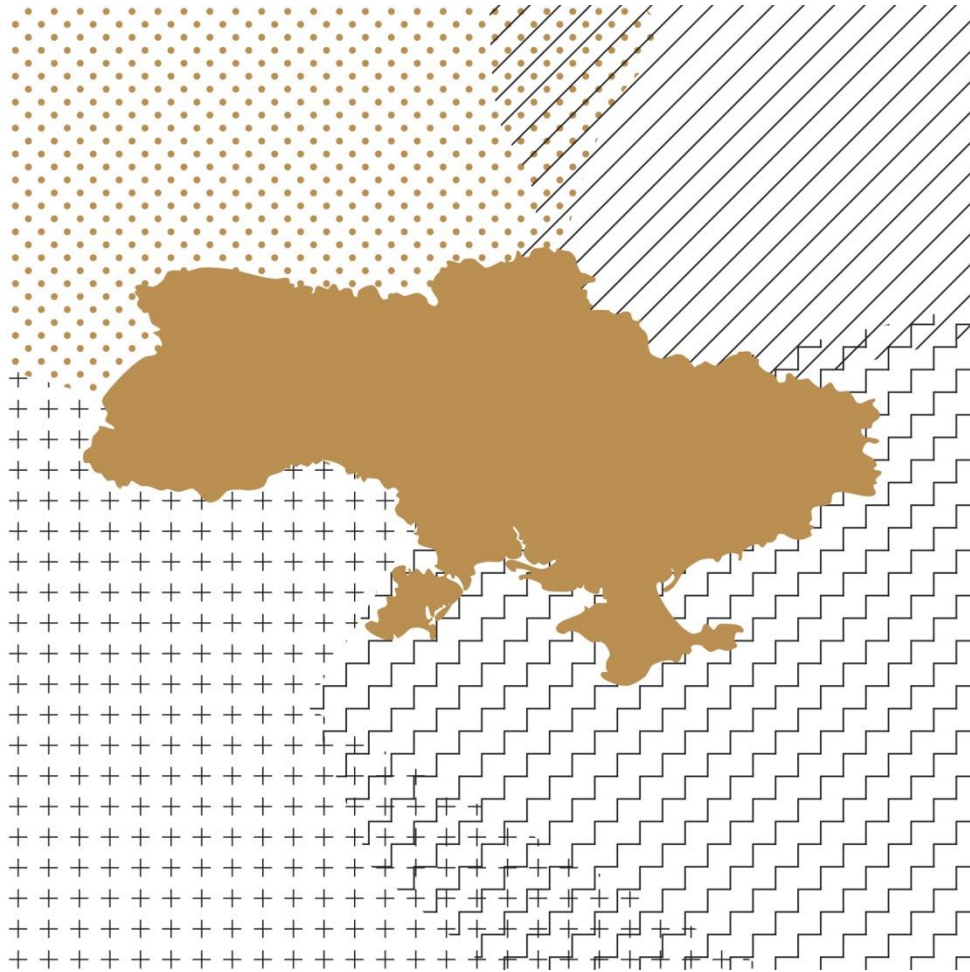




ENHANCING EU PEACEBUILDING CAPABILITIES



## Assessing the EU's conflict prevention and peacebuilding interventions in Ukraine

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Institute of World Policy

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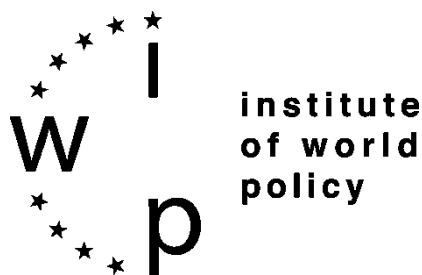
# ASSESSING THE EU'S CONFLICT PREVENTION AND PEACEBUILDING INTERVENTIONS IN UKRAINE

23 March 2017

Deliverable 3.4: Case Study Report Ukraine

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## Whole of Society Conflict Prevention and Peacebuilding

The Case Study Report on Ukraine was produced as part of the project "*Whole-of-Society Conflict Prevention and Peacebuilding*" (WOSCAP). It contains the research findings on the EU's interventions in conflict prevention and peacebuilding in Ukraine. The report focuses on: the European Union Diplomatic Intervention in Ukraine; Security Sector Reform in Ukraine: the role of The European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) and the European Union Advisory Mission (EUAM) Ukraine; and European Union Governance Intervention in Ukraine: Instrument contributing to Stability and Peace (IcSP) funded action "Restoration of Governance and Reconciliation in Crisis - Affected Communities of Ukraine". Further, it focuses on possible areas for improvement and recommendations regarding the EU capabilities. This case study report is based on both a desk research and field research, consisted of in-depth Interviews with the representatives of local and international actors. More information at [www.woscap.eu](http://www.woscap.eu).



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## Abbreviations

<b>AA</b>	Association Agreement
<b>COE</b>	Council of Europe
<b>CEU</b>	Council of the European Union
<b>CSDP</b>	Common Security and Defence Policy
<b>DCFTA</b>	Deep and Comprehensive Free Trade Agreement
<b>EaP</b>	Eastern Partnership
<b>EC</b>	European Commission
<b>EP</b>	European Parliament
<b>EU</b>	European Union
<b>EUAM</b>	European Union Advisory Mission
<b>EUBAM</b>	European Union Border Assistance Mission
<b>HR</b>	High Representative
<b>NATO</b>	North Atlantic Treaty Organization
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>SSR</b>	Security Sector Reform
<b>UNSC</b>	United Nations Security Council
<b>US</b>	United States of America
<b>USAID</b>	US Agency for International Development
<b>VLAP</b>	Visa Liberalization Action Plan

# Introduction

Relations between the European Union (EU) and Ukraine have traditionally lacked a security dimension. This was due to several reasons. On the one hand, the EU as a security actor has relied on its soft power, promoting democratic transformations in the neighbourhood through positive conditionality. Ukraine, in turn, has, for the most part, regarded the North Atlantic Treaty Organisation (NATO) as its primary security partner and model. Both the European Neighbourhood Policy and the Eastern Partnership which were offered to Ukraine did not provide any significant cooperation in the security sphere, and the defence component was excluded altogether. Some aspects of civilian security were touched upon (e.g. border management, judiciary reform) but never constituted a core dimension of the bilateral relations.

However, during the Revolution of Dignity and after the Russian meddling in Ukraine, the EU could not help but become a security actor, albeit reluctantly. In the first place, the EU was the player who recognized the legitimacy of the presidential elections held after the Revolution of Dignity on 25 May 2014 and hence made the entire world, including Russia, recognize them too. The EU has been active in setting up the Geneva format (April 2014) for negotiating a peaceful settlement of the conflict and the stabilization of Ukraine. Although the Geneva format was replaced by the Normandy format, which no longer included the EU but a representation by Germany and France, Brussels remained active in helping Berlin and Paris put together a settlement plan. Moreover, several waves of sanctions imposed by the EU against Ukrainian and Russian persons and companies (also special sanctions on Crimea), including top Russian companies and officials close to Putin, seem to have thus far been effective in deterring Russia from seizing more territory.

The EU also made an attempt at contributing to the conflict settlement by dispatching an EU Advisory Mission (EUAM) to Ukraine. Although the mandate of the mission did not match the request of Ukraine, EUAM remains a significant tool in Ukraine's institution building at the time when viable and functional institutions are paramount for the state's survival and sovereignty.

This paper looks into three cases of EU involvement in conflict prevention and peace building in Ukraine: the Normandy Format (multi-track diplomacy cluster), the EUAM and the European Union Border Assistance Mission (EUBAM) missions (security sector reform cluster) and the decentralization (governance cluster). Importantly, the role played by the EU and the form that the EU interventions have taken is subject to debate in Ukraine. As mentioned, this was not only the case with the EUAM mandate, but also with the EU's choice to consider decentralization as an additional element for conflict settlement. The latter is particularly sensitive and hotly contested in the Ukrainian context. The reason to include this case in this study is that the EU considers decentralization a means to contribute to conflict resolution. Nevertheless, including this case does not imply that the authors of this report agree with the suggestion that the root cause of the conflict in Ukraine is the status of the regions in the East, or that more autonomy in these regions will necessarily lead to a solution. The paper concludes with a reflection on how the EU civilian capabilities in peace building and conflict prevention could be made more inclusive and sustainable.

# 1. National context

The presence of the EU in the eastern neighbourhood has irritated Russia over the last decade. In order not to lose its capacity to project power in the region in the post-Soviet era, Moscow has created alternative integrationist projects that fuelled tensions in the region. Ukraine was thus 'forced' to choose between association with the EU or a membership of the Russian-led Customs Union (now Eurasian Economic Union). The final choice of President Yanukovich, announced on 21 November 2013 by then Prime Minister Azarov, of suspending the signing of the Association Agreement generated deep dissatisfaction in the form of mass protests. After repeated violent crackdowns by law-enforcement agencies, the protests led to a regime change after the incumbent president left the country.

The new pro-EU government in Kyiv, elected in February 2014, managed to reset the relations with Brussels and sign the Association Agreement but also initiate a series of reforms that were postponed during the presidency of Viktor Yanukovich (2010-2014). The EU financial aid and political support has been crucial for avoiding an economic collapse and deter Russia from further aggression (Gros and Blockmans 2016).

This chapter provides some relevant background information about the Ukrainian national context, both before and after the Revolution of Dignity (EuroMaidan) took place. It explains the conditions in which Ukraine found itself between two integrationist projects and how it managed to revive the relations with the EU and pursue a reform agenda.

## 1.1 Squeezing Ukraine between two integrationist projects

The increasing presence of the EU in the eastern neighbourhood through deepening bilateral relations with the former Soviet states, but also through partial integration mechanisms such as the European Neighbourhood Policy and the Eastern Partnership (EaP), generated distrust and resentment on the side of the Russian regime. The geographical proximity between the EU and Russia, combined with advanced cooperation models such as Association Agreements that were offered by Brussels to the EaP states, were perceived by Moscow as an attempt to weaken Russian influence in the region (Bildt 2015) and a project that according to Russian Foreign Minister Lavrov is designed to the detriment of Russian relations with the countries of the EaP (RIA Novosti 2016). Despite Brussels' assurances that the EaP was not directed against Moscow and the follow-up invitation to join the format which was declined, the Kremlin's feeling of potential threat from EU policies in the region was only strengthened (EUobserver 2009). Simultaneously, with Russia's stronger position due to higher income from hydrocarbons and an assertive foreign policy, especially after the 2008 Russian-Georgian War, Moscow started to create alternative integrationist projects that fuelled the rivalry between the EU and Russia (Popescu and Wilson 2009). The birth of the Customs Union in 2010 (consisting of Russia, Belarus and Kazakhstan), which became the Eurasian Economic Union in 2015 and additionally included Armenia and Kyrgyzstan, created a situation in which states from the EaP, especially those which negotiated an Association Agreement (Ukraine, Moldova and Georgia), were "forced" to choose between a deeper integration with the EU or a membership of the Russian-led Customs Union (Litra 2014a). Therefore, unlike previously believed, it is not only NATO that irritates Russia: European integration became a "threat" for Russia's capacity to

project its power in the region and thus the expansion of Brussels' policy in the eastern neighbourhood caused at least anxiety in Russia, if not led to war (Popescu 2014).

For Yanukovych's Ukraine (2010-2014), the choice between association with the EU and the membership in the Customs Union was an uncomfortable position. Choosing the Customs Union was dangerous due to the potential to provoke protests within Ukraine and loose the relative comfort of managing an independent policy for the benefit of Russia. In contrast, the signature of the Association Agreement would have involved the release of Yulia Tymoshenko – a fierce critic of president Yanukovych, a worsening relation with Russia (trade wars, gas price, loans, etc.) and implementation of reforms that the EU spelled out in EU Council (2012) conclusions on 10 December 2012 (EC 2012). During Viktor Yanukovych's rule, Ukraine made significant efforts to balance the two centres of gravity, which was also the case during the presidency of Kuchma (1994-2005), but this permanent balancing act led to a loss of credibility and worsening conditions to join one or the other. The increasing dissatisfaction of the population with the results of Yanukovych's governance, the worsening economic situation and the efforts of the EU to find a way out from the political deadlock made Yanukovych in summer 2013 opt in favour of the Association Agreement (Zerkalo Nedeli 2013).

The decision of Yanukovych was not well received in Moscow, which put significant efforts into convincing Ukraine to join the Customs Union. Moreover, it is widely believed that the effort to create a Customs Union was primarily the result of Putin's desire to have Ukraine (and Kyiv) on board, since this country represents the cradle of the Slavic civilization and the roots of its history through the Kievan Rus (Getmanchuk 2014). Following Yanukovych's decision in favour of the EU, Russia started an active campaign involving trade barriers by blocking Ukraine's exports to Russia, an anti-EU and anti-Ukraine narrative in the public discourse and a diplomatic offensive towards the western capitals to defend its interests in Ukraine (DW 2013a). After four months of pressures from the Russian side in combination with discreet negotiations between Moscow and Kyiv, Yanukovych accepted to shelve talks with the EU over the Association Agreement on 21 November 2013. In December 2013 Putin promised a \$15 billion loan to Ukraine and a gas discount that was perceived as the reward for Yanukovych's decision (DW 2013b). Later, reports revealed allegations that Putin had threatened Yanukovych with mobilizing mass protests in the East and South of Ukraine, should president Yanukovych sign the Association Agreement (Mendras 2013).

## 1.2 Kyiv's difficult return on the EU track

The Maidan protests started on 21 November 2013 with the announcement that Ukraine would not sign the Association Agreement (AA). These protests put additional pressure on Yanukovych. The failure of Ukraine's president to sign the AA at the Eastern Partnership Vilnius summit (28-29 November 2013) caused deep dissatisfaction among a big part of Ukrainian society. Many Ukrainians viewed the AA as a tool to fight corruption and revive the economy. Almost half of the population was willing to join the EU in 2013 while about 30% supported the idea of joining the Russian-led Customs Union. In 2015, 52% of the people were in favour of joining of the EU, while only 12% was in favour of joining the Customs Union (Razumkov 2015a). In addition, the attempted violent crackdown of peaceful protests on Maidan generated more protests demanding the resignation of the cabinet, and later of the president.



Although the EU was outraged by the behaviour of Yanukovych, it remained cautious and broadly maintained a position of non-involvement on the Maidan protests (Dempsey 2014). This was criticized by a part of the Ukrainian public and appreciated by another part. The pressure from the EU states increased in January and February 2014 after the law-enforcement bodies carried out violent attacks on the protesters. Despite the fact that former foreign minister Leonid Kozhara was holding regular meetings with EU ambassadors to convince the latter that Ukraine's authorities were acting within the legal framework and to ask them not to interfere in internal affairs, Brussels became increasingly involved in Ukraine's crisis (Inpress 2014).

The involvement of the EU operated, for a long time, through the "good offices" of the Kwasniewski & Cox Mission of the European Parliament, but also through multiple visits of the then High Representative of the EU, Catherine Ashton and Commissioner Stefan Füle (Szeptycki 2014). However, the mission was unable to reach its goals (benchmarks of the December 2012 EU Council conclusions). With the rising protests in February 2014, the foreign ministers of Germany, France and Poland became the mediators between president Yanukovych and the opposition. The mediation of the Weimar Triangle, also attended by a Russian representative, consisted of an attempt to find a compromise between the parties. However, even though a negotiated document was signed, it was too late and the process had become irreversible (Higgins and Kramer 2015). Alongside the violent actions of the law-enforcement representatives on the protesters, the tougher stance of the EU on Ukraine's incumbent was generated by the draconian laws adopted on January 16, 2014, which were basically legalizing a form of dictatorship and generated a new wave of protests after the document was adopted (Englund 2014). The EU, however, did not manage to predict the seriousness of the crisis in Ukraine and the aggression of Russia. This may have been the result of the previous EU-Russia dialogue in which Kremlin officials seemed to show little interest in the AA and were apparently not against the EU policy in the region (Grant 2016).

Once President Yanukovych surprisingly fled Ukraine on 22 February 2014, the new government took office and Crimea was illegally annexed by Russia (20 February 2014 - 18 March 2014). The new Ukrainian leadership now favoured signing the AA and the continuation of the European integration path. The annexation of Crimea and the subsequent Russian meddling in the East of Ukraine revealed the dire situation of the Ukrainian army and shortcomings in the functioning of state institutions in Kyiv. The Russian annexation of Crimea and the meddling in the East was evidence of the weakness and unpreparedness of the Ukrainian state to deal with domestic and external challenges. In this context, Ukraine needed the support of the EU, the United States (US) and other developing partners in restoring the state institutions. The relations with these developing partners focused partly on security related institutions, but the economy was also a priority. In fact, the EU focused more on providing support to deal with economic issues while member states jumped in with bilateral support that also touched upon the non-lethal military dimension (Gressel 2016).

Russia had described the events in Ukraine from a different angle. First of all, various Russian officials like foreign minister Lavrov mentioned that the Euromaidan revolution in Ukraine was in fact a coup d'état and blamed the Western countries for having double standards, reminding that in case of coup d'état in Yemen and attempt of coup d'état in Turkey Western countries called for respect of constitution and return of the presidents of these countries back in office, while in the case of Ukraine this did not take place (Russian Ministry of

Foreign Affairs 2016). Moreover, the Russian president Vladimir Putin have explained the annexation of Crimea as a preventive intervention aimed at defending the rights of the Russian speakers and denied the illegality of Russian actions, saying that over 90% of people living in Crimea voted in favour of reuniting with Russia (Politonline.ru 2016), although, not mentioning the conditions under which the referendum took place.

### 1.3 The reset of Kyiv's relations with Brussels

The conflict with Russia galvanized Ukraine's relations with the EU. A dynamic relation with Brussels did not only come as the result of Russian aggression in Ukraine, but mainly as a demand of Maidan for reforms and closer integration with the EU. The main process, which Ukraine had been preparing since 2007 – the Association Agreement – was re-launched and the first political part of the AA was signed despite Russian protest. In June 2014 Ukraine signed the economic part of the AA together with Moldova and Georgia (RFRL 2014). The signing of the AA was supported by the majority of Ukrainian society. As of November 2014 the support for EU membership, according to the sociological company Rating, had reached 64% (Rating 2014). Despite the high overall support of Ukraine's EU membership, there were considerable differences at the regional level. In the West of Ukraine support for the EU was reaching 81.7%, in the East and South of Ukraine the support was measured at around 35%, while opposition against it varied from 39% to 53% (Razumkov 2015b).

The AA between EU and Ukraine provisionally entered into force on 1 November 2014. However, the economic part, the key component of the AA, did not. At the insistence of Russia, on 12 September 2014, the EU and Ukraine agreed to postpone the implementation of the Deep and Comprehensive Free Trade Agreement (DCFTA) with Ukraine until 1 January 2016 in exchange for Russia's agreement not to cancel their trade arrangement with Ukraine (Speck 2014). The DCFTA between EU and Ukraine allows Kyiv to access the EU market in specific sectors and to have the same regulatory environment in those sectors. Despite the previously firm position of the EU of not accepting interference from Russia in EU-Ukraine relations, after several rounds of trilateral consultations (EU-Ukraine-Russia) the then Trade Commissioner, Karel de Gucht, announced that an agreement to delay DCFTA had been reached by the EU, Russia and Ukraine. This postponement would give all parties the possibility to 'make remarks, proposals'. Apparently, this compromise aimed to create space for constructive dialogue with the Kremlin and to offer an incentive to stick to the ceasefire agreed on 5 September 2014 in Minsk (Speck 2014).

Indeed, Russia made its remarks and proposals in a 60-page document asking for a significant revision of the DCFTA because of alleged possible losses and demanded a clear mentioning that the new trade regime of Ukraine with the EU should not prevent Kyiv from joining the Eurasian Customs Union (Silina 2014). However, Russian argumentation was weak since it did not provide arguments and detailed calculations of its economic losses due to the DCFTA between EU and Ukraine (Ibid). Russian president mentioned on many occasions that the economic losses generated by the agreement would entail at least \$3 billion with subsequent damage for Russian industry and many other sectors and if Ukraine and EU would overlook these arguments then Russian would have to take retaliatory measures to protect its market (Kremlin.ru 2014). Ukrainian leadership was not willing to join the Customs Union, but even if it was, this would have been impossible due to the fact that DCFTA and the Customs

Union exclude each other as each of these provides a different regulatory framework. The fact that the EU accepted to postpone the implementation of DCFTA with Ukraine was seen as 'an invitation' for Russia to continue its pressure on Ukraine (as well as on Moldova and Georgia) in order to force the latter to cancel its arrangement with the EU, but also put Brussels in the situation to prove to Moscow that the new trade regime with Ukraine would not harm the Russian economy (Silina 2014). Although the DCFTA provisionally entered into force on 1 of January 2016, the full commencement of the AA was put on hold because of the Dutch referendum on the EU-Ukraine AA held in April 2016 that recommended to not approve the EU-Ukraine deal (Van der Loo 2016).

The entry into force, even provisionally, of the Association Agreement changed the optics of how European integration is perceived in Ukraine. It is no longer an issue of foreign policy but it became part of the domestic policy, given that reforms are aimed at almost all sectors (Dombrovski 2016). Decision makers in Ukraine now need to implement the AA and avoid "empty" words about EU-Ukraine relations. The reforms target urgent issues like fighting corruption, independence of justice, reform of law-enforcement agencies, but also various reforms in social and economic areas. For the purpose of helping Ukraine implement the AA, the EU created the "Support Group"<sup>1</sup> which is an unprecedented mechanism for supporting the association process, and, according to the European Commission the Support Group, 'will identify and coordinate with the Ukrainian authorities the technical assistance that they need to stabilize the economic situation, plan and implement reforms to boost growth and move forward with the so-called 'visa liberalization' (EurActiv 2014).

Although Ukraine was the first to receive the Visa Liberalization Action Plan (VLAP) in November 2010, ahead of Moldova and Georgia, the implementation has been widely problematic as Kyiv wanted to get the visa-free regime with the EU through a political agreement rather than through the implementation of VLAP. Once the pro-European government of Yatsenuk took office on 27 February 2014 and adopted some of the remaining laws in the field of document security, asylum, anti-corruption, anti-discrimination and data protection, as well as other measures in order to address the identified gaps, the European Commission adopted the recommendation to grant visa liberalization to Ukraine and it is now pending the final approval from the European Council (EC 2016).

Of enormous importance in EU-Ukraine relations since the pro-European government in Kyiv took office was the contribution of Brussels to avoid an economic collapse of Ukraine. In financial terms, the EU promised that about 11 billion EUR would be made available over the next years from the EU budget and EU-based international financial institutions (EurActiv 2014). Lately, the EC also offered macro-financial assistance up to 1.8 billion EUR in mid-term loans, not to mention that up to March 2016 the EU member states and the European Commission (EC) had already provided 279 million EUR in humanitarian and recovery support (ECHO Factsheet 2016).

However important the financial support of EU to Ukraine would be, the political support was paramount for Ukraine. First of all, one should consider the EU support for presidential elections on 25 May 2014, which basically closed down the debate about the questioned legitimacy of the acting president. The fact that presidential elections were

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<sup>1</sup> The Support Group was established by the European Commission and consists of staff working for the Commission. See for an overview, Support Group for Ukraine, [http://ec.europa.eu/enlargement/neighbourhood/countries/ukraine/sgua/index\\_en.htm](http://ec.europa.eu/enlargement/neighbourhood/countries/ukraine/sgua/index_en.htm) (19 October 2016)

recognized by the entire world including Russia was largely the result of the EU's proactive role in this regard.<sup>2</sup> The same is valid for the energy talks between Ukraine and Russia, in which the EU participated and managed to broker a deal between the two (Macdonald & Blenkinsop 2014).

Particular attention has to be drawn to the EU efforts in stopping and rolling back Russian intervention in the East. The several waves of sanctions against Ukrainian and Russian persons and companies (also special sanctions on Crimea), including top Russian companies and officials close to Putin, seem to have thus far been effective in deterring Russia from seizing more territory (Cwiek-Karpowicz & Secieru 2015), but was insufficient in preventing the ongoing support of Moscow for the separatists in the East of Ukraine. It is noteworthy that the EU, and especially some EU member states that were previously unwilling to sanction Russia, proved more willing to do so after the downing of Malaysian Airlines Flight MH17 on 17 July 2014 (Guardian 2014).

The Russian Federation has attempted to play "divide and rule" over the European continent, finding situational allies in order to make the decision-making process more sluggish. The countries in the EU who are sometimes called "Russia's understanders" are Italy, France and, earlier, Spain (which significantly changed its policy after the annexation of Crimea) (Litra 2014b). Also, countries like Austria, Finland, Hungary, Cyprus, Slovakia, Greece and the Czech Republic have echoed unwillingness to increase sanctions or expressed readiness to cancel sanctions. One has to note the strong role of Germany in pushing the EU to speak with a common voice towards Russia. In fact, the ability of the EU to stick to the decisions on sanctions adopted within the EU institutions is one of the most powerful "weapons" of Brussels in relation to Russia (Wesslau 2016).

The EU sanctions were not welcomed in Russia and Moscow has been unwilling to discuss the issue of sanctions with EU. Following the sanctions imposed by European Union, the Russian government imposed retaliation sanctions on a series of goods produced in EU, United States of America, Australia, Canada and Norway. In 2014 the Russian leadership was praising Western sanctions and especially the Russian counter-sanctions, because as president Putin put it, these are beneficial for Russian economy (Rossiyskaya Gazeta 2014). The statement of Russian leadership was surprising for many given the contraction of Russian economy. Later on, president Putin has had a more moderate position, saying that sanctions are bad for Russia and for the world economy and that the earlier statements that sanctions do not influence Russia are untrue (Rossiyskaya Gazeta 2016).

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<sup>2</sup> The Ministry of Foreign Affairs of Ukraine official, Personal interview by author. Kyiv, Ukraine, 1, June, 2016

## 2. International interventions (EU and Others)

The European Union is an important player in Ukraine. EU-Ukraine relations have been defined by the Partnership and Cooperation Agreement (signed in 1994 and coming into force in 1998). In 2008 the negotiations on the new enhanced agreement – the EU-Ukraine Association Agreement – started and were concluded in 2013. The Association Agreement was signed in 2014 and, as of now, serves as one of the key reform roadmaps for Ukraine. Since 2003, Ukraine has been a part of the European Neighbourhood Policy and since 2009 a part of the Eastern Partnership programme. Also, from 2005 until 2008 the EU-Ukraine cooperation was based on an EU-Ukraine Action Plan that laid down the strategic objectives for cooperation between Brussels and Kyiv (European Commission 2006).

Also important is that the EU is a large donor for Ukraine. Since 1991 the EU has provided 3.7 billion EUR of assistance to Ukraine, which is comparable to that of the US (over 4 billion USD) (Solodkyy & Sharlay 2015: 8). In 2014 the EU announced the allocation of another 11 billion EUR to Ukraine. Therefore, EU money, as well as specific policy tools (e.g. the Association Agreement, the Visa Liberalization Action Plan) and reputational costs to Ukraine if it fails to deliver on its promises, provide the EU with a “carrot and stick” tool which has proven effective for reforms. Above all, the EU and NATO standards are defined as a roadmap in Security Sector Reform (SSR) for Ukraine (Concept for the Development of the Security and Defence Sector of Ukraine 2016).

The leverage of the EU can be exemplified by Ukraine’s fulfilment of the Visa Liberalization Action Plan (VLAP), a programme document with benchmarks which, upon realization, would lead to a visa free regime for Ukraine with the EU. Inter alia, the VLAP contains the “Public Order and Security” block, which in turn contains requirements for fighting corruption and law enforcement. As a result, several corruption-fighting institutions have been established (the National Anti-Corruption Bureau, the National Anti-Corruption Prosecutor’s Office, the National Agency for the Prevention of Corruption, etc.). The Ministry of Interior reform was also a part of the VLAP (European Commission 2015).

The EU presence takes various forms in Ukraine. Apart from the official representative body of the EU – the EU Delegation to Ukraine – there are a number of EU mechanisms which provide support to Ukraine. On a regional level, the EU Border Administration Mission to Moldova and Ukraine, with headquarters in Odessa, has been a permanent “representation” of the EU in Ukraine since 2005. Overall, more than 250 projects have been or are currently being carried out across a wide range of sectors, regions and cities in Ukraine (EU Delegation 2016). After the Revolution of Dignity in 2013-2014 the EU has come up with additional formats of assistance:

- The EU Advisory Mission for Civilian Security Sector Reform in Ukraine (EUAM Ukraine)
- Ukraine Support Group within the European Commission, which provides basic coordination of Ukraine’s reform efforts with the EU, in particular in the implementation of the Association Agreement.
- European Agenda for Reform, which serves as a roadmap for EU assistance and covers a wide range of activities in Ukraine (EU Delegation to Ukraine 2016).

The EU has been involved in various issues related to governance and security sector reform throughout the history of EU-Ukraine relations. Various aspects of reforms in good governance, democracy, rule of law, human rights, justice and migration, as well as the cooperation within the Common Foreign and Security Policy of the European Union, have been part of the EU-Ukraine Action Plan (2005-2008) and EU-Ukraine Association Agenda. The progress in various areas determined by these documents, has been published in progress reports, the first of which was published in 2006 (EU Delegation 2016).

The EU involvement in multi-track diplomacy became evident in the attempts of the EU to contribute to the settlement of the political crisis in Ukraine. Aside from the separate tracks initiated by the EU member states, the EU has been active in setting up the Geneva format (April 2014) for negotiating a peaceful settlement of the conflict and the stabilization of Ukraine. As will be discussed in the next chapter, the Geneva format was replaced by the Normandy format (in 2014). Although the EU, as such, was no longer included in the Normandy format, its member states Germany and France were, and Brussels remained active in helping Berlin and Paris put together a settlement plan. The EU also coordinated its activities on Ukraine with the United States of America and other countries, especially those represented in the G7. Despite the fact that the EU was not always present at the table, the role of the EU alongside such countries as Germany was instrumental in shaping a joint response to the conflict in Ukraine. In this context, it is noteworthy to mention the EU sanctions on Russia for illegal annexation of Crimea and for fuelling conflict in the East of Ukraine. Other efforts were concentrated on such international organizations as the United Nations, the International Monetary Fund, the Council of Europe, NATO and mainly the Organization for Security and Cooperation in Europe (OSCE), which became the key organization tasked with observing the cease-fire and report on the implementation of the Minsk Agreements.

## 2.1 EU involvement in conflict prevention and security measures in Ukraine until 2014

Out of all EU instruments in Ukraine only one – EUAM – was dispatched as a direct result of the Russia-Ukraine conflict and thus can be assessed as a conflict prevention and/or peace-building effort. The list of EU projects, available from the EU Delegation to Ukraine website (2016), also features two projects under “Conflict prevention”: ‘Bio-safety and bio-security improvement at the Ukrainian anti-plague station (UAPS) in Simferopol’ and ‘Border Assistance Mission to Moldova and Ukraine (EUBAM)’. Other projects, which could potentially be attributed to the security realm (listed under “multi-sector” on the EU Delegation website), are: ‘Harmonisation of competition and public procurement systems with EU standards’, ‘;’ and = ‘the Twinning project “Disposal of PFM-1 land mine type” (aimed at disposing landmines of Soviet production).

Apart from that, the EU was involved in the following efforts regarding Ukraine’s security sector reform:

- A Twinning project Support to Justice Sector Reforms in Ukraine (8.6 million EUR) started in October 2013 and continues until the end of 2016, which provides advisers to the Ministry of the Interior (police), the Prosecutor General’s Office, the Ministry of

Justice and court systems. The aim is to produce a coherent and complete strategy for the constitutionally independent players in the justice sector.

- An European Neighbourhood and Partnership Instrument (ENPI) regional-funded project “Eastern Partnership Police Cooperation Programme” is being implemented by EU member states (led by Poland, 5 million EUR). The objectives include enhancing the police skills on management and operations against cross border crime.
- The project “Support for Border Management Sector Policy in Ukraine” (66 million EUR budget support, including 6 million EUR of complementary assistance).
- Additional activities performed by EUROPOL and FRONTEX (Council of the European Union 2014b).

Also, a large number of EU member states have been engaged in Ukraine’s SSR, in addition to numerous other international actors. Since no donor coordination mechanism was established in Ukraine, the EU tasked EUAM to coordinate donor support to SSR in Ukraine to avoid duplication.

In 2015 Mans Hanssen from the Folke Bernadotte Academy (the Swedish government agency) mapped the support projects for SSR in Ukraine (see graph 1). The document offers a solid overview of the donors’ presence and priorities in Ukraine. In particular, the report reviewed some 250 projects, out of which 34 were implemented by the European Union alone or in a partnership. The key donors in SSR vary depending on the institution in question, but the key partners include NATO, the Council of Europe, IMF, the World Bank, the USA operating through the US Embassy, Japan, OSCE, as well as a whole range of individual states.

Looking at graph 1, it is obvious that NATO is the only international organization dealing with the military aspect of SSR in Ukraine. In turn, the civilian aspect of SSR is supported by the EU, OSCE, the Council of Europe and others.

According to Hanssen, there are five donor coordination groups that are of importance to SSR:

- Justice Reform – led by USAID FAIR
- Security and Defense – led by NATO
- Anti-corruption – led by UNDP and OECD
- Law Enforcement – led by EUAM
- Gender Equality – Sweden and the UN as major drivers (Hanssen 2016).

While the EU is present in all of the above mentioned spheres, law enforcement is the sphere where the EU has the strongest involvement given the EUAM’s coordinating role.

Mapping of International Support to Ukraine's Security Sector		INTERNATIONAL ACTORS SUPPORTING THE UKRAINIAN SECURITY SECTOR																												THEMATIC LEGEND																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
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the decentralization reform through technical advice and financial assistance. With EU support, a concept document on the reform of local self-government was approved by Ukraine in July 2009. The document seeks to create conditions for sustainable development of territorial communities and to increase local participation in decision-making (Progress Report 2009).

In a recent announcement by the European Commission, more than 100 million EUR will be devoted to local governance reform in Ukraine by means of two programmes: the Ukraine Local Empowerment, Accountability and Development Programme (U-LEAD) and the Instrument contributing to Stability and Peace (IcSP) funded action “Restoration of Governance and Reconciliation in Crisis - Affected Communities of Ukraine” (European Commission 2015b). EU’s financial assistance was preceded by the political decision derived from the EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement. Enabling decentralization reform was thus officially designated as a part of the political dialogue (European Union External Action 2015). The utilization of two different mechanisms by the EU is primarily driven by the peculiarities of decentralization reform in Ukraine. Thus, IcSP funded programmes would be focused on the eastern regions of Ukraine, Donetsk and Luhansk, and specifically on the areas under government control. Despite the signing of a ceasefire in winter 2015, hostilities continue to this day, which requires a different approach to decentralization and local governance reform. Thus, the IcSP is aimed not only at assisting with reforms, but also toward reconciliation efforts. U-LEAD, on the other hand, focuses on other areas of Ukraine that also require capacity building programmes and technical assistance to enable administrative and fiscal decentralization.

Overall, in view of the EU’s unique transformative power and leverage in Ukraine, any of its efforts in peacebuilding and conflict prevention could yield significant result, provided the EU is willing to fully engage and provide the necessary resources. The EU efforts within the multi-track diplomacy, security sector reform and decentralization are reviewed in detail below.

### 3. European Union Diplomatic Intervention in Ukraine – “Normandy Format”

#### 3.1. Contextualization of EU intervention in Ukraine

Diplomacy was unable to prevent the domestic crisis (EuroMaidan) in Ukraine or the Russian intervention in the East of Ukraine and its subsequent annexation of Crimea. The international community, including the EU, found itself unable to swiftly respond to the unfolding events in Ukraine, which included “hybrid” warfare. However, it is fair to say that the de-escalation of the conflict and the fragile ceasefire was possible due to the diplomatic efforts of the EU and United States of America (Strzelecki 2015).

The term hybrid warfare is used for a combination of traditional and unconventional elements that are employed by an aggressor, Russia in this case. Russell Glenn defined hybrid warfare as ‘an adversary that simultaneously and adaptively employs some combination of (1) political, military, economic, social, and information means, and (2) conventional, irregular, catastrophic, terrorism, and disruptive / criminal warfare methods. It may include a combination of state and non-state actors’ (Glenn 2009 in Racz 2015: 33). This type of warfare, which was applied on a large scale in Ukraine, proves to be an enormous challenge for the government of Ukraine and the EU, as it requires skills and resources that were not implemented before.

The term hybrid warfare is not used by all parties for the conflict. With reference to the Crimean annexation, Ukraine, EU, US and most of the UN countries refer to it as the illegal annexation of Crimea, unlike Russia which claims the annexation was carried out according to international laws. In relation to the war in the East of Ukraine, the Ukraine, EU and US have used the term Russian aggression, while Russia denies involvement and calls it a domestic conflict and civil war. All parties unofficially acknowledge that hybrid war tactics were applied initially. Moreover, the Chief of General Staff of the Russian Armed Forces, general Gerasimov, laid out his theory on new type of war before the conflict in Ukraine took place. His views are later on widely reflected in what happened in Ukraine. In 2013 general Gerasimov was saying that ‘in the XXI century there is a tendency of erasing distinctions between a state of war and peace. War is no longer declared, but once it begins – it does not follow a usual pattern’ (Gerasimov 2013). That is to a great extent the policy that Russian applied in regard to Ukraine once the aggression took place.

The short history of the independent Ukraine provided the tools to avoid conflicts and guarantee territorial integrity and security. In 1994 Ukraine signed the Budapest Memorandum (1994) in which Kyiv agreed to give up its nuclear arsenal (third biggest stockpile in the world) in exchange for security assurances from Russia, the United States of America and the United Kingdom, alongside some weaker, separate assurances from France and China. Despite the existence of the memorandum, Ukraine was not protected against external aggression. Moreover, Russia, as one of the guarantors was the one who actually annexed Crimea and crafted the conflict in the East, instead of protecting Ukraine’s territorial integrity.

In terms of diplomatic efforts of the EU, the EU reaction was often one step behind the events in Ukraine, while sometimes Brussels delegated its job to the member states. The first mention of the political crisis in Ukraine is contained in the EU Council conclusions of 20

December 2013, which highlight the readiness of the EU to sign the Association Agreement and 'emphasizes the right of all sovereign States to make their own foreign policy decisions without undue external pressure' (EU Council 2013) referring to Russia. The next conclusions of EU Foreign Affairs Council, adopted on 10 February 2014, reiterated the "deep concern" of the EU with regard to Ukraine and encouraged the High Representative (HR) and Commission to continue facilitating the dialogue between all actors (EU Council 2014). On 20 February 2014, at the pinnacle of the Revolution of Dignity<sup>3</sup>, the EU gathered for an extraordinary session of the Foreign Affairs Council in which the EU dropped its neutral position towards the ongoing events in Ukraine and agreed on necessary steps that would lead to de-escalation. The EU also introduced targeted sanctions, including the freezing of assets and a visa ban for those responsible for human rights violations (EU Council 2014b). Moreover, the EU had little influence over president Yanukovych. Evidence of that is the meeting between Yanukovych and HR Catherine Ashton on 10 December 2014, in which the president of Ukraine promised not to resort to violence. However, the riot police stormed the protesters in Kyiv while Ashton was still in town (EurActiv 2013). The inability of the EU to respond to the crisis in Ukraine was not only due to a lack of experience in conflict intervention and a slow reaction mechanism, but also due to the different visions inside the EU on how to deal with Ukraine and how to construct a dialogue with Russia (Averre 2016).

The situation in Ukraine after the presidency of Yanukovych was extremely chaotic. On the one hand the level of polarisation between Maidan supporters and Yanukovych supporters was extremely high, on the other hand, the state institutions were weak and it took them a few days to weeks to be back in control. The document that best illustrates the situation in Ukraine in detail at that time are the declassified minutes of the National Security and Defence Council of Ukraine from 28 February 2014 (RNBO 2014). Examples include the fact that Ukraine could mobilize only about 5000 soldiers and only 1500-2000 would be ready for combat activities (Ukrainska Pravda 2016). Moreover, the treasury of Ukraine was empty and it was difficult to raise the funds needed to restore the army and conduct military exercises (Ibid).



Figure 1. Map of the conflict with key data (Sajdik 2016)

3,1m people affected by conflict

0,8 m along line of contact

2,7m in NGCA

1,1 externally displaced (OCHA 5,16)

NGCA area: approx. 17,000km<sup>2</sup>

Length of contact line: approx. 480km

<sup>3</sup> In this text, the term Revolution of Dignity is referred to as Euromaidan, Maidan, revolution.

At the peak of the Euromaidan revolution certain efforts were made by individual countries to reconcile the then president Viktor Yanukovich with the protesters and the leaders of the opposition. The shuttle diplomacy of various officials from the United States, European Union and EU member states culminated in the Agreement on the Settlement of the Crisis in Ukraine, which was signed on 21 February 2014 by President Yanukovich and the three opposition leaders. The agreement was mediated by the foreign ministers of Germany, Poland and France at the invitation of the former EU HR and Vice-President Catherine Ashton. However, the intervention of this so-called 'Weimar Triangle' was too late since the protesters rejected the deal, and on 22 February 2014 President Yanukovich fled the country. Despite early calls to the EU in January 2014 from experts like Judy Dempsey (2014) to delegate mediation to Germany and Poland, given the inability of Brussels to handle the crisis, the EU has been slow in its response, at least slower than the expectations of Ukraine. When the efforts were undertaken, the solutions were no longer satisfying for either the protesters or the incumbent (Washington Post 2014).

After the difficult process of transferring power from the incumbent to the opposition, the Kremlin used the political void in Ukraine to illegally annex Crimea and craft the two "People's Republics" in the East of Ukraine (Donetsk People's Republic and Lugansk People's Republic) (RAND 2015). All the calls of the international community to restore control of the Ukrainian authorities were ignored. During the presidential elections in May 2014 and while the new Ukrainian authorities were regaining control over the Russian-backed rebel territories, a new wave of Russian involvement, this time with regular troops, came in August 2014 which forced the Ukrainian army to withdraw from various places (Gilles et al 2015).

This Russian intervention with regular troops in August 2014 further threatened the territorial integrity of Ukraine (Ibid), although Russian officials from Ministry of Defence and Ministry of Foreign Affairs have permanently denied any involvement of Russian regular troops (Novaya Gazeta 2014). Despite the restoration of power, the Ukrainian army was in a very poor condition. It is fair to say that Ukraine has been able to withstand the expansion of Russian-backed separatist territories mainly due to the mobilization of many volunteer battalions alongside the regular troops. Especially after the illegal annexation of Crimea, these battalions moved to the East of Ukraine (Speck 2016). Also, the opposition and lack of enthusiasm and support from people in Ukraine's separatist communities were an important factor (with the exception of the Autonomous Republic of Crimea) (Speck 2016). Even in the Donbas region, there has been significant opposition to the Russian inspired separatism. However, the locals have proven unable to oppose the armed groups (Guiliano 2015). The lack of support from local population and the "import" of Russian mercenaries was confirmed by Igor Strelkov, who used to serve minister of defence of the self-proclaimed Donetsk Peoples' Republic and led the Russian-backed separatists in Crimea and in Eastern Ukraine. Strelkov mentioned on several occasions that he has been unable to form fighting groups from locals and that is why Russian soldiers belonging to Russian regular troops who were on leave took place in the fighting (Zavtra.ru 2014).

The direct intervention of Russia, as well as other factors, such as the downing of MH-17, caused EU member states to become more involved in settling the conflict. Since the failure of the Weimar Triangle was a recognized fact after president Yanukovich's exile, the Geneva format emerged in April 2014. At the meeting in Geneva between Russia, Ukraine, the United States and European Union, an agreement aimed at de-escalation was reached (EEAS 2014). It

was agreed that the protesters in Ukraine were to leave the buildings they occupied, while the illegal groups in Eastern Ukraine would be offered amnesty. Aside from the agreed document, it was also the moment when the EU, US and Ukraine declared Russia responsible for the conflict in the East of Ukraine, noting that Russia is to be held accountable for the implementation of the agreement in the East of Ukraine (Guardian 2014). At the same time, Russia pushed for the start of a process of devolving constitutional power to the provinces of Ukraine (Ibid). The Geneva agreement was cautiously welcomed, though there were no guarantees that the commitments on the side of Russia and Ukraine would be fulfilled. Indeed, the Geneva format became futile as Russia was not fulfilling its obligations (EC 2014). Since the Geneva format was fading away because of its ineffectiveness, Germany, France, Ukraine and Russia met in Normandy on 6 June 2014 and reinforced a new format, however, this time, without the direct participation of the EU.

## 3.2 EU intervention in Ukraine

### 3.2.1 Policy design

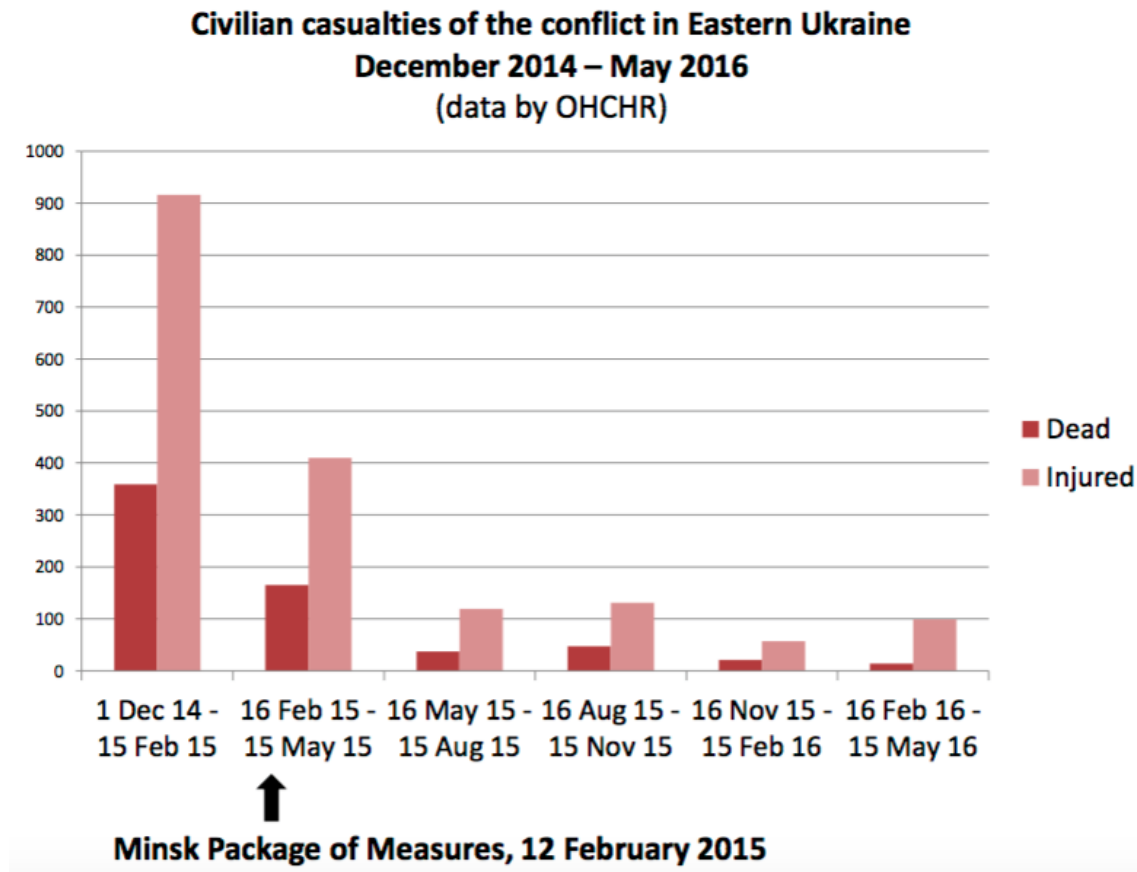
The EU model aimed to aid conflict settlement in Ukraine broadly corresponds to the one that was suggested by German Chancellor Angela Merkel. It entails a joint response based on three pillars: 1) attempt to diplomatically resolve the conflict with Russia, 2) sanctions in order to change Russian behaviour, 3) support for Ukraine to help resist the assault (Speck 2016). Under the first pillar, the “Normandy” format for the conflict in Ukraine was created on 6 June 2014, when the leaders of Ukraine, Germany, France and Russia met close to the 70<sup>th</sup> anniversary of the D-Day allied landings in Normandy. A cease-fire agreement was much needed in order to stop the violence and the rising number of casualties, but also for Ukraine’s stabilization.

The first meetings at the level of presidents did not bring many results (DW 2014). In contrast, the February 2015 meeting in Minsk was fruitful. After a fourteen hour negotiation, a package of measures for conflict settlement was agreed upon on 12 February 2015. The package of measures agreed by the Normandy Four in Minsk was not a process that started from scratch. It was a continuation of the Minsk Agreement (known as Minsk I) concluded on 5 September 2014 by Ukraine, Russia and the two separatist “republics” under the auspices of OSCE. In fact, the four leaders of these countries and separatist republics did not sign the Minsk Agreement and the package of measures (Minsk II) (Federal Foreign Office 2014). They prepared a joint declaration, which was a political umbrella for a signature of the Trilateral Contact Group (OSCE, representative of Ukraine, representative of Russia) and the two leaders of the separatist territories. The Trilateral Contact Group, created after the May 2014 presidential elections, holds bi-weekly meetings and has four working groups on political, security, economic and humanitarian issues (Sajdik 2016). To summarize, the Normandy Four upgraded and reinforced the Minsk protocol to create the conditions for the signing of Minsk II package of measures.

The signing of Minsk II occurred as a result of the Normandy format. It was clear that if Russia wants to stop the war, then it stops (Bildt 2015), because after the Kremlin accepted the Minsk package, de-escalation and a sharp decrease in cease-fire violations took place. This

significantly reduced the number of casualties (see Figure 2), but most importantly, the Minsk II agreement largely moved the conflict from the military playing field to the diplomatic playing field, which means that, as of February 2015, the main struggle focused on the interpretation of the agreement (Speck 2016).

Figure 2. Number of civilian casualties in Eastern Ukraine before and after Minsk II (Sajdik 2016)



The *ad hoc* creation of the Normandy Format and the subsequent agreement was welcomed by the EU and strongly supported by adopting an EU Council decision (EC 2015). A few days later, on 17 February 2015, the UN Security Council (UNSC) adopted Resolution 2202 which also endorsed the Minsk Agreements, including the package of measures of 12 February 2015.<sup>4</sup> During the negotiations and the creation of the Normandy Format, Brussels was not involved to the extent that Germany and France were. This was evidenced by less involvement by the head of the European Commission and president of the Council, as well as that of the new HRVP for foreign and security policy, Frederica Mogherini. Despite not being involved in key talks with Russia and the United States, it is worth mentioning however, that Brussels had an important role in the process of building consensus and providing expertise, which was an important help for an efficient execution of the joint decisions (Speck 2016). The EU Council meetings served to build consensus, while some arrangements took place prior to the Council.

<sup>4</sup> Interviews of the authors with officials of the Ministry of Foreign Affairs of Ukraine and with official of the EU Delegation in Ukraine, Kyiv, 2016.

Also, the EU provided expertise on possible sanctions and financial support to Ukraine (EEAS official).

For many it was not surprising to see that German Chancellor Angela Merkel took the initiative and also brought Paris into the format. The absence of the EU was regretted by certain EU countries and EU institutions, however, the most disturbing question for certain EU countries was why Germany and France went to the negotiations and signed an open-ended deal, which was later accepted by the EU through its Council endorsement.<sup>5</sup> The same question was raised to Frederica Mogherini, who said that, even though the EU was not directly involved, she has been coordinating with the leaders of France and Germany and she was on the phone with them during the negotiations. Ms. Mogherini acknowledged that she was severely criticized for not negotiating on behalf of the EU, however, she claimed that Germany and France defended the EU's position:

'... they had a constant contact with me, for sure, over the night of the negotiations themselves. I was sometimes very hardly criticized for not sitting at the table but I can tell you, I think, that the way in which Germany and France led the negotiations with a very European way of sharing and of representing European positions at that table was excellent' (Mogherini 2015).

Moreover, diplomats added that, in the Council, the member states had agreed on the red lines of the future agreements.<sup>6</sup> Therefore, the risk of reaching an agreement unacceptable to a member state was minimal. Germany and France had a general political mandate with the "red lines" that was given to find a solution for the implementation of the Minsk Agreement (Ibid). The EU was ready to hand over the negotiations to other stakeholders in any possible format, including the Normandy Format – an intention which was confirmed by the EU Foreign Affairs Council conclusions adopted one week ahead of Minsk II. HRVP Mogherini confirmed the mandate existed and that it was determined by Minsk I:

'... they had this general political mandate of first using the format that was recognized by the European Union as such, as a good format in which to invest and secondly, they had a large mandate of working on the line of implementing Minsk One. I will not refer to Minsk One and Minsk Two because we only have one agreement in Minsk' (Mogherini 2015).

However, despite the explanations given by EU, it is still necessary to find out why the EU lost the initiative in the process. With the EU involved in the first negotiation format (Geneva), why was it not represented in the Normandy format? The involvement of the EU in the negotiations is a much more disputed issue that it seems in the public discourse.<sup>7</sup> The lack of direct involvement in the conflict settlement has several explanations. Many experienced and knowledgeable public figures and EU officials share the idea that it would have been logical for the EU to sit at the table alongside the US, Russia and Ukraine. They point out, however, that the need for deeper EU involvement emerged when the EU was weak because of the elections in the European Parliament and the change of the European Commission. That is why Berlin and Paris took the initiative and presented a result that was probably better than what the EU could have achieved (Bildt 2016).

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<sup>5</sup> Author's interview with the officials of the EU delegation in Kyiv, 2016.

<sup>6</sup> Author's interview with a Senior official of the Ministry Foreign Affairs of Germany, Kyiv, 2016.

<sup>7</sup> Author's interview with an EEAS official, Brussels, 2016.

Additionally, some observers single out the replacement of Catherine Ashton with Frederica Mogherini as an important element. It is worthwhile to consider the mandates of HRVP Ashton and HRVP Mogherini, and how these mandates impacted member states' behaviour, from a comparative perspective. Catherine Ashton's mandate already showed that the member states are often unwilling to grant leadership in strategic dossiers in foreign policy of the EU to the HRVP. However, when comparing her mandate to that of HRVP Mogherini, it is possible to observe more diplomatic leadership during Ashton's mandate, with clear roles the EU played in the negotiations with Iran and Serbia – Kosovo negotiations. Additionally, the EU has played a leading role in the settlement of the Cyprus conflict.<sup>8</sup> In the mandate of HRVP Mogherini there seems to be a greater focus on strategic planning and cooperation with the European Commission and less involvement with political processes backed by member states. Under Mogherini, the EU revised the EU strategy in global affairs, the EU neighbourhood policy, and improved the inter-institutional coordination. Nevertheless, the challenge remains to increase the HRVP's contribution to the most pressing international issues in foreign policy, especially to those involving EU member states. If this is not dealt with, the HRVP's significance could diminish by the end of Mogherini's term (Kaca 2015).

In summary, it is not only the EU institutional void that caused a timid involvement of Brussels in diplomatic efforts to solve the conflict in the East of Ukraine. Frederica Mogherini assumed office at a crucial moment in the conflict. At that time, a series of questions were raised by EU officials in EU parliament, EEAS and member states regarding Mogherini's ability to negotiate on behalf of the EU and were questioning her preparedness to withstand a negotiation round with president Putin, given her allegedly insufficient experience.<sup>9</sup> Also, leaders of several member states have suspected Mogherini of having a too soft and conciliatory position towards Russia. Concluding, the EU policy design regarding its intervention in Ukraine at the level of multi-track diplomacy was rather process driven and has arguably weakened its influence in the process. This mainly happened due to the overlap of the need to intervene in the conflict with the leadership change in the EU institutions. The critics of Mogherini's position towards Russia intensified after she proposed a paper in January 2015 to EU foreign ministers in which a rapprochement with Russia was explored, including a pathway to easing economic sanctions which was seen as a way back to business as usual and as undermining the EU stance (Kaca 2015). The steps of the EU, especially at the level of the HRVP, were seen by certain EU member states as not entirely coherent and often inconsistent towards Russia (Reuters 2015), and questions regarding to what extent the new HRVP was well positioned and ready enough for negotiations in such a complex situation and format were raised.

### 3.3 Policy implementation

Very few observers consider it possible that another format would have been able to achieve what the Normandy did not achieve - the settlement of the conflict. The negotiation format was limited by the true intentions of the participants. In Ukraine and in a considerable part of

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<sup>8</sup> Author's interview with an EEAS official, Brussels, 2016.

<sup>9</sup> Author's interview with an expert of the Italian Parliament, Rome, 2016.



the West it is widely accepted that Russia has no good intentions in the settlement process.<sup>10</sup> The Kremlin, on the contrary, highlights its readiness to contribute and denies any direct involvement in the conflict. This also implies that Russia positions itself as a mediator and not as a party in the conflict. This positioning is unacceptable for Kyiv, Brussels and Washington.<sup>11</sup>

Minsk II, signed as a result of the Normandy format efforts, shifted the centre of gravity in the conflict from military operations to diplomacy. Nonetheless, military means are still used and the Russian military build-up on the Ukraine's border continues to take place. The aim is not only to intimidate Ukraine, but also to retain the ability to escalate and revert to military actions if the Russian conditions are not fulfilled (Speck 2016).

The question that is frequently asked by critics of the Minsk agreement is whether Minsk was created to hold the ceasefire and solve the conflict or to reform Ukraine. In Kyiv, many accused president Poroshenko that within Minsk II he committed to things he cannot deliver, such as the amendment of the constitution, which can only be done by the parliament. Poroshenko's party is indeed the biggest at the moment. However, it has insufficient votes to amend the constitution. In Ukraine, many parties did not receive the insistence to adopt constitutional changes well. The question that many Ukrainians ask is why a constitutional change has to be imposed from the outside instead of emanating from the population. The Minsk conditions are seen by many parties as a direct pressure on the country's leadership to accept changes that are not needed and do not contribute to the settlement process because these are not directed to solve the conflict, but to give Russia guarantees that Ukraine is not going to have a sovereign foreign policy.<sup>12</sup>

The pressure on Ukraine also relates to the issue of elections in the occupied regions. While it is a condition of the Minsk Agreement, Kyiv fears that the enactment of the new electoral law, before the security in the separatist regions is properly ensured, might place the political onus on Kyiv rather than on Moscow, and thus the responsibility of the crisis will revert from the Kremlin to Ukraine (Galbert 2015). Among other aspects, Minsk II does not provide for a concrete sequencing of the process. This has become a big issue as each side interprets the interconnections of the agreement in its own way. That is why Germany has focused on negotiating a strict action plan with clear dates and benchmarks lately in order to move on with the implementation.<sup>13</sup> When this report was written, no agreement had been reached.

Russia has been putting pressure on Kyiv to engage in a direct dialogue with the separatists (Segodnya 2016). In Ukraine, many parties see this as an attempt to transform the conflict from an interstate conflict into a domestic conflict. But as Kyiv is pressured by the Kremlin, it is also pressured by the Ukrainian public opinion and various groups to withstand occupation and confront the separatists. According to a Ukrainian official (2016) the formula widely accepted by Ukraine's population is 'peace and return of the separatist territories but not at any cost'. The majority of the public resists the federalization of Ukraine. This attitude is confirmed by opinion polls that show a support for a unitary Ukraine (36.8%), and a unitary Ukraine with larger competences for the region (41.5%). Only 7.6% think Ukraine should be federalized (Liga 2015).

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<sup>10</sup> Author's interview with a Senior official of the Ministry Foreign Affairs of Germany, Kyiv, 2016.

<sup>11</sup> Author's interview with a Senior official of the Ministry Foreign Affairs of Germany, Kyiv, 2016.

<sup>12</sup> Author's interview with a Senior official of the Ministry Foreign Affairs of Ukraine, Kyiv, 2016.

<sup>13</sup> Author's interview with a Senior official of the Ministry Foreign Affairs of Germany, Kyiv, 2016.

However, even if the EU and the US are not directly involved in the negotiation process, they do play a role in the overall efforts of conflict settlement and implementation of the Minsk Agreement. The EU sanctions – a key component in the de-escalation, accompanied by US, Canada, Australia, Japan, Norway and other countries – increased each time when the Kremlin crossed another “red line”, be it the illegal annexation of Crimea or the escalation in the East of Ukraine. Thus far, the EU has imposed three rounds of sanctions on Russia. ‘Sanctions against Russia had three major tasks. First, they were an important signal to everybody that the West was united in its rejection of Russian aggression. Second, they demonstrated the depth of this rejection, as Western countries were ready to pay a price: economic disruption and a more confrontational relationship with Russia. Third, sanctions imposed a serious economic cost on Russia for its actions’ (Speck 2016: 9).

The sanctions have generated economic losses to the Russian economy which implicitly influenced the Russian behaviour and, as Assistant Secretary of State Victoria Nuland (United State of America) put it, ‘provided a framework for diplomacy’ (Ukrinform 2015). At the same time, some EU member states advocated for lifting sanctions against Russia as these were affected by the Russian counter-sanctions. While EU based companies may have been affected by the Russian counter-sanctions, according to research carried out by CEPS (Gros & Mustilli 2016) and the report of the European Parliament (2015), the EU economies were not really affected or the impact was limited. Moreover, if the West would decide to ease or lift the sanctions, that would remove Moscow’s incentive to withdraw from Ukraine (Wesslau 2016). Also, in the absence of military options, renouncing the sanctions would leave the EU without an instrument to respond to Russian aggression (Kostanyan & Meister 2016). Although the EU had an instrumental role in adopting the sanctions, the key role was played by Chancellor Angela Merkel, in cooperation with the EU’s biggest players and thus, the decision on the prolongation of sanctions depends much on Germany’s position, which also reveals the EU’s dependency on big players, such as Berlin (Kaca 2015).

So far Brussels did not find any alternative to influence Russia. There was a discussion in 2014-2015 about the provision of lethal arms from the Western countries to Ukraine. However, president Obama and European leaders did not support this approach as the common policy is that the conflict could only be solved by peaceful means. The EU HRVP shares this vision by saying that: ‘I believe that there is no possible way of winning this kind of conflict militarily and this is probably something new compared to the past.’ (Mogherini 2015).

The connection with the Syrian conflict also needs to be considered. The Russian narrative attempted to speak about Ukraine and Syria in similar terms – those of a civil war, which for Ukraine, EU, US, Japan, Australia and other members of the western world is not the case (Bellingcat 2016). Also, among officials and experts there were discussions that the West might embark on a trade-off with Russia, having the West more conciliatory over Ukraine, and Russia helping more in Syria. From the perspective of EU officials, the intervention of Russia in Syria, aside from the supposed intention to show the ability to act as global power and reaching places outside the so-called near abroad, was intended to weaken the EU’s position in the negotiations, including on Ukraine.<sup>14</sup> Although the EU managed to keep separate tracks for Syria and Ukraine, it is true that the issue of Syria does effect the position of certain member states with regard to Russia. Particularly the case of France is interesting. France does not only

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<sup>14</sup> Author’s interview with an EEAS official, Brussels, 2016.

see Russia as a problem in the East, but also as a part of the solution in the South, especially after the terrorist attacks in France (Litra & Parmantier 2016).

### 3.4 The future of the “Normandy Format”

Various EU members and officials of certain member states are concerned with the fact that the two most significant players in the EU are handling the crisis by themselves and demand changes in the format. Especially the EU eastern member states are concerned about the vision of Berlin and Paris over the conflict and in particular that the Russian responsibility for the conflict may not be sufficiently reflected by Germany and France. The member states that have had negative experiences with Russia in the past are the most vocal. These states have a significant level of distrust for the Kremlin’s real intentions in the conflict, which is also the case for Berlin and Paris, although to a lesser degree.<sup>15</sup>

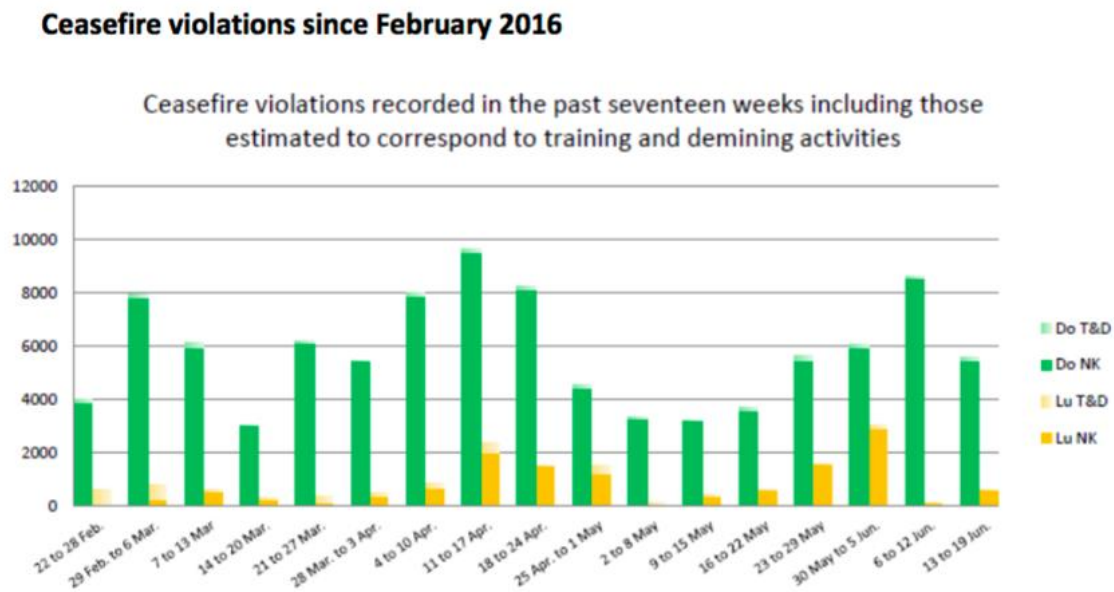
Likewise, Ukrainian officials often complain in Washington that they are being pushed by Germany and France to make compromises that they deem unjustified as long as part of their territory is occupied by Russia (Galbert 2015). Ukraine has quite a feeble ownership over the process of negotiations in the Normandy format because Kyiv is often pressured by the Kremlin, Berlin and Paris, and its choices are quite limited. However, even if Kyiv is not able to follow its own agenda in the Normandy format, it at least has the ability to block certain issues – a position that seems to be accepted by the EU. HRVP Frederica Mogherini mentioned that ‘we always have to remember that when we talk about the sovereignty of Ukraine, we also have to take that in mind and respect the sovereignty of Ukraine in its own decisions, whether they want to lead or how far they want to accept a deal concerning their own future.’ (Mogherini 2015). Even if HR Mogherini is not at the negotiation table, she has an important role in shaping the EU position on Ukraine within the European institutions.

Chancellor Merkel and President Hollande made it very clear that they do not consider themselves neutral brokers by constantly highlighting that Russia is responsible for the war in eastern Ukraine and the destabilization of Ukraine, and also by imposing sanctions. As of August 2016, it seems that there is an agreement at the level of the EU of who did what in the conflict and who is to be held accountable. However, there are different ideas within the EU on how to deal with Russia in the future. France, Italy, Austria and other countries would like to restore the dialogue, ease the sanctions and then deal with the issues. Other countries, such as Poland, Romania and Lithuania favour strong preconditions to re-launch the dialogue and cooperation with Moscow. Nonetheless, it seems that there is a consensus that bringing Russia and Ukraine into a diplomatic process has played an important role in de-escalating the conflict. At the same time, it is not clear to what extent the Normandy Format has the capacity to turn into a political settlement process from a ceasefire and “freezing” process (despite the fact that ceasefire violations are still numerous – see Figure 3).

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<sup>15</sup> Author’s interview with an EEAS official, Brussels, 2016.

Figure 3. Number of ceasefire violations (Sajdik 2016)



**Data by OSCE SMM , as of 22 June 2016**

The involvement of the US was demanded several times, above all by Kyiv. Also certain EU member states made this demand; the most vocal of them was Poland. Despite the huge disappointment of many officials and the expert community in Kyiv over Obama's disinterest in Ukraine, there were also reported offers on behalf of the White House to enter the negotiation format. However, it is not yet clear to what extent the inclusion of the US would increase the likelihood of a faster implementation of Minsk, but at least it would better synchronize the intentions and actions of the West (Kostanyan & Meister 2016). The inclusion of the US is not viewed positively by Moscow, which was trying to convince its European interlocutors that a settlement is more likely without than with the US (Galbert 2015). The US presence might lead to a discussion of Russian-US bilateral grievances in a format that was not created to discuss these, and, thus, deviate from the main purpose. The US unofficially joined the negotiation format by having a separate track of consultations over Minsk implementation led by V. Surkov and V. Nuland. Additionally, the US mentioned they could join Normandy 'if the four countries agree that Washington could play a role during the consultations or at the negotiating table'<sup>16</sup>. But in general, the Russian position is that the participation of such countries as the US, Poland, UK, etc., would have blocked the results that the Normandy format achieved so far. If the participation of the above states is not desirable because the Russian opinion is that it is not constructive, then the participation of the EU is also not recommended since the HRVP 'plays an important, albeit predominantly technical role'.<sup>17</sup> From the Russian perspective, the US is an

<sup>16</sup> Ukrinform. (2015, April 30). U.S. Ready to Join "Normandy Format" - Nuland. Retrieved August 29, 2016 from Ukrinform: [www.ukrinform.net/rubric-politics/1840988-us\\_ready\\_to\\_join\\_normandy\\_format\\_\\_nuland\\_331057.html](http://www.ukrinform.net/rubric-politics/1840988-us_ready_to_join_normandy_format__nuland_331057.html)

<sup>17</sup> Suslov, D. (2015). Normandy Four: The Best Possible Format. Retrieved August 29, 2016 from The Valdai Discussion Club: [www.valdaiclub.com/opinion/highlights/normandy-four-the-best-possible-format/](http://www.valdaiclub.com/opinion/highlights/normandy-four-the-best-possible-format/)

inconvenient interlocutor that has real influence, while the EU is more or less convenient, but not really decisive on the course of negotiations.<sup>18</sup> Thus, according to Russia, having the EU at the table would be a nice exercise, but would not provide the results which the Kremlin would like.

For the EU, the inclusion of the US in the Normandy format might make sense since the direct negotiations between the US and Russia at this moment are non-transparent. This leaves the possibility for Washington and Moscow to accept compromises in the absence of EU and Ukraine. If this occurs, Ukraine and the EU will lose ownership over the process. Also, expanding the Normandy format by including the US might be beneficial to strengthen the possibility for sanctions, while at the same time increasing the bargaining position of the EU and the importance of the negotiation process for Moscow (Konstanyan & Meister 2016).

*Table 1. Comparative advantages and disadvantages on EU direct / indirect involvement in negotiations regarding conflict settlement in Ukraine.<sup>19</sup>*

“Normandy Format”	Format with EU direct participation
<ul style="list-style-type: none"> <li>▪ Allows quick reaction</li> <li>▪ Decision making is faster</li> <li>▪ Personal commitment and responsibility</li> <li>▪ Propensity towards erosion of EU unity</li> <li>▪ Possibility for EU to be positioned as a broker</li> </ul>	<ul style="list-style-type: none"> <li>▪ Greater cohesion within the EU</li> <li>▪ The decision making is slower</li> <li>▪ EU clearly takes a side</li> <li>▪ Possibility to speak in the name of all member states</li> <li>▪ Insufficient credibility in the eyes of Russia</li> </ul>

Ukrainian officials have not always been content with the position of Brussels on the EU's role in conflict settlement. This issue became a central element of the EU-Ukraine summit in April 2015. For example, Kyiv has been asking for a peacekeeping mission in the East of Ukraine under the auspices of EU, but the idea of a peacekeeping mission under EU auspices was not well received in Brussels and the subject faded out (EurActiv 2015). Instead of a peacekeeping mission, Kyiv received the OSCE Special Monitoring Mission (SMM OSCE). The SMM OSCE is quite big – it has approximately 800 international staff (mainly monitors) and about 300 local staff, which 'makes it almost a peacekeeping mission', according to the OSCE General Secretary (EurActiv 2016). However, the mission is only observing how the ceasefire is violated, broadly speaking. In practice, contrary to the Minsk provisions, it has no free access to the occupied territories, as the separatist leaders condition the access. Brussels contributes 70% of the budget of the OSCE SMM. Nonetheless, Kyiv has been unhappy with it, because the Ukrainian leadership would like a mission with the capacity to enforce peace. Ukrainian officials know that the EU does not want to propose such a mission in order not to further irritate Russia and because it is not certain whether this will help solidify peace or create additional escalation (EEAS official 2016). Nonetheless, Ukrainian disappointment over the EU's lack of response to this demand has been deepened by the fact that, in the case of Libya, the EU HRVP, backed by Italy and France, proposed an EU mission to maintain the ceasefire (the mission was not supported by member states) (Kaca 2015), while in the case of Ukraine, Brussels did not even propose such a mission.

<sup>18</sup> National Security and Defence Council of Ukraine official, Personal interview by author. Kyiv, Ukraine

<sup>19</sup> Author's compilation based on the carried out interviews.

Although it seems that all the involved parties agree with the assumption that the Normandy format is the best that one could get, the format has its limitations. The Normandy format was able to reach an unstable ceasefire, but it is quite unlikely that it will solve the conflict in Ukraine. Moreover, the approach of the West has been to de-escalate, even at the price of temporary territorial losses for Ukraine (Speck 2016). The inability of the West to solve the conflict was not because the diplomatic efforts of Germany and France were insufficient, but rather because of the diverging objectives of Ukraine and Russia. The Kremlin states it would like to hand back control of the separatist territories to Ukraine, but on its own conditions. This means the de facto federalization of Ukraine. In the Russian understanding, the separatist territories will de jure be part of Ukraine, but only to block inconvenient decisions of the central government in Kyiv, as Russia wants the institutionalization of its meddling in local and national politics, especially when it comes to strategic issues such as NATO membership or joining the EU.<sup>20</sup> Therefore, Ukraine now has two choices and both of them are bad. The first is to accept the status of the separatist territories on Russian conditions and risk paralysing the Ukrainian government for an indefinite period. The second is to keep the status quo with the separatist territories and move towards freezing the conflict. Theoretically, there is a third option – ensuring security in the East of Ukraine, creating conditions for elections in separatist regions and take back control of the territory and the border, as the Minsk agreements prescribed. However, this scenario seems undesirable for Russia, since Russia asks for ‘peace in exchange for constitutional reform’ (federalization) (Suslov 2015).

Nonetheless, for Russia to further sponsor the separatist regions brings significant economic and reputational costs, for example through the funding demands of the occupied regions and the economic and political impact of sanctions against Russia. In order to speed up the process, Russia raised the issue of the Minsk implementation in discussion with the EU and US in August 2016. The pretext for this was allegedly a planned diversion of Ukrainian intelligence in the occupied Crimea, something denied by the government in Kyiv. The Russian reaction focused on the implementation of the Minsk agreements and President Putin refused to take part in the upcoming planned meeting of the Normandy format, because, as he put it, ‘it makes no sense’ (Baunov 2016). Thus, Moscow seems increasingly disappointed in the Normandy format and its European brokers. The main Russian disappointment came as a result of the inability of Germany and France to make President Poroshenko implement Minsk II, especially the part on constitutional reform. Therefore, the Kremlin does not seem to have any other choice than to continue the discussion with the US, as the Kremlin sees Washington as the one who could really influence Ukraine. The alternative is to stimulate discussions in the Minsk framework. Here, Ukraine is unofficially discussing with the separatist leaders. One of the key objectives of the Russian diplomacy is to stimulate these discussions (Ibid).

### 3.5 Conclusion

The EU has been slow in responding to the crisis in Ukraine and the following conflict between the Kremlin and Kyiv. The EU’s policy towards the conflict was rather reactive and therefore the decisions of EU were subordinated to the situation on the ground in Ukraine, which

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<sup>20</sup> Interviews of the authors with officials of the Ministry of Foreign Affairs of Ukraine and with official of the U.S. Embassy in Ukraine, Kyiv, 2016.

weakened EU intervention in the conflict settlement. The EU difficulties in having a clear role in conflict settlement in Ukraine were also generated by the institutional void and change of EU leadership when the conflict emerged.

The inability of the EU to respond to the crisis in Ukraine revealed insufficient experience in conflict intervention and slow reaction mechanisms, but also different visions inside the EU on how to deal with Ukraine and how to build a dialogue with Russia. However, the EU and its member states, with a leading role for Germany and France, have managed to move a considerable part of the fight to the diplomatic arena by creating the Normandy format. Apart from the diplomatic attempts to resolve the conflict, the EU strengthened its positions by imposing a series of sanctions against Russia and mobilized a wide support for Ukraine to resist the pressure.

## 4. Security Sector Reform in Ukraine – the role of EUBAM and EUAM

This chapter focuses on the role of two EU missions present in Ukraine – EUBAM and EUAM – in Ukraine’s security sector reform. The two missions are quite different in terms of institutional set-up and length of operation: EUBAM is the EU’s only “hybrid” mission, administered by the European Commission but supervised by the Council, while EUAM is a civilian CSDP mission. EUBAM started its work in 2005, while EUAM has only been in operation since 2014. EUBAM is a local mission based in Odessa oblast, while EUAM is Kyiv-based and covers all of Ukraine with its mandate. However, the missions also make a valid case for comparison: both focus on the security sector, albeit EUBAM’s focus is on the local level of the Border and Customs services while EUAM covers all of Ukraine’s civilian security sector and aims to provide strategic advice. Also, EUBAM is widely regarded as an EU success story, while the record of EUAM is still to be evaluated.

The chapter first gives an overview of the dynamics of Ukraine’s security sector reforms from independence until the present. It then moves on to provide an assessment of the two missions on focus, tracing the processes of policy design, implementation and change. It ends with conclusions and reflections about how the EU capabilities and conflict prevention can be enhanced, based on the case study.

### 4.1 Security Sector Reform in Ukraine: dynamics and challenges<sup>21</sup>

Security sector reform is especially worthwhile for Ukraine which, as a post-colonial state, inherited security institutions from an authoritarian state. In the first years of Ukraine’s independence, the new state apparatus focused on establishing autonomous and capable security structures, one of the key characteristics of a state, reforming those which Ukraine inherited from the Soviet Union. In 1997 the Charter on a Distinctive Partnership between Ukraine and NATO was signed. Together with Ukraine-NATO Action Plans, this has been by far the most important key strategic document which shaped Ukraine’s “security identity” until 2010, when the “Law on Domestic and Foreign Policy” of Ukraine declared Ukraine’s neutral status. However, although a plethora of strategies, state programmes, military doctrines and laws have been passed, at the time when Ukraine’s security-providing institutions were put to the test, first in the Revolution of Dignity and later facing rebellion and Russian intervention, they remained largely unreformed (Melnyk & Sungurovsky 2013, Lytvynenko 2011).

While different analysts have suggested different periods in Ukraine’s security sector reform (SSR) (e.g. Lytvynenko 2011, Bugriy & Maksak 2016), in this chapter special attention will be paid to the state of the security sector in Ukraine in the period 2010-2013. This reflects the state in which Ukraine’s security institutions were at the time the conflict in the East of

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<sup>21</sup> With its missions EUAM and EUBAM the European Union deals with the civilian security sector reform in Ukraine only. However, this section provides an overview of the security sector reform as a whole, since, in the current geopolitical environment, analyzing civilian and military security sector reform in Ukraine separately from each other would prevent the reader from an overarching comprehension of Ukraine’s security problematics.



Ukraine started, and which the current Ukrainian authorities inherited as point of departure for reforms.

The indicated period is also symptomatic of the fact that this is the period of Viktor Yanukovych's presidency whose policy towards Ukraine's SSR was characterized by two principal trends:

Strengthening the civilian security sector as a repressive apparatus, aimed at providing state security (i.e. the security of the ruling elite), rather than human security (security of citizens);

A relative neglect of military reform based on the assumption that the geopolitical environment around Ukraine is secure and the level of external threats is low, which would allow enough time to reform the military<sup>22</sup> (Melnyk & Sungurovsky 2013: 20).

As observed by Ukrainian military experts Melnyk and Sungurovsky (2013: 20), the strategy of Yanukovych and the then-governing Party of Regions was aimed at 'maintenance of the Armed Forces (AF) on the brink of survival and simultaneous development of public prosecutor offices, law-enforcement bodies and special services'. This was reflected by the budget: 'the state budget for 2013 planned reduction of expenditures on the Ministry of Defence (MOD) by 7%, and growth of expenditures on the Ministry of Internal Affairs (by 3%), the Security Service of Ukraine (by 4.4%), and the General Prosecutor's Office (by 17.2%) [...] In the 2013 state budget – for the first time in Ukraine's history – expenditures on the Ministry of Internal Affairs equalled the Ministry of Defence budget' (ibid: 20, 24). Overall, the defence expenditure in Ukraine over 2006-2013 ranged from 0.6% to 0.98% of the GDP (Novoe Vremia 2015).

By the years 2011-2012 the Ukrainian security institutions, especially those belonging to the civilian sector, still reflected the centralized Soviet model of governance. For example, the Ministry of Internal Affairs was sometimes called "the ministry of police", with weak political and analytical potential (Markyeva 2013). As of 2011, there were 6-9 employees in the law enforcement sector per 1000 citizens in Ukraine, while in the developed countries (e.g. the EU, the US and Japan) the ratio was 2-3 employees to 1000 inhabitants (Lytvynenko 2011: 124). However, in the same year Ukraine was the last (!) out of 26 European countries in terms of the level of trust towards the law enforcement institutions and judiciary (Ukrainska Pravda 2013).

The state-defence (i.e. defence of the ruling elite) function of the internal security forces in Ukraine became vivid during the Revolution of Dignity 2013-2014, when they were used for violent crackdowns on peaceful protesters (Bugriy & Maksak 2016: 69-70). It is symptomatic that the Internal Forces of the Ministry of Internal Affairs and the special militia troops "Berkut" were mainly used for the crackdowns on the protesters and not the Ukrainian Army. While in-depth research on the role of Ukraine's security sector in the events of the Revolution of Dignity remains an unfilled niche in the academic and policy literature, it could be assumed that one of the reasons why the Army was not engaged in the crackdowns could be the loyalty of the armed forces to citizens rather than to the governing authorities.

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<sup>22</sup> "In the next 5-7 years, armed aggression against our state in the form of a local or regional war is unlikely.

Therefore, we have the time for implementation of systemic reforms of Ukraine's AF and enhancement of the level of their combat efficiency, first of all, at the expense of technical re-equipment". See: Parliamentary Hearings "On state and prospects of development of Ukraine's military organisation and security sector", May 23, 2012, [http://static.rada.gov.ua/zakon/new/par\\_sl/sl230512.htm](http://static.rada.gov.ua/zakon/new/par_sl/sl230512.htm) (in Ukrainian). Cited from: Melnyk & Sungurovsky 2012.

While the Russian role in the annexation of the Crimea and occupation of the part of Ukraine's Eastern regions was instrumental, it is worth mentioning that the weakness of Ukraine's security sector played a significant role in the early stages of the conflict. As outlined by the EU Crisis Management Concept, which lays the basis for the EU Advisory Mission to Ukraine, '[w]ith little resistance, pro-Russian militant groups have seized control over local police, intelligence services and municipal buildings in the Eastern regions of Luhansk and Donetsk, have declared the birth of self-proclaimed independent republics and have engaged in increasingly violent actions against Ukrainian security forces. Ukrainian law enforcement agencies have proved 'unable to restore law and order' (Council of Ministers 2014: 4). Hence, the unpreparedness of Ukraine's civilian and military structures to defend Ukraine's citizens from the Russian attack was undeniable.

After the Presidential and Parliamentary elections in 2014, the newly established authorities embarked on a series of reforms in the security sector. Crucial strategic documents were adopted: the renewed National Security Strategy of Ukraine (26 May 2015), the Military Doctrine (2 September 2015), the Concept for the Development of the Security and Defence Sector (14 March 2016) and the Strategic Defence Bulletin (6 June 2016). The revision of the state's budget policy towards SSR also took place: the National Security Strategy requires the security and defence spending to be no less than 5% of GDP, while the Military doctrine requires no less than 3% of GDP, to be aimed specifically at defence needs (National Security Strategy of Ukraine 2015, Military Doctrine of Ukraine 2015).

In a nutshell, the period of 2014-2016 in Ukraine's SSR is characterized by:

- 1) The focus on the military aspect of the security sector reform, both strategy-wise and budget-wise, for reasons of obvious necessity as well a request from the civil society;
- 2) Reorientation from the "state security" concept to the "human security". The rights and freedoms of an individual and a citizen are for the first time defined as one of the key objectives of Ukraine's National Security Strategy (National Security Strategy of Ukraine 2015);
- 3) European and Euro-Atlantic integration as a guiding vector of reform (National Security Strategy of Ukraine 2015);
- 4) Reforming in a state of the ongoing conflict;
- 5) Increased cooperation between military and volunteers. It should be noted that the volunteer movement was instrumental to the support of the Ukrainian army in 2014-2016. As a result, the Concept for the Development of the Security and Defence Sector assigns numerous roles to the civil society 'for the realization of tasks in the interest of the national security and defence of the [Ukrainian] state', e.g. 'providing services in the implementation of what the Concept calls "peacekeeping tasks" by the Armed Forces of Ukraine; functioning of a network of non-state research institutions which would professionally deal with the security and defence issues, etc.'; 'ensuring development of ICT used for the security and defence sector;', etc. (Concept for the Development of the Security and Defence Sector of Ukraine 2016).

For civilian SSR, the Concept for the Development of the Security and Defence Sector envisages:

- Consolidation of law enforcement activities within the sphere of responsibility of the Ministry of Internal Affairs; development of the Ministry as a key executive body which formulates and realizes the policy in law enforcement, state border protection, migration and civil protection;
- Effective functioning of the National Police as a key executive body in countering crime and ensuring public order;
- Effective function of the unified state system of civil protection and adoption of the EU standards (Concept 2016).

In practice, the Concept's provisions reflect the changes which have started and been ongoing since 2014. However, it is fair to say that emphasis has been placed on military reform and that the reform of the civilian security sector has generally been less straightforward.

Numerous new structures were created (e.g. the National Police, the National Guard, the National Anti-Corruption Bureau, Special Anti-Corruption Prosecutor's Office, etc., and other bodies like the State Investigation Bureau pending to be established). According to a senior official in the National Security and Defence Council, the new civilian security sector in Ukraine will rely on five institutions: the Ministry of Interior, the State Investigation Bureau, the Prosecutor's General Office, the National Anti-Corruption Bureau and Security Service of Ukraine (National Security and Defence Council official 2016)<sup>23</sup>. As outlined by the Concept, the Ministry of Interior is now the key internal security structure, to which the National Police, the State Migration Service, the National Guard, the State Border Service and the State Emergency Service will belong.

The "brand" reform in the civilian security sector was the Ministry of Interior policy patrol reform, executed by Eka Zguladze, then first deputy Minister of Interior in Ukraine (2014-2016) and former deputy Minister of Interior in Georgia (2005-2012). The police patrol reform was part of the Ministry of Interior reform, which kicked off in 2015. Eka Zguladze also supervised the establishment of the National Police as a body subordinate to the Ministry of Interior. The police patrol was a new structure which was created from scratch and in a very short period of time (under 6 months), within which the officers were employed and trained. The reform was considered to be a success, since the level of trust towards the police patrol from the population amounted to some 46% a year after it was introduced (Unian 2016). In contrast, the former police (*militia*) only used to be trusted by some 16% of the population (Razumkov 2014). Notably, the early stages of the current governments' reform relied on the Georgian model; hence numerous former Georgian officials from Saakashvili government, including Saakashvili himself, occupied various state positions, including those in the security sector.

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<sup>23</sup> Importantly, the Concept does not provide any vision for the reform of the rule of law institutions (e.g. the Prosecutor's General Office and the Ministry of Justice), since it does not list the rule of law institutions among the components of the security and defence sector (Concept 2016). This approach is different to OECD-DAC approach to the definition of the security sector, on which the EU relies. The consequences of this discrepancy for the operation of the EU missions in Ukraine, in particular EUAM, will be analysed in further detail below.

However, there are several obstacles to the reform process in Ukraine at the moment:

- 1) The complexity of the reform. While the “police patrol” reform was relatively easy, quick and affordable to realize, other reform spheres, e.g. criminal investigation, are much harder to reform, both cost- and human resource-wise;
- 2) The financial factor. Ukraine’s defence needs have grown exponentially, which has led to a fivefold increase in its security and defence budget in comparison to 2013. However, as a result of the weakening of the national currency hryvnia and the drop in GDP, the absolute numbers in spending in US dollars demonstrate that the increase in fact is only 1.3 times (3309 million USD in 2013 vs 4438 million USD in 2015 according to SIPRI Military Expenditure Database). Moreover, abuse of funds (corruption) is likely to stay in the short to middle term. With national defence being a top priority in Ukraine this leads to underfinancing of the civilian security sector;
- 3) Potential duplication of functions. Over the last year numerous institutions have been created whose functions overlap, especially in the anti-corruption sphere. It remains to be seen whether all these institutions find their niche and can coexist efficiently;
- 4) “Turf wars” between the security sector institutions which are loathed to curb their own competences and authority (Ukrainska Pravda 2016);
- 5) Last but not least, the war, which requires the institutions to reform while responding to the challenges of war time.

## 4.2 Selected EU Policies: EUAM and EUBAM

Out of the EU actors present in Ukraine, two – EUAM and EUBAM – deal with SSR in Ukraine. The missions vary in time of operation, institutional set-up, geographical outreach and level of operation (see Table 1). Both missions, however, represent the EU efforts in the civilian security sector reform in Ukraine.

*Table 2. Overview of the two missions in focus*

	<b>EUBAM</b> (operational since 2005)	<b>EUAM</b> (operational since 2014)
<b>EU body in charge</b>	European Commission	Council of Ministers
<b>Mandate</b>	Border Assistance	Civilian Security Sector Reform

<b>Main tasks</b>	<ul style="list-style-type: none"> <li>a. Work with Moldova and Ukraine to harmonize border control, and customs, trade standards and procedures with those in EU Member States</li> <li>b. Improve cross-border cooperation between the border guard and customs agencies and other law enforcement bodies; facilitate international coordinated cooperation</li> <li>c. Assist Moldova and Ukraine to fulfil the obligations of the Deep and Comprehensive Free Trade Area (DCFTA) they have signed as part of their Association Agreements with the EU</li> <li>d. Contribute to the peaceful settlement of the Transnistrian conflict through confidence building measures and a monitoring presence at the Transnistrian segment of the Moldova-Ukraine border</li> </ul>	<ul style="list-style-type: none"> <li>a. Strategic advice on civilian security sector reform, in particular the need to develop civilian security strategies</li> <li>b. Support for the implementation of reforms, through the delivery of hands-on advice, training and other projects (since December 2015)</li> <li>c. Cooperation and coordination, to ensure that reform efforts are coordinated with Ukrainian and international actors</li> </ul>
<b>Location</b>	Odesa (HQ) and 5 field offices (Giurgiulesti, Kotovsk, Kuchurgan, Otaci, Odesa and Chornomorsk Ports)	Kyiv (HQ), Lviv and Kharkiv (from May 2016)
<b>Staff (as of 2016)</b>	196 international	Over 200 international
<b>Budget</b>	14 814 404 EUR (1 December 2015 – 30 November 2017)	30 770 000 EUR (1 December 2014 – 30 November 2016)

*Source: Zarembo Kateryna (under review). Measuring CSDP Effectiveness in Ukraine: Host State Perspective. European Security.*

### 4.2.1 EUAM

#### *Policy design*

A CSDP mission to Ukraine was requested by Ukraine in the wake of a Russian organized referendum in Crimea. Ukraine's idea was to request a monitoring CSDP mission to be dispatched to the administrative line of occupation between Ukraine and the Crimea. However, while the request was reviewed in the EU, the Russian intervention in the East started. Since some EU Member States were strongly against sending an EU mission to the East for political motivations, Sweden, Poland and Great Britain suggested a compromise in the form of an SSR CSDP mission, with headquarters in Kyiv.<sup>24</sup> This idea was taken as a blueprint when the field group of experts was dispatched to Ukraine to prepare the Crisis Management Concept (CMC) (Council of the European Union 2014a). As mentioned above, the CMC stressed the role of weak security institutions in the Ukraine during the unfolding and development of the conflict.

As a result, a CSDP mission was dispatched to Ukraine (Council Decision 2014b), but its "security and defence" component was watered down as much as possible. It is important to stress that while the key interlocutor with Brussels was the Minister of Foreign Affairs of Ukraine, apparently none of the mission's beneficiaries were consulted when EUAM's mandate was elaborated. The potential beneficiaries did not even know that they would be the mission's partners and target institutions until the mission set up in Kyiv.<sup>25</sup>

In addition, an official of the EU Delegation in Ukraine reported that the EU Delegation in Kyiv was not consulted at the stage of the mission's inception.<sup>26</sup> While the Delegation welcomed the mission as a reinforcement to the EU reform effort in Ukraine, its focus on SSR was treated with some degree of surprise, since the "SuperTWINNING" project, run by the Delegation, had already covered practically all institutions foreseen as EUAM beneficiaries. As a result, the EU Delegation had to withdraw the Twinning advisors from the Ministry of Interior to give way to EUAM advisors.<sup>27</sup>

Sent as a political signal of support to a partner country at war, the mission was mandated with providing strategic advice to the civilian security sector reform only. Its "security and defence" component largely disappeared from the mandate. The mission distanced itself from any activity which could be interpreted as a direct or indirect contribution to conflict resolution, with the military/defence sector reform treated as the realm of NATO. Some member states even opposed the mission's assistance to the National Guard, perceiving it as a military structure, despite its subordination to the Ministry of Interior.<sup>28</sup> As a result, the National Guard was not included in the list of EUAM beneficiaries. The EU reluctance to send military missions to the Eastern neighbourhood region for fear of irritating Russia has been addressed in the literature (Popescu 2009) and Ukraine's case provides more evidence of this reluctance. It should be stressed, however, that, distanced as the EUAM mandate is from any relation to the Russian-Ukrainian war, the Ukrainian case is still a precedent for the EU by sending a mission to the Eastern neighbourhood while armed conflict is ongoing. In contrast, the EU Monitoring mission to Georgia was dispatched after the hostilities were over. EUBAM, the

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<sup>24</sup> Author's interview with a Ukrainian diplomat, Kyiv, 2015.

<sup>25</sup> Author's interview with the National Security and Defence Council official, Kyiv, 2015.

<sup>26</sup> Author's interview with the EU Delegation to Ukraine official, Kyiv, 2016.

<sup>27</sup> Author's interview with the EU Delegation to Ukraine official, Kyiv, 2016.

<sup>28</sup> Author's interview with a Ukrainian diplomat, Kyiv, 2015.

mission to the Moldovan and Ukrainian border, was dispatched more than 10 years after the conflict existed in its frozen form.

### *Policy implementation and change*

The initial mandate of the EUAM was to provide strategic consultation and coordinate donor support to civilian security sector reform in Ukraine. The mission defined its key beneficiaries to be the Ministry of Internal Affairs, the Ministry of Justice, the Prosecutor General's Office, the State Penitentiary Service, the State Border Guard Service, the State Fiscal Service and the Security Service of Ukraine (Zarembo, 2015).

As of autumn 2015, after a year of the mission's operation, the majority of EUAM's beneficiaries complained that their expectations towards EUAM were not met (Zarembo 2015). In particular, the key complaint was that strategic advice was not enough for the local institutions and they needed projects and training as well. In addition, local stakeholders also complained about the mission's slow pace of interaction: it took many months for EUAM to resolve its administrative issues (renting and setting up an office, getting a landline phone, finish the hiring process, etc.), so the mission reached its full operational capability seven months after its official launch (ibid). While this could be justified by several objective reasons, the mission's mandate itself required it to support 'rapid preparation and implementation of the reform measures' (Council of the European Union 2014b) and the expectations of the local stakeholders for the mission's rapid involvement in the reform process were high but not met.

The local frustration with EUAM was felt in Brussels, which is why a Political and Security Committee delegation arrived in Kyiv in September 2015 in order to make an assessment of the mission's activities. So, the strategic review of EUAM's mandate was carried out after less than a year of its operation.<sup>29</sup> The mission's head was also changed: Kęstutis Lančinskas, chief of the Vilnius County Police (2009-2016) took over the position after Kalman Mizsei left at the end of 2015.

The review of the mission's mandate after one year was an exception to the regular procedures, since a typical timeframe for a CSDP mission mandate review is 2 years.<sup>30</sup> Overall the key changes in EUAM after the strategic review (autumn 2015) can be summarized as follows:

- 1) The requests of the local stakeholders have been considered and the mission's mandate was extended to include hands-on advice, training and other projects;
- 2) The mission identified and announced five priorities for its activities: delineation of competences, community policing, public order, criminal investigation, and human resource management; also, the mission identified three "cross-cutting issues" which play a part in each of the five priorities: good governance, anti-corruption and human rights and gender<sup>31</sup> (EUAM 2016b);
- 3) As is evident from the list of EUAM priorities, the police is one of the mission's foci. In fact, the National Police was established with support of EUAM (November 2015) and now is among the mission's beneficiaries (EUAM 2016b);

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<sup>29</sup> Author's interview with an EEAS official, Brussels, 2016.

<sup>30</sup> Author's interview with an EEAS official, Brussels, 2016.

<sup>31</sup> Author's interview with EUAM official, Kyiv, 2016.

- 4) Importantly, the mission changed the list of beneficiaries after the strategic review: some institutions were added, namely those which were established in the course of the mission's operation (National Police, National Anti-Corruption Bureau, Special Anti-Corruption Prosecutor's Office), while some were removed from the list of key target institutions (the Ministry of Justice and the State Penitentiary Service) (EUAM 2016c);
- 5) Starting from May 2015, EUAM has regional offices in Lviv and Kharkiv. This was an important concession, since the launch of the regional offices was considered from the start of the mission but only took place in May 2015, because the member states were sceptical about establishing regional offices for reasons of safety and a wish to avoid a duplication of functions with the OSCE Special Monitoring Mission in the East.<sup>32</sup> However, the EUAM regional offices were approved in Brussels on condition that they would perform a representative rather than a policy-making function. The issue was so sensitive for some member states that they even opposed the regional representations of the EUAM to bear the names of "offices", preferring the term "presences" instead.<sup>33</sup>

### *Assessments and evaluations*

After the strategic review of the mandate, EUAM works according to three pillars of activity:

- a. Strategic advice on civilian security sector reform, in particular the need to develop civilian security strategies
- b. Support for the implementation of reforms, through the delivery of hands-on advice, training and other projects
- c. Cooperation and coordination, to ensure that reform efforts are coordinated with Ukrainian and international actors (EUAM 2016c)

The mission itself drew up a list of its achievements. In fact, two such lists exist – one available on the EUAM website (EUAM 2016b) and the other obtained through an off the record conversation with a EUAM official. Below is the aggregated table of EUAM achievements (both official and unofficial) which allows one to take stock of the mission's operations to date (Table 2).

*Table 3.<sup>34</sup> EUAM's key achievements (2014-2016)*

Target partner institution in Ukraine	Assistance to drafting strategic documents and legislation, projects and trainings
Civilian Security Sector at large	Strategic advice on a range of concept papers and strategies, such as the 'Strategy of the reform of the internal affairs agencies', amendment to the Criminal Procedure Code on delineation of investigative powers, the draft law on freedom of assembly, and on the National Human Rights Strategy and Action

<sup>32</sup> Author's interview with a Ukrainian diplomat, Kyiv, 2015.

<sup>33</sup> Author's interview with an EEAS official, Brussels, 2016.

<sup>34</sup> This table is purely schematic and only reflects achievements of EUAM (according to EUAM itself) and not all of its activities.



	Plan;
The National Police	<p>Assisting in the preparation of the Law on National Police</p> <p>Assisting in the preparation of 'National Police Reform Concept 2016-2017'</p> <p>Training for Kyiv Patrol Police on crowd management in cooperation with the European Gendarmerie Force</p> <p>Support the opening of the citizen's reception hall of Kyiv Patrol Police</p> <p>Development of a response police model for rural areas and small towns (supplementary to the patrol police in the big cities) that was first implemented in Sambir (Lviv region) in 2015 before being rolled out to eight police stations in Kyiv, Lviv and Kharkiv regions; drafting curricula on community policing training</p> <p>Facilitation of joint working groups to discuss concepts and strategies of human resources, criminal investigations and community policing</p> <p>Training in leadership development for heads of regional chiefs of police patrol</p> <p>Holding a series of pilot community police workshops for supervisors of Kyiv City Patrol Police</p> <p>Public order training for the new specialised public order sub-branch of Ukrainian police named 'Kord'</p> <p>Training on the rights of peaceful assembly for police officers in Lviv and Kharkiv</p> <p>Introducing the concept of community policing to Ukraine's SSR and its implementation through provision of strategic advice and training</p> <p>Acting as an observer in the re-attestation process of the Ukrainian police, whereby officers need to pass exams in order to meet adequate professional standards</p>
Ministry of Justice	Penitentiary functions transferred to MoJ – contribution to legislative framework and development of a roadmap for reform
Prosecutor's General Office	<p>Support on a range of issues including integrity checks and inspection issues through a co-location agreement</p> <p>Observing re-selection process for local prosecutors and followed up with training.</p>
National Anti-Corruption Bureau, Special Anti-Corruption Prosecutor's Office and National Anti-Corruption Prevention Agency	Support to the establishment by acting as observers in the selection panels that choose heads and deputy heads of those institutions
State Border Guard Service of Ukraine	Development of Integrated Border Management concept for 2016-2020
Security Service of Ukraine (SSU)	Development of the SSU reform concept as a part of the International Advisory Group to SSU

*Source: author's compilation based on the open and off the record data.*

Overall, the beneficiaries of the mission appreciated the work of EUAM. The majority expressed their satisfaction with the cooperation with the mission.<sup>35</sup> EUAM is active in a variety

<sup>35</sup> According to six interviews of the author held in June – July 2016 in Kyiv.

of spheres, including collocation of experts to the beneficiary institutions and providing strategic advice on strategies and legislations, material and technical support (trainings, study trips, equipment (e.g. computers)), donor coordination and even fundraising. EUAM coordinates donor support for the reform of the law enforcement sector, and organizes monthly meetings with donors and beneficiaries. Various beneficiaries assured that the donor assistance was coordinated effectively and avoided overlap. Also, EUAM coordinates its activities with the EU Delegation to Ukraine and the EU Support Group to Ukraine. During autumn 2015 EUAM and the EU Delegation have started to work on a “comprehensive approach” of support for anti-corruption reform, community policing and the rule of law. Under this mechanism, EUAM drafts a project proposal, the European Commission provides funds and a third party (e.g. a relevant member state institution) implements it in consultation with the EU Delegation.

The points of appreciation expressed by the majority of the beneficiaries related to:

- The enhanced and more targeted cooperation with the mission after the change of the mandate in 2015. This could also be related to the fact that the mission finally reached its full operational capability and was ready to engage fully starting in autumn 2015, which coincided with the mandate review<sup>36</sup>;
- The role of the mission as the channel of communication between Brussels and the beneficiary institution<sup>37</sup>;
- The high level of EUAM professionalism and expertise of the mission’s advisors.

However, the EUAM mission was not seen as a ‘unique’ mission. The EUAM operates among a wide variety of donors and partners (see the “Overview of the EU intervention” section), and the beneficiaries seem to perceive the mission as one of the Western projects present in Ukraine, rather than a politically significant security and defence mission.

It is fair to say that the mandate review of EUAM led to positive evaluations of beneficiaries, who were of the opinion that the mission was much more focused and responsive to the needs of the partner institutions. On the other hand, a number of different but interconnected factors challenged EUAM’s activities. The most important are listed below.

### ***Lack of domestic strategic reform vision and civil-military dilemma***

One of the key challenges to EUAM’s work is lack of consensus on the vision and broader purpose of civilian security sector reform in Ukraine.<sup>38</sup> EUAM has drafted a proposal for a “Civilian Security Strategy” of Ukraine. The idea is to develop a mind-set of security as a civilian concept, stressing security of citizens and not the security of a state, which EUAM attributes to a more militarised approach.<sup>39</sup> This, however, contradicts Ukraine’s own approach, according to which it is impossible to draw a clear distinction between civilian and military security in times of war. For example, border guard and security service institutions function as both civilian and military bodies – e.g. regarding to intelligence, anti-terrorist activities, etc.

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<sup>36</sup> Author’s interviews with Ministry of Foreign Affairs, National Anti-Corruption Bureau, Security Service of Ukraine officials, Kyiv, 2016.

<sup>37</sup> Author’s interviews at State Border Service of Ukraine, Security Service of Ukraine, Kyiv, 2016.

<sup>38</sup> Author’s interview with EUAM official, Kyiv, 2016.

<sup>39</sup> Author’s interview with EUAM official, Kyiv, 2016.

This issue is linked to another problem which is related to the paradox of SSR in Ukraine. While Ukraine proclaims European and Euro-Atlantic standards as guidelines for its SSR, it often complains that the advice received from the EU, and EUAM in particular, would suit a peaceful security environment (to which the EU member states are used) but not the one of a country facing military aggression. This creates frustration among some local counterparts.<sup>40</sup>

Last but not least, the EUAM distances itself as much as possible from any connection whatsoever to the conflict in the East. Not only does it not carry out any activities which could be described as a contribution to conflict prevention and peacebuilding, but it also rejects indirect involvement, e.g. assisting in the establishment of regional antiterrorist centres operated by the Security Service of Ukraine.<sup>41</sup> While it is understandable that such attitude is the result of caution on behalf of the member states, it is important to underline that the mission was invited by Ukraine as assistance in the conflict resolution and in the aftermath of the Russian aggression and not as an adviser to SSR in peaceful times. The restraint of EUAM towards recognizing the realities of the ongoing war in Eastern Ukraine can well corrode the receptivity of Ukrainian counterparts towards its advice.

Some Ukrainian senior officials see significant potential if EUAM could assist in SSR in the East, where the security institutions can be built from scratch. Some EU officials in Brussels confirm the possibility of this option, but strictly conditional on the launch of the reintegration of the occupied territories.<sup>42</sup>

### *Domestic resistance to reform*

There is resistance of certain actors from the Ukrainian civilian security sector against reform. One of the reasons are the turf wars between the institutions which are reluctant to curb their competences and to redraft their budgets (Ukrainska Pravda 2016). Another factor is the “personnel resistance” - the “old apparatus” which remains employed in much of the security sector. Another cause of domestic resistance is that Ukrainian partner institutions are not used to receiving advice as a type of external assistance. They are used to perceive assistance as donor supported projects, technical and material support, trainings, professional development, trips, etc.

### *Lack of trust between the mission and local partners*

It is also true, however, that some partner institutions have more constructive cooperation with EUAM than others. For example, while the Prosecutor’s General Office (PGO) accuses EUAM of extremely low responsiveness,<sup>43</sup> describing that the cooperation is merely declarative and complains of numerous unanswered requests, EUAM points at the PGO as an institution which resists reform (Sydorenko 2016). It is worth pointing out that from the outset of EUAM GPO was one of the organizations which did not attribute itself to the security sector and hence did not perceive the EUAM’s mandate as relevant for itself.<sup>44</sup>

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<sup>40</sup> Author’s interviews with several Ukrainian officials, Kyiv, 2016.

<sup>41</sup> Author’s interview with Security Service of Ukraine official, Kyiv, 2016.

<sup>42</sup> Author’s interview with an EEAS official, Brussels, 2016.

<sup>43</sup> Author’s interview with PGO official, Kyiv, 2016.

<sup>44</sup> Author’s interview with PGO official, Kyiv, 2015.

Also, EUAM is not necessarily the key international partner in reform for its beneficiaries. For example, while for EUAM the National Police is one of the key local partners (as illustrated by Table 2), for the National Police EUAM comes fourth in terms of priority partners.<sup>45</sup> At the same time, the cooperation between the Security Service of Ukraine (SSU) and EUAM was very constructive and fruitful according to both sides.<sup>46</sup> The creation of the International Advisory Group to SSU, which EUAM suggested and to which it belongs, was explained, inter alia, by receptivity of the institution.

### *EUAM's low profile*

Whether the EU likes it or not, EUAM, as the only EU representation in the capital alongside the EU Delegation, bears the reputational costs for the EU in Ukraine. In this respect, the low profile the EUAM keeps in the media, lack of public statements and participation in public discussions are not only detrimental to the EU image in Ukraine but may also decrease the probability of reform success. According to the public survey conducted by GfK Ukraine, the majority of Ukrainians (30.12%) expect more pressure from the EU on the Ukrainian authorities to conduct reforms (in contrast, more aid is expected by only 8.88%) (Solodkyy & Sharlay 2015). Meeting these expectations could be the reason why the EU Delegation support to the transformation processes in Ukraine was rated higher (6.65 points out of 10) than that of EUAM (5.55 points), according to the expert survey conducted by GfK Ukraine (Solodkyy & Sharlay 2015). It might be (and likely is) the case that the reforms advocated by EUAM would be supported by Ukraine's civil society which might create synergy with EUAM in exerting pressure, advocacy and monitoring. However, with much of EUAM's work taking place behind the scenes, it is impossible for Ukraine's civil society to appreciate the EU efforts, or to take part in the public discussion.

As it was explained to the author by an EEAS official, low levels of the mission's publicity can be attributed to the fact that EUAM does the "technical" part of the work while the "political" statements are part of the EU Delegation or High Representative portfolio.<sup>47</sup> This appears as a certain paradox since CSDP was never meant to be a 'technical' instrument.

The low profile of EUAM could also be attributed to the culture of secrecy and confidentiality which is generally typical of CSDP: regarded as the last bastion of state sovereignty, security and defence policy deals with 'high politics' issues that are deemed too sensitive to be exposed to public scrutiny (Shapovalova 2016).

Publicity is also important in order to inform the civil society about the mission's "logic" of reform. It should be noted that EUAM is mandated with a very broad and far-reaching task of assisting the civilian sector reform in Ukraine. Hence, the mission's task is as complicated as the reform itself. In addition, EUAM rather offers a "fishing rod", than a "fish" – its focus is on assisting to choose the most suitable reform vector and reallocation of domestic resources to implement it rather than bringing the resources from the outside. Justified as this approach is to ensure local ownership, it is time-consuming and unlikely to provide immediate results. While Ukrainians expect a quick pace of reforms (Zinchenko 2016), EUAM risks

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<sup>45</sup> Author's interview at the National Police of Ukraine, Kyiv, 2016.

<sup>46</sup> Author's interview with Security Service of Ukraine official, Kyiv, 2016.

<sup>47</sup> Author's interview with an EEAS official, Brussels, 2016.

miscomprehension of its role and impact, and, consequently, lack of support from civil society if its activities remain unexplained.

### *EUAM and cross-cutting themes*

Below we discuss the relevance of the cross-cutting themes (gender, multi-stakeholder coherence, synergy and ICT) that are emphasized in the WOSCAP project (see Martin et al, 2016).

As mentioned above, human rights and gender belong to one of three cross-cutting issues which EUAM focuses on in supporting reform of the civilian security sector in Ukraine. EUAM aims to mainstream a human rights and gender perspective into all advice and support provided to agencies in the civilian security sector. EUAM realized a number of initiatives promoting gender equality in Ukraine's SSR, e.g. in the National Policy, the Ministry of Interior and the State Fiscal Service. EUAM also emphasized the European standards in human rights and gender while advising on the Law of Ukraine on Freedom of Peaceful Assembly and on the implementation of the Human Rights Strategy and Action Plan.<sup>48</sup>

However, a number of interlocutors among the local partner institutions admitted that gender-related issues are of secondary priority in SSR. Overall, the author observed that the interlocutors typically were taken aback by the questions of their cooperation with the mission on gender issues, clearly missing the link between the latter and conflict prevention and peace-building.

With regard to multi-stakeholder coherence, the EU-US "rivalry" was also observed by some commentators in 2015, when the US prevented the EU from "co-owning" the police patrol reform. In 2016 several interlocutors representing the EU institutions in Ukraine shared their frustration over the American approach, which according to them, focused on quick and bright but unsustainable results, whereas the EU approach focused on sustainability but lacked visibility and PR.<sup>49</sup> Some interlocutors in the beneficiary institutions also confirmed that EUAM is not the priority partner for them but the US, Canada and Japan.

EUAM also engaged a number of civil society organizations, e.g. Reanimation Package of Reforms, Razumkov Centre, Amnesty International, etc. It also created the "Parliament – Civil Society Platform" as a framework of cooperation between the Parliament and the Verkhovna Rada on issues related to civilian SSR.<sup>50</sup>

Regarding civil-military synergy, as explained above, EUAM avoids any cooperation with the military. Hence, no examples of civil-military synergy in connection to EUAM were observed. As noted above, EUAM advocates the "Civilian Security Strategy" which would separate the notion of "civilian security" from that of "military security".

Finally, with regard to ICT, EUAM assists with the introduction of modern ICT which is instrumental to the functioning of civilian SSR. One such example is e-case management (processing workload in the criminal investigation).<sup>51</sup>

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<sup>48</sup> Interviews of the authors with officials of EEAS and EUAM, Brussels, Kyiv, 2016.

<sup>49</sup> Author's interview with an EEAS official, Brussels, 2016.

<sup>50</sup> Author's interview with EUAM official, Kyiv, 2016.

<sup>51</sup> Author's interview with EUAM official, Kyiv, 2016.

### 4.2.2 EUBAM

The EU Border Assistance Mission (EUBAM) to Moldova and Ukraine has been operating since 2005. Its headquarters are in Odessa (Ukraine). It also has a EUBAM Office in Moldova and five field offices – two on the Moldovan side of the joint border and three on the Ukrainian side. EUBAM's primary counterparts in Ukraine and Moldova are the local Border and Customs Services.

Technically EUBAM is not a proper CSDP mission but a hybrid one, since it is administered by the European Commission rather than by the European Council. It started out following a traditional CSDP mechanism, when President of Ukraine Viktor Yuschenko and President of the Republic of Moldova Vladimir Voronin sent a joint letter, asking the European Union to establish a mission which would assist in providing customs control on the Transnistrian segment of the Moldovan-Ukrainian state border (Council of the European Union 2005). The Russia-instigated conflict in Transnistria remains frozen since 1992, and both Moldovans and Ukrainians were distrustful towards each other over the alleged smuggling over the Transnistrian segment of the Moldovan-Ukrainian state border, which the Moldovans did not control.

At the outset the mission was primarily asked to:

- Assist Ukraine and Moldova in harmonizing their border management practices with those prevalent in the EU countries;
- Enhance the exchange of information on customs data and border traffic between Moldova and Ukraine;
- Improve the risk analysis capacities in the Moldovan and Ukrainian border management services;
- Contribute to the resolution of the Transnistrian conflict (European Commission 2005).

However, the institutional affiliation of the mission was debated between the European Commission and European Council prior to its establishment. On the one hand, the nature of the mission was twofold, involving both technical assistance, and political and security concerns related to the Transnistria conflict (Dura 2009: 279). Ariella Huff also indicated that the 'initial expectation' was that the EU would send a CSDP mission on Moldova-Ukraine border issue but France and Germany shied away from supporting a political (CSDP) rather than a technical (EC-operated) project in the region (Huff 2011: 21). As a result, the dual nature of the mission was realized in its 'hybrid' institutional structure: the Commission is in charge of the financing, management and implementation of the mission, but with close cooperation and political oversight by the EU Council and EU member states (Dura 2009: 279). Still, scholars and policy analysts, as well as the European External Action Service itself tend to group EUBAM together with other CSDP missions.

#### ***Policy Implementation***

The daily activities of EUBAM experts, as described by Isachenko (2010), consist of two main duties. First is the on-the-job training of Moldovan and Ukrainian customs and border guard personnel. The training covers many areas: how to examine vehicles, how to spot fraudulent

documents, and how to check passports. At the management level EUBAM experts provide advice on how to set up night patrols, how to deal with subordinate personnel, as well as how and why to conduct briefings and meetings. The second main task of EUBAM experts consists of patrolling the border and making unannounced visits to the border checkpoints to observe how Moldovan and Ukrainian customs and border guard personnel manage the border control and implement the lessons learned (Isachenko 2010). The mission also provides consultations on drafting documents and legislation (e.g. the draft Customs Code for Ukraine). The key similarity with EUAM is that the bulk of EUBAM activities is aimed at capacity building of the local partners but, unlike EUAM, EUBAM's work is focused on field work and real time "on the job" training. While EUAM is based in Kyiv and attempts to influence the strategic level of decision-making, EUBAM efforts are local and constrained to specific branches of the Customs and Border Services of the partner countries.

The mission has been largely successful in realizing its objectives. One of EUBAM's key achievements is considered to be the introduction of a new customs regime between Moldova and Ukraine. This allowed Transnistrian businesses to register with Moldova's official agencies and to receive the official customs documents, which, de facto, contributed to the reintegration of Transnistria in economic terms (Dura 2009: 282). It also was able to confirm that 'no trucks full of weapons drive through the border here, neither do people carry around bags full of drugs' (Isachenko 2010: 12). However, EUBAM did detect the large smuggling route of chicken meat which was smuggled through Transnistria to avoid custom duties. Overall, EUBAM presence on the border rendered smuggling much more difficult (Isachenko 2010: 15). It also fulfilled its another objective of establishing cross-border and inter-agency cooperation between Moldova and Ukraine, thus contributing to establishing trust between the border and customs institutions of the two countries (Kurowska & Tallis 2009: 54).

Two very important cooperation initiatives between Moldova and Ukraine took place with facilitation from EUBAM. The first is to introduce automated exchange of travelers' data between Ukraine and Moldova, including on travellers entering Moldova through the Transnistrian segment of the border. The second is the establishment of a jointly operated border crossing point at Kuchurhan-Pervomaisk, which is located at the Transnistrian segment of the border. This is an extraordinary achievement, since for the first time since the start of the Transnistrian conflict, Moldovan customs and, later, border police, will be able to have access and check all travellers and vehicles entering or exiting Moldova at the Transnistrian segment.<sup>52</sup>

In a whole range of interviews which the author has carried out on EUBAM, not a single beneficiary complained or criticized the mission. Rather, various reasons for appreciation were mentioned. A senior Ukrainian official argued that EUBAM 'is one of the best examples of what EU can assist in'.<sup>53</sup> Among the most widely mentioned reasons for appreciation are:

- 1) EUBAM is providing practical and field advice. The fact that almost 100% of EUBAM personnel were seconded from the EU member states border and customs services and had practical rather than theoretical expertise was much appreciated.

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<sup>52</sup> Author's interview with EUBAM official, Kyiv, 2016.

<sup>53</sup> Author's interview with a Ukrainian official, Kyiv, 2016.

Also, the physical presence of EUBAM officers on the border was very much valued;<sup>54</sup>

- 2) The concrete contribution of the mission to the Transnistrian conflict settlement, with its numerous dimensions, curbing the scale of smuggling was considered one of the most important;<sup>55</sup>
- 3) Trust towards EUBAM from not only Moldova and Ukraine, but also Transnistrian “officials”.<sup>56</sup> For example, the EUBAM conclusions that no large-scale weapons smuggling has been observed in the region were very welcomed in Transnistria and treated with relief by the “authorities” (Isachenko 2010);
- 4) EUBAM being an independent channel of information to Brussels which could be used by any partner (Moldova or Ukraine);
- 5) Since the start of the Russia-Ukraine conflict the mission has assumed an additional meaning for Ukraine, especially for the local population in Odessa oblast – that of a security provider. The presence of an EU mission in Odessa makes the Ukrainian population feel more secure against the threat of Russia’s continued aggression, including from the Transnistrian side. Since Russian troops are stationed in Transnistria, there are fears in Ukraine that they could be used for an attack on Ukraine.<sup>57</sup>

### *Policy change*

The years 2014-2016 could be called the period of “rethinking EUBAM”. Two reasons account for this:

- A geopolitical environment completely different to that of 2005, including the Russian intervention, but also Ukraine’s closer integration with the EU in the form of the EU-Ukraine Association Agreement (AA) and Deep and Comprehensive Free Trade Agreement (DCFTA) and Visa Liberalization Action Plan for Ukraine (VLAP);
- The considerable time of operation for an EU mission (over 10 years) and the fulfilment of the initial mandate.

It is worth noting that EUBAM is known among its stakeholders as an ever self-developing mission, responding to the needs of local stakeholders and the evolving geopolitical situation. At the time of writing EUBAM’s website lists areas of the mission activity which go way beyond the initial mandate: AA/DCFTA, good governance, integrated border management, intellectual property rights, conflict resolution through confidence-building measures, VLAP and trade facilitation, in addition to combating various types of smuggling and fraud (EUBAM 2016). All these objectives were mentioned in the Addendum to the Memorandum of Understanding between the European Commission, the Government of the Republic of Moldova and the Government of Ukraine, signed in 2015. However, the Addendum only put to paper what was

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<sup>54</sup> Author’s interviews at the Ministry of Foreign Affairs of Ukraine and State Fiscal Service of Ukraine, Kyiv, 2016.

<sup>55</sup> Ibid.

<sup>56</sup> Author’s interview with an EEAS official, Brussels, 2016.

<sup>57</sup> Author’s interview at the Ministry of Foreign Affairs of Ukraine, Kyiv, 2016.



already ongoing in the mission's operation, since the mission had performed many of the activities long before the signature of the Addendum.<sup>58</sup>

Speaking about EUBAM's contribution to conflict prevention and peace-building in Moldova is one issue. But since Ukraine is the focus of this paper, the conclusion about EUBAM's role in peace building in the East is unequivocal: the mission is distancing itself from the Ukrainian conflict and is placing a distinct emphasis on its Transnistria portfolio. In addition, the administrative and financial supervision of EUBAM, which used to be carried out by the EU Delegation to Ukraine (Kyiv), was moved to the EU Delegation to Moldova (Chisinau). The Ukrainian interlocutors see this as a sign that EUBAM is getting more focused on Transnistria and Moldova, rather than Ukraine.<sup>59</sup>

The Russian intervention in the East and the annexation of the Crimea added an extra impetus to the work of the mission. Monitoring of the Transnistrian segment of the Ukraine-Moldova border became more important, firstly as an early warning mechanism of any threats which might emanate from that territory, and secondly to ensure that the increased security measures taken by Ukraine and Moldova still allowed for the flow of goods and people across the border.<sup>60</sup> The Ukrainian side underlines that EUBAM experience and assistance could be valuable beyond the Odessa region, for example: the mission's expertise could be used for establishing a border management/monitoring mission on the administrative line with the Crimea; the experience of border demarcation with Moldova could be applied to border demarcation with Belarus.

More specifically, EUBAM has deployed 12 additional experts to the Transnistrian segment of the border since 2014. It also opened a sub-office in Pischanka, at the northern end of the Transnistrian segment of the border to increase its geographical reach. The additional staff have been used to advise the Ukrainian State Border Guard Service and State Fiscal Service on second line checks to detect the smuggling of weapons and contraband, as well as to ensure traveller rights are protected through the additional second line checks.<sup>61</sup>

Despite a wide expansion of EUBAM functions in 2015, prolonging its mandate through 2017 (Phase 11) and administrative change (moving the supervising from Kyiv to Chisinau, see above), the signals which the author received from both the EU and Ukrainian stakeholders are unequivocal: the mission is looking for a phase-out strategy.<sup>62</sup> It is debated whether the mission will close down altogether, will continue with some changes to its functions or assume a different form.

The reason for the EUBAM exit is that the mission has fulfilled its mandate. The mission itself considers that intensive capacity building has been provided and large scale training is no longer needed by local beneficiaries. The mission is also trying to decrease its involvement in the initiatives it has created, "shrinking its role to verification and rectification". It can also be assumed that EUBAM wants to distance itself from the Russian-Ukrainian conflict and so refocuses its attention to Moldova and Transnistria, where it already has expertise and significant progress. This hypothesis should be verified, though.

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<sup>58</sup> Author's interview at the State Fiscal Service of Ukraine, Kyiv, 2015.

<sup>59</sup> Author's interview at the Ministry of Foreign Affairs of Ukraine, Kyiv, 2016.

<sup>60</sup> Author's interview with a EUBAM official, Kyiv, 2016.

<sup>61</sup> Author's interview with a EUBAM official, Kyiv, 2016.

<sup>62</sup> Author's interviews at the Ministry of Foreign Affairs of Ukraine and with a EUBAM official, Kyiv, 2016.

However, Ukraine advocates for the continued EU presence at the Moldova-Ukraine border, either as EUBAM, or as EUAM's local office.<sup>63</sup> The Ukrainian position is grounded in the arguments that:

- 1) Leaving the Odessa region now would send a very negative signal to Ukraine and its population from the EU and could also be interpreted by Russia as giving up on Ukraine;
- 2) Introducing integrated border management as a comprehensive and coherent system (the integrated management to which all border institutions, customs, law enforcement, sanitary services are involved) for the entire length of the Ukrainian border is vital for Ukraine now. Ukraine is especially interested in prevention of smuggling on the occupation lines in the same way it was done on the Transnistrian segment, and for this, EUBAM experience is crucial. An idea harboured by the Ukrainian officials is that EUAM takes up EUBAM's functions and expertise (e.g. personnel) in establishing Integrated Border Management (IBM) in Ukraine. Rather than providing direct monitoring on the occupation line in the East, transfer of practices to the Ukrainian institutions is what is expected by Ukraine's authorities.

### *Cross-cutting themes*

With regard to ownership, the above discussion shows that the Ukrainian government and counterparts have embraced the EUBAM mission and would like it to stay and expand to border crossing points with Slovakia, Poland and Hungary.<sup>64</sup>

In 2015 EUBAM introduced an international Gender Advisor position within its staff. The Advisor's job is to firstly look at how EUBAM's own support to the partners can be made more gender sensitive. Secondly, the Advisor is also working directly with the partners to identify how to mainstream gender considerations into their policies and daily work.<sup>65</sup>

Although EUBAM does not provide technical equipment, it recognizes that some of the improvements it supports, such as cross-border data exchange and closer connections to EUROPOL, FRONTEX and INTERPOL, require ICT equipment. In these cases, EUBAM has supported the partner services in both countries to submit proposals for the EU's Integrated Border Management Flagship Initiative projects, which provides funding for such equipment<sup>66</sup>.

The environment in which EUBAM operates is populated with other donors and partners present in Ukraine (EUAM, EU Support Group, US, FRONTEX, EUROPOL, WTO, OSCE, UN, EU Twinning projects, etc.). However, EUBAM operation is unique given its geographical focus (in turn, a number of other donors concentrate on the capital and/or other regions). Also, since EUBAM activity in Ukraine decreases, it ensures that other EU tools step in. For example, one EUBAM expert used to work on good governance and human resource management in the State Fiscal Service of Ukraine. A specially focused Twinning project was launched in February 2016, deploying ampler and more targeted resources on this issue.<sup>67</sup>

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<sup>63</sup> Author's interview at the Ministry of Foreign Affairs of Ukraine, Kyiv, 2016.

<sup>64</sup> Ibid.

<sup>65</sup> Author's interview with a EUBAM official, Kyiv, 2016.

<sup>66</sup> Ibid.

<sup>67</sup> Author's interview with a State Fiscal Service official, Kyiv, 2016.

## 4.3 Conclusion

This chapter discussed the EUAM and EUBAM mission in Ukraine. While EUAM deployed only recently, the EUBAM mission started in 2005 and it is not clear whether its mandate will be extended. The key similarity with EUAM is that a bulk of EUBAM activities is aimed at capacity building of the local partners but, unlike EUAM, EUBAM's work is focused on field work and real time on-the-job training. While EUAM is based in Kyiv and attempts to influence the strategic level of decision-making, EUBAM efforts are local and constrained to specific branches of the Customs and Border Services of the partner countries.

Overall, none of the missions contribute directly to conflict prevention and peacebuilding, instead concentrating on institution-building on a strategic, as well as, local level. The different institutional nature of EUBAM and EUAM and larger flexibility of EUBAM suggest that maybe in sensitive geopolitical environments (as is that of Eastern partnership for the EU), EUBAM's "hybrid" nature could be used as a blueprint for further missions, rather than a unique exception.

## 5. EU governance interventions in Ukraine – the case of decentralization

### 5.1 Introduction

In Ukraine, governance reform is an ongoing process that started after the proclamation of independence in 1991. Throughout the past twenty-five years, the speed and depth of reforms have varied depending on the political situation in the country. After the Revolution of Dignity of 2014 which was inspired in part by the intrinsic governance problems such as corruption and lack of rule of law, a new impetus was given for the acceleration of much needed reforms. Decentralization and local self-governance reform was among the top priorities in the Strategy for Sustainable Development ‘Ukraine-2020’ (2015), a framework document announced by President Poroshenko after the Revolution of Dignity to address the structural shortcomings that haunted the Ukrainian state for decades. Following the annexation of Crimea by the Russian Federation and its involvement in the conflict in the east of Ukraine, decentralization reform and authority of the regions became highly politicized issues in Ukrainian society.

The majority of the provisions in the Minsk II agreement are not observed to this day, including the critical aspects of peace processes such as a full ceasefire, withdrawal of heavy weapons, access for OSCE observers to the conflict zone, as well as the withdrawal of all foreign troops. Nevertheless, the Ukrainian government has moved forward with its obligations and introduced a new amendment to the Constitution of Ukraine in the area of decentralization and local governance (Verkhovna Rada 2015). Although the decentralization reform is not limited to just amending the Constitution, but also requires a comprehensive change of the budget, tax and election legislation, it is the inclusion in the fundamental law of Ukraine, a special provision regarding the local governance in some regions of Luhansk and Donetsk oblast, that led to a political crisis (BBC 2015). Furthermore, the initial voting on the amendments on 31 August 2015 resulted in tragedy when a hand grenade exploded near the Parliament and killed four National Guard servicemen (Ibid). The responsibility for the attack was attributed to right-wing nationalist parties who have only marginal support among the Ukrainian population (Ukrayinska Pravda 2014). At the same time, the inclusion of the “special status of Donbas” in the Constitution remains a contentious issue, while the support for administrative and fiscal decentralization per se remains strong (Council of Europe 2015). Thus, according to the survey from October 2015 on decentralization, prepared upon the request of the Council of Europe, 59% of the respondents believe that Ukraine has to implement the decentralization and local governance reform. At the same time, when asked whether these reforms would contribute to the solution of conflict in the east of Ukraine, 43% of respondents were sceptical, while 33% believe it would (Ibid).

The EU efforts in addressing governance reform in Ukraine, and particularly the decentralization dimension, have significantly increased in the past two years. Although European Union grants and programmes have been present in Ukraine for quite some time, the political and security situation in the country after 2014 has accelerated the pace and scope of support. Currently, the most recent initiatives of the EU that focus on governance reform and support for local-governance in the conflict-affected regions are “U-LEAD with Europe:

Ukraine Local Empowerment, Accountability and Development Programme” and the “Support to strengthening of local governance in government-controlled areas of Donetsk and Luhansk Oblasts (European Commission 2015)” (“EU announces more than €100 million for Ukraine”).

This case study evaluates the process of the creation, implementation and adjustment of EU policies in support of the decentralization reform in the conflict-affected areas of Ukraine. It assesses the state-of-affairs of the governance reform in Ukraine, and analyses the relevant EU programmes and instruments, while accounting for local ownership, gender dimension, communication technologies and multi-stakeholder coherence. Ultimately, it stresses the significance of decentralization reform for mitigating the grievances and shaping the conflict dynamics, not only in the war-ravaged regions, but throughout the whole country.

## 5.2 Decentralization in Ukraine

Scholarly inquiries into the ability of decentralization to mitigate conflict or prevent a relapse, point at both the possibilities to do so and possible backlashes. The 2004 UNDP report “UNDP Practice Note: Decentralised Governance for Development” (2004) links the failure of the decentralization reform to conflict occurrence by pointing at the highly politicized nature of the process that can be hijacked by corruption, abuse of power by elites, lack of inclusive practices and respect for local traditions. In the analysis of the ethnic conflict and secessionism, Dawn Brancati (2008: 2) argues that implementing political decentralization reforms in democracies have produced mixed results for the reduction of conflict. Her findings suggest that the strength of regional parties is largely responsible for the variation in the effectiveness of decentralization (Ibid: 5). Statistical analysis of the patterns between decentralization and intrastate conflict by Joseph Siegle and Patrick O'Mahony (2006: 51-52) also underlines the complex nature of the relationship.

Empirical evidence from the case study analysis further suggests that there is no one-size-fits-all relationship between decentralization and conflict. Thus, in Malawi, poorly developed or implemented decentralization strategies created avenues for the conflict to develop and escalate (Tambulasi 2009). In the Democratic Republic of Congo the primary challenge was to address local grievances and devise more inclusive local governance mechanisms (Gaynor 2016). The implementation of the decentralization reform prior to establishing the central government in Kosovo has posed a risk to the post-conflict society with the presence of ethnic grievances (Gjoni, Wetterberg & Dunbar 2010). Ultimately, in the case of Sierra Leone where the post-conflict recovery process has been largely successful, incomplete decentralization can pose a threat to the stabilization process and lead to tensions at the local level (Edwards, Yilmaz & Boex 2015).

The existing scholarship on decentralization and conflict can shed additional light on the possible benefits and potential pitfalls for Ukraine. The central themes examined in the literature are also relevant in the whole-of-society approach to governance reform (Lundström & Dressler 2016: 4). Thus, inclusive practices, local ownership, and multi-stakeholder approaches will be explored as the possible elements of a successful decentralization reform outlined by Kyiv.

### 5.2.1 Decentralization reform in Ukraine

Ukraine has inherited its administrative structure from the Soviet Union which comprises three tiers: oblasts, rayons and villages. Alongside the structure, it also acquired the intrinsic problems such as the overreliance on central authority, ineffective composition of lowest administrative units, and lack of resources available to them. Although the legislative foundation for the decentralization was already devised in the mid-nineties, the continued dominance of the centralized decisions from Kyiv, lack of real financial resources at the local level, and pervasive corruption have hampered the transition to a more decentralized model. The real attempts to change the status quo were made after the Orange Revolution in 2005 and Revolution of Dignity in 2014 (USAID 2014).

The decentralization reform during the presidency of Viktor Yushenko (2005-2010) was not realized, in part due to the political infighting. The current efforts of President Poroshenko are largely supported at the political and societal levels, yet the annexation of Crimea and the conflict in Donbas have been detrimental for the decentralization process. Following almost a year of active combat, the Minsk agreement was signed, which sought a peaceful solution to the conflict and subsequent integration of the breakaway entities (The Telegraph 2015). The final article of the Minsk II agreement that was signed on 12 February 2015 had a direct reference to the decentralization reform:

'Constitutional reform in Ukraine, with the new Constitution to come into effect by the end of 2015, the key element of which is decentralization (taking into account peculiarities of particular districts of Donetsk and Luhansk Oblasts, agreed with representatives of these districts), and also approval of permanent legislation on special status of particular districts of Donetsk and Luhansk Oblasts in accordance with the measures spelt out in the footnotes, by the end of 2015' (The Telegraph 2015).

European Union members such as Poland, Sweden, and Germany, and the organization as a whole have been consistently supporting the decentralization reform, both through technical advice and financial assistance. In the recent announcement by the European Commission, more than 100 million EUR will be devoted to local governance reform in Ukraine through U-LEAD: Ukraine Local Empowerment, Accountability and Development Programme and The IcSP funded action "Restoration of Governance and Reconciliation in Crisis - Affected Communities of Ukraine" (European Commission 2015). EU's move with financial assistance was preceded by the political decision in the EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, where enabling decentralization reform was officially designated as a part of the political dialogue (EUEA 2015). The utilization of two different mechanisms by the EU is primarily driven by the peculiarities of decentralization reform in Ukraine. Thus, IcSP-funded programmes would focus on the eastern regions of Ukraine, Donetsk and Luhansk, and specifically on the areas under government control. Despite the signing of a ceasefire in winter of 2015, hostilities continue to this day, which requires a different approach to decentralization and local governance reform. Thus, the IcSP is aimed not only at assisting with reforms, but also geared toward reconciliation efforts. U-LEAD would focus on the rest of Ukraine, which also requires capacity building programmes and technical assistance to conduct administrative and fiscal decentralization.

### 5.3 EU Intervention in Ukraine – The Instrument contributing to Stability and Peace

The Instrument contributing to Stability and Peace (IcSP) is a mechanism of EU external assistance aimed at preventing and addressing conflict situations across the globe. The successor of the Instrument for Peace (IfP), IcSP focuses on conflict prevention in addition to the crisis response and preparedness components. The primary focus of the IcSP is to maintain stability and long-term sustainable development through addressing the challenges emanating from terrorism, piracy, organized crime, climate change, and biological and nuclear threats (European Commission 2014).

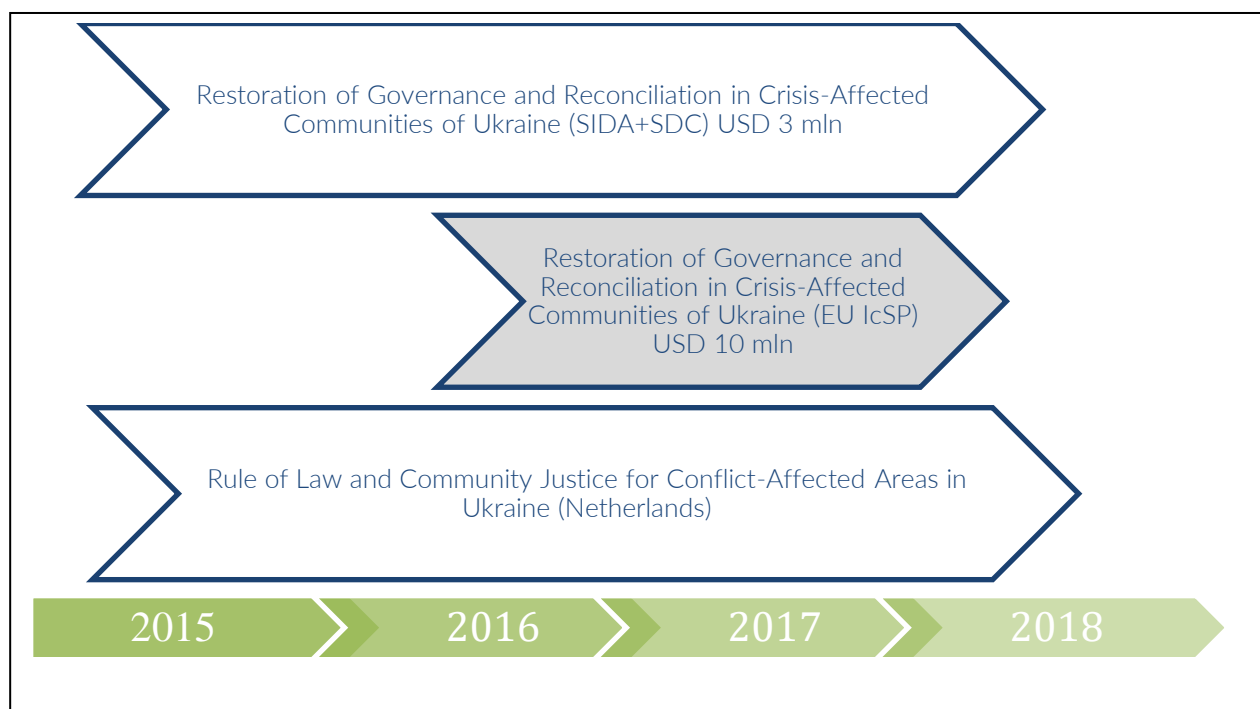
In Ukraine, the IcSP has been used to fund programmes that aided internally displaced persons (IDP), supported election observation missions, demining processes, and activities aimed at improving governance (297 projects in 80 countries are funded by the EU) (European Commission 2014). Since the second part of 2014, IcSP-related programmes in Ukraine were funded for 55 million EUR, with an additional 20 million planned for 2016. Conceptually, IcSP interventions can be divided into hard interventions, such as the support for the Organization for Security and Cooperation in Europe Special Monitoring Mission to Ukraine (30 million EUR), and soft interventions, such as the assistance to local populations, demining, and governance reform in Donetsk and Luhansk regions. Alongside the OSCE, the IcSP aimed at assisting the efforts of the International Organization of Migration and the Office of the High Commissioner for Human Rights in Ukraine. Activities, such as increasing the capacity of regional media to report in a sensitive way on the conflict, social assistance, and demining, were implemented directly through NGOs. Currently, the IcSP in Ukraine continues to support IDPs, activities of the OHCHR, demining, and is expected to expand its focus to police reform.<sup>68</sup> In 2016, a new action has been developed to address one of the most contentious aspects of the governance reform in Ukraine. Decentralization and local governance reform has sparked heated debates in the Ukrainian society following the occupation of Crimea and war in the eastern regions. The Minsk II agreement, signed in February 2015, had a direct reference to the decentralization reform and specifically to the special format of governance for Non-Government Controlled Areas (NGCA). With the constitutional reform regarding decentralization in Ukraine underway, the future of the territories under separatists' control remains uncertain. In this regard, the new programme **“Restoration of Governance and Reconciliation in Crisis - Affected Communities of Ukraine”**, funded under the IcSP, was both a timely and necessary step to address the discrepancies that may arise from the uneven progress of the governance reform in Ukraine given the deterioration of capacity and infrastructure that resulted from the conflict.<sup>69</sup>

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<sup>68</sup> Author's interview with a EU Delegation official, Kyiv, 2016.

<sup>69</sup> The program with the same title was launched in 2015 and was supported by SIDA and SDC.

The newest IcSP in Ukraine, aimed at assisting the war-torn communities in Donetsk and Luhansk oblasts, was neither an isolated, nor the first action launched by the international community. In fact, this instrument appeared as an extension of the existing framework of recovery and peacebuilding efforts funded by Sweden, Switzerland, Japan, Poland, Czech Republic and the United Kingdom and managed by the United Nations Development Programme (UNDP 2016). A new project with a similar name, funded by SIDA and SDC, which focusses on facilitating recovery through reconciliation and inclusive dialogue, as well as enhancing the capacity of local authorities, is set for the period of 2015-2017 (UNDP 2015). In fact, the EU's instrument, which will run for 18 months, will contribute to the existing framework and also enhance the scope of the current efforts. IcSP-funded efforts would also contribute to the existing UNDP project, supported by the government of the Netherlands, to enhance community security and community justice in the Donbas region (see graph 1). According to a representative of the UNDP in Ukraine, the IcSP was designed to accomplish in the conflict-affected areas what U-LEAD would in the rest of Ukraine.<sup>70</sup> Thus, IcSP will fund a range of projects and efforts that would be implemented by UNDP and UN Women in Ukraine, as well as by local and international NGOs. The primary focus of the funded projects is strengthening the capacity of local government in light of the ongoing decentralization reform. Other aspects that the instrument covers are the support of community security, enhancing social cohesion and promote gender equality.



Graph 1. Internationally-funded restoration and recovery efforts in the conflict-affected areas of Ukraine

The IcSP was jointly designed by the representatives from the EU and UNDP. By and large, the activities envisioned by the instrument are demand-driven, as they reflect the needs of the local state administrations and local communities outlined in regional development and recovery plans. This “demand-driven” assumption postulates that these plans were developed

<sup>70</sup> Author's interview with a UNDP official, Kyiv, 2016.



in collaboration with local communities and governments, as well as coordinated by the UNDP. As of June 2016, the IcSP programme, aimed at assisting decentralization reform in Donetsk and Luhansk oblasts, has moved from the policy design to implementation stage. The 10 million EUR funded action will seek to address one of the underlying constraints to the decentralization reform in the conflict-affected areas of Ukraine – building the capacity of the stakeholders at the local level (European Commission 2015). The primary objectives of the programme are:

- 1) To improve regional and local government capacity in recovery planning and service delivery, which is gender-responsive, participatory and in line with decentralization and the local government reform agenda;
- 2) To enhance community security for people in conflict-affected areas, with a focus on IDPs and host communities;
- 3) To restore social cohesion and promote trust between local authorities and communities, including IDPs;
- 4) To enhance the capacity of gender equality advocates and women affected by conflict to demand accountability and transparency in local decision-making and spending (EU Delegation 2014).

The IcSP funded programme **“Restoration of Governance and Reconciliation in Crisis - Affected Communities of Ukraine”** was jointly designed by the EU delegation in Ukraine and the UN Development Programme in Ukraine. While the IcSP provides funds for the initiatives to strengthen the capacity of local communities for decentralization reform, the EU officers also participated in designing these projects. At the same time, the programme was devised within the framework of the overall programmes and agreements between the principal donors of the decentralization in Ukraine - the EU and US.<sup>71</sup> Although in its current form the EU-funded IcSP programme is similar to the approach designed for the rest of Ukraine (capacity building for local governance reform), there are nuances for the Donetsk and Luhansk regions. A representative of the EU delegation in Ukraine contended that ‘because the capacity in Donetsk and Luhansk is so low by comparison with what capacity exists in the rest of the country, it is also important that, through this programme, we make sure that Donetsk and Luhansk are not left behind in the decentralization process’.<sup>72</sup> The situation in the conflict-affected areas is further complicated by the slow process of unification of administrative units (hromadas). The unification of hromadas is the central aspect of administrative decentralization and thus lack of trust and knowledge about this process from the local communities creates additional obstacles for the IcSP (National Reform Council 2015).

The EU representatives regularly visited the affected regions and interacted with the local government officials that designed regional development plans. These plans were created in consultations with the local communities and with organizational assistance from UNDP. Based on these recovery strategies and development plans, the EU delegation to Ukraine devised the IcSP funded programme. Although there was no direct input for the programme from the local level, the UNDP and EU’s prior experience with supporting governance reforms

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<sup>71</sup> Author’s interview with a EU Delegation official, Kyiv, 2016.

<sup>72</sup> Ibid.

in this region played an important role in designing the IcSP programme for Donetsk and Luhansk.

Another unique feature of the EU intervention through the IcSP in the conflict-affected areas of Ukraine, is that it not only enhanced the existing framework supported by other donors, but also encompassed a dualistic approach of development and recovery, which was not the case for the rest of Ukraine. Thus, the U-LEAD and similar actions that are aimed at assisting with administrative reform (amalgamation of hromadas) and enhancing service delivery, were not directly linked to the regional development that was funded under separate EU mechanisms. In contrast to U-LEAD, which focused primarily on development interventions, the IcSP in Ukraine, which supported projects in the conflict-affected regions, has also incorporated the recovery component.

Although the Instrument contributing to Stability and Peace was created in 2014, this process was not related to the events in Ukraine, but rather coincided with the changing security environment. In contrast to other EU instruments, IcSP is not programmable. Thus, the programme of the European Neighbourhood Instrument is known in advance; IcSP, however, is designed for a short period, in which the European Union identifies relevant areas and then searches for the stakeholders that could offer proposals and implement them. While the broader ideas for the programmes funded under the IcSP in Ukraine were largely driven by the European Commission, the input from the regional development and recovery plans brought into light the needs of local communities and local government (National Reform Council 2015).

### 5.3.1 Policy design and implementation

The formal start of the design stage of the IcSP was September 2015, a period that directly followed the protests around the first voting for the Amendments to the Constitution of Ukraine regarding the decentralization reform. However, according to a representative of the EU delegation the contentious situation resulting from the provision in the Minsk II agreements on the special status of NGCA did not have a negative impact on the IcSP. Yet, he mentioned that it might be a risk during the implementation stage.

The formal start of the implementation stage for the **“Restoration of Governance and Reconciliation in Crisis - Affected Communities of Ukraine”** was 27 May 2016, when the project was officially launched in Kramatorsk, the location of the regional HQ of the UNDP. Kramatorsk has directly suffered from conflict when it was first occupied by separatists in 2014, but later liberated by Ukrainian armed forces. Although the IcSP in its current format is not aimed to cover the territory of Donetsk and Luhansk that is not controlled by Ukraine, at the design stage the EU specifically looked for the partners that would be accepted in the NGCA if the situation changes.

Given the existing timeline of the Instrument contributing to Stability and Peace in the conflict-affected areas of Ukraine, it is rather premature to assess the policy implementation and subsequent policy changes. However, it is possible to explore the expected role of four cross-cutting themes, as well as the interactions between the primary stakeholders and the unique context in which the implementation stage is set to develop.

All four cross-cutting themes of the “whole-of-society” approach to EU peacebuilding interventions were already addressed by the EU delegation in Ukraine while designing the action aimed at restoring **the governance and conducting decentralization reform in crisis-affected communities of Donetsk and Luhansk oblasts** (funded under the IcSP). The issue of gender and women involvement in the local governance reform was actively considered during this stage. Given the fact that the Women, Peace and Security agenda has been introduced both practically and institutionally in EU approaches to peacebuilding, the IcSP in Ukraine has dedicated approximately 20% of its activities to gender-related issues (Villellas et al 2016). An active role in proposing strategies and sharing practices in gender-based approaches was taken by the UN Women in Ukraine. The UN Women involvement in the IcSP in cooperation with UNDP was directly encouraged by the EU delegation in Ukraine.<sup>73</sup> The significance of women’s involvement in local ownership for the local governance reform and reconciliation efforts is further highlighted by the fact that women are disproportionately affected by the conflict and also represent the majority of the IDPs. At the same time, their representation in the higher management and leadership positions in communities or local civil society groups remains low. One of the goals of the IcSP in Ukraine is to address this incongruence and empower women to play a more active role in conflict resolution (EU Delegation 2014).

### 5.3.2 Gender

The emphasis on gender in the recovery and development efforts in Donbas during the implementation stage of the IcSP is highlighted in the tentative action plan that is focused on empowering local women-leaders, female IDPs and women groups to enhance the capacity of gender advocates to oversee the accountability and transparency for decision-making at the local level. Furthermore, the planned activities included increasing the awareness about gender equality and supporting women’s leadership among IDPs and host communities (EU Delegation 2014, 19-20). Toward these goals, the IcSP will involve the services of not only UN Women, who also participated in the design of the instrument, but also local and regional NGOs and contractual service-companies. The official proposal for the EU IcSP has also emphasized the pivotal role of a gender coordinator and analyst at the national and regional levels:

‘The National Gender Equality and Governance Programme Coordinator (Kyiv) and Gender Equality and Governance Programme Analyst (Donbas), will report on substantive issues to the International Gender Equality, Women’s Empowerment and Governance Programme Specialist and will be responsible for day-to-day implementation, monitoring and reporting on women’s empowerment initiatives and technical gender mainstreaming support to the project team and partners’ (EU Delegation 2014: 24).

The peculiarity of the conflict in the east of Ukraine, which has been widely considered a case of hybrid warfare, gave rise to the importance of the media and various information technologies in shaping the discourse of conflict. Currently, the cross-sectional theme of the information and communication technologies is supported under the related programme “Support to conflict-affected populations in Ukraine” funded through the IcSP (European Commission 2015). The focus on empowering regional and local media representatives to promote a balanced view on the conflict through interaction between EU and Ukrainian

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<sup>73</sup> Author’s interview with a EU Delegation official, Kyiv, 2016.

journalists has been executed through the creation of the Regional Voices (2016) programme. Support for the local media would also be considered under the IcSP activities focused on Donbas in 2016-2017. Furthermore, the ICT and gender themes are highly interlinked in the case of Ukraine, since almost 95% of journalists participating in the IcSP Regional Voices programme are women. According to the representative of EU delegation to Ukraine, this trend is shaped by the fact that regional journalism is considered less prestigious and not well paid, therefore men are not willing to hold positions in this sphere.<sup>74</sup>

### 5.3.3 Information and Communication Technologies (ICT)

Introduction of innovative technologies such as e-governance is one of the primary activities planned under the goal of enhancing community capacities for an effective decentralization. Under the IcSP, the e-tools for greater transparency and effectiveness of governance will be introduced through the provision of small grants to hromadas by subcontracting companies that specialize in e-governance software and systems (EU Delegation 2014). Alongside hromadas and contractual companies, local CSOs and NGOs, as well as the UNDP, will be the primary stakeholders in the process of introducing the innovative information and communication technologies.<sup>75</sup> Moreover, the current instrument would continue to support the local media in order to develop a conflict-sensitive approach toward such issues as decentralization and peacebuilding.

### 5.3.4 Local ownership

In Donetsk and Luhansk oblasts, which have been directly affected by the conflict, the issue of local ownership regarding local governance reform has been vividly demonstrated by the actions of local communities. Although these two regions require greater support with strengthening the capacity to conduct the reforms in comparison to other regions of Ukraine, they are also more willing to take the matter into their own hands to accelerate the pace of these reforms.<sup>76</sup> EU and UNDP representatives have emphasized that conflict-affected communities have demonstrated the willingness to not only receive assistance from international institutions, but also to participate in shaping the vision and strategies for change. In the case of decentralization reform, local stakeholders have actively taken part in devising regional development strategies. Since the IcSP funded action was building upon the existing efforts of the international community, the established connections with regional government administrations (Kramatorsk and Severodonetsk) proved to be useful for revising and expanding regional development programmes that now incorporate issues that previously were not included, such as community security, issues of IDPs, and administrative reform. The crucial dynamics behind the local ownership for reforms and cooperation between communities, state administration, UNDP and EU is stressed by a representative of the UNDP in Ukraine:

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<sup>74</sup> Author's interview with a EU Delegation official, Kyiv, 2016.

<sup>75</sup> At the moment of preparing the report, no information was available on the range of NGOs that will be involved in the projects funded under the IcSP.

<sup>76</sup> Author's interview with a UNDP official, Kyiv, 2016.

'Because the regional administration engaged in a participatory consultative process with working groups in four areas to discuss these things from bottom up and to actually produce a very different type of regional strategy document from the usual convoluted, very technocratic documents that nobody would ever read. This is actually designed to be read by an interesting public and should be considered as owned by the communities. And this was very useful because, for instance, the emphasis on community security, and administrative reform, and IDPs and social cohesion are also the themes that we integrated into the proposal and, therefore, now the action. So what we now have is that we have a government-owned product of a participatory process, which is this regional development strategy, and we have the resources from the EU to actually conduct the targeted programmes in those areas'.<sup>77</sup>

Although there is the common vision for the recovery and development strategies which is supported by stakeholders at the local, state and donor level, it is worth noting the unequal geographic distribution of attitudes of Ukrainians toward local governance reform. Thus, the survey, conducted upon the request of the Council of Europe regarding the decentralization reform in Ukraine, has shown that in the East people are generally less supportive of the changes of the local self-governance structure in comparison the rest of the country (Council of Europe 2015). This discrepancy can be partly explained by the timing of the report that was presented on October 2015. Given the sensitivity of these reforms in the conflict-affected regions, there might be a lag between the activities of the international donors and the Ukrainian government to educate the population about decentralization reform and the shift in the population's perceptions. Another critical dimension to the progress of decentralization in Ukraine, and concurrently the efforts of international donors, is the possible discrepancy between the formal legislative process of local governance reform and real tangible changes that should take place at the community level. The Ukrainian government tracks the reform process, yet the primary indicators are focusing on the adoption of required laws (Decentralization reform). Although progressive legislation on local governance is the foundation for successful reforms, measuring the capacity of local communities to actually benefit from administrative and fiscal decentralization is equally important.

Although local ownership for the recovery and development efforts is not explicitly referenced in the official IcSP documents, it is nevertheless reflected in the character of activities planned for implementation by this instrument. Since the current EU action is not a standalone project, but rather expands on the existing framework, there is an already established dynamic of a bottom-up approach not only while designing the action, but also when implementing it. Thus, the Community-based approach (CBA) to the local development that is also supported by EU, has generated awareness among the local population in the conflict-affected areas about the importance of being responsible for changes in the communities (Community Based Approach 2015). The CBA initiatives strengthened the capacity for local governance through microfinancing local development projects in Ukraine. These initiatives have a wide geographic representation and have operated for several decades. In the Donbas region, the CBA projects have also been implemented providing a certain foundation for the current governance interventions by UN, EU and other international actors.

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<sup>77</sup> Author's interview with a UNDP official, Kyiv, 2016.

The IcSP is equally committed to these principles as its activities were developed based on the regional development strategies that took into account the input from the local communities. At the same time, the IcSP project has to be sufficiently flexible to accommodate the possible challenges coming from a changing security environment, the progress of Minsk peace talks, and tensions at the local level following the amalgamation of the hromadas (communities). In that sense, the current IcSP has the capacity to develop proposals along the duration of the action that stem either from the assessment of the IcSP interlocutors or, on occasion, can come from the local level. The latter proposals that identify a gap or a need in the framework supported by the IcSP will be assessed and implemented if possible.<sup>78</sup>

### 5.3.5 Multi-stakeholder coherence

Multi-stakeholder coherence is clearly visible at the policy design stage of the IcSP. The EU delegation has not only directly cooperated with the UNDP and UN Women to devise the range of activities that would enhance the capacity of Donetsk and Luhansk for decentralization reform, but also interacted with central government authorities at the Ministry of Regional Development, Building and Housing of Ukraine, as well as at the level of local administrations and communities.

The importance of an effective multi-stakeholder coherence is further emphasized by the fact that the IcSP was not designed as a standalone intervention, but rather as an expansion on the existing development and recovery framework that was supported by various donors. Thus, effective integration and cooperation with the projects funded by SIDA/SDC and the Netherlands, as well as coordination of efforts with other donors such as USAID, was an important precondition for the complementarity and continuity of the recovery and reconciliation efforts in Donbas.

In the implementation phase the EU relies on the UNDP, UN Women, local CSOs and contractual service companies for implementation of the activities planned. Whether it is improving local communities' capacity for governance reform, enhancing community justice and security, restoring social cohesion or empowering women-leaders and groups, the EU IcSP highlights the unique role that Ukrainian state institutions, especially at the oblast level, play in directly affecting and benefitting from the planned activities. According to a representative of the UNDP in Ukraine, international donors and Donetsk and Luhansk regional administrations have de facto formalized the multi-stakeholder approach, as the latter developed inclusive regional development strategies that will be financially supported by donors' funds including the IcSP. Moreover, the smaller area to support for reforms (in comparison the rest of Ukraine that is funded under U-LEAD), the unique role of civil-military administrations of Donetsk and Luhansk oblasts that were reorganized following the conflict, as well as Kyiv-appointed governors who have a lot to prove to the local population in GCAs (and equally in NGCAs), solidify the expectations that the planned scope of activities will be implemented. Given the conflict dynamics in Donbas and especially the NGCA that is affected by the humanitarian crisis (shortage of food products and medication), it was imperative to coordinate the IcSP efforts with other stakeholders. Although not directly having a humanitarian component, the IcSP implementation will be supplemented through partnerships with humanitarian organizations

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<sup>78</sup> Author's interview with a EU Delegation official, Kyiv, 2016.

such as the UNHCR, OHCHR, UNICEF, UNFPA, as well as through coordination with the OSCE and Council of Europe missions to Ukraine (EU Delegation 2014, 23).

## 5.4 Policy change

Since at the time of the assessment of the IcSP in Donbas, it was at a very early stage of implementation, it is rather premature to speak about the crucial changes that this action went through and how EU has adapted to them. Nevertheless, it is possible to anticipate certain factors that could alter the course of the IcSP.

In this regard, the analytical component of the IcSP includes the monitoring of the most vulnerable groups in the Donetsk and Luhansk region who could be disproportionately affected by the decentralization reform. While at the time of the preparation of the report no data on such groups was available, one can safely assume that communities that are close to ceasefire borderlines would be the most affected. The vulnerability assessment will be conducted at the initial stages of the programme to adapt planned activities to include the potential inequalities that women and men IDPs face in the conflict-affected areas. The results of this analysis will feed into the Social Cohesion and Reconciliation Index (SCORE) (2015) that is used to measure the impact of the IcSP and inform programme design through focusing on social cohesion and reconciliation.

While a vulnerability assessment represents the intrinsic mechanisms that can change the activities of the IcSP, there are also external factors that could affect the change in policy. Based on the interviews with relevant stakeholders, and examination of primary documents, the main risks for the EU-supported action regarding decentralization reform in the conflict-affected areas of Donbas are:

- 1) Political uncertainty due to the fact that the amendments to the Constitution of Ukraine on decentralization are still not fully implemented. Currently, Ukrainian government indicates that the reform is 35% complete (National Reform Council 2015);
- 2) The volatility of the security situation in the East of Ukraine and the sensitivity of the ceasefire related provisions on decentralization represent crucial risks for the IcSP. A deterioration of the security situation in the region (breakdown of the ceasefire under the Minsk Protocol) may put the programme at risk;
- 3) The short period for implementation (18 months). The decentralization reform is a lengthy process and in Ukraine, where the security and political situation is still unstable, the risks of slowing and stalling remain high. In this regard, it is imperative to think beyond the timeframe of the IcSP for mechanisms that can support EU efforts in the mid-to-long term;
- 4) There is a risk that the wide variety and number of activities leads to dissipation of focus. Given the 10 million EUR budget of the IcSP, it is imperative not to lose focus of what the primary needs are in terms of local governance reform. Although, here the EU appears to have the role of funder through the IcSP and UNDP as an implementer, a synergetic relation between the two organizations is important for implementing the project;
- 5) The lack of acceptance of decentralization efforts from local communities. The perceptions about what is decentralization and how it can improve the well-being of the

communities are gradually improving. Yet, in the east of Ukraine much is contingent upon the security situation, as well the success of the state and international efforts in the areas of infrastructure improvement and reconciliation. In this regard, the acceptance from local communities is depending on the success of reforms that are tangible at the local level.

The “Minsk” factor clearly stands out among the risks that can change the architecture of the IcSP. The agreement that was signed in the Belarus capital, first in September 2014 and then again in February 2015, as the fight continued became the generally accepted road map for solving the war in the East of Ukraine. Under the agreement that is colloquially known as Minsk II, warring sides agreed to a ceasefire and withdrawal of foreign combatants. Moreover, there were provisions on the reintegration of the non-government controlled areas of Donetsk and Luhansk and decentralization reform in Ukraine. However, a year and a half later none of the articles except for consultations have been implemented, thus creating a dual risk for international efforts to support decentralization reform in the conflict-affected areas of Donbas. On one hand, the possibility of a resurgence of conflict and deterioration of security environment would hinder local governance reform. On the other, if the situation will not change as the low level violence continues and NGCAs are not reintegrated, the grievances will only grow stronger. It is worth noting that according to Minsk II, parts of Luhansk and Donetsk not under government control should receive a special status as a part of decentralization reform. This provision has created tensions as Ukrainian parliament vote on the corresponding legislation in August 2015 has led to violent outbreaks.

Although the EU and UNDP representatives who work on the implementation of the IcSP agree that there has to be a credible plan for expansion of the action scope if the Minsk II agreement is fully implemented, stakeholders appeared sceptical of that possibility in the near future. A representative of the UNDP in Ukraine, however, suggested that the UNDP activities in the GCA should be considered as a “forward deployment” when and if the reintegration happens.<sup>79</sup> Given the extensive work and connections that this organization established throughout the past twenty years, UNDP has the capacity to conduct such operations. Toward this goal, the IcSP, which focuses on capacity building in the short run, could have a real impact on reintegrating Donbas, but only if it triggers the processes for the long run. In a sense, creating participatory inclusive governance practices, getting rid of corruption, and capacity building for decentralization reform, could show the local population in both GCA and NGCA areas the progressive and effective changes that are conducted by Ukrainian government.

## 5.5 Conclusion

The EU Instrument contributing to Stability and Peace in Ukraine that was launched in spring of 2016 will aim at assisting the conflict-affected communities in Donetsk and Luhansk. In order to effectively address not only the lack of capacity in the Donbas region for decentralization, but also to coordinate the actions with other international and local stakeholders, the IcSP was designed to complement the existing development and recovery framework.

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<sup>79</sup> Author's interview with a UNDP official, Kyiv, 2016.



In Ukraine, the EU governance interventions through the IcSP rely on partnerships with international agencies such as UNDP and UN Women, as well as local NGOS for the implementation of the project. Even though the EU appears to play largely the role of the funder, it had a significant impact at the design stage of initiatives that fall under the IcSP. It is imperative to outline strong and weak aspects of the IcSP in Ukraine that focus on conflict-affected areas of Donbas to anticipate the challenges the EU could face during the implementation stage. Following the interviews with main stakeholders, the table below (table 5) summarizes their central arguments.

*Table 5*

### **Strengths**

IcSP is a practical action that addresses the most crucial aspects of recovery processes in Donbas

The IcSP is designed to be open to consultations and involvement of the local community

IcSP has a strong communication component

EU IcSP implementing organizations, UNDP and UN Women, have regional headquarters in the conflict-affected areas

IcSP overlaps with both the recovery and reform agenda through focusing on community security, social cohesion, and enhancing administration capacity

The short duration of the action can also be a strength since it encourages UNDP/EU to focus on what is important and deliver results

### **Weaknesses**

The short duration of the instrument (18 months)

Follow-up programmes that are coherent and consistent are required to sustain the impact of the IcSP

Can be considered politically biased by some, given the nature of the activities

The EU supporting Ukraine in the conflict, while not interacting with the opposite side in the NGCA, can exacerbate the situation

## Chapter 6: Conclusions

Three cases of EU intervention in Ukraine have been analysed in this report: one diplomatic case (Normandy Format); two missions in the field of security sector reform (EUAM and EUBAM) and one in the field of governance reform (decentralization). At all levels, the EU policies were evaluated against the background of Ukraine, in order to understand to what extent Brussels is able to influence the process of conflict settlement.

The European Union has been less involved in the conflict settlement in Ukraine than Kyiv would have liked. However, for the EU it is not important whether Brussels participated directly in the negotiations or not. It is much more important to achieve a stable ceasefire and positive steps in conflict settlement and if the EU could do this with the help of others, then it will proceed precisely in such a way. Moreover, the example of the Normandy format represents clear evidence that in certain cases, such as the one of Ukraine, the member states are better positioned to solve issues that are common for the EU. Therefore, the model developed by the Normandy format could be replicated for other conflicts as well, if there are member states that have a greater ability to reach the EU's objectives. The model of Normandy has also been accepted by the EU in the case of Ukraine, and Brussels was happy that Germany and France took the leadership, however, the EU is willing to join the table shall there be another conflict. In this context, HRVP Frederica Mogherini mentioned:

The case of the Russian-Ukrainian conflict also highlighted that the personality of High Representative is very important not only in order to reflect the consensus or trade-off of the member states, but also to be able to face crisis situations and negotiations with such experienced leaders as President Putin. The EU has been slow in responding to the crisis in Ukraine and the following conflict between the Kremlin and Kyiv. The EU's policy towards the conflict was rather process driven and therefore the decisions of the EU were subordinate to the situation on the ground in Ukraine, which weakened the EU intervention in the conflict settlement. At the same time, the EU has the capacity to adapt and create new mechanisms to deal with new challenges. That was the case for diplomatic efforts made within the Normandy format with the active involvement of Germany and France, but most importantly by putting in place a series of sanctions and a support package for Ukraine involving financial means and expertise.

Also, the conflict in Ukraine revealed that the EU is very vulnerable in times of transfer of power. To a great extent, aside from the questions regarding the preparedness of Frederica Mogherini to withstand a round of negotiations with President Putin, the reason why the EU excluded itself from the negotiations process, is the fact that all the heads of EU institutions were changing. Therefore, an EU mechanism that would ensure a smooth transfer of power and not affect its capacity to act on the international arena was largely missing.

The case of Ukraine shows that the EU is rather perceived as a source of funds and an extremely important player for a country's economic stability, and as a consequence political stability, and less as an actor that could take on the challenge of the negotiation process. This demonstrates the fact that the EU preferred to delegate some tasks to OSCE (probably also at the insistence of Russia) and opted for political and economic sanctions that were a powerful non-direct tool to deter Russia from taking additional destructive steps. It is quite often that the EU preferred to be less involved in the political crisis, despite calls from Ukraine, but at the same time playing a heavy technical role, especially through its financial support.

Unlike in the recent international negotiations over Ukraine, Brussels has been more involved with the SSR dimension. While EUBAM and EUAM have a different nature, their objectives have become so intertwined against the backdrop of the Russian conflict in Ukraine that it would be sensible to advise on a common policy towards these two missions rather than provide separate conclusions.

In the first place, in the times of conflict the EU presence matters, even more so than in peaceful times. For geopolitical and security reasons it is advisable to continue the EU presence in the Odessa region after EUBAM exits. While the EU approach towards the exit strategy and local ownership for reforms is understandable and justified, the Russian aggression, ongoing since 2014, does not allow for a traditional phase-out. As explained above, the EU presence in Odessa is perceived as a security and stabilizing factor and leaving the region would send a wrong signal to both Ukraine and Russia.

A flexible approach to the mandate and responsiveness to the needs of the local beneficiaries is what is appreciated by the local partners. EUAM and, most importantly, the Political and Security Committee and Member States, should be ready to adopt a flexible approach to the mission's mandate, being ready to respond to the needs of the local beneficiaries and the changing geopolitical context. It would be advisable to engage the partner institutions into the development of the operation plan of EUAM (following the example of EUBAM).

As the EU did not negotiate the mission's mandate with the local stakeholders before the mission arrived, it caused certain issues. When the mandate is not negotiated, as in EUAM's case, this decreases the probability and inclusivity of local ownership, since the local partners are excluded from owning the process from the start. Also, the EU should not have announced the official launch of the mission until it had reached its full operational capacity, in order not to create false expectations among the local stakeholders (as was the case with EUAM in Ukraine).

It is quite puzzling that a mission, which was sent as a result of the Russian aggression in Ukraine, distances itself from the realities of war. Ignoring these realities and specific tasks of the security sector to counter them, both civilian (e.g. intelligence, border guard services, etc.) and military, will ultimately increase the gap between EUAM and partner institutions and discredit the mission.

The different institutional nature of EUBAM and EUAM and the larger flexibility of EUBAM suggest that, maybe, in sensitive geopolitical environments (as is that of the Eastern partnership for the EU), EUBAM's "hybrid" nature could be used as a blueprint for further missions, rather than a unique exception. For now it seems that a CSDP status for EUAM would offer more limitations and bureaucracy rather than opportunities and flexibility. In turn, EUBAM, administered by the European Commission, is more flexible and responsive, both activity and budget-wise.

Finally, it is worth mentioning that none of the missions in question were sent to prevent a crisis/conflict. Both of them were dispatched *after* the conflict already erupted. Hence, as valid as the institution-building argument as a conflict prevention tool is, it looks like the EU has failed to act pre-emptively in the case of Ukraine. For further EU interventions it would be advisable to dispatch an institution-building mission simply on the grounds of the existing institutional weakness, and not after the institutions fail to prevent a conflict.

Since the annexation of Crimea and war in Donbas, the much needed decentralization reform has become a heated subject in the peace process debate. Thus, according to the Minsk II agreement the areas of Luhansk and Donetsk that are not controlled by the Ukrainian government should receive a special status, which de facto means that the scale and the quality of the decentralization reform would be unequal not only in the conflict-affected areas, but also for the whole of Ukraine.

To address the low level of capacity for local governance reform among the state authorities and local communities in Donbas, the European Union, in collaboration with the UN agencies in Ukraine and civil society organizations, has developed a new action that combines both a reform and recovery agenda. The Instrument contributing to Stability and Peace (IcSP) in Ukraine became a crucial form of EU intervention that will enhance the capacity of the conflict-affected communities for fiscal and administrative decentralization, empower women leaders and groups among IDPs and host communities, promote community security, and generate social cohesion.

Although, at the time of the assessment, the IcSP was in the early stages of the implementation, it has already contributed to the consistency of the international donors' efforts to provide support to the most vulnerable communities. Since the IcSP is not a standalone action, but rather an expansion on the existing programmes aimed at capacity building, community justice, and recovery, it provides a unique opportunity to consolidate the recovery efforts and connect them to the reform agenda. The focus on the decentralization reform in Ukraine will serve not only as the conflict resolution and peacebuilding element with regard to the war in Donbas, but would also be an indispensable conflict prevention tool, given the existing grievances toward inefficient governance structure expressed in many regions of Ukraine. In a way, the decentralization reform strengthened by the comprehensive support from international donors could improve the well-being of the conflict-affected communities. If successful, the reform would improve the attitude of the local communities in Donbas toward the central government and thus eliminate several of the causes for grievances, such as lack of authority at the local level and economic deprivation.

At the same time, there is a need for more analytical coherence at the level of the EU delegation when it comes to the cross-cutting effect of various projects and programmes. Thus, there are specific offices in the EU delegation in Ukraine that are responsible for anticorruption, decentralization, open budget etc., but the strategic discussion regarding how all these topics intersect is concentrated at the level of head of cooperation. While it is important to have a strategic level discussion, it does not have to be concentrated only at the top level.

Overall, the EU decision to offer a separate mechanism for supporting local governance reform in conflict-affected areas of Ukraine could prove beneficial not only because it would affect both the reform and reconciliation agendas in the region, but also because a working framework of international donors coordinated by the UNDP exists in Ukraine that has worked with local communities since the start of hostilities and accumulated considerable knowledge about their needs. Moreover, the EU through the IcSP acts as a fund that delegates the implementation of the projects to several UN institutions in Ukraine and local NGOs that are perceived by the local communities as more unbiased (while retaining the capacity to design and shape the scope of the activities). Although the IcSP is at the early stages of implementation, it is important to take into account the risks associated with local governance reform in Ukraine and also particular weaknesses of the instrument that were outlined in this

report. The crucial focus, however, is to think strategically beyond the 18-month timeframe of the IcSP and consider the spill-over effect that the success of the project could have beyond the targeted communities and, specifically, on the population in the non-government controlled areas.

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