

CURRENT CHALLENGES FOR EU COHERENCE IN PROMOTING THE RULE OF LAW IN KOSOVO

Monica OPROIU

National University of Political Studies and Public Administration

Bucharest/Romania

monica.oproiu@dri.snspp.ro

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 foreign policy. According to their mandates, the High Representative and the External Action Service aim to increase the consistency of the European Union's external action thus answering to on-going criticisms about the lack of a "single voice". This paper aims to assess the policy implications of the main post-Lisbon institutional developments by using the concept of "coherence". Understanding this concept as synergy among EU policies, the study will analyse the current challenges to the ways in which the EU is promoting the rule of law in Kosovo. Based on the critical analysis of EU documents and the academic literature, as well as semi-structured interviews with EU officials in Brussels and Kosovo, this paper questions whether the introduction of the High Representative and the creation of the EEAS improved the coherence of EU involvement in Kosovo, especially in the field of rule of law assistance.

Keywords

Coherence; External Action Service; EULEX; High Representative; Kosovo; Rule of Law

1. INTRODUCTION: WHY IS IT WORTHWHILE TO STUDY EU RULE OF LAW ASSISTANCE IN KOSOVO?

Fifteen years after the European Council in Santa Maria da Feira in June 2000 announced for the first time that the Western Balkans countries had the perspective of EU membership, the political, security and economic situation in the region does not provide many reasons for optimism. Croatia joined the EU in 2013, but the remaining contenders are challenged by unresolved issues including contested statehood and unconsolidated democracy. Meanwhile, the EU seems to have become weary of enlargement. Nevertheless, it continues its involvement in the Western Balkans since the promise of European integration of the countries in the region has been reiterated several times and is widely perceived as a guarantee of their stability and reform. As the region slowly moved away from posing significant “hard security” threats, the international community entrusted the EU with the tasks of conflict resolution, stabilisation and democratisation.

When the security environment became relatively “safe and secure” in most of the Western Balkan region and as the possibility of relapsing into war diminished, the EU started focusing on “soft security” threats like organised crime, corruption, illegal immigration and lack of good governance. Consequently, it created instruments for helping these countries become more efficient in addressing the sources of instability and thus prevent potential spill-over into the EU. Due to the particularities of the legacy of violent conflicts in the Western Balkans, the EU designed the Stabilisation and Association Process as the main policy framework for engaging these countries.

Moreover, based on the lessons from the previous round of enlargement in Central and Eastern Europe, especially regarding the transformation of the rule of law area in Romania and Bulgaria, which proved to be a difficult and lengthy process, the EU decided to address the identified shortcomings. The Enlargement Strategy of 2011 stated that the issues related to the judiciary and fundamental rights and to justice and home affairs respectively¹ should be tackled early in the accession process, monitored

¹ Chapter 23 includes four main elements: judiciary, fight against corruption, fundamental rights and EU citizens’ rights, while Chapter 24 is dedicated to the fight against all types of organised

continuously by the Commission and targeted through the Instrument for Pre-Accession funds (European Commission 2011, 5). In 2012 the European Commission officially placed the rule of law at the centre of the enlargement policy (European Commission 2012c, 4).

The topic of EU rule of law assistance in Kosovo¹ is worth exploring for several reasons. Firstly, despite slowing down its pace, the enlargement process remains the EU's most successful foreign policy tool. This was acknowledged once more in December 2012 when the EU was awarded the Nobel Peace Prize for having "for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe" (Nobel Peace Prize 2012). After Croatia's accession, the EU needs another success story in order to maintain the resolve of the countries in the region to pursue the goal of EU integration and their commitment to painful reform, especially in the fields of rule of law and good governance. Despite its distant prospects and multiple issues to solve, the stakes are too high in Kosovo's case for the EU not to try its best in proving enlargement to be an infallible tool for attaining stabilisation and promoting peace in Europe.

Secondly, Kosovo together with Serbia have been recently enjoying widespread attention due to the successful mediation attempts by the EU High Representative for Foreign Affairs and Security Policy in view of a "normalisation" of the relations between Belgrade and Pristina. In April 2013 a ground-breaking agreement was obtained, establishing a power-sharing arrangement in Serbian-dominated Northern Kosovo (Mitrovica), run by parallel structures supported by Belgrade after 2008. This was possible because the EU engaged both Serbia and Kosovo through the Stabilisation and Association Process and promised them a European future.

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 mediation efforts between Belgrade and Pristina, the visa dialogue, the activity of the EU Special Representative, the launching of the Structured Dialogue on Rule of Law, the financial assistance through IPA and IPA II are all part of the multifaceted EU involvement in Kosovo. Also, they illustrate a

crime, terrorism, the Schengen rules, border control and visas, as well as migration, asylum, judicial cooperation in criminal and civil matters and police and customs cooperation.

¹ All references to Kosovo in this paper are in line with United Nations Security Council Resolution 1244/99 and the opinion by the International Court of Justice on the Kosovo declaration of independence (2010), as acknowledged at the level of the European Union.

particular emphasis on rule of law-related reforms as the essential premise of viable statehood for Kosovo and a *sine qua non* condition for becoming closer to the EU. The coherent use of all these instruments represents a relevant test for the European Union from a legal, political, public policy and administrative perspective.

The works on EU enlargement and Europeanization mainly focus on the transformative power of EU accession and membership and analyse the impact of conditionality on domestic politics. The picture becomes more complicated when enlargement or pre-accession are accompanied by proper foreign and security policy initiatives, including state-building and conflict resolution. This brings into the discussion a whole new set of elements. The questions that arise are thus related to how to coordinate actors and instruments across the former EU pillars and create synergy in the EU's external action or to the limits of conditionality in an environment that is less pro-European and also shared with other international actors undertaking similar activities (Papadimitriou and Petrov 2013, 123).

The present study will try to explore the answers to some of these questions and offer an understanding of the EU's involvement in rule of law assistance in Kosovo based on the analysis of the coherence of the Union's relevant policies and instruments in this field. The underlying assumption is that a proper understanding of the EU external action from "within" is useful in order to evaluate what the Union is doing on the international scene in general and in various specific cases in particular. External variables aside, the intra-EU dynamics in Brussels and on the ground are essential for the Union's capacity to devise common policies and implement them in a coherent manner. Based on the critical analysis of EU documents and the academic literature, as well as semi-structured interviews¹ with EU officials in Brussels and Kosovo, and civil society representatives in Kosovo, this paper explores the extent to which the introduction of the High Representative and the creation of the EEAS improved the coherence of the EU's involvement in Kosovo and the current challenges to its efforts in the field of rule of law assistance.

¹ Interviews were conducted in October 2014 in Brussels and April 2015 in Pristina with financial support from the National University of Political Studies and Public Administration. One interview was conducted over Skype. All interviews were conducted in confidentiality, and the names of the interviewees (and their institutional affiliation, in some cases) are withheld by mutual agreement.

2. STUDYING COHERENCE IN THE EU CONTEXT - BETWEEN ACADEMIC DEBATES AND TREATY REQUIREMENTS

The works on EU coherence are plentiful, illustrating both the legal and the political science perspectives. 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 policy (Hillion 2008; Hillion 2012). It is in this context that three main dimensions of coherence have been defined – horizontal, vertical and institutional – with some variations among authors (Tietje 1997; Nuttal 2001; Missiroli 2001; Gebhard 2011). On the other hand, empirical studies analyse the existing institutional arrangements and their potential for creating (in)coherence (Duke 2006; Portela and Raube 2009) or use case-studies in order to explore the specifics of the three dimensions of coherence (Juncos 2013).

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 relations 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 three general types of coherence has emerged, there are still some variations in the literature.

Initially, Christian Tietje identified two types of coherence in the EU's foreign policy, as institutionalised by the Maastricht Treaty. In his view, there was vertical (in the relation between the Member States and the Union) and horizontal (between the foreign relations of the EC and the Common Foreign and Security Policy) coherence (Tietje 1997, 224). 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 and national policies) (Nuttal 2001, 3-4). 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 evolving cooperative practice, like in the case of the relationship between the High Representative for Common Foreign and Security Policy and the Council Secretariat in the aftermath of the Amsterdam Treaty (Nuttal 2001, 7). Whilst issues of institutional consistency were easier to solve, as his example showed, those pertaining to horizontal or vertical consistency required a thorough debate on the nature of the EU's foreign policy and its identity as an international actor (Nuttal 2001, 10). Later on, Carmen Gebhard identified four types of coherence: horizontal (inter-pillar), vertical, internal and external, with the first three being in line with the literature of the field, whereas the fourth was treated more like a technical matter regarding the external representation of the EU (Gebhard 2011, 109).

A more recent strand of literature looks at coherence as the basis for the emergence of an EU "comprehensive approach" to external action in general and crisis management or conflict prevention in particular. Alexander Mattelaer traces the quest for comprehensive planning in EU crisis management in the post-Lisbon era and, putting "empty promises" aside, he argues that the comprehensive approach is more of a "rhetorical phantom" which cannot be put into practice because of "a persistent unwillingness to concentrate planning and decision-making authority in the hands of single institutions or individuals" (Mattelaer 2013, 125).

In his view, the result of this unwillingness is an "EU foreign policy bureaucracy characterized by omnipresent stovepipes" lacking unity of effort, which, surprisingly, is "both politically understandable and, for the time being, practically inconsequential" (Mattelaer 2013, 126). That is why "the search for coordination mechanisms cannot be a merely technical quest for efficiency: as strategic coordination must follow a particular policy agenda it represents a battle for political influence. This runs against the EU's culture of dispersed authority and omnipresent checks and balances. The lack of policy coherence is therefore politically understandable and not necessarily «bad»" (Mattelaer 2013, 125).

In other words, although not always deemed efficient, the set-up of EU crisis management (and if we extrapolate from it, of foreign policy in general) may represent a safety net against other dangers. Mattelaer even argues that "the EU's political culture of dispersed authority and omnipresent checks and balances may work against strategic coherence, yet it also prevents the strategic miscalculations that bedevil more unitary actors", like the United States (Mattelaer 2013, 127). So, by introducing the topic of crisis management

into the equation he aims to debunk some myths and explore a less known perspective on coherence. Being the direct result of a political culture, which tries to prevent the concentration of authority and coordination in only one pair of hands, the EU's complicated foreign policy bureaucracy and its implicit lack of coherence do not necessarily constitute a threat to EU strategic relevance. On the contrary, the debate on the comprehensive approach could be used as a smokescreen that masks the bigger picture of faltering ambitions, downsizing of member states' capabilities and on-going financial difficulties for EU crisis management.

Even fewer works look at the evolution of the consistency/coherence requirement¹ in the EU treaties. Such requirements can be traced back to the Single European Act and the introduction of the European Political Cooperation as a means to increase coordination of the member states' foreign policy. The Treaty of Maastricht institutionalised the pillar structure of the European Union and included specific references to consistency based on the spirit of solidarity and loyalty among member states, as well as on the principle of clear delimitation of competences between EU institutions. Subsequent treaties were meant to reform the institutional setting of the Union and streamline its functioning in view of the EU's enlargement. Finally, the preamble of the Lisbon Treaty shows that the decision to amend the existing treaties was made by the European leaders "desiring to complete the process started by the Treaty of Amsterdam and by the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action" (European Union 2007).

There are several articles in the Treaty on the European Union (TEU) and one in the Treaty on the Functioning of the European Union (TFEU) which address directly the issue of consistency in external action. The following table provides an overview of the main provisions regarding consistency in the consolidated versions of the two Treaties after the Lisbon reform and groups them under the main categories identified in the literature: institutional, horizontal and vertical coherence, respectively. The aim is to highlight that the reform treaty aimed at a general streamlining of the EU external action in all

¹ The term "consistency" is used throughout the Treaty on EU and the Treaty on the Functioning of the EU in the English version, but in other languages it has been translated as coherence (*cohérence* in French, *coherencia* in Spanish, *kohärenz* in German, *coerență* in Romanian, etc.) (Juncos 2013, 45). In most of the literature of the field consistency and coherence seem to be equivalent. Juncos (2013) provides a detailed analysis of this debate.

its dimensions and at all levels, by entrusting both existing institutions and new players with the task of providing the much sought after consistency of EU action.

Table no. 1 Provisions on consistency in the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, as amended by the Treaty of Lisbon

Institutional coherence	Horizontal coherence	Vertical coherence
<p>Art. 13 TEU</p> <p>1. The Union shall have an institutional framework, which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.</p> <p>2. 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.</p>	<p>Art. 18 TEU</p> <p>4. The High Representative shall be one of the Vice-Presidents of the Commission. He shall ensure the consistency of the Union's external action. He shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action.</p>	<p>Art. 4.3 TEU</p> <p>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.</p>
<p>Art. 26(2) TEU</p> <p>[...] 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.</p>	<p>Art 7 TFEU</p> <p>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.</p>	<p>Art. 24 TEU</p> <p>3. 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. The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action, which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive</p>

		force in international relations.
		<p>Art. 32 TEU [...] Before undertaking any action on the international scene or entering into any commitment, which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene.</p> <p>When the European Council or the Council has defined a common approach of the Union within the meaning of the first paragraph, the High Representative of the Union for Foreign Affairs and Security Policy and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.</p> <p>The diplomatic missions of the Member States and the Union delegations in third countries and at international organisations shall cooperate and shall contribute to formulating and implementing the common approach.</p>

Source: Compiled by the author based on the text of the EU treaties available at http://europa.eu/eu-law/decision-making/treaties/index_en.htm. All highlights belong to the author.

The new High Representative and the External Action Service are the result of a long and continuous process of institutionalisation of EU foreign policy (and beyond, touching upon the entire spectrum of external action and

internal policies with an external dimension) which, while aiming for consistency and effectiveness, tries to maintain the established system of multiple checks and balances and the firm grip of EU member states as well. At the same time, the treaties ensure that the member states are committed to devising and implementing common policies in the relations of the EU with the outside world according to the principles of sincere cooperation, mutual solidarity and loyalty. Although in practice foreign policy at the national level remains each individual state's *domain réservé*, the member states are bound by the treaties to cooperate and support the Union's foreign policy. Kosovo is a case in point. Although recognizing its independence remains the sovereign prerogative of each member state, helping the country reform and advance towards EU standards (including through a peace-building and, ultimately, state-building EU mission there) is a common goal of the Union, credited with bringing stability to the neighbouring Western Balkans region.

Hence, whether we call it "consistency", "coherence" or "convergence of actions", the goal is for the Union to be able "to assert its interests and values on the international scene" (European Union 2012, art. 32 TEU). One of the most comprehensive definitions in the literature considers coherence to be "the lack of contradictions between policies/institutions/instruments, plus a variable degree of synergy as a result of policies/institutions/instruments working together in order to achieve a common objective" (Juncos 2013, 46).

The view adopted in this paper is that the "institutional" and "horizontal" types of coherence are very difficult to separate in practice. In fact, as most authors have argued, the very basis of horizontal coherence is the existence of a "single institutional framework" for decision-making (and policy-making) according to both the "community method" and the intergovernmental one. Although the removal of the pillar structure by the Treaty of Lisbon aimed precisely to streamline the functioning of the European Union, increase its coherence and favour the emergence of a "comprehensive approach" to external action, it is difficult to avoid contradictions or overlaps and to create synergies between policies as the EU institutions jealously guard their prerogatives. At the same time, while decision-making procedures can affect coherence in Common Foreign and Security Policy (CFSP), what is equally important is how objectives are set and instruments are combined across policies with an external dimension, as well as whether and how the member states put them into practice. The interplay between different types of coherence is obviously complex and much less evident in practice than in academic research.

3. CURRENT CHALLENGES FOR COHERENCE IN PROMOTING THE RULE OF LAW IN KOSOVO

The number of instruments used for implementing EU policies in order to strengthen 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. In a speech in November 2010, Stefan Füle, former Commissioner for Enlargement and Neighbourhood Policy praised the post-Lisbon institutional set-up that enhanced, in his view, the coherence and efficiency of the EU's external action. Going into details, he stated that: "with the Lisbon Treaty in force, the EU is now equipped to deal with foreign policy challenges in an efficient, coherent and innovative manner. The Lisbon Treaty removed the institutional bottlenecks in our decision-making, leading to increased efficiency. With the creation of a new position of High-Representative/Vice President - currently held by Cathy Ashton - the foreign policy of the European Union acquires increased coherence. As Commissioner for Enlargement and European Neighbourhood policy, I combine forces with Catherine Ashton to address the key issues of the region. This process is innovative as we can now make full use of the 'Community toolbox' together with the Common Foreign and Security Policy (...) and establish broader and more strategic political conditionalities" (Füle 2010).

Furthermore, he acknowledged that "Yes, enlargement is foreign policy but it goes far beyond that. The prospect of EU membership is the best mechanism to implement far-reaching political, economic and social reform" (Füle 2010). In other words, enlargement and CFSP policy tools had to be combined in order to tackle the issues in the Western Balkans region in a coherent and efficient manner, within a revamped institutional framework, according to the spirit and letter of the Lisbon Treaty. In the new context the onus was on the Commission and the High Representative (assisted by the External Action Service) to join forces in order to transform treaty requirements into coordinated external policies. In the particular case of Kosovo, with five member states not recognising its independence, harmonising positions and ensuring intra-EU coherence was an even greater challenge.

3.1. The driving force in Brussels: the Commission's role

The Commission has been working with the Government of Kosovo in the framework of the Stabilisation and Association Process on the one hand and pre-accession on the other hand, promoting the rule of law through a technical process based on the Copenhagen criteria and especially on chapters 23 and 24 of the EU *acquis*. Because of the five non-recognisers it is somewhat premature (and politically incorrect as well) to talk about the country's future accession to the EU. However, given the fact that the EU's approach to its relationship with Kosovo is based on the Copenhagen criteria, from a technical point of view the Union engages with Kosovo mainly in the enlargement framework. In fact, in a speech delivered in July 2013 before the Parliamentary Assembly in Pristina, Stefan Füle stated that "The European Commission has become a more important partner for you than ever before. Kosovo is now placed firmly in the enlargement mainstream" (Füle 2013).

Within the Commission, DG Enlargement¹ runs the general negotiations, while DG Home is in charge of the dialogue on visa issues, thus holding the key to 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 process. This is mainly because DG Enlargement needs to deliver tangible results in the pre-accession process, while DG Home needs to be strict and prioritise the interests of the member states (Interview with EU official 9.10.2014). Hence, even coherence within single institutions cannot be taken for granted as sub-institutional and bureaucratic structures with slightly different priorities can undermine it. This goes to show that when analysing horizontal coherence at EU level - understood as combining institutional and policy components - one must look at all possibly relevant sub-levels of policy-making in order to unpack the factors undermining or enhancing the potential for "synergy".

The member states keep a close watch on the political and technical processes of Kosovo's approximation to EU standards and make decisions in the Council based on the Commission's recommendations. Moreover, due to the sensitivity of such issues as migration, the member states are directly

¹ In the Juncker Commission appointed at the end of 2014 DG Enlargement was renamed DG Neighbourhood Policy and Enlargement Negotiations.

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 briefs to the member states representatives in the Council Working Group on the Western Balkans (COWEB) 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 soon (Interview with EU official 9.10.2014).

Although both enlargement and visa dialogue are rather technical processes driven by the Commission, it is the member states that not only make the final decision, but in the end also dictate the speed of the process. In general, it is a common goal of the EU to ensure stability in Kosovo and although the degree of interest in this issue obviously varies within the Union, the big member states with high stakes in the region maintain a firm grip on the enlargement process. Despite not recognizing Kosovo as a state, the five EU members generally support its efforts to attain EU standards and share the common EU objective of promoting the rule of law, while requiring the observance of certain wording and rituals according to their official position (according to interviews with several national diplomats, October 2014). 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 in Kosovo as long as necessary.

The visa dialogue launched in January 2012 is one of the most efficient avenues for incentivising the Kosovo authorities to undertake rule of law-related reform. The initial Roadmap for visa liberalisation included 95 requirements regarding readmission and reintegration, document security; border/boundary and migration management; public order and security and fundamental rights related to the freedom of movement that Kosovo would have to meet in order to advance towards a visa-free regime (European Commission 2012b). The first progress report featured 70 "recommendations" for Kosovo to follow in this regard (European Commission 2013a).

The strictness with which DG Home assessed Kosovo's initial progress is one thing, but the lack of clear priorities too becomes obvious under close scrutiny. Although sheer numbers are sufficiently intimidating, it is the fact that no priorities have been singled out among those 70 requirements that can create problems for EU assistance. Without priorities, it is not clear how the Commission would measure progress in Kosovo and weigh the fulfilment of some against others (House of Lords 2013, 14). If progress assessment criteria are not clear or transparent, the relationship with Kosovo could be affected,

especially if they feel that their progress is not sufficiently rewarded. By the same token, issues may arise if Kosovo seems to be “rewarded” for insufficient progress.

It is logical that *all* requirements have to be met in order for the EU to grant visa free travel to Kosovo citizens. Moreover, it can be argued that if it becomes obvious that one benchmark is more important than any other, this reduces the incentives for broad reform efforts and applying all recommendations. Whatever the approach the EU favours, it is essential that the authorities in Pristina understand what they need to accomplish as part of EU conditionality, in the visa dialogue or any other framework. From this perspective, it is interesting to note that DG Enlargement tries to “rationalise” the recommendations provided by DG Home and make them “operational” or more concrete for their Kosovo interlocutors (Interview with EU official 7.10.2014). While DG Home is “the master of the *acquis*” in its area of expertise, DG Enlargement deals with the people on the ground closely and more often (Interview with EU official 7.10.2014), thus building a different type of relationship with them.

The progress reports on visa liberalisation are elaborated by the Commission following assessment missions on the ground, assisted by experts from the member states, the EU Office in Kosovo and EULEX (European Commission 2013a, 2; European Commission 2014, 2). The diversity of inputs ensures a diversity of perspectives, but also a close cooperation among EU structures involved in managing the relationship with Kosovo. Fundamentally, the visa liberalisation process touches upon issues related to the rule of law and helps channel EU member states preferences and concerns more directly. Moreover, it provides the opportunity to create synergies by aligning objectives from the SAP, enlargement policy and the external dimension of Area of Freedom Security and Justice (AFSJ). In practice, such opportunities have not been sufficiently used¹.

¹ The Court of Auditors’ 2012 report on EU rule of law assistance found two major policy shortcomings in this regard. First, because of the 5 non-recognisers Europol cannot enter into operational and/or strategic agreements with Kosovo authorities (European Court of Auditors 2012, 27). Second, the EU’s internal security priorities – included in the EU’s various strategies for the external dimension of Justice and Home Affairs have not been reflected in the EU assistance programming of IPA or the cooperation between the Commission and EULEX (European Court of Auditors 2012, 26-27; House of Lords 2013, 20-21).

Furthermore, the member states' input in delivering the actual rule of law assistance sometimes complicates the situation too. Since there is no EU model for various rule of law institutions set up in Kosovo, receiving conflicting advice from the "EU side" is often possible. As part of the visa liberalisation dialogue, expert missions from member states can sometimes offer different perspectives which undermine a more unitary EU approach (Interview with EU official 6.10.2014). This allows Kosovo authorities to play such technical inadvertences against the Commission and head for US support instead. Still very popular in Kosovo, the United States is enjoying undisputed influence and usually plays a constructive role. However, in some instances they provided solutions which proved to be incompatible with European Union standards, like a border management system they helped install (House of Lords 2013, 8). Consequently, the EU needs to coordinate its own policies as much as it needs to coordinate with the other main donors in the country.

In October 2013 the negotiations for contracting a Stabilisation and Association Agreement between the EU and Kosovo authorities began. On the EU side, the negotiating team was led by the Commission, while the provisions on the political dialogue and the CFSP had to be negotiated by the High Representative of the Union for Foreign Affairs and Security Policy (European Commission 2013c). The start of the negotiations on the SAA was considered as a "reward" for the landmark deal concluded between Pristina and Belgrade few months earlier. The negotiated SAA was supposed to be the first after the Lisbon Treaty and had to be signed together with an entity that not all EU member states recognised as a state.

The solution was provided by the Lisbon Treaty. Having legal personality, the EU could sign the SAA as an EU-only agreement. The Commission made it clear that signing the SAA did not amount to recognition of Kosovo as an independent state just as full recognition was not a precondition for negotiations (European Commission 2012d, 3). Indeed, the SAA does not make any explicit reference to future EU membership but mostly to the Copenhagen criteria¹. But this solution backfired nevertheless. On the one hand, it raised concerns among some member states that allowing

¹ The Stabilisation and Association Agreement between the EU and Kosovo was signed in Strasbourg on 27 October 2015. On the EU side, it was signed by HR/VP Federica Mogherini and Johannes Hahn, Commissioner for European Neighbourhood Policy and Enlargement Negotiations.

the contracting of an EU-only agreement in this domain could trigger “competence creep” from the Commission (Interview with national diplomat/Council delegate 8.10.2014). On the other hand, some in Kosovo perceived this solution as a second-class agreement – different from the previous SAAs – because of the 5 non-recognisers. This difference fuels Kosovo’s apprehension towards an EU approach which seems to depart from previous cases in the region.

3.2. The newcomers: the European External Action Service and the High Representative

The European External Action Service (EEAS) - the newest EU body dealing with foreign policy - provides the political expertise for the Union’s relation with Kosovo, acts as the supervisor of EULEX and supports the High Representative in mediating the political dialogue between Kosovo and Serbia. The EEAS has been functioning since January 2011, but during the first months it was not in a position to play its role fully. When it finally started to do so, the decision to appoint the EU Special Representative in Kosovo as Head of the European Commission Liaison Office was seen as “the most significant change which the External Action Service wrought”, and was “the first of many improvements” in EU rule of law assistance in Kosovo (House of Lords 2013, 9).

As far as the division of labour between the Commission and the EEAS regarding the Western Balkans is concerned, DG Enlargement has policy lead for the relations with pre-accession countries in the framework of the enlargement process, while the political aspects of the relationships with these countries are handled by small geographical teams in the EEAS (EEAS 2013, 8). The geographical desks are made up of people who worked on these issues under former High Representative Javier Solana too, thus maintaining a hub of dedicated expertise able to help the new High Representative deliver results in the Kosovo-Serbia dialogue. From this perspective, the transition from the Council Secretariat and Solana’s team to the new EEAS was mostly smooth; there were no major issues regarding the Kosovo/Western Balkans desk because basically all the people came from the Council since the Commission’s DG Relex did not have a unit on the Western Balkans (Interview with EU official 29.10.2014). Although some key figures left, overall the main team remained intact and other skilled diplomats were entrusted with key roles.

Javier Solana himself had a huge personal knowledge of the Western Balkans and had been very engaged in the region throughout his mandate, often travelling there and knowing the local actors by their first names (Interview with EU official 29.10.2014). Moreover, he was the NATO Secretary General during the Allied bombing against Belgrade in 1999. All this made him very well known in the region and in Kosovo in particular. When Catherine Ashton became the new High Representative under the Lisbon Treaty in 2009 the Western Balkans were not her first priority.

However, she soon became involved in the diplomatic quest to ensure that Serbia and Kosovo agreed to EU-mediated talks, as part of the UN General Assembly Resolution on the International Court of Justice (ICJ) Advisory Opinion on Kosovo, issued in September 2010 (United Nations 2010). The HR/Vice-President employed “a combination of policy tools, most clearly the conditionality associated with the perspective of EU membership, to encourage Serbia and Kosovo to support a reconciliatory resolution and to agree to EU-mediated talks” (Füle 2010). The US-backed EU effort to obtain the sanctioning of the UN for EU-mediated talks between Serbia and Kosovo opened a new chapter in the EU post-Lisbon foreign policy, as the talks themselves confirmed the EU’s predominance over Balkan issues – at least formally¹.

Starting in 2011, representatives from the governments in Belgrade and Pristina engaged in negotiations in view of a normalisation of relations under the auspices of the EU. 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. When the Serbia-Kosovo talks started, the HR delegated to her counsellor Robert Cooper the task of chief-negotiator in the technical level dialogue, and focused on setting up the EEAS during the first two years of her mandate

¹ The high profile and great influence of the United States in Kosovo were reluctantly but candidly admitted in a debate organised by the House of Lords in the United Kingdom with the participation of senior officials from the European Court of Auditors, who authored the ECA Special Report on EU rule of law assistance in Kosovo. According to them, “the United States is popular and has played and is continuing to play an important role in supporting Kosovo. And as the United States does not have to explain the difference between the European Union institutions and [what] the European Union does, which occasionally on the ground creates some confusion about who does what, I think it is fair to say that the profile of the United States in Kosovo politically is generally considered on the ground to be slightly higher than that of the European Union” (House of Lords 2013, 11-12).

(Interview with EU official 29.10.2014). The negotiation process was co-chaired by Robert Cooper from the EEAS and Pierre Mirel, Director for the Western Balkans in DG Enlargement, enabling the intra-EU coordination of positions. The High Representative became personally engaged in the normalisation talks between in October 2012 and the dialogue was linked to the enlargement framework. With both parties striving for progress on their EU paths, the High Representative managed to obtain a breakthrough.

The ground-breaking agreement of April 2013 established 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 EU (Lehne 2013). A "game changer" in the EU's involvement in Kosovo, it was later acknowledged among the main accomplishments of the High Representative Catherine Ashton's mandate, as well as a great success for the EEAS. The two parties were promptly rewarded – the EU started negotiations for a Stabilisation and Association Agreement with Kosovo and accession negotiations with Serbia respectively. The successful conclusion of over 20 agreements between Kosovo and Serbia since then represent a first in the short but tense history of the attempts to pursue normalisation between the two after the war in 1999, and the EEAS "has worked hard" alongside the two negotiations team to obtain these results (Interview with Kosovo official 1.04.2015).

The relationship between the Commission and EEAS remains complicated, but in the end mutual dependency makes it work. There are voices who claim that the geographical desks within the EEAS actually duplicate the existing ones within the Commission or that the EEAS tries to use the technical rules for political purposes when dealing with Kosovo (Interview with EU official 7.10.2014). However, it is useful to note that coordination issues seem to occur rather within the EEAS or within the Commission than between the EEAS and the Commission. Inside the EEAS it is the Civilian Planning and Conduct Capability who runs the daily business of EULEX, the Crisis Management Planning Directorate who is in charge of the strategic review of EULEX and the geographical desk dealing with the diplomatic and political aspects of the EU's involvement in Kosovo (especially the Dialogue) that clash occasionally; within the Commission, DG Enlargement, DG Home and DG Justice sometimes bicker over issues of who owns what in terms of lower level negotiations in the field of rule of law (Interview with EU official 6.10.2014).

3.3. EULEX – “the master of ceremonies” on the ground

On the ground in Kosovo, the EU’s rule of law mission EULEX has been the “master of ceremonies” (Interview with EU official 7.10.2014) and to a certain extent the most influential EU actor locally mostly due to its executive mandate. It is currently managed by the Civilian Planning and Conduct Capability (CPCC) based in Brussels as part of the EEAS, whilst its budget is administered by the Commission as a civilian crisis management mission financed within the Common Foreign and Security Policy (CFSP). Launched in December 2008, the mission’s aim has been to help Kosovo authorities strengthen the rule of law, specifically in the police, judiciary and customs areas.

The EU conception of rule of law support through civilian crisis management missions is mainly focused on the justice sector, that is, judicial reform through capacity-building, undertaken by various EU actors by using specific instruments (from financial assistance programs to substitution of local authorities, if necessary). EULEX is an integrated rule of law mission entailing police and customs elements too, thus reflecting a wider perspective of institution-building and capacity-building for rule of law enforcement authorities in the context of the Stabilisation and Association Process (Spernbauer 2010, 9).

Under the Stabilisation and Association Agreement, Kosovo will have 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 issues (European Commission 2012d, 13-14). By helping Kosovo strengthen the rule of law, improve the performance of its judiciary, tackling serious and organised crime together with fighting corruption, EULEX enhances the link between the Common Security and Defence Policy - CSDP (the civilian component) and the external dimension of the Area of Freedom Security and Justice, which share the objective of ensuring EU internal security. 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” (EEAS 2014, 1).

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” (European Commission 2012d, 6). Its mandate was bound to end in June 2014, but following an agreement between the Kosovo authorities and the EU a restructured EULEX was prolonged until June 2016 (EEAS 2014, 2). The main challenges for EULEX Kosovo in the current phasing-out stage 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 Commission (Interview with EU official 6.10.2014). 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 EULEX. Moreover, EULEX does not have an in-built exit strategy and its mandate is renewed every two years, whilst 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 this (European Court of Auditors 2012, 28). The main contentious issue is that the Commission does not really want to take over through projects the unfinished work of EULEX, preferring instead to help the Kosovo authorities assume direct responsibility for reforms (Interview with EU official 7.10.2014). In the end, that is the logic of external intervention and state-building efforts: external actors do the hard work - including by performing executive functions - to show that it is possible, they then do it together with the local institutions and then they transfer the responsibilities to the latter.

Inter-institutional bickering aside, the executive mandate of EULEX does make an exit strategy problematic - the closure of the mission means that it fulfilled its objectives in Kosovo, but this assessment depends also on the country’s progress in the Stabilisation and Association Process (Spernbauer 2010, 34). In addition to this, terminating EULEX would be the equivalent of recognising Kosovo as a state (interview with national diplomat/ former

Council delegate 28.10.2014), which is problematic for the 5 non-recognisers within the EU.

The gradual downsizing and re-organisation of EULEX represent a step forward towards the exit, but as the EU made its credibility dependent on its achievements in the Western Balkans it cannot be too prudent when it comes to the legacy of its biggest civilian mission and will try to avoid a hasty end. The corruption scandal that has engulfed EULEX recently¹ fuels the arguments of those who ask for the termination of the mission, either local politicians or Member States representatives. Representatives of civil society and local politicians alike contend that EULEX has been discredited by this scandal (interviews with government officials and civil society representatives in Pristina, April 2015) and some suggest that the internal corruption scandal actually explains why EULEX has not delivered the expected results (Interview with Kosovo official 1.04.2015). Although it may be true that the initial expectations generated by EULEX were unrealistic, it is also true that the corruption allegations make it an easy target for those arguing against prolonging the mission.

3.4. The EU Special Representative in Kosovo – towards an enhanced role

As EULEX is being scaled down the EU Special Representative in Kosovo - also acting as head of the EU Office - gains more influence. Established in 2008, the EUSR had the mandate to ensure intra-EU political coordination and guidance (Council of the European Union 2008, 88). After EULEX was launched the EUSR was entrusted with the mandate to provide it with political advice, and to generally increase the coordination between the EU Office and the rule of law mission in Kosovo. But until 2011 the EUSR was the International Civilian Representative² as well, as part of a hybrid

¹ The scandal is based on allegations of possible corruption among members of EULEX's executive branch (judge and prosecutor), allegations which became public following appearances of another EULEX prosecutor in local media, who believed she had been victimised because she was the one behind the respective allegations. Erupting in the context of the strategic review of EULEX, the scandal was addressed by the High Representative and EEAS by appointing Jean Paul Jacqué (Honorary Director General and Counsellor to the Council of the EU) in November 2014 in charge of an investigation on the handling by EULEX of the corruption allegations. Published on March 31st 2015, his report is available on the EEAS website at http://eeas.europa.eu/statements-eeas/docs/150331_jacque-report_en.pdf.

²

construction which proved to be dysfunctional. The separation of the two positions was among the initiatives which allowed an improvement in the coherence of EU assistance efforts in Kosovo (Interview with EU official 6.10.2014). In February 2012 Samuel Žbogar - a former Slovenian Minister of Foreign Affairs - was appointed as both EUSR and Head of the EU Office in Kosovo. Besides his "deep knowledge of the region and its personalities, as well as extensive diplomatic and EU experience", which were deemed as beneficial for the EU's activity in Kosovo, the fact that he was a former minister sent a strong signal regarding the Union's commitment to Kosovo's European future (House of Commons 2014).

The Court of Auditors' 2012 Report on the EU assistance to Kosovo, analysing the period 2007-2011, 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 EUSR and Head of EUO is likely to significantly improve coordination" (European Court of Auditors 2012, 28). As a consequence of merging the EUSR Office and Commission Liaison Office in Pristina in 2012, local stakeholders have started to acknowledge the EUSR as the main EU actor on the ground with both political and financial influence (through the EUO, which administers the Instrument for Pre-accession funds in Kosovo). This is in fact one major advantage which allows the EUSR to use more leverage in dealing with the local stakeholders. A supplementary advantage is that Kosovo aims to become an EU member one day, which make the local authorities more open to reforms suggested from Brussels. The latter is however undermined by the lack of unanimity within the EU on Kosovo's independence which often makes it difficult for the Union to use the potential membership as an incentive.

The EUSR has direct contact with the political situation on the ground, on which it reports to the EEAS. Moreover, the EUSR's office aims to "shield" EULEX from the political factors in order for the mission to focus on its mandate (Interview with EU official 3.04.2015). Even though the work of EULEX is mostly technical, it touches upon issues that can be easily politicised or are fundamentally political like the rule of law, Kosovo's sovereignty and the deep reform process undergone by the country. Of course, this refers more to the executive mandate that EULEX used to have, but as long as the EU mission remains in Kosovo, the EUSR has to work closely with it and provide local political guidance, without being part of a formal chain of command. The EUSR is thus an important political factor on the ground, alongside EU member states and the United States representatives. From this perspective,

the EUSR can address political issues in his interactions with political stakeholders in Kosovo and push to solve those which cannot be dealt with effectively at the technical level through the dialogue between EU civil servants and their local counterparts.

Samuel Žbogar is credited with having brought added value to the EU's work in Kosovo by building important working relationships on the ground, including with Kosovo Serbs in the North which helped him secure the necessary compromises to implement agreements reached through the Serbia-Kosovo Dialogue (House of Commons 2014). This supports the idea that once the EU started mediating the Serbia-Kosovo Dialogue, all its relevant actors and instruments in Kosovo and in Brussels were refocused so as to help deliver results. Consequently, the EUSR, EU Office and EULEX work together in Kosovo for implementing the agreements reached in the Dialogue mediated by the High Representative and EEAS in Brussels, thus following the same objective and creating synergies to push EU policy further.

In a similar manner, EUSR Žbogar used the relations with Kosovo Serbs to support the work of EULEX and “smooth over the inevitable tensions caused by a number of EULEX arrests of significant figures”; in parallel, he has been working to establish an “effective relationship” with EULEX and has given “sound political advice” to the EULEX Head of Mission (House of Commons 2014). With the existing potential for competition between the two, this is no minimal achievement. In fact, the incumbents of the two positions had to find a *modus vivendi* from the beginning and both carve out space for cooperation and work towards affirming their own profile in Kosovo. Without any formal hierarchy but with the requirement to cooperate according to their mandates, the EUSR and EULEX Head of Mission were in a position to contribute to the coherence of EU policy on the ground. By coordinating activities through their joint chairing of the Joint Rule of Law Coordination Board, the two have been able to present a unified EU front in relation with the Kosovo government officials participating in this forum.

3.5. In search of coherence: new coordination mechanisms on the ground

A recent addition to this crowded scene was the Structured Dialogue on the Rule of Law initiated in May 2012 by the former Neighbourhood and Enlargement Commissioner Stefan Füle, who conceived it as a high level dialogue involving himself and Commissioner for Home Affairs Cecilia Malmström on the EU side and the Ministers of Justice, Internal Affairs and for

European Integration respectively on 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 Füle wanted the new forum to “play an increasingly important role in confirming priorities and ensuring the necessary close coordination between the key actors” (Structured Dialogue 2012). Defining priorities for reforms in the rule of law field and monitoring and regularly assessing Kosovo’s progress regarding these priorities were the initial goals of the Dialogue (Government of Kosovo 2014).

Stefan Füle emphasised from the beginning that “The Structured Dialogue is not a way around the accession process; it is not a substitute to the European aspirations of Kosovo. It is a way how to get Kosovo even closer to the EU” (European Commission 2012a). This new initiative had to be integrated in the existing EU assistance formats in Kosovo. Linkages had to be created between the Structured Dialogue on the Rule of Law, EULEX and the Stabilisation and Association Process Dialogue, as elements of a common EU framework for promoting the rule of law in Kosovo, with a particular focus on the areas of judiciary, fight against corruption and fight against organised crime, which the new forum dealt with.

A personal project of former Commissioner Füle, the initiative seemed to embody the visibility and high level commitment that would push forward both reforms in Kosovo and coherence efforts in Brussels. In reality, the added value of this initiative was questioned even by some in Brussels (Interviews with EU officials 6.10.2014 and 10.10.2014). Moreover, it made it more difficult for authorities in Pristina to keep track of EU instruments involved in rule of law assistance and cemented some civil society representatives’ opinion that Kosovo’s sovereignty was being continuously undermined by the EU (Interviews with Kosovo civil society representatives, April 2015). The forum met again in 2013 and 2014 but it became more and more difficult to organise regular meetings involving such high-level officials and the initiative lost momentum (Interview with EU official 7.10.2014).

In November 2014 the Joint Rule of Law Coordination Board co-chaired by EULEX, EUSR and the Kosovo Ministry of Justice became the supporting, lower-level forum for the Structured Dialogue on the Rule of Law. The three structures – EULEX, EUSR/ Head of the EU Office and Kosovo Ministry of Justice – signed a so-called Compact on Joint Rule of Law Objectives for the period until June 2014, when the mandate of EULEX was

bound to end. The Compact thus set joint objectives in the rule of law field, to be pursued by Kosovo's rule of law institutions, established a Compact Tracking Mechanism for measuring progress against clear indicators and benchmarks and established the Joint Rule of Law Coordination Board as the main forum to oversee the implementation of the Compact (JRCB 2013, 3-4). The Compact Actions detailing "specific activities and concrete goals with measurable benchmarks" in line with the overall objectives (Compact 2012, 3) included the requirements for the start of the SAA negotiations and in the Visa Liberalisation Dialogue. Hence, "overall EU accession requirements, EULEX, EUSR/EU Office in Kosovo and Kosovo rule of law institutions' priorities were synchronized through the Compact" (JRCB 2013, 4). Again, this accounts for a step forward in ensuring coherence.

3.6. Enter the auditors: the EU addresses the coherence issue once again

With so many initiatives in Brussels and Pristina targeting rule of law promotion in Kosovo, at least two issues become prominent: creating synergies between relevant EU policies on the one hand and entrenching the rule of law in Kosovo without overstressing the local capacity to absorb assistance on the other hand. Neither of them allows for simple solutions. A special Court of Auditors' report revealed in November 2012 the many shortcomings hampering EU rule of law assistance in Kosovo (European Court of Auditors 2012).

In responding to the Court of Auditors' conclusions and recommendations, the Commission and the EEAS showed, among other things, that: "as regards coordination with EULEX and EUSR, the Court's report reflects the challenges involved in coordinating different entities at the start of their respective mandates. The EULEX Joint Action was adopted in February 2008, EULEX deployment started in April and EULEX only became fully operational in December 2008. In parallel, the European Agency for Reconstruction was being phased out and the European Commission Liaison Office (now EU Office) became fully responsible for IPA assistance in Kosovo. [...] Coordination is currently being strengthened, especially between EULEX and the EC/EUO. An example is the Joint Rule of Law Coordination Board, where assistance and MMA are planned to feature more highly on the agenda. The double-hatting of EUSR and Head of EU Office (the EUSR also giving political guidance to EULEX) supports this development" (European Court of Auditors 2012, 50).

The main remedies that the EU adopted were to streamline its presence on the ground and to adjust the mandates of EULEX and the EUSR through strategic reviews (Interview with EU official 3.04.2015). In fact, the EU had started to work towards increasing coordination even before the ECA report was published (Interview with EU official 3.04.2015). The latter served as an additional red flag to emphasise the extent of the harm done by the lack of coordination. In the aftermath of the Court of Auditors' Report on rule of law assistance in Kosovo, the Commission also acknowledged the need for better coordination with EULEX in promoting the rule of law in Kosovo. One way of seeing whether it was put into practice is to look at what the IPA funds were allocated for and to what extent policy objectives and priorities were aligned.

In November 2012 the European Commission announced that it allocated €63 million to support Kosovo's efforts to implement its EU-reform agenda, with the funds - part of the Annual IPA Programme - targeting reforms of the justice and public administration systems, support for readmission and reintegration of refugees and the improvement of correctional and probation services (European Commission 2012e). The Annual IPA programme for Kosovo also included provisions allowing the Commission "to respond quickly to political priorities that need financial support for their implementation, such as the Belgrade-Pristina dialogue, the strategic review of EULEX, and the visa dialogue" (European Commission 2012e). In other words, money seemed to follow political and development priorities across the spectrum of EU involvement in Kosovo. The same approach was maintained a year later.

As EULEX will be slowly wrapping up, the EU Office in Pristina and the EU Special Representative there will take the forefront in managing rule of law assistance in Kosovo. The latest changes to the EUSR's mandate include a role for him to play in guiding the transition from EULEX when the mission's renewed mandate expires in 2016, which is "a very important issue given the expectation that the EU Office will take on certain responsibilities for monitoring and assistance" (House of Commons 2014). A further change codified "the EUSR's role in using public diplomacy to build support for EULEX, which would continue to be a challenge as EULEX steps up its rule of law work"; as part of the future transfer of responsibilities and resources from EULEX to EUSR, nine staff involved in monitoring and assistance have been transferred to the latter (House of Commons 2014). For the time being though, the EUSR team does not have half as many people and expertise as EULEX

(Interview with EU official 29.10.2014). Ultimately political, the decision to terminate EULEX has to take into consideration whether all elements are in place for a continuous EU presence which can ensure the irreversibility of reforms.

The last change of its mandate was agreed in 2014 and entailed a further downsizing of its personnel by specialising in the areas which would make the most impact in the next two years; the main objectives in the new phase entailed focusing on capacity-building and security throughout Kosovo, and on the implementation of agreements reached in the Belgrade-Pristina dialogue in the north (House of Commons 2015). Moreover, the mission had to start phasing out its executive functions in the justice sector as part of a gradual handover of responsibility to Kosovo and complete its work on ongoing serious cases (House of Commons 2015). In parallel, the Kosovo authorities had to create a special court to hear any trials arising from EULEX's Special Investigative Taskforce, which had been investigating the allegations against senior Kosovo political figures in the 2010 Martyr Report. EULEX would have an important role in assisting Kosovo with the operation of this court too (House of Commons 2015). These changes were the result of both the ECA Report of 2012 and the EEAS Review of 2013.

At present, EULEX is undergoing a credibility crisis threatening to have a significant impact on the perspectives for maintaining the mission on the ground. At the same time, with voices claiming that the rule of law is improving in Kosovo and others arguing that despite unsatisfactory progress the EU should diminish its presence anyway for financial reasons, it seems that the dominating narrative entails either a new re-organisation of EULEX or even its termination as soon as possible (Interview with EU official 3.04.2015). Its current mandate runs until mid-June 2016. With the EEAS in "damage control" mode, the decision on the future of EULEX has to take into consideration its increasing unpopularity. Finding ways for EULEX to avoid the faith of UNMIK and also protect what the mission has achieved so far represent the biggest current challenges for the EU in Kosovo.

4. CONCLUSIONS

Despite the proliferation of categories and definitions, "coherence" is a useful concept for unpacking and assessing the policy-making process of the EU in the field of external action. Depicting more than coordination among

actors/policies/instruments, achieving coherence in the EU's external action was one of the main desiderata in the Lisbon Treaty and the reason for streamlining its institutional framework. Developments in practice show that instances of coherence are much more fluid than academic categories. Also, they trigger the question whether the different types of coherence just co-exist or one is the prerequisite for the other.

The Kosovo case makes it clear that member states maintain a firm grip of foreign policy and external action in general, thus making vertical coherence an important factor in any equation on EU coherence. However, a close look at EU instruments and policy components for rule of law assistance in Kosovo allows for an in-depth exploration of the post-Lisbon transformation of the framework for EU external action. Despite local specificities, the EU "machine" has to work coherently in order to achieve results. In Kosovo the EU draws on its most visible and important policies - enlargement, foreign policy, CSDP (as well as trade) to consolidate rule of law reform. Although the almost general opinion on the EU side is that EU success in Kosovo is seriously undermined by local context (lack of a tradition of self-governance, pervasive corruption, clan mentality, etc.), its lack of internal coherence and failure to transform its own rhetoric into tangible coordination of policy objectives and outputs play a significant part in the less than optimum results obtained in assisting Kosovo with rule of law. At the same time, the sheer concentration of EU instruments and its huge investments in Kosovo are too significant to be allowed to fail in the long run.

NOTE

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REFERENCES

- Compact on Joint Rule of Law Objectives for the period until June 2014, concluded by the Kosovo Rule of Law Institutions, the Head of the EU Office in Kosovo/EUSR and EULEX

- Kosovo, Pristina, the 9 November 2012, accessed May 2, 2015, www.eulex-kosovo.eu/eul/repository/docs/M20150514_ENG.pdf.
- Council of the European Union. 2008. Council Joint Action 2008/123/CFSP of 4 February 2008 appointing a European Union Special Representative in Kosovo, *Official Journal of the European Union* L42, (16.2.2008), accessed June 1, 2015, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:042:0088:0091:EN:PDF>.
 - Duke, S. 2006. Consistency as an Issue in EU External Activities, Working Paper 99/W/06, European Institute of Public Administration, Maastricht, accessed May 1, 2015, <http://aei.pitt.edu/542/1/99w06.pdf>.
 - European Commission. 2011. Communication from the Commission to the Council and the European Parliament Enlargement Strategy and Main Challenges 2011-2012. Brussels, 12 October, accessed June 1, 2015, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/strategy_paper_2011_en.pdf.
 - European Commission. 2012a. EU-Kosovo: Further step to consolidate rule of law, Press release database MEMO/12/394, Brussels, 30 May, accessed August 10, 2015, http://europa.eu/rapid/press-release_MEMO-12-394_en.htm
 - European Commission. 2012b. Visa Liberalisation with Kosovo Roadmap, Brussels, 14 June, accessed May 3, http://eeas.europa.eu/delegations/kosovo/documents/eu_travel/visa_liberalisation_with_kosovo_roadmap.pdf.
 - European Commission. 2012c. Communication from the Commission to the Council and the European Parliament Enlargement Strategy and Main Challenges 2012-2013, Brussels, 10 October, accessed May 4, 2015, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/strategy_paper_2012_en.pdf.
 - European Commission. 2012d. 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, accessed May 4, 2015, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf.
 - European Commission. 2012e. *EU allocates €63 million to bring Kosovo closer to Europe*, Press release IP-12-1194, Brussels, 9 November, accessed July 30, 2015, http://europa.eu/rapid/press-release_IP-12-1194_en.htm
 - European Commission. 2013a. Report from the Commission to the European Parliament and the Council on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, Brussels, 8 February, accessed September 1, 2015, http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/report_on_progress_on_kosovo_visa_liberalisation_en.pdf
 - European Commission. 2013b. 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, accessed May 3, 2015, http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf.

- European Commission. 2013c. *EU starts the Stabilisation and Association Agreement negotiations with Kosovo*, Memo 13-938, Brussels, 28 October, accessed July 30 2015, http://europa.eu/rapid/press-release_MEMO-13-938_en.htm
- European Commission. 2014. Report from the Commission to the European Parliament and the Council Second report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap, Brussels, 24 July, accessed September 1, 2015, http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/second_commission_assessment_en.pdf.
- European Court of Auditors. 2012. *European Union Assistance to Kosovo related to the rule of law*, Special Report No 18, Brussels, 16 October, accessed May 5, 2015, http://www.eca.europa.eu/Lists/ECADocuments/SR12_18/SR12_18_EN.PDF.
- European Union. 2007. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, *Official Journal of the European Union* C 306, (17.12.2007), 1-147, accessed May 10, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12007L/TXT&from=EN>
- European Union. 2012. 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 May 3, 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN>
- European Union External Action Service (EEAS). 2013. *EEAS Review*, accessed May 1, 2015, http://eeas.europa.eu/library/publications/2013/3/2013_eeas_review_en.pdf
- European Union External Action Service (EEAS). 2014. *EULEX Kosovo EU Rule of Law Mission in Kosovo Factsheet*, (October), accessed May 2, 2015, http://eeas.europa.eu/csdp/missions-and-operations/eulex-kosovo/pdf/factsheet_eulex_kosovo_en.pdf
- Füle, Š. 2010. *The EU: a Force for Peace, Stability and Prosperity in Wider Europe*, Speech delivered at Columbia University, New York, 30 November, accessed September 1, 2015, http://eu-un.europa.eu/articles/en/article_10447_en.htm
- Füle, Š. 2013. Address to the Parliamentary Assembly of Kosovo, Pristina, 18 July, accessed September 1, 2015, http://europa.eu/rapid/press-release_SPEECH-13-653_en.htm
- Gebhard, C. 2011. Coherence. In *International Relations and the European Union*, 2nd edition, edited by Christopher Hill and Michael Smith, 101-127. Oxford: Oxford University Press.
- Government of the Republic of Kosovo (Ministry of Justice). 2014. *Rule of Law Assistance Strategy in Kosovo 2016-2019*, (Justice and Internal Affairs), Pristina, accessed July 20, 2015, [www.md-ks.net/.../Rule_of_Law_Assistance_Strategy_in_Kosovo_2016-2019_\(Justice_and_Internal_Affairs\).pdf](http://www.md-ks.net/.../Rule_of_Law_Assistance_Strategy_in_Kosovo_2016-2019_(Justice_and_Internal_Affairs).pdf)
- Hillion, C. 2008. *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.
- Hillion, C. 2012. *Cohérence et action extérieure de l'Union Européenne*, EUI WorkingPaperLAW2012/14, accessed May 1, 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224392/evidence-christophe-hillion-working-papers.pdf.
- House of Commons. 2014. *EU Special Representative for Kosovo - Documents considered by the European Scrutiny Committee on 18 June*, accessed September 1, 2015, <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-iii/21914.htm>
- House of Commons. 2015. *EU Special Representative for Kosovo - Documents considered by the European Scrutiny Committee on 4 February*, accessed September 1, 2015,

- <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-xxxi/21910.htm>
- House of Lords. 2013. Revised transcript of evidence taken before the Select Committee on the European Union Sub-Committee C (External Affairs) Inquiry on EULEX Kosovo, 18 April, accessed September 1, 2015, <http://www.parliament.uk/documents/lords-committees/eu-sub-com-c/EULEX%20Kosovo/cEUC180413ev1.pdf>.
 - Joint Rule of Law Coordination Board (JRCB). 2013. Compact Progress Report (September), accessed July 20, 2015, <http://www.eulex-kosovo.eu/docs/Compact%20Report%20final%20ENG.pdf>.
 - Juncos, A. E. 2013. *EU Foreign and Security Policy in Bosnia. The politics of coherence and effectiveness*. Manchester and New York: Manchester University Press.
 - Lehne, S. 2013. *Serbia-Kosovo Deal Should Boost the EU's Western Balkans Policy*, Carnegie Europe, April 13, accessed May 1, 2015, <http://carnegieeurope.eu/2013/04/23/serbia-kosovo-agreement-should-reenergize-eu-s-western-balkans-policy/g0q8>
 - Mattelaer, A. 2013. The Empty Promise of Comprehensive Planning in EU Crisis Management". *European Foreign Affairs Review* 18: 125-146.
 - Missiroli, A. 2001. Introduction - The terms of the debate. In *Coherence for Security Policy: Debates-Cases-Assessments*, edited by Antonio Missiroli, 1-16. Occasional Paper no. 27, Institute for Security Studies - Western European Union, Paris, accessed May 3, 2015, <http://www.iss.europa.eu/uploads/media/occ027.pdf>.
 - The Nobel Peace Prize for 2012 - Press Release, accessed May 2, 2015, http://www.nobelprize.org/nobel_prizes/peace/laureates/2012/press.html
 - Nuttal, S. 2001. Consistency and the CFSP: a categorization and its consequences, Working Paper 2001/03, LSE European Foreign Policy Unit Network, accessed May 5, 2015, <http://www.lse.ac.uk/internationalRelations/centresandunits/EFPU/EFPUpdfs/EFPUworkingpaper2001-1.pdf>.
 - Papadimitriou, D. and P. Petrov. 2013. 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 A. Elbasani, 121-137. London and New York: Routledge.
 - Portela, C. and K. Raube. 2009. (In-)Coherence in EU Foreign Policy: Exploring Sources and Remedies. Paper presented at the European Studies Association Bi-annual Convention, Los Angeles (April), accessed May 1, 2015, http://aei.pitt.edu/33122/1/portela._clara._%282%29.pdf.
 - Spornbauer, M. 2010. *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, accessed June 10, 2015, http://www.asser.nl/upload/documents/7302010_24440CLEER%20WP%202010-5%20-%20SPERNBAUER.pdf.
 - Structured Dialogue on the Rule of Law with Kosovo Brussels, 30 May 2012 - Conclusions, accessed March 1, 2015. http://ec.europa.eu/commission_2010-2014/fule/docs/news/20120530_rol_d_conclussions_30_may.pdf
 - Tietje, C. 1997. The Concept of Coherence in the Treaty on European Union and the Common Foreign and Security Policy, *European Foreign Affairs Review* 2: 211-233.
 - United Nations. 2010. Resolution adopted by the General Assembly on 9 September 2010 A/RES/64/298, Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with

- international law, accessed September 10, 2015,
http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/298
- Interview with EU official, European Commission, Brussels, October 6, 2014.
 - Interview with EU official, Brussels, October 6, 2014.
 - Interview with EU official, European Commission, Brussels, October 7, 2014.
 - Interview with EU official, European Commission, Brussels, October 10, 2014.
 - Interview with Council delegate, Brussels, October 8, 2014.
 - Interview with former Council delegate, Bucharest, October 28, 2014.
 - Interview with EU official, October 29, 2014 (Skype).
 - Interview with Kosovo official, Pristina, April 1, 2015.
 - Interview with civil society representative, Pristina, April 2, 2015.
 - Interview with civil society representative, Pristina, April 2, 2015.
 - Interview with civil society representative, Pristina, April 3, 2015.
 - Interview with civil society representative, Pristina, April 3, 2015.
 - Interview with EU official, Pristina, April 3, 2015.