illichevsk seaports.

16. EUBAM detected major difficulties in securing criminal prosecutions for smuggling<sup>13</sup> (insufficient legislation; inefficient interaction/unclear roles of the state customs service, state border guard service, tax police and security service; poor demarcation of green border). Most cases were not prosecuted as criminal, but only as administrative infringements without obligatory confiscation of the goods involved<sup>14</sup>. EUBAM reported also that due to the level of corruption in the prosecutor's offices and judiciary, smugglers have been released and the smuggled goods returned to the smugglers.

17. When EUBAM started in November 2005 it was financed for its first six months by the Rapid Reaction Mechanism<sup>15</sup>. The mechanism was applied to respond in a rapid and flexible manner to the opportunity which arose in 2005 for advancing the resolution of the Transnistrian conflict (see Box 1). The project's assumption is that improved border and customs controls and border surveillance along the whole border are crucial elements to a peaceful resolution. Whether this assumption is valid can only be assessed in the very long run.

18. Subsequently the financing of EUBAM was characterised by the use of several short term contracts financed from different TACIS Regional Action Programmes. As a consequence, staff contracts or rental agreements had to be renewed every few months. The Commission had not foreseen such a major long-term project (nearly one million euro per month) when programming its activities in the region.

19. To complement the support delivered by EUBAM, the EU is financing the purchase of border equipment under the project "Improvement of border controls at the Moldova-Ukraine border" (Bommoluk project, EU contribution of 9,9 million

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<sup>13</sup> Based e.g. on a case of high-value alcohol products smuggled from the Transnistrian region to Ukraine.

<sup>14</sup> Burden of Proof, the difficulty of securing criminal prosecutions for smuggling cases in Ukraine, Special Report by EUBAM.

<sup>15</sup> This mechanism may be triggered in situations "when in the beneficiary countries concerned there occur situations of crisis or emerging crises, situations posing a threat to law and order, the security and safety of individuals, situations threatening to escalate into armed conflict or to destabilise the country...".

euro). This additional activity raises a number of challenges to be addressed in the future, such as complex tender processes<sup>16</sup>, choosing the best physical location for the equipment given the length of the borders and ensuring complementarity with the equipment funded by other donors<sup>17</sup>. Also the Governments have to provide sufficient national funds for running costs and maintenance.

### **Migration and asylum: poor progress in a difficult context**

20. EU policy aims to assist third countries in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, provide information on legal channels for migration and resolve refugee situations by providing better access to durable solutions.

21. Belarus, Moldova and Ukraine are situated on the eastern border of the enlarged EU. All three are seen as transit countries for large-scale illegal migration westwards. Ukraine in particular faces an increase in migratory movements of persons (both legal and illegal) entering and crossing its territory. Thousands of illegal migrants traverse the country annually, largely via the border with Russia.

22. Ukraine is chronically short of accommodation, particularly for longer-term illegal migrants. Repatriation requires identification of the persons by the Ukrainian authorities and cooperation from the relevant embassies or consulates which are not always helpful. Another solution would be readmission, i.e. acceptance of the detained persons by the country from which they illegally entered Ukraine. However, a readmission agreement has not been signed between Ukraine and Russia, the prime source of Ukraine's illegal migrants.

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<sup>16</sup> In an earlier project for Ukraine field radar equipment and a radio communication network (total value of 5,0 million euro) could not be procured and delivered due to unsuccessful tendering procedures.

<sup>17</sup> The U.S. Government has allocated 28 million dollars to improve the fight against the proliferation of weapons of mass destruction at the Ukrainian-Moldovan state border.

23. The need for adequate accommodation for illegal migrants has recently become more pressing, with the entry into force on 1<sup>st</sup> January 2008 of a readmission agreement with the European Community. In 2010, after a transitional period of two years, Ukraine will face the requirement to house hundreds or even thousands of illegal migrants from third countries, currently being held in the neighbouring EU countries of Hungary, Slovakia and Poland, who reached the EU illicitly via Ukraine.

24. The projects in the sub-area of migration and asylum received a total EU-contribution of 16,8 million euro (10,2 % of total support) from 2000-2005 programmes. The Court audited 10 contracts with a total EU contribution of 13,8 million euro.

25. The project results achieved in this area of migration and asylum were unsatisfactory mainly in respect of infrastructure (see *Annex III*). A key goal of the EU is to help provide accommodation centres meeting international humanitarian standards for illegal migrants as well as for asylum seekers. In Ukraine, despite the EU support, this objective is far from being achieved:

- (a) the detention and accommodation conditions for illegal migrants in existing centres were often very far from acceptable. In general illegal migrants in Ukraine suffer severely from over-crowded living conditions, insufficient sanitation and poor diet (see Box 4).

**Box 4 - Despite alleviation by EU support, living conditions for illegal migrants in existing accommodation centre still unacceptable**

The project "Establishment of Migration Management System in Zakarpattya, Ukraine"<sup>18</sup> (EU contribution of 2 million euro for two contracts) essentially delivered basic help to the migrants: distribution of food and hygiene packages, medical assistance, distribution of clothes, provision of bedding and legal advice. Moreover urgent repair, construction

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<sup>18</sup> The Zakarpattya region borders with Hungary, Poland, Romania and Slovakia and is a transit corridor in Ukraine for migrants on their way to Western Europe.

works and all kind of running costs were also financed. The project is above all an action of humanitarian aid and not of capacity building as its title might suggest.

After nearly a year of operation, the Delegation monitored the project on the spot (April 2005). It reported that the conditions of the detention centres in Pavchino and Chop (the old part of the building) were inhuman and degrading, not meeting the minimum standards set by the Council of Europe, the European Court of Human Rights and the Committee for the Prevention of Torture and Inhuman Treatment. Furthermore the Delegation found evidence that the humanitarian aid delivered by the project did not always reach the targeted migrants. This led to corrective action by the Ukrainian authorities.

At the time of the audit in November 2006 the capacity (320) in Pavchino was exceeded by about 100 people. The local project partners reported that in summer time overcrowding had been far worse and reached 700 people with corresponding negative consequences for hygiene and health.

The migrants interviewed by the Court hesitated to speak openly. Complaints were still expressed, concerning medicine not passed on and the practice of searches by masked persons. It also became clear that the project still did not cover basic needs (e.g. sufficient heating, sufficient clean and hot water supply, adequate clothing including shoes). Furthermore, there was insufficient interpretation available in the camps, making communication difficult between the migrants and the authorities.

(b) the construction/refurbishment of new facilities for illegal migrants did not advance as planned (see Box 5);

#### **Box 5 - Poor progress in establishing new accommodation centres for illegal migrants**

The core of the project "Capacity Building of Migration Management-CBMM I, Ukraine" (EU-contribution of 3,8 million euro) was to refurbish and equip two former military sites as Migrant Accommodation Centres for 1 260 persons. The project Steering Committee decided in June 2006 to devote project money only to refurbishing one of the sites. By the time of the audit (November 2006) no works contracts were concluded and no money had been spent for refurbishment, some three months after the project's original finishing date (1.9.2006). Discussions were still on-going about fundamental aspects of the

refurbishment, e.g. how the site would be heated and what solution would be found for waste water. The Steering Committee also decided to limit the numbers to be housed to 250. This means that the EU funded capacity would be reduced by around 1 000 places in comparison to the original planning.

(c) newly constructed temporary accommodation centres for asylum seekers were under utilised or not used at all (see Box 6).

#### **Box 6 - Under utilisation of newly constructed centres for asylum seekers**

In Ukraine, at the end of 2006, only some 65 additional persons could be housed in temporary accommodation centres (TACs) instead of the planned 350 (EU contribution of 1,6 million euro for "Strengthening the Asylum systems of Ukraine and Moldova). The main reason was that the centre in Odessa was only half-used because of a lack of state-funded running costs, and that the 80-person centre in Mukachevo remained completely unoccupied for more than one year and a half, in fact since its opening in April 2005. This wasteful situation in Mukachevo resulted from the persistent failure to transfer ownership of the building from the Border Guards to the responsible project partner institution. Meanwhile, those asylum seekers lacking private means were living in tents and other short-term facilities run by the Border Guards.

26. The sustainability of detention and accommodation centres is jeopardised in Ukraine by the lack of state funds for running and maintenance costs and because there is an unclear division of responsibilities between the State Border Guard Service and the Ministry of Interior.

27. Difficulties with regard to project registration, tax exemption, land ownership and funding were also found in the construction of a temporary accommodation centre for asylum seekers (25 people) in Belarus<sup>19</sup>. On the other hand, in Moldova, the situation was better. A temporary accommodation centre in Chisinau was already fully operational in November 2005, offering 160 places.

## **Fight against organised crime: mixed results**

28. The general post-communist transition process in the countries of central and eastern Europe was accompanied by a considerable rise in organised crime such as trafficking in human beings, drug trafficking and money laundering.

29. Ukraine and Moldova are major source countries for the trafficking of women and children for the purpose of forced prostitution in Europe. Recent years have seen also a growth in the trafficking of men, who are compelled, for instance, to work as labourers. The full scale of the practice remains relatively unknown, due to the very nature of organised crime, and because few people are willing or able to report what has happened to them to the authorities. This is aggravated by a lack of witness protection measures. Concerning drug trafficking, Belarus, Ukraine and Moldova are seen as transit routes towards EU Member States. The banking systems have been increasingly used to launder the proceeds of serious crime.

30. The fight against organised crime accounted for 19,2 million euro (11,6 %) of the total funds allocated for the area of freedom, security and justice from programmes for the period 2000-2005. The Court audited 10 contracts with a total EU contribution of 18,6 million euro.

31. In spite of several successes, overall progress is still insufficient in the fight against organised crime (see ***Annex III***). The projects to combat trafficking in human beings had weak criminalisation and prosecution components<sup>20</sup> (see paragraphs 34 and 35). Overlapping is a major feature, since many donors are keen to fund projects in this area (see paragraph 36). Concerning drug control, projects progressed slowly in the areas of legislation and of police intelligence (see paragraph 40). As regards preventing money laundering and terrorist

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<sup>19</sup> The centre is located in Gomel, close to Ukraine where there is a thriving community of Afghan refugees.

<sup>20</sup> The anti-trafficking projects had three standard components: protection and reintegration; criminalisation and prosecution; and raising awareness. The term criminalisation is commonly used in the project documentation.

financing, a major challenge is to achieve successful prosecution (see paragraph 44).

### Combating Trafficking in Human Beings

32. The Governments of Ukraine and Moldova expressed their commitment to combating trafficking in human beings in national policy papers. One project was audited in Ukraine (EU contribution of 1,9 million euro) and three projects (including a rehabilitation centre for victims of trafficking) in Moldova (total EU-contribution of 1,2 million euro).

33. With the help of the projects, large-scale public awareness campaigns were carried out in Moldova and Ukraine (e.g. theatre performances, numerous publications, toll-free hotlines), and humanitarian assistance was delivered to hundreds of victims of trafficking (e.g. legal support, medical assistance, housing allowance, transport assistance, vocational training, 'in-kind' grants for small business start-up). Thus the aspects of prevention and reintegration were well covered by the projects.

34. Results were less positive regarding the criminalisation and prosecution components, in particular as regards information sharing between law enforcement agencies. In Ukraine, the TACIS monitors noted that the State Border Guard Service was not cooperating in information exchanging initiatives. The measure to equip border checkpoints with the i24/7 system<sup>21</sup> failed when the tendering process was cancelled due to the Ukrainian stakeholders insisting on a supplier whose prices were far higher than the market rate.

35. Getting evidence is a major challenge, since the criminal act often occurs outside Moldova or Ukraine. National authorities blamed the slowness of other countries to respond to requests for mutual assistance. To help circumvent such procedural blockages, the projects paid for networking visits for law enforcement officers to countries of transit and destination of victims. In addition, police officers

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<sup>21</sup> Interpol global police communications system operating 24 hours a day.

took part in workshops on investigative techniques and anti-trafficking legislation was reviewed. Weaknesses persist in mutual assistance arrangements.

36. There are concerns relating to efficiency and economy. As many donor organisations are ready to fund the fight against trafficking in persons, it is a challenge to avoid unnecessary duplication of actions and to ensure cost effective use of resources. In Moldova, for instance, certain project activities had to be changed, and an unusually high rent was paid for the Rehabilitation Centre's premises in Chisinau<sup>22</sup>. In addition, it is not always possible to distinguish clearly the results of the EU support from that of other organisations, making it difficult to assess the effectiveness of the EU spending.

#### Drug Control

37. Another significant project in the fight against organised crime is called "Drug Control Multisectoral Assistance and Institution Building in Ukraine, Moldova and Belarus" (BUMAD). BUMAD is a multi-annual activity in three phases which started in 2003 and is expected to finish at the end of 2008 (overall EU-contribution of 6,5 million euro).

38. This programme, covering Ukraine, Moldova and Belarus, is the third in a series of EU-funded regional programmes designed to filter the traffic of heroin flowing westwards from Afghanistan towards the EU<sup>23</sup>. The overall objective is to reduce drug-trafficking from, and through, the three countries towards EU Member States.

39. Most of the activities foreseen under the different sub-projects were carried out (e.g. legal assistance, seaport control (Ukraine), land border control, police and community prevention). The general picture at the end of the second phase

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<sup>22</sup> The amount budgeted for food and lodging was more than double the amount budgeted for comparable services at the equivalent Rehabilitation Centre in Kiev.

<sup>23</sup> The first programme, CADAP, began in Central Asia in 2000, the second, SCAD, in the Southern Caucasus in 2001.

(January 2007) is that good progress has been made in setting up national anti-drugs structures, for example the National Drugs Observatories, courses in drugs prevention in the respective Police Academies or training in drugs demand reduction to numerous NGOs in the three countries.

40. Slow progress was noted in the components of legislation and of police intelligence. The necessary cooperation between customs, border guards, police and secret services for effective criminal investigations is not yet sufficiently developed in the three countries. Setting up national systems to support the criminal investigation of drug traffickers requires not only appropriate analytical tools, but also a high degree of cooperation among agencies which have not been accustomed to share operational data in a systematic way. Imbalances in investigative powers are a further complication. A particular obstacle in Belarus is the security service's apparent reluctance to accept foreign analytical software. The Commission, when planning the project, underestimated the time needed to change ways of operational thinking and to overcome rivalry between enforcement bodies.

41. Up to the completion date of BUMAD 2 (January 2007), heroin and cocaine seizures were modest. Only two international attempts to traffic heroine in Ukraine were uncovered, with the help of software delivered by the project. Seizures of drugs in all three countries concerned mainly locally-produced poppy seed and cannabis. However the Ukrainian Security Service reported in July 2007 that in cooperation with the U.S. Drug Enforcement Agency and Turkish law enforcement organizations 174 kg of heroin were confiscated in Illichevsk seaport.

#### Projects against money laundering/terrorist financing

42. The overall objective of the "Project against money laundering in Ukraine" (EU-contribution of 1 million euro) was to prevent the use of the financial system to launder the proceeds of serious crime and to enable Ukrainian authorities to cooperate in fighting money laundering.

43. The project helped to achieve Ukraine's very significant removal from the "Non-Cooperative Countries and Territories"<sup>24</sup> list in February 2004 and the acceptance of Ukraine as a member by the Egmont Group<sup>25</sup> in June 2004. Furthermore by the end of the project the State Committee for Financial Monitoring (SCFM) was functioning as Ukraine's Financial Intelligence Unit (FIU)<sup>26</sup>. Indeed, over the years until 2006, the number of case referrals, submitted by the SCFM to law enforcement authorities, increased considerably (18 in 2003; 446 in 2006).

44. Setting up a FIU is only a first important condition for combating money laundering. There is also the need for effectively operating law enforcement agencies and trained judges. A major problem is the lack of successful prosecution. Until the end of 2006 only three verdicts for money laundering were made by the courts. The lack of a modern regime of seizure and confiscation of assets was also identified as a serious gap in the anti money laundering system. However Ukraine is more advanced in the fight against money laundering and terrorist financing than Moldova, where serious concerns exist regarding the effectiveness of the system in place (e.g. weaknesses in the Centre for

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<sup>24</sup> The Non-Cooperative Countries and Territories (NCCT) initiative was developed by an inter-governmental Financial Action Task Force (FATF) to ensure that measures for the prevention, detection and punishment of money laundering according to internationally recognised standards are applied.

<sup>25</sup> Many countries around the world have created specialised governmental agencies, known as "Financial Intelligence Units" (FIU). Recognising the benefits inherent in the development of a FIU network, in 1995, a group of FIUs at the Egmont Arenberg Palace in Brussels decided to establish an informal group for the stimulation of international co-operation. Now known as the Egmont Group, these FIUs meet regularly to find ways to cooperate, especially in the areas of information exchange, training and the sharing of expertise. There are around 100 countries with recognised operational FIUs.

<sup>26</sup> It is the responsibility of a FIU to collect and analyse suspicious and threshold transactions. Investigative powers lie with law enforcement agencies.

Combating Economic Crime and Corruption or insufficient use of provisions to seize, freeze and confiscate)<sup>27</sup>.

### **Judiciary and good governance: mixed results**

45. EU policy supports reforming the judiciary in order to ensure its independence, impartiality and efficiency. In addition it aims at strengthening legal cooperation with the EU in civil and criminal matters. It also gives support to encourage good governance which refers to the structure, functioning and performance of public authorities/institutions at all levels.

46. The projects in the sub-area of judiciary and good governance received a total EU-contribution of 24,8 million euro (15,0 % of total support) from programmes for the period 2000-2005. This sub-area concerned only Moldova and Ukraine. The Court audited 10 contracts<sup>28</sup> with a total EU contribution of 14,2 million euro.

47. Achievement has been mixed (see **Annex III**). Some projects showed satisfactory overall results, for example improvements in the application of civil and commercial law in Moldova (EU contribution of 2,2 million euro) or better international cooperation in criminal matters in Ukraine (EU contribution of 1,5 million euro). By contrast, the results achieved in the project "Reform of Arbitration Courts and Support to Court Administration" (EU contribution of 2,5 million euro) were less satisfactory, in particular regarding the provision of IT equipment. Nothing had been delivered by the original deadline.

### **Anti-corruption**

48. Results achieved to date in projects combating corruption are very modest. Corruption is one of the most pressing problems in Moldova and Ukraine

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<sup>27</sup> Third Round Mutual Evaluation Report on Moldova, September 2007, prepared by MONEYVAL (Committee of Experts on the Evaluation of Anti-money Laundering Measures, under the auspices of the Council of Europe).

<sup>28</sup> Including one contract which was finally not signed, see paragraph 52(c).

threatening the whole sub-area of judiciary and good governance. Both countries are deeply affected, with a considerable impact on society<sup>29</sup>. The legal and administrative systems are deeply flawed (e.g. lack of public trust, impaired independence of judges, insufficient salaries, high level of perceived corruption)<sup>30</sup>.

49. In 1999 and 2002 the Moldovan Government had already adopted ambitious national programmes for combating crime and corruption. However success was very limited because of insufficient resources and the absence of an efficient control mechanism. In December 2004 the Parliament adopted a new anti-corruption strategy together with a new action plan for its implementation. At that moment the Commission intervened with its first anti-corruption project in Moldova.

50. The EU contribution was a relatively small pilot activity (250 000 euro). As its interim results were satisfactory, the Commission decided to fund a follow-up project for three years until 2009 (EU contribution of three million euro<sup>31</sup>). The new project progressed more slowly than planned and its achievement after the first year was very limited. Progress on key issues<sup>32</sup> or in the delivery of equipment had not been achieved. The project gained momentum only after March 2007.

51. The United States signed a 25 million dollar agreement to support anti-corruption initiatives in Moldova<sup>33</sup>. The World Bank is also planning to aid anti-

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<sup>29</sup> Position 111 for Moldova, position 118 for Ukraine in the 2007 corruption perceptions index compiled by Transparency International.

<sup>30</sup> See e.g. Ukraine Governance Assessment, performed in February 2007 by SIGMA (Support for Improvement in Governance and Management), a joint initiative of the OECD and the European Union.

<sup>31</sup> The project has two components, one on anti-corruption and one on anti-money laundering/financing of terrorism.

<sup>32</sup> Revision of monitoring structure for strategy and action plan; reduction of the conflict of competences among the main enforcement bodies in investigation and prosecution; elaboration of risk analyses within judiciary, police, tax inspectorate, customs and health and education institutions.

<sup>33</sup> Millennium Challenge Corporation (MCC) Threshold Program Agreement.

corruption measures. Coordinating the EU efforts with the assistance of other international donors is now a major challenge. There are already parallel monitoring structures, undermining the concept of a single national anti-corruption strategy.

52. Numerous donors have been active in the field of anti-corruption in Ukraine. The first significant EU financed project in this area (EU contribution of 1,5 million euro) started in 2006. One year into this three-year EU project the number of activities carried out was substantially lower than initially foreseen:

- (a) the Ukrainian authorities developed a draft anti-corruption action plan, without using specific drafting support offered by the project<sup>34</sup>. Only at a late stage, in June 2007, did the Ministry of Justice request an expert assessment of the draft. The experts criticised the “lack of transparency of the drafting process” and concluded that the draft action plan was “far from satisfactory”;
- (b) no activities took place with regard to a monitoring mechanism for the future implementation of the action plan. It is not clear which institution will have the lead in the anti-corruption fight. The issue of monitoring the financing of political parties and electoral campaigns was not tackled. Also a general public opinion survey on corruption was not carried out despite extensive preparatory work for this survey (defining a methodology, expert meetings);
- (c) while the Commission established the clear need to promote public involvement in the anti-corruption effort, it abandoned the plan of developing a grant programme open to non governmental organisations (NGOs) and other civil society organisations aimed at promoting public involvement in the anti-corruption effort. The alternative solution, to support the creation of an Advocacy and Legal Advice Centre was also not realised due to procedural problems.

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<sup>34</sup> See Second progress report of 26 June 2007.

***What are the main reasons for under-performance?***

53. While many projects delivered satisfactory results, this section presents reasons for under-performance of those that did not.

**Limited achievement typically due to a combination of factors involving all main parties**

54. The audit showed that limited achievements are typically due to a combination of factors involving all main parties (Commission, national authorities, international institutions). For example, in the anti-corruption project for Ukraine (see paragraph 52):

- (a) weak needs assessment by the Commission in a difficult context and insufficient coordination with other donors: substantial parts of the project, especially the assistance to drafting legislation, were no longer really wanted by the Ministry of Justice. Other organisations, particularly American ones, also provide anti-corruption legislative assistance;
- (b) lack of commitment and of cofinancing by the national authorities: the Ministry of Justice failed to provide an adequate office to the project team, thus breaking not only the contract conditions but also its commitment expressed in a separate statement of endorsement;
- (c) weak management by the contractor which struggled to set up and maintain the project team ;
- (d) external factors: the difficult political situation following the 2 April 2007 presidential decree on early elections combined with a frequent change of leadership in the Ministry of Justice caused the suspension of all legislative activity surrounding the anti-corruption draft laws.

## Shortcomings in Commission's management of projects

55. Two factors made the Commission's management more difficult and increased the risk of failure:

- (a) the majority of the projects lay under the responsibility of the Delegation in Kiev. This Delegation has been responsible for project management not only in Ukraine but also in Belarus and Moldova. Staff in the area of freedom, security and justice are very competent, however the Kiev Delegation had too few project managers to deal with a rapidly growing policy area with an increasing number of projects. Although a new Delegation to Moldova was opened in October 2005, it only started to become operational with regard to project management in summer 2007;
- (b) the co-existence of different sources of financing to support the area of freedom, security and justice (see paragraphs 3 and 4). The TACIS instrument proved to be insufficient to meet the growing demand for funding of projects. Different instruments, procedures and Commission services were sometimes used for the same intervention, causing inefficient contract management (see Box 7).

### Box 7 - Example inefficient contract management

The support of phase III in the cross-border co-operation between the Western New Independent States and the EU (Söderköping process) was artificially divided into two contracts running in parallel with the same contractor. One contract is financed from TACIS and managed by the Delegation in Kiev and the other is financed from AENEAS and managed by Commission's HQ in Brussels (EuropeAid). DG JLS, the previous manager, is no longer involved.

The co-existence of two legal bases with different rules for the same action is not coherent. For example the AENEAS contract fixed the maximum allowed co-financing rate at 80 % whereas the TACIS contract co-finances 90 % of the total eligible costs. In addition the TACIS contract is subject to external monitoring whereas the AENEAS contract is not. Thus the external monitors, who indicated a number of deficiencies in the

intervention logic (e.g. lack of measurable indicators), cannot give a complete picture of the action.

The artificial division into two projects is also not efficient. The administrative burden is doubled for each implementation step on the Commission's and the contractor's side (parallel procedures for project selection, contracting, cost verification, payment requests, payments, reporting). The need for coordination to avoid double funding is high.

56. These two structural problems led to failings in the Commission's planning and implementation procedures. Requirements were not always assessed thoroughly enough (see example in paragraph 52(a)) or financing decisions were taken without an in-depth analysis of the fulfilment of basic preconditions. For example, in the case of two accommodation centres for asylum seekers, questions of land allocation or ownership were not clarified (see Box 6 and paragraph 27). The Commission's supervision of project reporting requirements was not strong enough (see paragraph 60). A major concern is the lack of exchange of information with other donor organisations with regard to their planned projects to avoid unnecessary duplication in programming and later in implementation. With regard to project extensions, a convincing analysis of the need for extra time and, in one case, for extra money was not always made.

### **Shortcomings in management of projects by international organisations**

57. For most of the contracts, the Commission opted for grants awarded directly to international organisations, because of their particular competence in the area of freedom, security and justice and their geographical presence in the countries. As a consequence, the international organisations are in charge of the day to day project implementation (so-called joint management, see paragraph 6), although the Commission retains overall responsibility for sound management. Whereas generally the performance of the international organisations was satisfactory, the following shortcomings were noted in relation to this form of management:

- (a) after contract signature, international institutions often faced problems in putting a functioning project team in place, delaying the start of the project by several months;

- (b) in other cases delays were caused by lengthy procurement processes. Contracts with international organisations usually stipulate that the procurement of any goods, works or services is carried out by the organisation in accordance with its own rules and procedures. In one case the contract stated that the procedures applied by the international organisation should not be less stringent than the EU rules. This clause caused lengthy clarification procedures, hindering an efficient procurement process;
- (c) in one international organisation dealing with a number of contracts, lengthy administrative procedures caused late payments to local suppliers;
- (d) the possibility of carrying out detailed checks on expenditure in projects implemented by an international organisation is not defined clearly enough. In one instance, the verification clause in the Financial and Administrative Framework Agreement (FAFA) with the United Nations was interpreted differently by the Commission and its counterparts, hindering controls and a timely closure of the contract;
- (e) EU visibility was not achieved in some projects managed by international organisations in Moldova. Beneficiaries are not always aware that projects received EU funding. Projects are then perceived only as those of the managing international organisations. This is due to their direct implementation role and also to the fact that project web pages are usually only to be found under their address.

***To what extent has the Commission a learning process in place to take into account lessons for the continued assistance in the area of freedom, security and justice?***

58. The Commission's learning process is of utmost importance in the area of freedom, security and justice as a sustainable change can only be expected with a long-term gradual approach. A new project has to build upon the achievement and experience gained in earlier projects and repetition of mistakes has to be

avoided. Several examples showed that lessons were indeed learnt: for example, in the new project "Increased independence, transparency and efficiency of the justice system of Moldova" (EU contribution of three million euro) the Commission focused on a narrower spectrum of interrelated project purposes, avoiding the dispersion found in the forerunner project.

59. In line with the needed gradual approach, the Commission has financed projects sequentially, e.g. three consecutive projects in the area of drug control. The projects fiches prepared by the Commission within new programmes usually have sections "Lessons learnt" into which information flows from progress reporting, evaluation and monitoring.

#### **Not all possibilities exploited to collect information**

60. However in some cases the sections "Lessons learnt" were weak. The Commission had not sufficiently exploited the possibilities to gather information for the learning process because progress reports were late or of a poor quality or planned evaluations had not been carried out. These shortcomings point to a lack of supervision by the Commission of the respective contract stipulations by contractors.

61. It is positive that the Commission has a contract with external consultants to monitor projects, including on-the-spot visits and interviews with the different stakeholders. In general the external monitors performed well and often corrective action in the daily management took place following their remarks. However the Court notes two weaknesses:

- (a) some projects were not covered by external monitoring, notably projects comprising works or supply contracts and the non-TACIS projects managed from Brussels<sup>35</sup>. Management from a distance already hinders a closer follow up. The absence of monitoring worsened the problem. The resulting lack of up to date information led in one case to the Commission retroactively

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<sup>35</sup> Generally projects below a 1 million euro threshold were also not covered.

agreeing to a substantial budget change as well as to the extension of the contract one month after the expiry of the original grant agreement;

- (b) the aggregate monitoring scores for some of the audited projects were overly positive.

### **Experience gained not always reflected in new projects**

62. In some cases experiences gained in earlier projects were insufficiently reflected in new projects. This happened especially when project management changed from one Commission service to another. As a result new projects faced sometimes the same problems as projects from previous programmes, errors were repeated or there was no continuity between project phases (see Box 8):

#### **Box 8 - Experiences made insufficiently transferred into new projects**

- (a) Concerning the project "Establishment of Migration Management System in Zarkapattya" (Ukraine) the specific experience of the first project was not a decisive factor in the Commission's process of evaluating the proposal for the second project. While the proposal briefly explained how the action was intended to build on the results of the previous action the Commission evaluated it as if it were a new action. They did not assess if the planning documents took into account risks materialised in the forerunner project. For example, the role, the conduct and also the budget problems of the border guards service in running the centres were not considered. The question as to how the project should better build up capacity should have been dealt with in more detail;
- (b) the project "Capacity Building of Migration Management-CBMM II" (Ukraine) was prepared without sufficient consideration of the experience of the previous project. Although substantial implementation problems appeared in this first project, the Commission signed a grant agreement for a follow-up project at an early stage. It was not logical to replicate more or less a project which was facing severe implementation challenges, especially when the timetable for completion was tight;

(c) The Koslovichi II Border Terminal project (see Box 3) revealed difficulties in obtaining bids within tender budgets and obtaining exemption from value added tax. These two problems had been highlighted in a Special Report from the Court of Auditors published in November 2001<sup>36</sup> concerning the TACIS cross-border cooperation programme.

## **CONCLUSIONS AND RECOMMENDATIONS**

### ***To what extent has the EU support for freedom, security and justice projects in Belarus, Moldova and Ukraine been successful?***

63. The greater part of the audited projects Belarus<sup>37</sup>, Moldova and Ukraine achieved satisfactory results (see ***Annex III***). However their scope was limited compared to the scale of the problems they had to address and success varied, even between components within the same project. In general progress was slower than expected by the Commission, the great majority of projects being extended by several months, some even by over a year.

64. The best performance was in the area of "Border Management". The EU support substantially enhanced the border management capacities of Belarus, Moldova and Ukraine. However the long term goal of a modern system of border management approximating European good practice is still some way off. The key issue is to convert the initial success into sustainable operational improvement (see paragraphs 11 to 19).

65. The European flagship project in the area of border assistance, EUBAM, performed well. The peaceful resolution of the Transnistrian conflict is, however, a long term task needing policy measures beyond better border and customs controls and border surveillance (see Box 1).

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<sup>36</sup> Special Report No 11/2001 concerning the TACIS cross-border cooperation programme together with the Commission's replies(OJ C 329, 23.11.2001).

66. The performance was unsatisfactory in the area of "Migration and Asylum", mainly in respect of infrastructure. Progress in providing adequate shelter for illegal migrants and asylum seekers respecting international humanitarian standards has been especially slow in Ukraine. The division of responsibilities at national level remains unclear and the Government allocated insufficient funds for infrastructure and running costs (see paragraphs 20 to 27).

67. Mixed results were achieved in the area "Fight against Organised Crime". In spite of several successes, project achievements have been insufficient in respect of securing effective prosecution and improved cooperation between customs, border guards, police and secret services for effective criminal investigations (see paragraphs 28 to 44).

68. In the area of "Judiciary and Good Governance" the results are also mixed. Despite democratic reforms and improvements brought about by EU support, Moldova and Ukraine are still deeply affected by corruption (see footnotes 31 and 32). The Court considers that a fundamental, long term change in political will, mentalities, behaviour and attitudes is required to achieve a significant reduction in this high level of corruption (see paragraphs 45 to 52).

### **Recommendation**

The Commission should:

- (a) with the aim of achieving sustainable operational improvement in border management, seek advice from the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX); with regard to further support for border equipment ensure complementarity with equipment provided by other donors;
- (b) before releasing further funds for centres for illegal migrants and asylum seekers, make sure of the recipient government's commitment to pay for at least the running costs, thus ensuring sustainability;

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<sup>37</sup> Due to a lack of respect for democracy and human rights, assistance to Belarus was limited to humanitarian, cross-border and regional cooperation projects (see paragraph 7).

- (c) in the fight against organised crime, focus the project activities more on the issue of effective prosecution (including a modern system of seizure and confiscation of assets) and promote more systematic information sharing between law enforcement bodies;
- (d) continue to explore possibilities for promoting more public involvement in the anti-corruption policy by supporting civil society organisations and advice centres.

### ***What are the main reasons for underperformance?***

69. Whereas the Commission has the ultimate responsibility for the projects, the audit showed that where limited achievements were found they could be typically attributed to the actions or omissions of all the main parties: the Commission, national authorities in the recipient states and contractors which in this area were often international organisations. External factors such as political instability also diminished the project results (see paragraph 54).

70. The Commission did not allocate sufficient manpower to the Delegation in Kiev to deal with a rapidly growing, labour-intensive policy area in the three countries. And it took nearly two years to start operational project management in the Delegation in Moldova (established in 2005). The co-existence of several EU financing instruments for the same purpose, and a lack of consistency between them, hampered a quality approach. Furthermore, the Commission did not take rigorous action whenever it became apparent that the quality of the EU assistance was lowered by shortcomings in the project management of the grant contractors (see paragraphs 55 to 57).

71. The recipient governments and the Commission did not sufficiently coordinate EU activities with the massive support given by other donors. The uncoordinated flow of funds from different sources causes unnecessary duplication of efforts, inconsistent approaches and reduced incentive to keep costs low (see paragraphs 36, 51, 54(a)).

72. In the recipient countries a lack of commitment at project level was noted especially in the sub-areas of migration/asylum and judiciary/good governance. The Commission also underestimated the extent to which external factors, such as political fragility, discontinuity of government structures and, potentially, lack of EU accession perspective could prevent the fulfilment of project objectives. These factors lay beyond the Commission's direct responsibility but were not adequately and realistically evaluated in its risk assessment (see paragraphs 54(b) and (d)).

### **Recommendation**

The Commission should:

- (a) strengthen its personnel in the area of freedom, security and justice in the Delegations in Moldova and Ukraine and have sufficient expertise for dealing with procurement and works elements;
- (b) strive to use the new ENP instrument as a single and flexible tool for support to the sector;
- (c) exercise more rigorous control over the international institutions acting as contractors in respect of project management procedures, such as mobilisation of personnel, procurement, payments, reporting, expenditure control and requirement for EU visibility;
- (d) take appropriate steps to encourage and support the recipient countries to establish and exercise effective donor coordination;
- (e) support the projects where the real interest of recipient countries is clear and evidenced by, among other things, national funding; at the same time be more realistic in terms of objectives and consider longer implementation periods for individual projects.

***To what extent has the Commission a learning process in place to take into account lessons for the continued assistance in the area of freedom, security and justice?***

73. The Commission has not fully exploited options to learn lessons and experience gained was not always reflected in newly-started projects which in some cases led to the repetition of old mistakes (see paragraphs 60 to 62).

**Recommendation**

When preparing new projects the Commission should take into account more systematically the experiences of earlier projects. "Lessons learnt" sections should be more fully developed in preparatory documents. They should also become a standard element in grant applications from international organisations.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 19 November 2008.

*For the Court of Auditors*

Vítor Manuel da Silva Caldeira  
*President*



Source: European Commission.

**ANNEX II****JHA - Project overview (committed under programmes 2000 - 2005)**

	Belarus		Moldova		Ukraine		Multi-country		Total			
	No of Projects	Million euro	No of Projects	Millio euro	No of Projects	Million euro	No of Projects	Million euro	No of Projects	%	Million euro	%
Border Management (including customs)	3	27 300 000	5	2 773 635	16	42 019 884	21	32 593 501	45	50,6	104 687 020	63,2
Migration and asylum	2	940 700	1	794 700	5	8 628 764	9	6 472 354	17	19,1	16 836 518	10,2
Fight against organised crime (terrorism, drugs, money laundering, human trafficking)	1	1 200 000	4	4 207 408	2	6 892 000	4	6 898 012	11	12,3	19 197 420	11,6
Judiciary and good governance (including fight against corruption)			4	6 244 015	7	16 175 935	4	2 382 483	15	16,9	24 802 433	14,9
Other					1	172 000			1	1,1	172 000	0,1
<b>TOTAL</b>	<b>6</b>	<b>29 440 700</b>	<b>14</b>	<b>14 019 758</b>	<b>31</b>	<b>73 888 583</b>	<b>38</b>	<b>48 346 350</b>	<b>89</b>	<b>100,0</b>	<b>165 695 391</b>	<b>100,0</b>

Source: European Commission.

**ANNEX III**

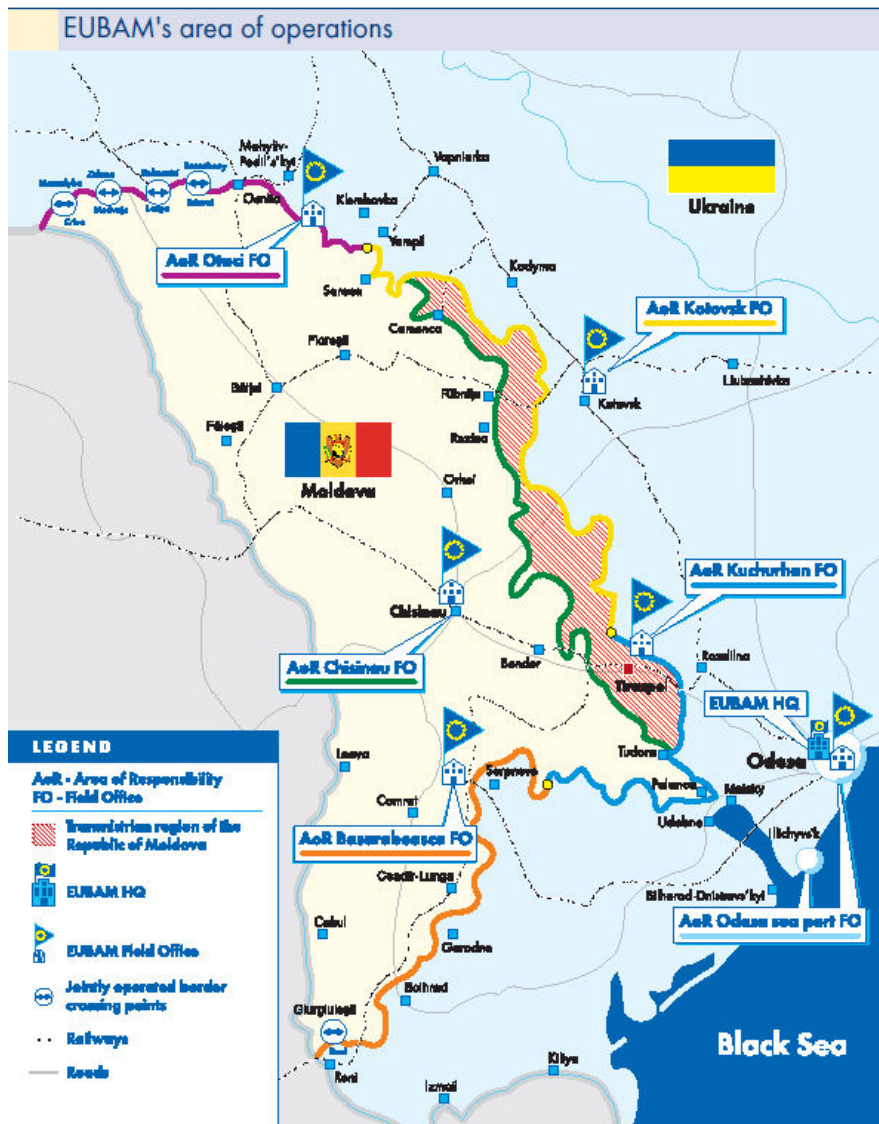
**Overview of audited contracts**

N	Title of the contract	EU contribution	Country	Status (July 2007) <sup>1</sup>	Contractor / Source of Financing	Overall judgment on results <sup>2</sup>
<b>BORDER MANAGEMENT</b>						
1	EU Border Assistance Mission to Moldova and Ukraine EUBAM I	4 000 000,00	UA, MD	completed on 21.5.2006	UNDP / Rapid Reaction Mechanism	Satisfactory
2	EU Border Assistance Mission to Moldova and Ukraine EUBAM II	4 000 000,00	UA, MD	completed on 31.10.2006	UNDP / RAP 2004	
3	EU Border Assistance Mission to Moldova and Ukraine EUBAM III	2 200 000,00	UA, MD	completed on 31.1.2007	UNDP / RAP 2003	
4	EU Border Assistance Mission to Moldova and Ukraine EUBAM IV	8 885 000,00	UA, MD	ongoing since 1.2.2007	UNDP / RAP 2006	
5	Strengthening Border Management in the Republic of Belarus - BOMBEL I	4 500 000,00	BL	completed on 31.12.2006	UNDP / RAP 2001	Satisfactory
6	Strengthening Border Management in the Republic of Belarus - BOMBEL II	8 800 000,00	BL	ongoing since 1.9.2006	UNDP / RAP 2003	
7	Koziovichi II Border Terminal - works	14 000 000,00	BL	ongoing since 30.12.2004	Works contract / CBC 2000; CBC 2002	Unsatisfactory
8	Border Management Improvement, Ukraine - Lot 1,2	2 223 738,00	UA	completed on 17.7.2005	Supply contracts / TACIS NAP 2001	Satisfactory
9	Border Management Improvement, Ukraine Lot 5	1 770 555,00	UA	completed on 17.7.2005		
10	Reform and Modernization of the Customs in Ukraine	1 372 500,00	UA	completed on 15.1.2005	Service contract / NAP 2001 (Small Projects Programmes)	Satisfactory, however underperformance in component "New Computerised Transit System"
<b>MIGRATION AND ASYLUM</b>						
11	Establishment of migration management system in Zakarpattia	1 278 186,41	UA	completed on 31.12.2006	Grant Agreement / Budget line B7-667	Unsatisfactory with regard to capacity building (action of humanitarian aid)
12	Enhancing Capacities in the area of protection and treatment of refugees and asylum seekers in Zakarpattia	699 942,43	UA	ongoing since 1.1.2007	Grant Agreement / AENEAS	
13	Capacity Building of Migration Management - CBMM I	3 781 505,00	UA	ongoing since 1.3.2005	International Organisation for Migration / TACIS NAP 2003	Unsatisfactory in its core activity (MACs); corrective action launched after audit visits
14	Capacity Building of Migration Management (Phase II) - CBMM II	2 767 000,00	UA	ongoing since 22.7.2006		
15	Strengthening the Asylum Systems of Ukraine and Moldova	1 635 000,00	UA, MD	completed on 31.12.2006	UNHCR / TACIS RAP 2002	Unsatisfactory in its core activity (Temporary Accommodation Centres) for Ukraine and Belarus, Satisfactory for Moldova
16	Strengthening the National Asylum System in the Republic of Belarus	365 000,00	BL	completed on 31.12.2006		
17	The Cross Border Co-operation Process (Söderköping Process) - Secretariat	147 479,00	BL, UA, MD	completed on 3.5.2004	UNHCR / ATA	Satisfactory, however delays. Exit strategy to be designed.
18	The Cross Border Co-operation Process (Söderköping Process) - Söderköping I	762 488,00	BL, UA, MD	completed on 28.2.2006	Swedish Migration Board / Budget line B7-667	
19	The Cross Border Co-operation Process (Söderköping Process) - Söderköping II a	1 307 898,00	BL, UA, MD	ongoing since 1.3.2006	UNHCR (subcontractors IOM & Swedish Migration Board) / AENEAS	
20	The Cross Border Co-operation Process (Söderköping Process) - Söderköping II b	1 026 000,00	BL, UA, MD	ongoing since 1.3.2006	UNHCR (subcontractors IOM & Swedish Migration Board) / RAP 2004	

N	Title of the contract	EU contribution	Country	Status (July 2007)	Contractor / Source of Financing	Overall judgment on results
<b>FIGHT AGAINST ORGANIZED CRIME</b>						
21	Drug Control Multisectoral Assistance and Institution Building in Ukraine, Moldova and Belarus - BUMAD 1	2 000 000,00	BL, UA, MD	completed on 30.4.2005	UNDP/ RAP 2001	Satisfactory for setting new anti-drug structures, <b>Unsatisfactory</b> for legislation and police intelligence
22	Drug Control Multisectoral Assistance and Institution Building in Ukraine, Moldova and Belarus - BUMAD 2	2 500 000,00	BL, UA, MD	completed on 21.1.2007	UNDP/ RAP 2002	
23	Drug Control Multisectoral Assistance and Institution Building in Ukraine, Moldova and Belarus - BUMAD 3	2 000 000,00	BL, UA, MD	ongoing since 1.1.2007	UNDP/ RAP 2004	
24	Combating trafficking in women in Moldova	599 408,00	MD	completed on 23.6.2004	International Organisation for Migration / RAP 2000	Satisfactory, however concern as to efficiency (overlapping with other donors)
25	Fighting trafficking in Persons in the Republic of Moldova	300 000,00	MD	completed on 18.12.2006	International Organisation for Migration / TACIS RAP 2002	Satisfactory, however concern as to economy (high rent)
26	IOM Rehabilitation Centre for Victims of Trafficking Chisinau, Moldova: recovery, rehabilitation and reintegration through comprehensive care	306 000,00	MD	completed on 3.3.2006	International Organisation for Migration / TACIS RAP 2002	Satisfactory for protection/ reintegration and raising awareness. <b>Unsatisfactory</b> for criminalisation and prosecution
27	Combating trafficking in human beings in Ukraine	1 892 000,00	UA	completed on 18.6.2006	International Organisation for Migration / TACIS RAP 2002	<b>Unsatisfactory</b> start; but improvement in anti-corruption component
28	Project against money laundering, terrorist financing and corruption in Moldova	3 000 000,00	MD	ongoing since 2.8.2006	Council of Europe/ NAP 2005	Satisfactory
29	Project against money laundering in Ukraine - MOL-UA-1	974 502,00	UA	completed on 1.7.2005	Council of Europe / RAP 1999	
30	Follow-up project against money laundering and terrorist financing in Ukraine - MOLI-UA-2	5 000 000,00	UA	ongoing since 1.5.2006	Council of Europe / NAP 2005	
<b>JUDICIARY AND GOOD GOVERNANCE</b>						
31	Civil and commercial judiciary project NIS, Moldova	2 194 015,00	MD	completed on 29.7.2005	GTZ/ NAP 2001	Satisfactory
32	Support to the National Anti-corruption Strategy of Moldova (PACO Moldova)	250 000,00	MD	completed on 14.1.2006	Council of Europe/ NAP 2003	Satisfactory (pilot action)
33	Joint Programme between the European Commission and the Council of Europe for Moldova: Support to continued democratic reforms 2004 - 2006	800 000,00	MD	completed on 15.12.2006	Council of Europe/ NAP 2003	Satisfactory, however inefficient design
34	Increased independence, transparency and efficiency of the justice system of the Republic of Moldova	3 000 000,00	MD	ongoing since 1.10.2006	Council of Europe/ NAP 2005	Satisfactory, however lack of lessons learnt
35	Reform of Arbitration Courts and Support to Court Administration	2 476 000,00	UA	completed on 31.12.2005	UNDP/ NAP 2000	Unsatisfactory
36	Ukraine International Cooperation in Criminal Matters (UPIIC)	1 500 000,00	UA	ongoing since 1.12.2005	Council of Europe/NAP 2004	Satisfactory
37	Ukraine - Judicial Selection and Appointment Procedure, Training, Disciplinary Liability, Case Management and Alternative Dispute Resolution Methods	2 000 000,00	UA	ongoing since 31.5.2006	Council of Europe/NAP 2003	Unsatisfactory start; more satisfactory since 2007
38	Support to Good Governance: Project Against Corruption in Ukraine (UPAC)	1 500 000,00	UA	ongoing since 9.6.2006	Council of Europe/NAP 2004	Unsatisfactory
39	Interpol-assisted International Cooperation in Criminal matters by Ukrainian Law-enforcement	989 788,00	UA	ongoing since 15.1.2007	INTERPOL/NAP 2004	Unsatisfactory start; more satisfactory since June 2007
40	Anti-corruption Advocacy and Legal Advice Centre in Ukraine (ALAC)	500 000,00	UA	Project prepared, however no contract signed	NAP 2004	Unsatisfactory, activity cancelled
<b>Total EU contribution</b>		<b>99 306 004,84</b>				

<sup>1</sup> Last mission on the spot took place in July 2007.

<sup>2</sup> Unsatisfactory: denotes significant parts of the specific objectives not achieved (finished contracts) or current progress far below expectations (ongoing contracts).



Source: European Commission.

EUBAM has its headquarters in Odesa, and six fields offices on the Moldovan-Ukrainian border and in Odesa Port. It also has four advisers on risk analysis, deployed in Chisinau and Kyiv.

## **REPLY OF THE COMMISSION TO THE SPECIAL REPORT "THE EFFECTIVENESS OF EU SUPPORT IN THE AREA OF FREEDOM, SECURITY AND JUSTICE FOR BELARUS, MOLDOVA AND UKRAINE"**

### **EXECUTIVE SUMMARY**

I. Commission's assistance had to operate in difficult political and institutional contexts characterised by Soviet-style administration in need of large scale reforms.

Due to a lack of respect for democracy, human rights, and rule of law, Commission assistance to Belarus is limited to 5 million euro per year for the period 2007-2010. Successive Council conclusions state that EU assistance to Belarus will support the needs of the population and democratisation, notably by humanitarian, cross-border and regional cooperation and by projects supporting directly and indirectly democratisation and democratic forces.

III. The Commission welcomes the positive appreciation of the Court for the projects in the area of Border Management that represents nearly two thirds of the projects financial weight. In the area of Migration and Asylum difficulties were encountered in the work/supply components of projects, particularly in Ukraine, while the capacity building components attained satisfactory achievements.

IV. Political instability in the region has contributed to hindering progresses. However, limited achievements were circumscribed to some projects.

As regards coordination with other donors, the Delegation in Ukraine is unanimously considered in the forefront of such an exercise. The extent to which coordination takes place is heavily reliable upon the willingness of the parties involved of entering such a process (some donors, especially non-EU, are more reluctant than others).

The Commission has undertaken to systematically lead and strengthen donor coordination efforts in countries, and hosted a region-wide donor coordination conference in January 2008 to kick-start this process.

Taking account of the possibility of comparing the technical specificity of projects, lessons learnt were considered in the design of subsequent operations.

The EC Delegation in Moldova has now fully taken over programme management responsibilities from the Kiev Delegation.

V. The Commission acknowledges the work of the Court and its contribution to increase the effectiveness of the projects.

### **AUDIT SCOPE AND APPROACH**

13. The Commission acknowledges the positive appreciation of the Court on the financially most significant part of the audit.

Box 3 – Example of unsatisfactory result: reduced scope of work and delays

In spite of the mentioned difficulties, the Commission took a number of measures in order to assure the completion of the project. The progress of works was closely and permanently monitored until completion. Finally, the works contract has been completed with full utilisation of the EC funds. The Provisional Acceptance Certificate for the EC funded works contract on construction of the Kozlovichi II border terminal was signed by the Belarusian Customs in March 2008. The

Belarusian Customs took the decision to complete those elements of infrastructure that were excluded after negotiations with their national funding (i.e. parking areas and some storage facilities). Respective works are ongoing. The new border terminal thus is expected to be made operational in the beginning of 2009. Works were planned allowing the old border terminal to continue its functioning through the construction period of the new one, and the old terminal shall continue to be used as a part of the entire complex at Kozlovich.

17. The Rapid Reaction Mechanism (RRM) allows the mobilisation and rapid deployment of specific financial resources to take urgent action to help re-establish or safeguard normal conditions for the execution of the policies undertaken, in order to preserve their effectiveness. Art. 2 of Council Regulation (EC) 381/2001 clearly indicates that the RRM may finance actions which under normal circumstances fall within the regular assistance programmes. The major purpose of the RRM was to enable the Community to react swiftly to crisis situations and thus to support the Communities' external policy. The RRM paved the way for the regular programmes to be used in order to achieve the overall objectives of the intervention. As mentioned in the EUBAM Terms of Reference, it was from the very beginning assumed that tangible results can only be expected in the mid- or long-term. This assumption is fully in line with the intention of the Council Regulation establishing the RRM.

18. The Tacis programme was not flexible enough to allow for a quick mobilisation of major funds for a longer implementation period. A window of opportunity for such a project occurred in June 2005 when the Presidents of Moldova and Ukraine signed a joint letter to the Council and the Commission requesting assistance. The Commission felt it important to react rapidly to this request. However, due to the political instability in the region at that time (Orange Revolution in Ukraine), it was unavoidable to conclude short-term agreements making use of available funds. Meanwhile, the mandate of the Mission was extended (up to end 2009). A factor of predictability was introduced with the coming into force of the ENPI, in the frame of the Regional East Indicative Programme 2007-2010. An annual allocation is foreseen for EUBAM until the end of 2009.

19. The BOMMOLUK projects are based on EUBAM's Needs Assessment and Recommendations Report which analysed the gaps and needs of the national border authorities at the Moldovan-Ukrainian state border. A distinct advantage is that the lessons learned from tender processes in previous projects are being taken into account. As regards other donors, complementarity was ensured with the US whose focus was to provide counter-terrorism assistance. Before having tendered any equipment, the beneficiaries have to ensure that they are able to operate the equipment, and to cover the running and maintenance costs. EUBAM is carefully examining the partner services' capacity to fulfil their commitments.

25.

a) Upon the request of the Ukrainian Government, the Commission decided to support the Ukrainian government. The latter showed strong commitment in 2004, to improve conditions for irregular migrants and agreed to financially support the State Committee for Nationalities and Migration to establish two Migrant Custody Centres which meet the standards determined by the European Convention on Human Rights and the recommendations of the CPT.

Box 4 – Despite alleviation by EU support, living conditions for illegal migrants in existing accommodation centre still unacceptable

Due to the very poor condition of the temporary holding facilities in Pavshino and Chop this project finally delivered more humanitarian aid than capacity building.

After the EC Delegation's visit, a serious discussion was held with representatives of the State Border Guard Service (SBGS) which took immediate action and initiated corrective measures. After the Court's visit, the Commission recommended the Government of Ukraine closed Pavshino due to the poor human rights standards. Meanwhile the Cabinet of Ministers decided to close Pavshino as soon as other facilities will be available.

#### Box 5 – Poor progress in establishing new accommodation centres for illegal migrants

Delays were encountered in refurbishing the selected Migrant Custody Centres in Zhuravychi (Volyn oblast) and Rozsudiv (Chernihiv oblast) due to political instability (the so-called "Orange Revolution"), change in competent Ministry over the period 2004-2005 and lack of transfer of committed resources.

The decision to reduce the number of accommodation places from initially 1 260 to 250 was based on European practice by acknowledging that higher capacity negatively affects the operation of the Centre. In 2007 substantial progress was made in refurbishment works. Meanwhile both migrant custody centres have started operating in accordance with European practices.

#### Box 6 – Under utilisation of newly constructed centres for asylum seekers

At the end of 2006, 250 accommodation places for asylum seekers were available in the Odessa Temporary Accommodation Centre (TAC) thanks to the Strengthening the Asylum Systems of Moldova and Ukraine project. It is true that at the time of the audit only half of the TAC was in use due a lack of State funding. As far as TAC in Mukachevo is concerned it started becoming operational in November 2007 after the Commission convinced the Ukrainian Government to transfer the ownership of the land and building from the SBGS to the State Committee for Nationalities and Religion and to make available State funding for its operation.

26. The Commission is pointing to the financial aspects in its meetings with the Ukrainian Government. The division of responsibilities between the SBGS and the Ministry of Internal Affairs is legally determined and clear: the SBGS responsibility ends after 10 days (short-term detention), afterwards irregular migrants have to be handed over to the Ministry of Internal Affairs. However, since the Ministry did not operate any Custody Centre until recently, the law was not applied and the SBGS held migrants detained up to 6 months, the maximum duration allowed by Ukrainian legislation.

27. The strengthening of the national Belarus asylum system project faced administrative and legal problems that the EC Delegation addressed and solved through contacts with the national administration. The TAC for asylum seekers in Gomel in Belarus has been officially opened on 16 January 2008 and is now operated and used.

34. In its attempt to assist better information sharing among the Ukrainian law-enforcement, the Commission in cooperation with Interpol has since explored the possibility of extending i24/7 to the SBGS of Ukraine. However, for reasons related to national sovereignty this extension proved not to be feasible.

35. Ukraine has not yet ratified the Council of Europe Convention on data protection which is a requirement if personal data is transmitted. The Commission is urging Ukraine to ratify the Convention in order to enable law enforcement services to cooperate with each other. The non-ratification of the data protection convention is also a reason why no strategic agreement has yet been signed with Europol.

36. The Commission became active in the region in the fight against trafficking in human beings already in 2000. With the involvement of others donors in anti-trafficking, the Commission stopped programming such projects under the Tacis bilateral programme. The last project was the one for Belarus under NAP 2005.

40. The legislative process was, at least in Ukraine, hampered by frequent changes in the Government after the Orange Revolution. Generally speaking legislative processes are slow in the region.

41. At the time of the Court's visit seizures were indeed modest. However, the results have improved significantly since then. Ukraine seized in 2007 a total of 415 kg heroin and 19 kg cocaine, and in the first five months of 2008 214 kg heroin and 41 kg cocaine. In Moldova, a seizure of 200 kg heroin was made in February 2008. The EC project has certainly contributed to the successful seizures through its capacity building activities.

47. "Reform of Arbitration Courts and Support to Court Administration" has delivered tangible results since it was the first judicial-assistance project of such a scope and magnitude ever in Ukraine and it intervened in an institutional context still designed along the Soviet-style administration profile. Some significant operational changes suggested by the project were implemented by the State Court Administration.

Ensuring that all equipment purchases were made in a transparent manner resulted in some cases in tender cancellations which eventually caused delays.

50. The follow-up project started in August 2006 and suffered a slow start due to the resignation of the anti-corruption advisor soon after the start-up conference and a new recruitment had to be launched.

52. The 2006-2007 political crisis affected the pace of reforms as well as activities surrounding adoption of new anti-corruption legislation and the anti-corruption Action Plan. The project received a "fresh start" at the end of 2007 when the snap Parliamentary elections brought pro-Presidential political forces to power. The project work plan was revised during the Steering Group (SG) meeting held on 29.11.2007 and a list of priority activities for the period December 2007 – March 2008 was approved. Part of the activities related to drafting and adoption of anti-corruption legislation have been rescheduled for 2008 and 2009.

a) The Anti Corruption Action Plan (ACAP) started with assistance provided by the project. However, subsequently the Ministry of Justice decided to draft the ACAP alone. As a follow-up measure aimed to support the ACAP implementation, the project assisted in drafting of the "anti-corruption package". The expert assessment provided by the CoE focused on the anti-corruption package containing three draft laws. The expertise by the President of the Group of States against corruption (GRECO) mentioned the high quality of the revised Draft Laws.

Experts had access to the Anti-Corruption Action Plan only briefly before it was enacted. Thus, there was not any possibility to suggest changes to the document. Moreover, the draft laws were supposed to be adopted at the same time with the action plan to provide the legal foundation for anti-corruption fight in Ukraine. The deployment of the project and Ukraine's accession to GRECO served as "catalysts" for the action plan's adoption. Nevertheless, it was perceived that by adopting the action plan the Government was intending to "timely report" on the action taken rather than generating a well-orchestrated comprehensive document easy to implement.

b) The ACAP was only adopted in August 2007. Therefore no ACAP monitoring-related activities could have taken place at the time of the audit.

Project support is currently provided through the inter-institutional working group on combating corruption to which a representative from the project team has been appointed as a member. Monitoring of ACAP implementation is one of the group's objectives. The issue of political party financing was first raised at the project Steering Group meeting on 6 March 2007, but it was understated by the Ministry of Justice.

As to the general public opinion survey on corruption, the Ukrainian authorities had sent simultaneous requests to several international donors without ensuring the necessary coordination and dissemination of the information.

54.

a), b), c) The main problem has been indeed the difficult political situation from April 2007 until the end of the year. The perception by the Court of the needs assessment in the area of justice/judiciary/anti-corruption in Ukraine is essentially the result of a particularly difficult and specific context, which is characterized by a high degree of fragmentation and dilution of responsibilities among different executive entities, and by a lack of any form of cross-sectoral coordination.

The project had been designed and developed together with prospective beneficiaries (the Ministry of Justice among them). The local ownership, therefore, has been ensured from the very outset and confirmed under the current Government, appointed after the 2007 elections.

Regular donor coordination initiatives have been put in place by the Project Team in order to share information; to ensure coherence among the different interventions and to avoid overlapping. Initial staffing difficulties are overcome and the issue of office space availability is now solved under the new government.

It has to be stressed that co-financing is not an obligation for the recipient country.

55.

a) The EC Delegation in Moldova has now fully taken over its programme management responsibilities from the Kiev Delegation. In general, the Commission agrees with the Court that adequate staffing, both in terms of number and skills, represents a challenge.

b) Though creating some administrative complexity this mixed fund architecture did not impede the Söderköping project to reach satisfactory results, as acknowledged by the Court.

#### Box 7 – Example inefficient contract management

The division of the Söderköping phase 3 project between the AENEAS programme and Tacis was done because neither programme had available sufficient funding to allow a comprehensive project which was particularly important after EU enlargement in 2004 in order to promote cross-border cooperation in the area of asylum, migration and border management and to avoid the impression that the EU is building a new curtain along the new EU external border.

56. It is correct that the Commission's implementing partners did not pay adequate attention to the question of land allocation and ownership. However, as soon as the Commission learned about these problems corrective measures were immediately initiated.

Donor coordination took place frequently, before, during and after programming exercises. It became institutionalised after the Paris Declaration. Meanwhile, joint programming missions took place.

57. Despite limited cases of shortcomings, international organisations do usually have a significant level of know-how in terms of - inter alia - mobilisation of expertise, overseas financial management and efficient procurement in difficult fields. Improvements will be brought in the definition of verification modalities in the context of the FAFA through the elaboration of common Terms of Reference, and visibility will be enhanced thanks to the issuance of the "Visibility and Communication Manual for EU External Actions" (April 2008) that now also applies to international organisations.

d) "In the specific case, it has been decided to carry out verifications on some UNDP projects and to follow up on the basis of these findings".

60. The Commission follows scrupulously the reporting procedure that links reporting with payment to contractors. There are instances when continuity of action necessitates the launching of new contracts when the full reporting procedure has not yet been completed on an existing action, thus giving rise to unavoidable situations when not all information possibilities are exploited.

61.

a) Since the Court's audit the Commission has widened the ROM coverage.

b) The ROM two-page summary report, supported by a detailed Background Conclusion Sheet, includes not only the scoring of the main five monitoring criteria Relevance, Efficiency, Effectiveness, Impact and Sustainability, but also a total of 21 sub-criteria to be analyzed, scored and made available for statistics and further comparisons. The MONIS (Monitoring Information System) database allows a detailed and strategic statistical, yet simple to extract and use, analysis for all managers involved in projects supervision, implementation and monitoring.

Box 8 – Experiences made insufficiently transferred into new projects

a) The follow-up project selected was the best proposal received under the 2005 AENEAS call for proposals and met the actual needs of the detention centres in the Carpathian region.

b) As regards the timing for the follow-up project, the CBMM 2 project was signed to support the positive resolution of the EC- Ukraine negotiations on the Readmission Agreement. Lessons learned from the CBMM 1 project were taken into account, particularly with respect to the focus on Temporary Holding Facilities and the issue of land allocation/ownership clarified upfront with the responsible entity, and to the additional funds required for the VolynMigrant Custody Centre and made available under the phase II of the project.

## **CONCLUSIONS AND RECOMMENDATIONS**

63. The Commission acknowledges the overall positive appreciation of the Court as regards the audited projects. Their scope was naturally limited to avoid dilution of activities and to diminish the

risk of low effectiveness in terms of outcomes, given the scale of the problems to be tackled in these transition countries. While the capacity building component of projects has achieved overall satisfactory results, the work/supply components have progressed more slowly due to the tendering procedures involved and the need for the beneficiary administration to provide adequate logistics.

64. The key issue of sustainability is tackled in a two-fold manner. On the one hand, border management projects are heavily geared towards strengthening the technical and institutional capacities of the beneficiaries. On the other hand, EUBAM's assessments and recommendations have been further transposed at national level in Moldova and Ukraine with additional EC support in view of ensuring adequate longer-term sustainability.

65. The peaceful resolution of the Transnistrian conflict is, as a matter of fact, tackled primarily at the political level.

67. Ultimate responsibility for achievements in the area of prosecution and improved inter-services cooperation for criminal investigations lies with the national authorities due to matters relating to national sovereignty including security.

68. The Commission considers that progress is gradually undergoing in the area of corruption. GRECO, the Group of states against corruption, of the CoE, to which Ukraine became a member in 2006, adopted its peer review report in March 2007 (published in October 2007). Ukraine should report back to GRECO by Autumn 2008. The Anti-Corruption Action Plan mentioned above aims at addressing a number of recommendations provided by GRECO. Issues to be tackled include:

- setting-up a dedicated entity to deal with corruption offences;
- lifting undue immunities and streamlining the immunity-granting procedures;
- making public procurement more transparent;
- criminalising any corruption-related offence, many of which still do not fall under the criminal jurisdiction.

### **Recommendation**

a) In principle, the FRONTEX Regulation provides the Agency with a mandate to facilitate operational cooperation between Member States and third countries. However, the Commission agrees to seek its advice. Complementarities of border equipment were and will be further ensured with the other donors.

b) The Commission agrees with the Court's recommendation and would like to underline that in the context of the Readmission related assistance programme (2007), such commitment has already been confirmed by the Ministry of Internal Affairs in Ukraine.

c) The Commission agrees with the Court's recommendation. This recommendation is being ensured in the frame of the joint EC – Council of Europe project: Ukraine's International Cooperation in Criminal Matters (UPIC) since 2006 and currently ongoing.

d) The Commission explored and will continue to explore possibilities for promoting Non State Actors involvement in the anti-corruption policy.

69. The difficult political context from April 2007 to the end of the year was the main problem. Despite these events, local ownership was ensured. Initial staffing difficulties are overcome with a full time CoE staff member placed in Ukraine taking direct supervision/leadership of the project affairs.

70. The EC Delegation in Moldova has now fully taken over programme management responsibilities from the Kiev Delegation, which should solve the resources problem.

As regards the co-existence of several EU financing instruments for the same purpose, the use of two financing instruments for supporting the Söderköping project was at that time the solution to adequately respond to the scale of the problem.

71. The Commission has undertaken to systematically lead and strengthen donor coordination efforts in Ukraine, and hosted a region-wide donor coordination conference in January 2008 to kick-start this process.

In addition to this, possibilities for joint programming are being actively pursued, and one joint programming mission in Ukraine, with Sweden's SIDA, has been completed.

72. The Commission draws the attention to the importance of the external factors.

## **Recommendation**

The Commission should

a) Adequate staffing, both in terms of number and skills, represents a challenge. However, the EC Delegation in Moldova has now fully taken over programme management responsibilities from the Kiev Delegation. Besides, as regards the Delegation in Ukraine, an internal reorganisation of the operations' staff aiming at redistributing the workload, particularly in the area of JLS, is effective since 1.9.2008.

b) While the ENPI does represent a more flexible instrument than its predecessor, there is still a clear case for a division of labour between funding instruments, according to the advantages and specificities of each. The focus of ENPI programmes in Ukraine and Moldova is, for example, on large, sector-wide support programmes, rather than smaller projects. This is in line with the need to improve the focus and strategic impact of ENPI funding. Other instruments however, such as the Thematic Programme for Asylum and Migration have the ability to mobilise smaller pools of funds, in a more rapid and flexible way than large-scale sector reform programmes.

c) The standard contribution agreement reflects the requirements of the FR and contains extensive requirements as regards the obligations of the IO as regards visibility, information on contracting arrangements for contracts, as well as the procurement, the award of grants, the respect of the exclusion criteria and adequate ex post publicity of the EC-funded grant and procurement contracts awarded by the organisation.

d) The Commission has been working with partner governments, Member States and other donors to encourage and support country-owned donor coordination mechanisms, and will continue its efforts in this direction.

e) The Commission agrees that the recipient country should clearly express its interests and wishes to underline that these expressions are set out in the Partnership and Cooperation Agreements and in the ENP action plans. They are further taken into consideration at the project's identification stage following priorities identified in the Country Strategy Paper and the National Indicative Programmes in line with the ENP Action plans. National participation is envisaged and implemented according to the nature of the project.

In the frame of the regular ROM exercise, particular attention will be further given to the definition of the objectives in line with the political and institutional capacity of the recipient countries. As regards the length of the implementation periods, it is defined taking into account the capacity of absorption of the recipient countries, measured in terms of the time needed to pursue sectoral reforms.

73.

### **Recommendation**

The Commission shares this preoccupation and would like to underline that it already includes at the level of project's preparation relevant information regarding lessons learnt. The Identification Fiche for project approach is used for the screening by the Quality Support Group, then this translated into an Action Fiche which is part of the financing decision contains a section regarding "lessons learnt" (section 2.2).