

CONFLICT AND COOPERATION IN THE EU'S FOREIGN POLICY: THE QUEST FOR POST-LISBON COHERENCE

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Abstract

The appointment of a double-hatted High Representative of the Union for Foreign Affairs and Security Policy (HR) and the creation of the European External Action Service (EEAS) were two of the main innovations brought by the Lisbon Treaty to the European Union's external policies. While the appointment of the HR was purely political, the creation of the EEAS entailed a deep restructuring of the EU foreign policy apparatus, unveiling the fierce competition between institutions in the post-Lisbon framework. According to their mandates, the High Representative and the External Action Service should increase coherence in the European Union's external action, thus answering to ongoing criticisms about the lack of a „single voice“. This is nevertheless counter intuitive to classical studies of international cooperation which usually predict that an increasing number of actors decreases the likelihood of cooperation or the efficiency of outcomes.

Based on the critical analysis of EU documents and the academic literature, as well as semi-structured interviews with EU officials in Brussels, this paper makes the case for studying the EU external policies as a fertile ground for both conflict and cooperation between institutions, and argues that the EU's ability to use its instruments for post-conflict stabilisation in a coherent manner in the post-Lisbon era should be a relevant test for its foreign policy. By focusing mainly on the contribution that the High Representative and the EEAS bring to the European Union's involvement in Kosovo, the study explores the concept of coherence, understood as the synergy between EU policies and the activity of the institutions which implement them. Finally, the study will analyse the emergence of an EU "comprehensive approach" to post-conflict stabilisation derived from the experience in the Western Balkans.

Keywords: coherence, EU foreign policy, post-conflict stabilisation, Western Balkans, High Representative, European External Action Service, Kosovo.

1. Introduction

The appointment of a new High Representative of the Union for Foreign Affairs and Security Policy and the creation of the European External Action Service were the main institutional changes introduced by the Lisbon Treaty in the foreign policy realm. The former is at the same time Vice-President of the Commission, while the latter helps him/her with implementing the mandate and coordinating the different strands of EU external action better. Although these changes targeted precisely the coherence of the EU's external relations, they were only the latest in a series of initiatives marking the increased institutionalisation of the EU's foreign policy. The study of post-Lisbon coherence in the EU's external action allows a closer look at what is behind the Union's "magnetic power of attraction", that is, at how EU instruments and policies with an external dimension are coordinated in order to enhance dialogue with third countries, apply conditionality and foster transformation in candidate and potential candidate countries. This paper makes the case for

studying the EU external policies as a fertile ground for both conflict and cooperation between institutions, and argues that the EU's ability to use its instruments for post-conflict stabilisation in a coherent manner in the post-Lisbon era should be a relevant test for its foreign policy. Based on the critical analysis of EU documents and the relevant academic literature, as well as semi-structured interviews with EU officials in Brussels, it aims to explore some of the challenges that the EU is facing in Kosovo, where enlargement and pre-accession instruments are complemented by proper foreign and security policy initiatives underpinning peace-building and state-building.

The works on EU coherence are plentiful, illustrating both the legal and the political science perspective. Legal scholars focus on the analysis of coherence as a constitutional principle in EU law enshrined in the Treaties, creating an obligation for EU institutional actors to implement a coherent European foreign policy¹. It is in this context that three main dimensions of coherence have been defined – horizontal, vertical and institutional – with some

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¹ Christophe Hillion, "Tous pour un, un pour tous! Coherence in the External Relations of the European Union". In *Developments in EU External Relations Law*, edited by Marise Cremona, 10-36. Oxford: Oxford University Press, 2008; Christophe Hillion, "Cohérence et action extérieure de l'Union Européenne", EUI Working Paper LAW 2012/14, (2012), accessed February 1, 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224392/evidence-christophe-hillion-working-papers.pdf

variations among authors². On the other hand, empirical studies analyse the existing institutional arrangements and their potential for creating (in)coherence³ or use case-studies in order to explore the specifics of the three dimensions of coherence⁴. Few of them question whether coherence is an actual concern or just an academic invention⁵.

This study analyses the challenges related to horizontal coherence in the EU's external action, more precisely, how the enlargement and pre-accession, and foreign/security policy objectives respectively could be coordinated in order to create synergy in the case of the EU's promotion of the rule of law in Kosovo.

2. Content

I. The principle of coherence

The explanatory framework of this study is centered on the concept of coherence, as understood in an EU context. I examine the academic debates on how to ensure greater coherence of EU external action in general, while also looking at the specific treaty provisions in this regard. I will thus try to answer the following question: How does conflict and cooperation among institutional actors influence the coherence of EU external action? The study analyses the transformation of the EU foreign and security policy apparatus following the entry into force of the Lisbon Treaty and its impact on the coherence of the Union's involvement in Kosovo, with a focus on the policy output, that is, on *horizontal* coherence.

To begin with, the Treaty on the European Union, as amended by the Lisbon Treaty, states that the Union "shall ensure consistency between the different areas of its external action and between these and its other policies"⁶ (art. 21.3). Moreover, "The

Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect"⁷. This provision is reiterated regarding the foreign and security policy of the EU, as "the Council and the High Representative of the Union for Foreign Affairs and Security Policy shall ensure the unity, consistency and effectiveness of action by the Union"⁸ (art. 26). At the same time, "The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area"⁹ (art. 24.3). Hence, cooperation and loyalty are the other significant concepts which complement consistency in EU external action.

The fulfilling of the EU's objectives requires cooperation between institutions and among member states, respectively. Article 4 states that „Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties"¹⁰, whereas article 13 (2) shows that „Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation"¹¹. Last but not least, the Treaty on the Functioning of the EU too, as amended by the Lisbon Treaty, contains a provision stating that „The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers"¹² (art. 7).

The word "consistency" is used throughout the Treaty on EU and the Treaty on the Functioning of the EU in the English version, while in other languages it was translated as coherence (*cohérence* in French,

² See, for example, Christian Tietje, "The Concept of Coherence in the Treaty on European Union and the Common Foreign and Security Policy", *European Foreign Affairs Review* 2 (1997):211-233; Simon Nuttal, "Consistency and the CFSP: a categorization and its consequences", Working Paper 2001/03, LSE European Foreign Policy Unit Network, (2001), accessed February 5, 2015, <http://www.lse.ac.uk/internationalRelations/centresandunits/EFPU/EFPUpdfs/EFPUworkingpaper2001-1.pdf>; Missiroli, Antonio. "Introduction – The terms of the debate". In *Coherence for Security Policy: Debates-Cases-Assessments*, edited by Antonio Missiroli, 1-16. Occasional Paper no. 27, Paris: Institute for Security Studies - Western European Union, 2001, accessed February 3, 2015, <http://www.iss.europa.eu/uploads/media/occ027.pdf>; Carmen Gebhard, "Coherence". In *International Relations and the European Union*, 2nd edition, edited by Christopher Hill and Michael Smith. Oxford: Oxford University Press, 2011.

³ See Simon Duke, "Consistency as an Issue in EU External Activities", Working Paper 99/W/06, European Institute of Public Administration, Maastricht, (2006), accessed January 1, 2015, <http://aei.pitt.edu/542/1/99w06.pdf>; Clara Portela and Kolja Raube. "(In-) Coherence in EU Foreign Policy: Exploring Sources and Remedies". Paper presented at the European Studies Association Biannual Convention, Los Angeles, April 2009, accessed February 12, 2015, http://aei.pitt.edu/33122/1/portela_clara_%28%29.pdf.

⁴ See Ana E. Juncos, *EU Foreign and Security Policy in Bosnia. The politics of coherence and effectiveness*. Manchester and New York: Manchester University Press, 2013.

⁵ A good example is Miguel Angel Medina Abellán, The coherence of the European foreign policy: a real barrier or an academic term?, Working Paper 27, Observatori de Política Exterior, Barcelona Institut Universitari d'Estudis Europeus, (2002), accessed February 5, 2015, <http://www.recercat.cat/bitstream/handle/2072/204352/N.%2027.pdf?sequence=1>.

⁶ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union* C326, (26.10.2012), accessed March 3, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN>.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

coherencia in Spanish, *kohärenz* in German, *coerență* in Romanian, etc.)¹³. Consistency and coherence thus seem to be equivalent. Ana Juncos argues that, since both terms refer to “harmony” or “harmonious connexion of several parts”, “in the normal sense there is no substantive difference between these two terms” and could thus be “used interchangeably”¹⁴. From a political point of view, both terms are used to express similar types of concerns, which refer to the ability of the EU to speak with one voice in international affairs, by displaying unity of action. From this perspective, the difference in translation in the various EU official languages is not significant, as the message is the same.

But a closer look at the literature of the field indicates that there could be an important difference between the two concepts: while consistency refers to the lack of contradictions, thus having a negative and static sense, coherence entails positive interactions which could create synergies between policies or institutions. In other words, coherence allows for mutual reinforcement between policies or the functioning of institutions. Moreover, it is possible to distinguish between different degrees of coherence, while consistency does not allow for this distinction (something *is* consistent or *not*)¹⁵. Last but not least, whereas consistency is a necessary condition for a policy, it is not sufficient as well; hence, if consistency is a minimal requirement, coherence designates a higher standard of coordination and synergy in EU external action¹⁶. As a result, coherence could be defined as “the lack of contradictions between policies, institutions or instruments, plus a variable degree of synergy as a result of policies, institutions and instruments working together in order to achieve a common objective”¹⁷.

Due to the complexity of the EU system, a rich body of literature was created in order to identify various types of coherence, focusing on its internal and external dimensions, as well as on the relation between the member states and the Union and between and within the latter’s institutions. Ever since the Maastricht Treaty was adopted, scholars have begun analysing the sources of potential incoherence in the EU’s external action in parallel with the novel requirements for consistency, more so as the Union began defining its distinct identity on the international scene. Whilst a certain consensus regarding the existence of three general types of coherence has

emerged, there are significant variations among authors. Originally, Christian Tietje identified two types of coherence in EU foreign policy, as institutionalised by the Maastricht Treaty. In his view, the two were vertical (in the relation between the Member States and the Union) and horizontal (between the foreign relations affairs of the EC and the CFSP) coherence¹⁸. He was also among the first scholars to explain the difference between consistency and coherence and pointed out the translation issue in the various official languages of the treaty¹⁹. The main argument of his work was that the Maastricht Treaty and the CFSP could be seen as a coherent system governing the development towards “an ever closer union among the peoples of Europe”²⁰. Coherence was not necessarily something new, as it had featured in the Single European Act (1987), but with the Maastricht Treaty the requirement for coherence became a constitutional principle²¹. Horizontal coherence was, in his view, governed by only one leading principle, that of a single institutional framework, which actually created an obligation to optimize the Union’s functioning and symbolized the close connection between the supranational and intergovernmental structures governing the European Union²². Vertical coherence was underpinned by the obligation of loyal and faithful cooperation between the member states and the EC, but this obligation referred to EU institutions as well, as all these actors have to cooperate in order to promote the overall goals of the Community²³.

Few years later, Simon Nuttal built on Tietje’s approach and provided a new categorization of what he termed “consistency”: horizontal (between the different EU policies), institutional (between the two different bureaucratic apparatuses, intergovernmental and Community) and vertical (between EU policy and national policies)²⁴. At the same time, he showed that after the Single European Act, successive EU treaties failed to define bureaucratic boundaries, which meant that consistency issues had to be tackled through an evolving co-operative practice, like in the case of the relation between the High Representative for CFSP and the Council Secretariat in the aftermath of the Amsterdam Treaty²⁵. While issues of institutional consistency are easier to solve, as his example showed, those pertaining to horizontal or vertical consistency require a thorough debate on the nature of the EU’s foreign policy and its identity as an international

¹³ Juncos, *EU Foreign and Security Policy in Bosnia*, 45.

¹⁴ *Ibid.*, 46.

¹⁵ Missiroli, “Introduction”, 4.

¹⁶ Juncos, *EU Foreign and Security Policy in Bosnia*, 46.

¹⁷ *Ibid.*

¹⁸ Tietje, “The Concept of Coherence...”, 224.

¹⁹ *Ibid.*, 212.

²⁰ *Ibid.*

²¹ *Ibid.*, 214.

²² *Ibid.*, 231-232.

²³ *Ibid.*, 233.

²⁴ Nuttal, “Consistency and the CFSP...”, 3-4.

²⁵ *Ibid.*, 7.

actor²⁶. In fact, this was highlighted by other scholars too, who argued that the discussion about coherence in an EU context is complicated by the fact that finding solutions to existing issues might necessitate some kind of hierarchisation among EU bodies and institutions, thus making it more of a political than legal debate²⁷.

Other scholars, however, questioned whether the coherence of EU foreign policy was a real problem or just an academic debate. Miguel Angel Medina Abellán provides a historical study of coherence, from the beginning of the so-called European Political Cooperation to the Maastricht Treaty establishing the CFSP, in order to show that coherence has always been a concern, only to become even more important after the Cold War due to the international context²⁸. Nevertheless, in his view, there was little improvement on this issue in the Treaty of Amsterdam, but the Treaty of Nice brought substantive modifications²⁹. While acknowledging Nuttal's categorisation of institutional, vertical and horizontal consistency, he takes an in-depth look at what is to be coherent in an EU context, reaching a sobering conclusion. His analysis revealed that although coherence as a principle needs to apply to the EU foreign policy, the legal means to enforce it are absent in the second pillar, which implies that "the stipulations contained in Title V must therefore be considered as legally binding, but not enforceable"³⁰. What is more, even if decision-making procedures in CFSP affect its coherence, other elements such as the latter's objectives and results, as well as the ways in which the instruments of EC and CFSP are combined and the outcomes of the EU's international performance overall represent issues which are more significant than the actual interplay between institutions³¹. And from this perspective, it is not the institutional structure of the EU that will determine the success of the EU's external performance, but the political will of its member states³². In other words, it is the topic of vertical coherence that should actually dominate the debates in the literature.

More recently, Carmen Gebhard has identified four types of coherence: horizontal (inter-pillar), vertical, internal and external. Her main argument is that the fact that the governance of EU policy is spread across two pillars puts horizontal coherence at the

centre of any investigation of the EU's external profile³³. Moreover, the fact that ESDP has become a *de facto* fourth pillar triggered new challenges, including the reorganization of Council structures, which in turn influenced reforms inside the Commission³⁴. Consequently, achieving horizontal coherence is inherently connected with the compatibility, interoperability and credibility of the EU as a bilateral or multilateral partner, and with what she terms "external coherence"³⁵. This fourth dimension of coherence is treated more like a technical matter, being ensured by the European External Action Service through an internal coordination process.

The view adopted in this paper is that the "institutional" and "horizontal" types of coherence are very difficult to separate in practice. The removal of the pillar structure by the Treaty of Lisbon aimed precisely to streamline the functioning of the Union, increase its coherence and favour the emergence of a "comprehensive approach" to external action. However, it is difficult to avoid contradictions or overlaps and to create synergies between policies as the EU institutions jealously guard their prerogatives. The next section will analyse the reconfiguration of the EU's foreign, security and defence policy apparatus in the post-Lisbon framework and the main policy consequences of these institutional transformations.

II. The quest for post-Lisbon coherence – HR & EEAS

The Lisbon Treaty, which entered into force in 2009, provided for the appointment of a High Representative of the European Union for Foreign Affairs and Security Policy (HR), who shall "conduct the Union's common foreign and security policy" and "contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council"³⁶ (art. 18.2). The same provisions apply for the Common Security and Defence Policy³⁷ as well. Basically, the new High Representative's mandate encompasses the old ones of the Commissioner for External Relations and of the former High Representative for CFSP, together with the responsibilities of a Vice-President of the Commission and the permanent presidency of the Foreign Affairs Council.

²⁶ *Ibid.*, 10.

²⁷ Missiroli, "Introduction", 5.

²⁸ Miguel Angel Medina Abellán, "The coherence of the European foreign policy...", 4-6.

²⁹ *Ibid.*, 7-8.

³⁰ *Ibid.*, 12.

³¹ *Ibid.*, 17.

³² *Ibid.*

³³ Carmen Gebhard, "Coherence", 107.

³⁴ *Ibid.*, 108.

³⁵ *Ibid.*, 109.

³⁶ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union C326*, (26.10.2012), accessed March 3, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN>.

³⁷ The European Security and Defence Policy was renamed the Common Security and Defence Policy (CSDP) by the Lisbon Treaty in 2009. I will hereinafter use the term CSDP.

The very complex nature of this new post was meant to enable the High Representative to ensure the coherence of the EU's external action, more precisely, the use of all its elements – from trade to diplomacy, and development cooperation to the security policy also entailing operational capabilities for crisis management. The triple-hatted High Representative's mandate and responsibility for coherence in the EU's external relations are detailed in articles 18.4 (referring to the three main duties) and 21.3 (stating the supportive role played by the HR in operationalising the cooperation between the Council and the Commission in ensuring the consistency of the EU's external action)³⁸. Based on these arrangements, the HR has a role to play in all types of coherence³⁹, as identified in various classifications in the academic literature.

As Chairperson of the Foreign Affairs Council dealing with CFSP, but also trade and development, the HR can contribute mainly to horizontal coherence. As Vice-President of the Commission in charge of external relations, the HR has the duty to coordinate the Union's external action, including by working together with the other Commissioners entrusted with portfolios having a relevant external dimension (Trade, Development, Humanitarian Aid, Neighbourhood Policy and Enlargement). Again, this contributes to horizontal coherence, understood as maximising synergies between different external policies and the external aspects of other (internal) policies. The “double hat” also embodies the inter-institutional dimension of coherence – the one between the Council and the Commission – to be put into practice through the HR's participation in the College meetings and the chairing of the Foreign Affairs Council, as well as by attending the European Council meetings⁴⁰. Vertical coherence is less within the HR's remit, depending not only on Council meetings but also on the bilateral relations between the HR/VP and member states, which are actually supposed to act based on the principles of sincere cooperation and loyalty, especially for the CFSP⁴¹. All in all, while the legal preconditions and institutional arrangements for enhancing coherence were there, the HR/VP mainly represented the political level. The coordination effort had to be doubled at the administrative level, where it was entrusted to the European External Action Service.

The Lisbon Treaty envisaged the creation of a European External Action Service in order to help the High Representative perform their mandate. The EEAS is referred to in article 27(3) of the Treaty on the European Union, stating that “*In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission*”⁴². But the Council Decision no. 427 of 26 July 2010 establishing the organisation and functioning of the European External Action Service, reached after a prolonged negotiation process spearheaded by the HR during the first half of 2010, did not state any specific objectives for the new body. Hence, according to the Council Decision of 2010, the EEAS is supposed to:

- support the HR/VP to fulfil the triple-hatted mandate: conduct the Common Foreign and Security Policy, preside over the Foreign Affairs Council and being Vice-President (VP) of the Commission;
- assist the President of the European Council, the President of the Commission and the Commission in the exercise of their respective functions in the area of external relations;
- support the diplomatic services of the Member States, the General Secretariat of the Council and the Commission, and other institutions and bodies of the Union, in particular the European Parliament and cooperating with them⁴³.

The Council thus provided only a general list of tasks, which added to the fact that the role of the EEAS was defined in vague terms anyway, also due to the lack of an overarching EU foreign policy strategy⁴⁴. However, these tasks seemed to underpin a desire for coherence in the EU's external relations and throughout 2010 the making of the EEAS triggered a massive restructuring of the EU's foreign policy apparatus. In the end, the actual format of the new body merely reflected the agreement reached by the

³⁸ Consolidated versions...

³⁹ Anne-Claire Marangoni, “One Hat Too Many for the High Representative – Vice President? The Coherence of EU's External Policies after Lisbon”, *EU External Affairs Review* (July 2012), 8, accessed February 16, 2015, http://www.global-europe.org/articles_pdf/500137-issue02_marangoni_july2012.pdf.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, 9.

⁴² Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union C326*, (26.10.2012), accessed March 3, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN>.

⁴³ Council of the European Union. Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, 2010/427/EU, *Official Journal of the European Union L 201*, (3.08.2010), pp. 30-40, accessed December 20, 2014, http://www.eeas.europa.eu/background/docs/eeas_decision_en.pdf.

⁴⁴ European Court of Auditors, “The establishment of the European External Action Service”, Special Report no. 11 (2014), 8, accessed February 12, 2015, http://www.eca.europa.eu/Lists/ECADocuments/SR14_11/SR14_11_EN.pdf

EU institutions involved in the negotiation process and not necessarily the necessities of a functional diplomatic body. Finally, when inaugurated in January 2011, the EEAS was staffed through bloc transfers of officials from the Commission and the former General Secretariat of the Council, and through the secondment of national diplomats. But such transfers were made not on the basis of the respective departments' expected contribution to the fulfilment of EEAS objectives, but on the basis of "their activities and their administrative position within the Commission or the General Secretariat of the Council", which resulted in practical difficulties for the EEAS to coordinate some actions of the Commission with impact on foreign policy⁴⁵.

As part of the same effort to ensure coherence in the EU's external action, the crisis management structures within the General Secretariat of the Council were transferred to the EEAS as a distinct unit placed under the direct authority of the High Representative – the Crisis Management Planning Directorate (CMPD), the EU Military Staff (EUMS) and the Civilian Planning and Conduct Capability (CPCC). The High Representative became the highest authority governing the CSDP structures, which also include the Political and Security Committee (a preparatory body for the Council which assesses the need for launching missions, among other responsibilities) and the two structures which provide it with advice - the EU Military Committee (EUMC) and the Committee for Civilian Aspects of Crisis Management (CIVCOM), as well as the Politico-Military Group, chaired by a representative of the High Representative.

But the focus on the reform of the CSDP structures, as well as the external political context in which the EEAS started working, marked by the Arab Spring (most notably the developments in Egypt and Libya), took priority over bolder foreign policy initiatives expected from the new body⁴⁶. The necessity to respond to international events also favoured an *ad hoc* approach over the elaboration of a autonomous strategy for foreign policy. At the same time, it is true that only some member states supported after 2003 the idea of adopting a new security strategy or seriously reviewing the one adopted after the war in Iraq. The latter was perceived by external observers more as a foreign policy strategy than a "grand strategy" articulating comprehensive security goals on the long term. Nevertheless, both member states and EU institutions expected a more proactive approach from the EEAS even though they were not necessarily forthcoming in accommodating the new body during its initial phase. The HR set some priorities later in 2011 and making the EEAS work was one of them⁴⁷. At the

same time, despite its growing pains, the EEAS proved flexible enough to take on new responsibilities as circumstances changed, supporting the HR as she became the key facilitator in the Kosovo/Serbia talks and in the international negotiations on Iran's nuclear programme. These were later praised as the main highlights of Catherine Ashton's mandate as High Representative (2009-2014).

To sum up, by fusing existing institutions into the new High Representative and the EEAS coordination between institutions is actually transferred to new institutions⁴⁸. This should facilitate coherence between EU policies due to the emerging hierarchical executive and administrative structures – the High Representative is Vice-President of the Commission and Chairperson of the Council and heads the EEAS, which consists of both the former CFSP/CSDP branches of the Council Secretariat and the DG RELEX of the Commission⁴⁹. In helping the High Representative fulfilling her mandate, the EEAS is supposed to cooperate closely with the Commission and the Member States, thus ensuring horizontal and vertical coherence respectively, both at the Brussels headquarters and in delegations. As the Commission holds responsibility for some external relations areas (such as development, trade, enlargement, humanitarian assistance and the external aspects of internal policies), it has to coordinate its activity with that of the EEAS. Despite formal working agreements having been established between the two, this coordination takes place rather through informal channels and networks supported by ex-Commission staff transferred through the EEAS⁵⁰, a practice that is not sustainable on the long term.

Another institutional development refers to the transformation of the Commission's former delegations in third countries and permanent representations to international organizations into full-fledged EU embassies abroad, coordinated by the EEAS. By being in the first line of EU external representation in third countries, they have to cooperate closely with the national embassies of the member states or represent the latter's interests when there are no such embassies. It is in this context that the extent to which the EU member states are willing to implement and support a unitary foreign policy coordinated in Brussels by what is desired to be a genuine EU Ministry of Foreign Affairs becomes clear. Unproductive rivalry should be avoided, as well as the temptation to maintain these EU embassies as purely bureaucratic and decorative organisms, without any real contribution to the design and implementation of the EU's foreign policy.

⁴⁵ Ibid., 9.

⁴⁶ Ibid.

⁴⁷ Ibid., 12.

⁴⁸ Clara Portela and Kolja Raube, "(In-)Coherence in EU Foreign Policy...", 9.

⁴⁹ Ibid.

⁵⁰ European Court of Auditors, "The establishment of the European External Action Service", 20.

As in the case of the traditional embassies, the EU's ones have to perform the classical duty of providing information to the central headquarters (in Brussels), thus becoming the HR's "eyes and ears" abroad. A network of 139 missions representing the EU in 163 third countries and at international organisations ensures a truly global coverage in terms of geographical and thematic issues⁵¹, but their functioning under both the EEAS and Commission umbrellas remains a challenge. Nevertheless, by being branded (and organised) as Union embassies (not just the Commission's delegations anymore), the efforts of enhancing coherence should be positively perceived by external actors, while the Commission and the EEAS will continue to deal with the difficulties of internal coordination on the ground.

In the context of creating the new EU embassies, the HR initially envisaged to eliminate the EU Special Representatives in various countries or regions, since their Heads of Missions could have taken on their responsibilities. The appointment of the EU Special Representative in Afghanistan as the Head of the EU's embassy in Kabul in April 2010 was thought to set a trend bound to become the general rule in the future⁵². As this transformation has not happen in all cases in the post-Lisbon context, the current status of the EU Special Representatives is an "anomaly"⁵³. Having been originally created by the Council and linked to specific crises in an era when there was no EEAS and only the Commission had delegations around the world, the Special Representatives had little connection with the latter and they mainly communicated with the Member States through the Political and Security Committee (PSC)⁵⁴. The Lisbon Treaty partially changed this by putting them under the authority of the High Representative but without fully integrating them in the EEAS. By stating that "*the Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues (...) who shall carry out his mandate under the authority of the High Representative*"⁵⁵ (art. 33 TEU), the treaty enabled the HR to use the EUSR's potential contribution to diplomacy and civilian crisis management as she considered best for the EU's foreign and security policy. This is quite interesting since placing the EUSR's under the exclusive and direct

authority of the High Representative meant depriving the member states – which used to appoint the EUSR's – of a useful and flexible instrument for providing foreign policy guidelines. On the other hand, as the EUSR's have not been fully integrated in the EEAS, this "autonomy" fuels "competence conflicts" with the latter, resulting in a potential lack of coherence in the EU's external action in general or crisis management efforts in particular, for example⁵⁶.

In 2013, when the first review of the EEAS was undertaken, there were 12 EUSR's, including 8 based in Brussels and 4 based in specific countries, with a combined staff of over 200 political advisors and administrative support; the EEAS argued for their full integration among its ranks, while also retaining a close link to Member States via the PSC⁵⁷. At the same time, the Service pleaded for enhanced flexibility that would allow it to recruit "short-term senior figures (special representatives, co-ordinators or EU envoys) to undertake specific missions as the need arises"⁵⁸. In this context, if maintained, the office of EU Special Representative will cover a broader geographical area and will only be justified where a regional approach is needed – like in the Caucasus, Central Asia or the Middle East and North Africa – including for performing diplomatic "shuttles" in various negotiation contexts which could benefit from a lower level of representation than that of the HR herself.

All in all, the restructuring of the EU foreign and security apparatus by means of the Lisbon Treaty registered a certain degree of success as far as institutional matters were concerned. Beyond the creation of the triple-hatted HR and the EEAS, the complexity of which partially explain their imperfect functioning so far, worth mentioning are the transfer of responsibility from the six-month presidency of the Council to the HR for CSFP and the transformation of former EU Commission delegations into EU embassies around the world, with a strong potential for playing an important political role in negotiations, conflict prevention and crisis management in third countries. As far as coherence in practice is concerned, the case-study on EU involvement in Kosovo will shed some light on how the reorganization of the foreign policy apparatus after Lisbon influenced the Union's performance in post-conflict stabilisation.

⁵¹ European Union External Action Service, "EEAS Review", (2013), 3, accessed February 1, 2015, http://eeas.europa.eu/library/publications/2013/3/2013_eeas_review_en.pdf

⁵² Andrew Rettman, "Afghanistan envoy flies the flag for new EU states", *EUobserver*, February 24, 2010, accessed December 12, 2014, <http://euobserver.com/foreign/29540>.

⁵³ European Union External Action Service, "EEAS Review", 4.

⁵⁴ *Ibid.*

⁵⁵ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union* C326, (26.10.2012), accessed March 3, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN>.

⁵⁶ Tolksdorf, Dominik. "The Role of EU Special Representatives in the post-Lisbon foreign policy system: a renaissance?", Institute for European Studies Vrije Universiteit Brussels, Policy brief issue 02/2012, (2012), 2, accessed February 1, 2015, <http://www.ies.be/policy-brief/role-eu-special-representatives-post-lisbon-foreign-policy-system-renaissance>.

⁵⁷ European Union External Action Service, "EEAS Review", 5.

⁵⁸ *Ibid.*

III. Rule of law-driven post-conflict stabilisation in Kosovo and the emergence of a post-Lisbon comprehensive approach

To a certain extent, the EU's involvement in Kosovo seems to repeat the scenario in Bosnia and Herzegovina: without playing a major role in the 1999 war and the subsequent political and security arrangements, the EU has gradually positioned itself to the forefront of the international community's stabilisation and conflict resolution efforts. In fact, the EU's involvement in Kosovo provides "a text book example covering all aspects of external assistance as well as security and defence policies"⁵⁹.

Kosovo was included in 2003 on the Thessaloniki Agenda confirming the European perspective of the Western Balkan countries, as well as in the Stabilisation and Association Process, as "the overall framework for the European course of the Western Balkan countries, all the way to their accession"⁶⁰. It is in this context that the EU established the European Partnership with Serbia and Montenegro including Kosovo as defined by UNSC Resolution 1244/1999, with a separate plan for addressing the priorities regarding Kosovo⁶¹. Both the main and complementary priorities, among which the rule of law featured prominently, were meant to help create "a stable future for a secure, democratic and multi-ethnic Kosovo"⁶². The European Partnership was revised in 2006⁶³ and again in 2008, after the introduction of the Instrument for Pre-Accession (IPA) as the unique framework for providing financial assistance to pre-accession countries. The new document contained 38 priorities in the field of rule of law, grouped under seven headings: the judicial system, anti-corruption policy, money laundering, drugs, police, fighting organised crime and terrorism, and visas, border control, asylum and migration⁶⁴. The envisaged reforms had to be implemented on the long term, with substantive EU technical and financial assistance.

The importance of supporting the rule of law in third countries was emphasized early on by the 2003 European Security Strategy, which showed that "spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights" were the best means of "strengthening the international order"⁶⁵. This not only reveals the self-assumed mission of the EU as an international actor, but also the philosophy behind the EU's peace-building and post-conflict stabilisation endeavours. The EU tries, just as other international organisations and individual Western governments involved in state-building and peace-building, to implement such efforts according to a model of the state that they consider it best supports (domestic and international) peace, that is, a state grounded in democracy, the rule of law and a market-oriented economy. The challenge is, of course, not to limit state-building to the physical creation of institutions, but to foster real change, by supporting endogenous processes favouring the emergence of self-sustaining peaceful institutions⁶⁶.

After Kosovo unilaterally declared independence in February 2008, it was recognised by most of EU members including Great Britain, Germany or France. However, five member states⁶⁷ refused to do it. Even so, in December 2008 the EU launched the integrated rule of law mission EULEX as part of the efforts to stabilize Kosovo, and gave it an executive mandate enabling it to perform functions of police, customs and judicial systems. Because of the five EU member states not recognizing Kosovo's independence, EULEX had to do its work based on a "status neutral" approach, which entailed significant difficulties in practice. More or less, EULEX was entrusted with building a state that not all EU members recognized.

In the previous rule of law missions, such as EUJUST Themis in Georgia and EUJUST LEX-Iraq, the EU activity focused on criminal justice and reform

⁵⁹ Martina Spornbauer, "EULEX Kosovo – Mandate, structure and implementation: Essential clarifications for an unprecedented EU mission", CLEER Working Papers 2010/5, Center for the Law of EU External Relations, T.M.C Asser Institute, The Hague, (2010), 3, accessed January 10, 2015, http://www.asser.nl/upload/documents/7302010_24440CLEER%20WP%202010-5%20-%20SPERNBAUER.pdf.

⁶⁰ Council of the European Union, Council Regulation (EC) No. 533/2004 of 22 March 2004 on the establishments of European partnerships in the framework of the stabilisation and association process, *Official Journal of the European Union* L86, (24.03.2004), accessed February 12, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0533&from=EN>

⁶¹ Council of the European Union, Council decision of 14 June 2004 on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 (2004/520/EC), *Official Journal of the European Union* L227, (26.06.2004), accessed February 1, 2015, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004D0520:EN:HTML>.

⁶² Ibid.

⁶³ A distinct European Partnership with Montenegro was adopted in 2007, following its peaceful secession from Serbia.

⁶⁴ Council of the European Union, Council decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing decision 2006/56/EC (2008/513/EC), *Official Journal of the European Union* L80, (19.03.2008), accessed January 25, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008D0213&from=EN>.

⁶⁵ Council of the European Union, "A Secure Europe in a Better World - European Security Strategy, Brussels, 12 December 2003, 10, accessed February 10, 2015, <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

⁶⁶ OECD, "Supporting Statebuilding in Situations of Conflict and Fragility", Policy Guidance, DAC Guidelines and Reference Series, Paris: Organisation for Economic Co-operation and Development (2011), accessed January 20, 2015, http://www.oecd-ilibrary.org/development/supporting-statebuilding-in-situations-of-conflict-and-fragility_9789264074989-en.

⁶⁷ The five member states are: Spain, Romania, Slovakia, Cyprus and Greece.

of the criminal justice system⁶⁸. With EULEX Kosovo, the concept of rule of law was operationalised more widely and translated into stability, law and order, criminal justice and security in a post-conflict context (ibid.), thus underpinning peace-building. However, the real focus on rule of law promotion in Kosovo seems to be on the latter two – criminal justice and security – with EULEX supporting rule of law dynamics based on the core functions of judiciary, corrections and customs, as UNMIK before it did⁶⁹.

As the EU endowed the CSDP with capabilities in the field of justice, police, rule of law and security sector reform, existing Community instruments or internal policies were developed in order to complement them, as is the case with those pertaining to the external dimension of the Area of Freedom, Security and Justice. Activities under the latter refer to the fight against terrorism and organised crime, managing illegal immigration and the failure or malfunctioning of law enforcement institutions, as well as to fostering the rule of law in third countries and regional cooperation, thus requiring „close coordination between the Council and the Commission to guarantee coherence in the EU’s external activities”⁷⁰. These developments are in line with the emerging of a different understanding of security in the post-Cold War era. By admitting that the boundaries between “external” and “internal” security threats have become blurred, the EU started promoting a multi-faceted approach which entails the use of the full range of instruments at its disposal, including political, diplomatic, economic, development, military, civilian (policing, judiciary, border assistance, etc.), and the external dimensions of internal instruments such as energy policy – as complementary aspects of a coordinated response to crisis, post-crisis and post-conflict situations around the world⁷¹. In an embryonic stage, this idea of the “comprehensive approach” was included in the 2003 Security Strategy which acknowledged the paradigm shift in terms of security occurred in the decade after the Cold War and more so after 9/11: “In contrast to the massive visible threat in the Cold War, none of the new [global security] threats is purely military; nor can any be tackled by purely military means. Each requires a mixture of

instruments”⁷². The EU with its wide range of instruments for external assistance seemed well placed to try to tackle crises in a holistic manner and to stabilise fragile states emerging from conflicts. But as these instruments were spread across the three pillars and the degree of political interest in intervening varied a lot, the EU did not always make a significant or coherent contribution in this regard. The Lisbon Treaty aimed to streamline the functioning of an enlarged Union and also provide better coordination, efficiency and coherence among CFSP/CSDP and Community instruments⁷³. Moreover, as part of the CSDP reform, it acknowledged post-conflict stabilisation as a specific task of EU missions deployed abroad⁷⁴. This added to the substantial reform of the foreign policy apparatus, as detailed in the previous section. At present, EU-driven peacebuilding “makes inroads into different policy areas such as CSDP, development cooperation, the external dimension of the Area of Freedom, Security and Justice (AFSJ), EU enlargement policy, and the European Neighbourhood Policy (ENP)”⁷⁵.

For example, in the case of African states CSDP missions and development aid were meant to address specific challenges, while in the Western Balkans the pre-accession framework and stabilisation CSDP missions were combined in order to bring the countries there closer to EU standards. The comprehensive approach was thus not necessarily something new, but the framework for implementing it through a coherent use of all available EU instruments and incentives was improved by the Lisbon Treaty. In other words, both the philosophy and the necessary means were there, but the EU had to make it happen through political will, adequate functioning of its institutions and most of all, through a long term strategic approach to a coherent external action. At the same time, Carmen Gebhard is right to point out that implementing the comprehensive approach is often considered as a predominantly technocratic challenge, which requires institutional actors to work together in sync to provide for what is falsely assumed as a set and static political agenda⁷⁶. In fact, the EU’s ability to put the comprehensive approach into practice is affected by “substantial political struggles both between Member

⁶⁸ Richard Zajac Sannerholm, “Rule of Law Promotion after Conflict. Experimenting on the Kosovo Laboratory”. In *Rule of Law Dynamics in an Era of International and Transnational Governance*, edited by Michael Zürn, Andre Nolkaemper and Randal Peerenboom, 259. (Cambridge: Cambridge University Press, 2012).

⁶⁹ Ibid., 277.

⁷⁰ European Commission. Communication from the Commission “A Strategy on the External Dimension of the Area of Freedom, Security and Justice”, Brussels, (12.10.2005), 7, accessed January 6, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005DC0491&from=EN>

⁷¹ Linda Barry, “European Security in the 21st Century: The EU’s Comprehensive Approach”, Institute of International and European Affairs Publications, (17 July 2012), 1, accessed February 28, 2015, <http://www.iiea.com/publications/european-security-in-the-21st-century-the-eus-comprehensive-approach>.

⁷² Council of the European Union. “A Secure Europe in a Better World - European Security Strategy, Brussels, 12 December 2003, 7, accessed February 10, 2015, <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

⁷³ Linda Barry, “European Security...”, 3.

⁷⁴ According to the new Petersberg tasks catalogue.

⁷⁵ Steven Blockmans and Martina Spornbauer. “Legal Obstacles to Comprehensive EU External Security Action”, *European Foreign Affairs Review* 18 (2013): 8.

⁷⁶ Carmen Gebhard, “Introduction: A European Approach to Comprehensive Security?”, *European Foreign Affairs Review Special Issue* 18 (2013): 6.

States, but also between major institutional actors, which should be taken as a critical context for any discussions about coherence and comprehensiveness across different policy areas and different phases of the conflict response cycle⁷⁷. This is nowhere more evident than in the case of Kosovo, where the stance of the five non-recognizing member states complicates most EU initiatives there. Although vertical coherence is beyond the scope of this paper, it is worth noting that this reality should not be either overplayed or underestimated. Despite not recognizing Kosovo as a state, the five EU members generally support its progress in getting closer to EU standards and share the common EU objective of promoting the rule of law there, while requiring the observance of certain wording and rituals according to their official position⁷⁸. At the same time, security concerns are shared by all member states, the impact of which is mostly visible in the visa dialogue and the determination to keep EULEX on the ground as long as necessary.

IV. The current state of play - what challenges for coherence in Kosovo?

The number of instruments used for implementing EU policies in order to consolidate the rule of law in Kosovo has gradually increased over time and the post-Lisbon arrangements had a significant impact on the institutional framework underpinning these policies. The coherent use of the said policies and instruments for rule of law promotion in particular and post-conflict stabilisation in general represents an important test for the European Union from a legal, political, public policy and administrative perspective. While endogenous factors in Kosovo obviously create a special case, this is not the first time the EU acts as a state-builder and assumes executive roles, as Bosnia's case demonstrates too. In both cases the EU employs a myriad of foreign and security policy tools, alongside "traditional" enlargement-related tools. What distinguishes the Kosovo case, among other things, are the following two elements: on the one hand, what the literature has labelled "state-building without recognition" and on the other hand the hostile attitude of the local population/society towards the European project (and Europeanization attempts)⁷⁹.

The deployment of EULEX, an integrated rule of law mission targeting the police, judiciary and customs and the biggest civilian EU mission to date, the efforts to mediate between Belgrade and Pristina, the Visa

Dialogue, the activity of the EU Special Representative, the Structured Dialogue on Rule of Law, the financial assistance through IPA and IPA II are all instruments of the multifaceted EU involvement in Kosovo. Also, these instruments illustrate a particular approach by the EU which emphasizes the existence of the rule of law as a *sine qua non* condition for Kosovo to eventually become a member of the EU. This is part of the so-called "new approach to enlargement" arguing for "fundamentals first", which means that the rule of law was put at the centre of enlargement policy after Romania's and Bulgaria's accession to the Union. More concretely, this approach provides that "the chapters judiciary and fundamental rights and justice, freedom and security will be tackled early in the negotiations to allow maximum time to establish the necessary legislation, institutions, and solid track records of implementation before the negotiations are closed"⁸⁰. According to the 2012 Enlargement Strategy, the key challenges facing most of the countries in the Western Balkans were: establishing a judicial system that is independent, impartial and accountable and capable of ensuring fair trials, fighting corruption and organised crime, public administration reform, implementing fundamental rights and ensuring the freedom of expression⁸¹. While strengthening the rule of law and public administration is viewed as "essential for enlargement countries to come closer to the EU and eventually to fully assume the obligations of membership" (ibid., 4), it also serves as the means, among others, by which the EU tries to insulate its member states from external security threats such as instability, illegal immigration and organised crime stemming from state fragility in its vicinity.

The Commission works with the Government of Kosovo in the framework of pre-accession, promoting the rule of law through a technical process based on chapters 23 and 24 of the acquis and the Copenhagen criteria. It also runs the Stabilisation and Association Process, which deals with rule of law issues on a technical level. Within the Commission, DG Enlargement runs the general negotiations, while DG Home is in charge of the dialogue on visa issues, thus holding the big "carrot" of visa liberalisation. The two have to coordinate closely in view of the annual progress reports and while their objective is the same, they sometimes disagree regarding the speed of the process⁸². This is mainly because DG Enlargement needs to deliver tangible results in the pre-accession process, while DG Home needs to be strict and

⁷⁷ Ibid.

⁷⁸ According to the personal communications with several Council delegates, Brussels, October 2014.

⁷⁹ Dimitris Papadimitriou and Petar Petrov, "State-building without recognition. A critical retrospection of the European Union's strategy in Kosovo (1999-2010)", in *European Integration and Transformation in the Western Balkans. Europeanization or business as usual?*, edited by Arolda Elbasani, 121-137, London and New York: Routledge, 2013, 122.

⁸⁰ European Commission. Communication from the Commission to the Council and the European Parliament "Enlargement Strategy and Main Challenges 2012-2013", Brussels, (10 October 2012), accessed December 4, 2014, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/strategy_paper_2012_en.pdf, 4.

⁸¹ Ibid., 4-6.

⁸² European Commission official, DG Home, Brussels, personal communication no. 7 (9.10.2014).

prioritise the interests of the member states. The latter keep a close watch on the political and technical processes of Kosovo's approximation to EU standards and make decisions based on the Commission's recommendations. Moreover, due to the sensitivity of such issues as migration, the member states are directly interested in Kosovo's progress and in maintaining a firm control on the speed of the process of visa liberalisation, for example. That is why DG Home officials in charge of the Kosovo file regularly brief the member states representatives in COWEB (the Council Working Group on the Western Balkans) on the developments in the visa negotiations, the purpose being that of assuring them that no new migration routes are opened by liberalising the visa regime too soon⁸³.

The European External Action Service provides the political expertise for the EU's relation with Kosovo, acts as the supervisor of EULEX and mediates, alongside the High Representative, the dialogue between Pristina and Belgrade, with its political and technical components. Starting in 2011, the governments in Belgrade and Pristina engaged in negotiations in view of a normalisation of their relations under the auspices of the EU⁸⁴. Final status issues aside, the talks had to concentrate on the "practical coexistence" of Serbia and Kosovo and the highly political issue of the "parallel structures" run by Serbia in northern Kosovo. In April 2013 a groundbreaking agreement was reached, establishing a power-sharing arrangement in the Serbian-dominated Northern Kosovo (Mitrovica) run by authorities which had been supported by Belgrade after 2008. This was the result of both EU diplomatic efforts and the two capitals' interest in advancing their relationship with the EU⁸⁵. This was a "game changer" in the EU's involvement in Kosovo and was later acknowledged among the main accomplishments of the High Representative Catherine Ashton's mandate, as well as a great success for the EEAS.

EULEX is, due to its executive mandate, the "master of ceremonies"⁸⁶ and to a certain extent the most influential EU actor in Kosovo. It is managed by the Civilian Planning and Conduct Capability (CPCC) based in Brussels and thus forms part of the EEAS, being financed from the EU's Common Foreign and Security Policy (CFSP) budget. Launched in December 2008, its aim has been to help the Kosovo authorities to strengthen the rule of law, specifically in the police, judiciary and customs areas. Under the Stabilisation and Association agreement - initialled in May 2014 - Kosovo has to meet certain obligations regarding the rule of law, the judiciary, public administration, electoral reform and the Assembly, human and fundamental rights, protection of minorities, trade and internal market issues⁸⁷. With EULEX helping Kosovo improve its performance with the first two and by tackling serious and organized crime, together with fighting corruption and entrenching the rule of law, the mission enhances the link between CSDP (the civilian component) and the external dimension of the Area of Freedom Security and Justice, which share the objective of "protecting the EU's safe internal space from an «unsafe» external environment"⁸⁸. According to the EEAS, EULEX "forms part of a broader effort undertaken by the EU to promote peace and stability in the Western Balkans and to support the Kosovo authorities as they undertake necessary reforms, in line with their and the region's overall European perspective. EULEX skills and expertise are also being used to support the key objectives in the visa liberalisation process, the Stabilization and Association Process Dialogue and the Belgrade-Pristina dialogue"⁸⁹.

In other words, this could be horizontal coherence at its best. The EULEX mission was reconfigured in 2012 and its personnel downsized by 25%, in order to "reflect increasing capacities of the Kosovo authorities"⁹⁰. But the main challenges for

⁸³ Ibid.

⁸⁴ The possibility of such negotiations arose in 2010 and was materialized through a UNSC Resolution introduced by the EU member states. When the talks began, the Belgian EU rotating presidency initially took charge, as Catherine Ashton had just assumed office. Later on, the seasoned diplomat Robert Cooper took charge of the talks on behalf of the HR in 2011 and early 2012. Catherine Ashton herself became involved in the mediation process in the autumn of 2012, in time for the political part of the dialogue, focusing on the issue of Northern Kosovo. In a short article published in EUobserver, Robert Cooper presents some of the characteristics of that process, leading to the Brussels agreement of April 2013. Robert Cooper, "An unfair critique of Ashton", *EUobserver*, December 12, 2014, accessed March 1, 2015, <https://euobserver.com/opinion/126893>.

⁸⁵ Stefan Lehne, "Serbia-Kosovo Deal Should Boost the EU's Western Balkans Policy", *Carnegie Europe*, April 13, 2013, accessed February 1, 2015, <http://carnegieeurope.eu/2013/04/23/serbia-kosovo-agreement-should-reenergize-eu-s-western-balkans-policy/g0q8>.

⁸⁶ European Commission official, DG Enlargement, Brussels, personal communication no. 3, (7.10.2014).

⁸⁷ European Commission, Commission Staff Working Document "Kosovo 2013 Progress Report Accompanying the document Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2013-2014", Brussels, (16 October 2013), accessed January 3, 2015, http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf.

⁸⁸ Gregory Mounier, "European Police Missions: From Security Sector Reform to Externalization of Internal Security Beyond the Borders", *ETC HUMSEC Journal*, 1 (2007), 48, accessed December 5, 2014, <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?id=110394&lng=en>.

⁸⁹ European Union External Action Service, EULEX Kosovo EU Rule of Law Mission in Kosovo Factsheet, (February 2014), accessed December 2, 2014, http://eeas.europa.eu/csdp/missions-and-operations/eulex-kosovo/pdf/factsheet_eulex_kosovo_en.pdf.

⁹⁰ European Commission, "Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo", Brussels, (10 October 2012), accessed December 4, 2014, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf.

EULEX Kosovo in the current phasing-out stage⁹¹ are not only to transfer responsibility to the Kosovo authorities, but also to facilitate the transfer of capacity-building activities to the projects financed by IPA, a transition which sometimes causes friction between the EEAS and the Commission⁹². There are several reasons for this. On the one hand, IPA-funded projects can be used for supporting the monitoring, mentoring and advising activities of EULEX as it phases out its executive mandate, but the financial regulations in this regard do not allow for fast and flexible responses needed by the specific activity of EULEX⁹³. Moreover, EULEX does not have an in-built exit strategy and its mandate is renewed every two years, while the Commission's involvement in Kosovo is open-ended and focused on the long term. The Commission and the EEAS have agreed in principle that the former will continue to pursue through Commission-funded projects the objectives of CSDP missions as they close down, but they still need to figure out the practical arrangements for this⁹⁴.

The EU Special Representative in Kosovo was established in 2008 in order to try to ensure intra-EU political coordination and guidance⁹⁵. After EULEX was launched, the EUSR was entrusted with the mandate to provide political advice to EULEX as well, and to generally increase the coordination between the EU Office and the rule of law mission in Kosovo. The Court of Auditors' 2012 Report on the EU assistance to Kosovo noted that "until recently the EUSR has not made a substantial contribution to strengthening coordination between EUO and EULEX", but "the combining in 2012 of the roles of EU SR and Head of EUO is likely to significantly improve coordination"⁹⁶. As both EUSR and Head of the EU delegation in Kosovo, the incumbent has direct contact with the political situation on the ground, on which it reports to the EEAS. At the same time, it has to provide political guidance to EULEX, without being part of a formal chain of command. One main issue at stake in the EUSR's activity is to emphasize a unique message of the EU and to align political priorities and financial assistance, since the EU Office became fully responsible for IPA assistance in Kosovo.

A recent addition in this already crowded scene was the Structured Dialogue on the Rule of Law initiated in 2012 by the former Neighbourhood and Enlargement Commissioner Stefan Fule, who

conceived it as a high level dialogue involving himself, Commissioner for Home Affairs Cecilia Malmström for the EU and the Ministers of Justice, Internal Affairs and for European Integration respectively for the Kosovo side. The Dialogue was designed to help Kosovo address the challenges in the field of the rule of law, by initially focusing on the judiciary, the fight against organised crime and corruption. By launching it in the context of the gradual transition from EULEX to the Kosovo authorities, Commissioner Fule wanted the new forum to "play an increasingly important role in confirming priorities and ensuring the necessary close coordination between the key actors"⁹⁷. The forum met again in 2013 and 2014, alongside other established formats such as The Joint Rule of Law Coordination Board co-chaired by EULEX, EUSR and Kosovo Ministry of Justice, the Visa Liberalisation Dialogue and, to a smaller extent, the Stabilisation and Association Process Dialogue. At the same time, it became more and more difficult to organise regular meetings involving so many high-level officials⁹⁸.

With so many initiatives in Brussels and Pristina targeting the rule of law promotion in Kosovo, at least two issues become prominent: coordinating them and creating synergies between relevant EU policies on the one hand and entrenching the rule of law in Kosovo without overstretching the local capacity to absorb assistance on the other hand. Neither of them allows for simple solutions.

3. Conclusion

The duty of coherence obliges the European institutions to use the Union's different competences and instruments in a mutually reinforcing way by having regard to the complete set of objectives listed in Article 21 TEU of the 'general provisions on the Union's external action'. When tangible results are lacking, there are three types of measures the EU can undertake for enhancing coherence – legal remedies, institutional reform and political initiatives⁹⁹. The adoption of the Lisbon Treaty was just another attempt in a long line of initiatives meant to help the EU overcome turf wars, inefficiency and incoherence in its foreign policy endeavours. By touching sensitive issues like the identity of the EU on the international scene and an eventual hierarchisation among its

⁹¹ EULEX's mandate was extended until 14 June 2014 and then again until 14 June 2016. <http://www.eulex-kosovo.eu/en/info/whatisEulex.php>.

⁹² EEAS official, Brussels, personal communication no. 2, (6.10.2014).

⁹³ European Court of Auditors, "European Union Assistance to Kosovo related to the Rule of Law", Special Report no. 18 (2012), accessed February 12, 2015, http://www.eca.europa.eu/Lists/ECADocuments/SR12_18/SR12_18_EN.PDF, 35.

⁹⁴ Ibid.

⁹⁵ Council Joint Action 2008/123/CFSP of 4 February 2008 appointing a European Union Special Representative in Kosovo, *Official Journal* L 42, (16.2.2008), 88, February 1, 2015, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:042:0088:0091:EN:PDF>.

⁹⁶ European Court of Auditors, "European Union Assistance to Kosovo ...", 28.

⁹⁷ Structured Dialogue on the Rule of Law with Kosovo Brussels, 30 May 2012 – Conclusions, para. 7, accessed March 1, 2015, http://ec.europa.eu/commission_2010-2014/fule/docs/news/20120530_rolld_conclusions_30_may.pdf

⁹⁸ EEAS official, Brussels, personal communication no. 2, (6.10.2014).

⁹⁹ Carmen Gebhard, "Coherence", 113.

institutions, as well as the finality of the integration process, the study of horizontal coherence provides an excellent opportunity for analyzing conflict and cooperation instances in the EU's external action. In the case of Kosovo, due to both the existing stakes and

great number of actors involved, rule of law promotion as a cross-over policy entailing both CFSP and non-CFSP areas of activity could become a real test for institutional and horizontal coherence in the post-Lisbon era.

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