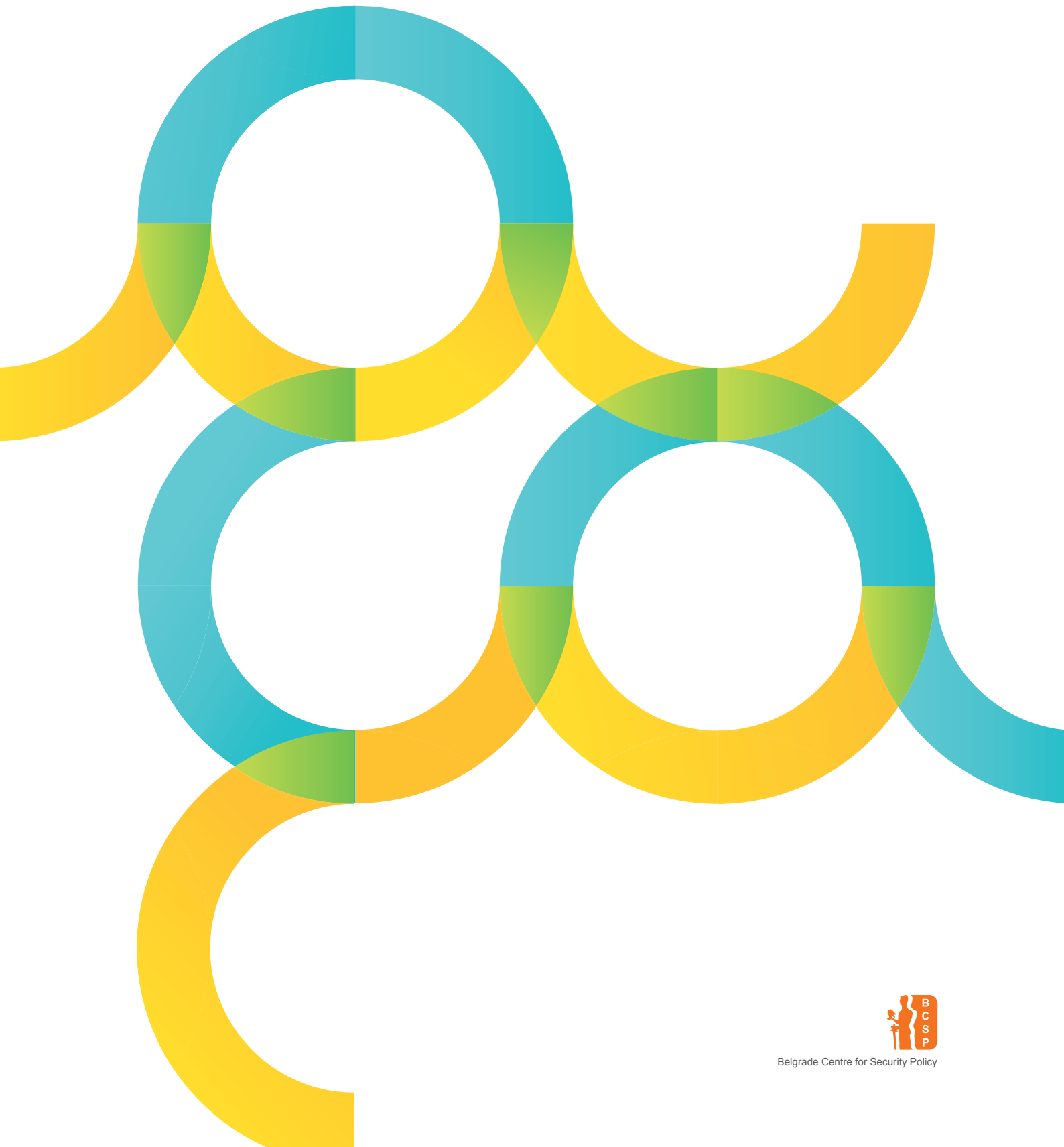


TOWARDS MORE EFFECTIVE POLICE COOPERATION BETWEEN SERBIA AND KOSOVO



Towards more effective police cooperation between Serbia and Kosovo

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EXECUTIVE SUMMARY

The process of normalisation of relations between Serbia and Kosovo has surfaced as a top priority for the EU's approach to enlargement in the Western Balkans. Belgrade and Pristina have embarked upon a laborious road to negotiate outstanding technical and political issues, under the auspices of an EU mediated dialogue. Although the EU's shiniest trophy thus far, the April 2013 Brussels Agreement, heralded a positive breakthrough in relations between the two sides, its implementation has met with significant obstacles on the ground. A number of issues are yet to be addressed at the bilateral level, including both political matters (to be negotiated under Chapter 35 of the accession talks) and technical questions stemming from the process of harmonising national legislation with the EU *acquis*. The most important issues are encapsulated by Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Area of Freedom, Security and Justice). Within the latter the European Commission explicitly requested from Serbia to raise cooperation with Kosovo to the same level as with any other neighbouring country for a number of policy areas, including police cooperation. Although an elaborate web of mechanisms for exchange of information is in place, the establishment of direct police cooperation remains to be addressed as a part of the Belgrade-Pristina dialogue. Police cooperation is still at a nascent level, which significantly affects the ability of the competent authorities to enforce the law and fight organised crime, while also having detrimental effects on the level of human security in the region.

This policy brief analyses the existing institutional and procedural landscape for exchange of operational information and police cooperation between Serbia and Kosovo, with a view to proposing a model for establishing more effective direct cooperation between the two police forces. Based on the analysis of the Serbian Government's strategic approach to the transposition and implementation of the best EU standards and practices in the area of police cooperation and

also taking into account agreements already reached and mechanisms put in place, a set of recommendations is proposed to Belgrade and Pristina, as well as to the EU institutions. These are as follows:

1. Effective mechanisms for police cooperation that are already in place (such as ILECU) should be formalised and further enhanced.
2. An Agreement on Police Cooperation, modelled after similar arrangements in the region and focusing on fighting organised crime and human security issues, needs to be reached.
3. Police Contact Points should be established to facilitate police cooperation.
4. An independent oversight body needs to be established to ensure the implementation of this Agreement.
5. The EU should set the agenda and facilitate dialogue on police cooperation.

TOWARDS MORE EFFECTIVE POLICE COOPERATION BETWEEN SERBIA AND KOSOVO

In May 2013 two Serbian citizens suspected of involvement in a murder in Belgrade fled to Kosovo to seek refuge from the Serbian authorities. Aware of the lack of cooperation between the law enforcement agencies of Serbia and Kosovo – a result of Kosovo's contested statehood – their intention was to avoid being arrested after a warrant was issued by Serbian police. Through informal yet direct channels of communication and exchange of information on the case, between the two police forces, Kosovo police managed to apprehend the two suspects, charging them with possession of narcotics.¹ With no extradition agreement between the two parties, Kosovo police were unable to officially hand the suspects over to the Serbian authorities. Instead, an informal handover of the suspects was arranged, where the Kosovo police released them at a previously agreed upon border crossing, only for the Serbian police to re-arrest them on the other side.²

This case raises three important points. First, it is obvious that the lack of cooperation between Serbian and Kosovo law enforcement agencies creates an environment conducive to various forms of cross-border criminal activity. This is true for the cases of smuggling, trafficking of illicit goods and for robberies and petty crimes that have seen increases recently due to the inability of Serbian and Kosovo authorities to effectively monitor the cross-border movement of people.³ Second, it is evident that security sector professionals – working in a less-than-conducive institutional and legal framework – are willing to find creative ways to cooperate. Once the

appropriate mechanisms for direct and official cooperation are established, one can reasonably expect both Serbian and Kosovo law enforcement agencies to have better prospects of enforcing the law and ensuring public safety. Finally, this showcases the negative effects of using the current, real-politik-inspired, discourses in the process of Serbia-Kosovo dialogue on normalisation. It is evident that the human security dimension is completely left out of the picture and that this state of affairs is detrimental to the safety and security of ordinary citizens.

This paper aims to provide a rationale for establishing direct lines of communication between the police forces of Serbia and Kosovo. The first section provides an overview of existing cooperation in police matters as it takes place via various mechanisms between Serbia and Kosovo. The subsequent section proposes a model for establishing direct police cooperation channels while taking into account various factors: the bilateral agreements already reached in this area, EU standards and practices contained in Chapter 24, as well as the decisions and outcomes of the political dialogue between Serbia and Kosovo that is taking place in Brussels. The final section provides a set of policy recommendations for establishing effective mechanisms for cooperation on police matters, in line with the analysis.

The current state of play

Police cooperation between Serbia and Kosovo takes place through various channels for both formal and informal information exchange. Despite the fact that Kosovo does not participate in the existing law enforcement cooperation networks directly, due to its contested statehood, an elaborate network of institutions and mechanisms does exist to ensure that information is exchanged between Serbia and Kosovo. Even though the level of police cooperation between the two is far from satisfactory, it is worth mentioning that the cooperation that takes place between security actors, both bilaterally and

¹ In News, *Suspects in the Shooting in "Just Vanilla" arrested in Kosovo*. Available at: <http://inserbia.info/today/2013/05/suspects-in-the-shooting-in-just-vanilla-arrested-in-kosovo> [accessed 3 June 2015]

² Kursani, Shpend. 2015. *Police Cooperation between Kosovo and Serbia*. Belgrade Centre for Security Policy.

³ Interview with Nenad Djurić, Regional Commander for Kosovo North of the Kosovo police. Interviewed on 7 March 2014, North Mitrovica.

through multilateral initiatives, is much better than for other aspects of Serbia-Kosovo relations.

The multilateral level

The International Criminal Police Organisation (Interpol), the world's largest organisation facilitating international police cooperation, operates in member countries through National Central Bureaus (NCB). As Kosovo is not fully internationally recognised as an independent state it is, however, unable to host an NCB of its own. Instead, the United Nations Mission in Kosovo (UNMIK) hosts a contact point that performs the functions normally assigned to the NCBs of Member States. Therefore, UNMIK effectively serves to liaise between Kosovo law enforcement agencies and their counterparts in fully fledged Interpol member states.⁴

The European Police Office (Europol) is the law enforcement agency at the EU level, aiming to provide support to the law enforcement agencies of Member States and to serve as an information hub on criminal activities within the EU. Europol cooperates externally with the national law enforcement agencies of non-Member States, including Serbia but not Kosovo. Serbia has in place a Strategic Cooperation Agreement with Europol, and the Agreement on Operational and Strategic Cooperation was signed in January 2014.⁵ However, due to the fact that five EU member states still do not recognise its independence, Kosovo has in place neither strategic nor operational agreements with Europol. This is why the EU Rule of Law Mission in Kosovo (EULEX) serves as an intermediary

in communication between Europol and Kosovo law enforcement institutions.

Lastly, direct yet informal police cooperation takes place under the auspices of the EU-supported International Law Enforcement Coordination Units (ILECUs) project. ILECUs aims to establish national units responsible for facilitating cooperation between authorities in the Western Balkans, principally with regards to the fight against organised crime. The idea behind the project was to establish a single contact point in all of the countries of the region that would streamline information exchange with various international law enforcement organisations (Interpol, Europol, Eurojust, Frontex, etc.).⁶ ILECUs office in Serbia was opened in October 2010,⁷ whereas in Kosovo it was opened once a Memorandum of Understanding was signed in April 2011.⁸ Due to the fact that it does not have a strategic agreement with Europol or Interpol, Kosovo's ILECUs serves as a hub for facilitating communication between the two, which are represented by the UNMIK and EULEX missions in Kosovo, respectively.⁹ Even though the cooperation that takes place under the auspices of ILECUs is informal, which means that operational data obtained through its channels is not valid in court proceedings, it does facilitate direct information exchange and enables closer cooperation and much more timely reactions. The case that was described at the beginning of this paper was successfully handled via the ILECUs mechanism.

Apart from ILECUs, there are a number of regional security initiatives in the Western Balkans that facilitate police cooperation covering various aspects of police work. These include the Southeast European Law Enforce-

4 This mode of cooperation is functional as of December 2002 with the signing of the Memorandum of Understanding between Interpol and UNMIK. The Memorandum is available at: www.interpol.int/content/download/9519/69777/ [accessed on 4 June 2015]

5 The Agreement is available at: https://www.europol.europa.eu/sites/default/files/publications/edoc-663978-v10-agreement_on_operational_and_strategic_co-operation_between_the_republic_of_serbia_and_the_european_police_office_english_version.pdf [accessed on 7 June 2015]

6 In Serbia, the ILECUs contact point is located within the International Police Cooperation Directorate, whereas in Kosovo it is part of the General Directorate for Operations.

7 Serbian MoI website. *Otvorena kancelarija ILECUs u Beogradu*. Available at: http://www.mup.gov.rs/cms_cir/aktivnosti.nsf/051010-ilecus.h [accessed on 8 June 2015]

8 The full text is available at: <http://www.psh-ks.net/repository/docs/ILECU.pdf> [accessed on 8 June 2015]

9 Emmini, Donika. 2014. *Kosovo's Membership and Representation in Regional Security Initiatives*. Kosovar Centre for Security Studies.

ment Centre (SELEC) based in Bucharest, which focuses on combating organised crime and drug trafficking; the Southeast Europe Police Chiefs Association (SEPCA), a network that promotes effective and democratic police services and cooperation; and the Migration, Asylum, Refugee Regional Initiative (MARRI), a follow up to the Stability Pact for Southeast Europe. Kosovo does not, however, formally participate in these regional initiatives due to its contested statehood and thanks to Serbia's diplomatic activities to prevent its participation.

this is not always adhered to and that EU-LEX representatives do not share all of the information they obtain.¹¹ More recently, in March 2015 and under the auspices of EULEX, there was a first direct meeting between the Serbian Police Director, Milorad Veljović, and his Kosovo counterpart, the General Director of the Kosovo Police, Shpend Maxhuni.¹² Although the two police chiefs discussed how to address the increased influx of migrants from Kosovo travelling through Serbia and how to better combat organised crime, there were no follow-up meetings and there is

Table 1. Overview of Serbia and Kosovo's participation in multilateral mechanisms for police cooperation

	Interpol	Europol	ILECUs	SELEC	SEPCA	MARRI
Serbia	Member	Strategic and operational cooperation	Member	Member	Member	Member
Kosovo	through UNMIK	through EULEX	Member	x	x	x

The bilateral level

When it comes to direct police cooperation between Serbia and Kosovo there has been some progress, albeit not to a sufficient extent. EULEX and the Serbian Ministry of Interior signed a special cooperation protocol in August 2009, a prerequisite for liberalisation of the visa regime for Serbia. Although this document caused outrage in both Pristina (on the account of being excluded from the negotiation process) and Belgrade (where it was viewed as an infringement of Serbia's territorial integrity), it established a basis for technical cooperation in the areas of combating organised crime and cross-border cooperation.¹⁰ Although there are provisions ensuring that EULEX will share all information pertaining to law enforcement with the Kosovo institutions, there are indications that

definitely a need to establish more frequent and structured coordination mechanisms in future.

At the moment, the only direct and formal cooperation between Serbian and Kosovo law enforcement units takes place at the level of their respective Border Police Departments, within the framework of the Integrated Border Management (IBM) Agreement, signed in 2011, and which became operational in 2013 with the adoption of the Technical Protocol.¹³ Although there are regular meetings between Serbian and Kosovo police officials, in the presence of EULEX, the IBM agreement has yet to be fully implemented, particularly with regard to the establishment of permanent border crossing points (BCP).

¹⁰ See: Helsinki Committee for Human Rights in Serbia. Report No. 9 August/September 2009. *The Protocol: EULEX, MUP and Kosovo*. Available at: [http://www.helsinki.org.rs/doc/Kosovo%20EULEX%20B%20\(2\).doc](http://www.helsinki.org.rs/doc/Kosovo%20EULEX%20B%20(2).doc) [accessed on 7 June 2015]

¹¹ Kursani 2015, p. 8.

¹² Serbian MoI website. *Načelnik Euleksa prisustvovao sastanku direktora srpske i kosovske policije*. Available at: http://www.mup.gov.rs/cms_cir/aktivnosti.nsf/110315-nacelnik-euleksa.h [accessed on 25 August, 2015]

¹³ The IBM Agreement is available at: http://www.kry-eministri-ks.net/repository/docs/agreement_0210_ibm.pdf [accessed on 7 June 2015]

Moreover, as a part of its negotiation process with the EU, Serbia is obliged to reach full harmonisation in regards to two important EU regulations: The Swedish Initiative¹⁴, pertaining to the simplification of information exchange between law enforcement agencies, and the Prüm Decision¹⁵ on stepping up cross-border cooperation to combat crime and terrorism. The former entails the revision and streamlining of current mechanisms for cooperation by the Serbian Ministry of the Interior, including the establishing a single contact point that will process all exchange of information requests by its Directorate for International Operative Police Cooperation. The latter envisions conducting joint operations between the competent authorities of Member States. Although this is a long-term objective within the negotiation process, it will mean that in due course Serbian and Kosovo police authorities will be required to conduct joint operations. This is why it is necessary to establish effective mechanisms for cooperation early on, so as to ensure not only that the EU acquis is transposed into national legislation but also that it is effectively implemented with a positive track-record.

Lastly, there is the issue of transparency when it comes to police cooperation between Serbia and Kosovo. Neither have the aforementioned agreements on police cooperation been made public, nor is the process of the Brussels dialogue open to the public. At the same time, the EU's insistence on the normalisation of relations between Serbia and Kosovo has created a need for a wider audience – not limited to civil society but including parliamentarians, the media and security professionals – to be involved in the process, so as to ensure that the interests of the public are protected.

It is evident, therefore, that the institutional architecture for police cooperation between Serbia and Kosovo is more complex than necessary. The presence of UNMIK and EU-

LEX does help to facilitate cooperation with other police authorities but these institutions also simultaneously serve as additional intermediaries that often delay the exchange of information, thus affecting the operational work of the respective police authorities. At the same time, the exclusion of Kosovo from formal participation in regional security initiatives creates a black hole in the security landscape of the Western Balkans.

The Way Forward: European Perspectives

Within the process of accession negotiations, under the *new approach* to enlargement, the European Commission will pay special attention to policies covered under the two Rule of Law chapters [Chapters 23 and 24]. One of these, Chapter 24 (Area of Justice, Freedom and Security), covers the policy area of police cooperation and requires that all member states establish effective mechanisms for the exchange of information between their law enforcement agencies. Effective police cooperation is, therefore, also a criterion that Serbia must fulfil during its accession negotiations. Another important chapter in Serbia's negotiations is Chapter 35. This chapter deals with the so-called *other questions* pertaining to the accession process and it will cover negotiations between Serbia and Kosovo. Therefore, the issue of police cooperation under this chapter will also have to be addressed during the Brussels mediated talks between Belgrade and Pristina.

More than a mere obligation stemming from the enlargement process, the issue of police cooperation is a human security concern from a citizen-oriented perspective. Namely, the lack of police cooperation affects the safety of citizens and does little to prevent trafficking (whether of human beings, illicit goods or the smuggling of excise goods) or cross-border organised crime. In this manner, citizens' rights and personal safety fall victim to the lack of appropriate mechanisms for police cooperation between Serbia and Kosovo. This issue should not, therefore, be observed

14 The Council Framework Decision 2006/960/JHA.

15 The Council Decision 2008/615/JHA, sometimes referred to as the Schengen III Agreement.

as a political question that is subject to negotiations between Belgrade and Pristina in Brussels, but as a human security issue that affects the lives of ordinary citizens.

This is why it is of the utmost importance that a mechanism is put in place to ensure that Serbian and Kosovo law enforcement units can exchange information effectively and jointly combat the aforementioned threats. The fight against organised crime, as one of the priority areas for Serbia according to the Progress Report for 2014,¹⁶ can only be effectively enhanced via regional and international cooperation between law enforcement agencies.¹⁷

Notwithstanding the cooperation mechanisms outlined above, during its accession negotiations process Serbia is required to establish direct channels of communication with Kosovo on cooperation in police matters. This was explicitly required of Serbia during the screening process and the opening of accession negotiations with the EU, as stipulated in the Screening Report for Chapter 24, released by the European Commission in July 2014.¹⁸ This document states that Serbia needs to take additional steps towards full cooperation with Kosovo on police matters and that the level of cooperation has to be the same as with other neighbouring countries. Based on the recommendations made in the Screening Report, the Serbian Ministry of Interior started drafting an Action Plan for Chapter 24, outlining the steps Serbia needs to take in order to meet the criteria set by the EU in the area of justice and home affairs.

16 Progress Report for Serbia for 2014, pp. 1. and 55, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf [accessed on 8 June 2015]

17 At the time of writing, the Progress Report for 2015 had yet to be published after the EC twice postponed its release, firstly due to the Summit on the refugee crisis and a second time because of general elections in Turkey scheduled for 1 November.

18 Screening Report for Chapter 24 for Serbia, p. 26, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-24-serbia.pdf [accessed on 8 June 2015]

On 9 September 2015, the European Commission gave a positive opinion on the Fourth Draft Action Plan for Chapter 24,¹⁹ after a protracted process of drafting this document that took more than a year and a half from the moment Serbia officially opened negotiations. This means that the current version of the Action Plan will serve as the opening benchmark for negotiations in Chapter 24. As with the previous draft version, the section dealing with police cooperation in the final version lists no concrete measures to ensure that Serbia meets the full level of police cooperation with Kosovo. The Action Plan merely states that this issue will be addressed in line with the conclusions of the political dialogue between Serbia and Kosovo in Brussels.

This means that the issue of establishing direct police cooperation between Serbia and Kosovo will not be addressed through negotiations on Chapter 24, but must wait until negotiation of Chapter 35. However, no known benchmarks or requirements yet exist for this chapter, which covers the process of normalisation of relations with Kosovo, but will have to be agreed upon along the way. Although the process of normalisation of relations between Serbia and Kosovo is ongoing, with frequent EU-mediated meetings in Brussels, the issue of police cooperation yet has to be addressed.

Another issue that has arisen is the fact that the Government of Serbia finalized its negotiation structure and procedures pertaining to EU integration in mid-August 2015. The positive outcome of this process is the belated establishment of a Negotiation Team with 24 members representing state institutions, civil society and academia.²⁰ Thus, almost two years after the commencement of the screening process with Serbia, a unified political body in charge of the negotiations

19 The Fourth Draft Action Plan for Chapter 24 is available at: http://www.mup.gov.rs/cms_cir/oglasni.nsf/ap-p24.pdf [accessed on 14 September 2015]

20 The Government of Serbia's Decision on Formation of the Negotiation Team, 14 August 2015, available at: http://www.seio.gov.rs/upload/documents/nacionalna_dokumenta/pregovori_sa_eu/odluka_pregovaracki_tim_13_08_15.pdf [accessed on 22 August 2015].

finally exists. However, the Government of Serbia also adopted a Conclusion pertaining to the process of adopting Negotiating Positions.²¹ This document stipulates that the Negotiating Position for the Chapter 35 will be confidential throughout the negotiation process. Consequentially, police cooperation and other issues due to be discussed under the auspices of the so-called normalisation of relations [i.e. Chapter 35], will most likely be decided upon without transparency or the inclusion of interested parties or any external and independent monitoring mechanisms.

RECOMMENDATIONS

- Serbia and Kosovo should work towards formalising the direct communication which already takes place through their respective ILECU offices. Besides exchange of information, which has proved to be very useful, an additional benefit would be the possibility of coordinating joint investigative operations.
- In line with the EC recommendations to pave the way for operational cooperation in the foreseeable future, Serbia and Kosovo should agree upon and sign an Agreement on Police Cooperation, with the aim of preventing and fighting organised crime. The Agreement should build upon already established communication channels, with respect to the legal status and mutual stances of both signatories, and should focus on the technical level of information exchange between the Directorate for International Operational Police Cooperation of the Serbian police and the Directorate of Police Operations of Kosovo Police.
- The Agreement should envisage posting Police Contact Points that would serve as direct channels of communication be-

tween the respective police authorities. These posts could be attached to the Communication Liaisons that were established in June 2013, following the successful brokering of the Brussels Agreement, and which remain operational ever since.

- With a view to ensuring its implementation, based on the problematic track-record of implementing agreements reached at the earlier stages of the Belgrade-Pristina dialogue, the Agreement should envisage the creation of an independent oversight body that would meet regularly and assess the performance of both police administrations when it comes to the exchange of information.
- The EU should facilitate the process of brokering the Agreement with the signatory parties by setting the agenda for negotiations on this topic. Although normalisation of relations between Serbia and Kosovo is the single most important priority for the EU at this time, the issue of establishing direct police cooperation has been omitted from the dialogue thus far.

21 The Government of Serbia's Conclusion for Directing and Harmonizing the Work of State Administration in the Process of Drafting Negotiating Positions, 13 August 2015, available at: http://www.seio.gov.rs/upload/documents/nacionalna_dokumenta/pregovori_sa_eu/zakljucak_pregovaracke_pozicije_13_08_15.pdf [accessed on 22 August 2015].

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Nota Bene: Although the author of the publication contacted Serbian Ministry of Interior on several occasions for the purposes of arranging additional interviews, as well as IL-ECUs unit in Kosovo via email, by the time the publication had to be finalised no response has been received.

