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THE EFFECTIVENESS OF THE
COMMISSION'S PROJECTS IN THE
AREA OF JUSTICE AND HOME AFFAIRS
FOR THE WESTERN BALKANS



EN



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EUROPEAN COURT OF AUDITORS
12, rue Alcide De Gasperi
1615 Luxembourg
LUXEMBOURG

Tel. +352 4398-45410
Fax +352 4398-46410
E-mail: euraud@eca.europa.eu
Internet: <http://www.eca.europa.eu>

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REPLY OF THE COMMISSION

ABBREVIATIONS

BiH: Bosnia and Herzegovina

BiHCC: Constitutional Court of BiH

BCP: Border crossing point

CARDS: Community Assistance for Reconstruction, Development and Stabilisation

DG ELARG: Directorate-General for Enlargement

EAR: European Agency for Reconstruction

EBRD: European Bank for Reconstruction and Development

EC: European Commission

EIB: European Investment Bank

EU: European Union

EUPOL-Proxima: European Union Police Mission in the former Yugoslav Republic of Macedonia

HQ: Headquarters

HRC: Human Rights Commission

IBM: Integrated border management

JHA: Justice and Home Affairs

PAMECA: Police Assistance Mission of the European Community to Albania

SAP: Stabilisation and Association process

SR: Special Report of the European Court of Auditors

UNSCR: United Nations Security Council Resolution

WCC: War Crimes Chamber

EXECUTIVE SUMMARY

I.

The European Union's strategic interest in the western Balkans is to install democracy, security and long-term stability. The Balkans have been affected by insecurity and violence in the past. The political and economic environment is still fragile. The relevance of the Justice and Home Affairs (JHA) sector is therefore high for the EU. The incentive of EU membership has contributed to making the EU the biggest and most influential external stakeholder in the region. Between 2001 and 2006, the Commission has spent almost 500 million euro on Justice and Home Affairs projects in the western Balkans. The aim of the Commission's assistance was to align the western Balkan countries with EU standards through appropriate administrative, judicial and law enforcement structures.

II.

The Court's audit assessed to what extent:

- (a) needs in the Justice and Home Affairs area had been properly identified and the projects were relevant to the identified needs, and
- (b) the intended outputs had been delivered and the expected results were achieved and sustainable.

III.

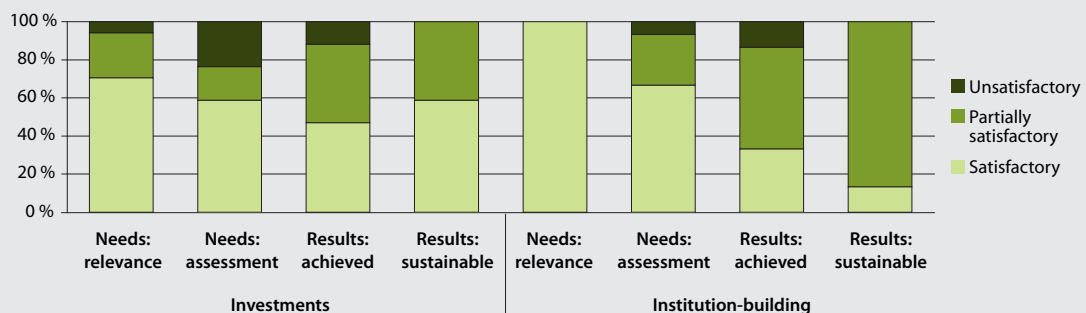
The Court's audit covered both investment and institution-building projects in the four Justice and Home Affairs sub areas: asylum and migration, integrated border management, judiciary and police. The Court found that¹:

- (a) unlike the previous accession programmes, the Commission has prioritised the Justice and Home Affairs sector and attempted to tackle important structural reforms earlier in the enlargement process;
- (b) against the background of a difficult political and organisational environment, the Commission's management of Justice and Home Affairs projects has been largely effective, although the Court identified some shortcomings, particularly in terms of the sustainability of results;
- (c) the needs analyses were sometimes inadequate and there was a lack of donor coordination;

¹ The summary of findings on projects is in **Graph 1**.

GRAPH 1

SUMMARY OF FINDINGS ON AUDITED PROJECTS



EXECUTIVE SUMMARY

- (d) although not all investment projects achieved fully satisfactory results and the sustainability is at risk, the investment assistance financed by the Commission made a relevant and useful contribution to the national infrastructure and institutions;
- (e) on the other hand the achievements of institution-building projects were only partially satisfactory and unlikely to be sustainable. This was due to continued political weakness and lack of commitment (ownership) by the beneficiaries, as most reform initiatives do not come from within the region but from the European Commission or other external stakeholders;
- (f) there was no significant difference in the degree of success achieved in projects managed by the Delegations compared with those managed by the European Agency for Reconstruction.

IV.

On the basis of these observations, the Court makes recommendations which could help the Commission to provide more efficient and effective assistance. The project results could be improved if:

- (a) when designing the Justice and Home Affairs projects, the Community support complied with annual programme objectives (for example the future joint border crossing points should be given priority as this would foster regional cooperation);
- (b) investment projects were matched more closely with institution-building projects;
- (c) all donors active in the area, including the Commission as the main donor, coordinated better with each other (for example one donor could fund or co-fund a project designed by another donor);
- (d) the procurement process for equipment was reconsidered by the donor community. Wherever possible, joint investment pools managed by the recipient countries should be considered.

V.

Project sustainability could be improved if:

- (a) beneficiary involvement were increased;
- (b) no projects were launched without a maintenance plan;
- (c) the Commission monitored more closely the distribution and evaluated the use of EU-funded equipment and infrastructure;
- (d) the delivery of technical assistance was adequately complemented by active encouragement for institutional change.

INTRODUCTION

1. Enlargement serves the EU's strategic interests in stability, security, and conflict prevention. The present enlargement agenda covers the western Balkans, which have been given the prospect of becoming EU members once they fulfil the necessary conditions.

² CARDS is the acronym for 'Community Assistance for Reconstruction, Development and Stabilisation' and covered the period 2000–06.
2. The audit of the Justice and Home Affairs (JHA) sector for the western Balkans addressed an area of high political relevance. The JHA sector is one of the most prominent areas of cooperation between the European Union and western Balkan countries and can be categorised into four sub areas: asylum and migration, integrated border management, judiciary and police. The value of Justice and Home Affairs-related contracts under the Commission programme for the western Balkans (CARDS²) amounts to around 470 million euro from 2001 to 2006³.

³ This represented around 10 % of the total CARDS budget. Most of the CARDS spending took place during the first years of the programme, addressing the urgent post-conflict needs of the western Balkan population.
3. Prior to starting the audit, the following principal risks to sound financial management were identified:
 - (a) Justice and Home Affairs projects are implemented in a fragile political and economic environment which means that the Commission assistance might not achieve the intended policy objectives and might be unsustainable.
 - (b) The role of the recipient country and final beneficiaries is of fundamental importance to the success of the projects because the Commission's powers to strengthen the competence, professionalism and independence of Justice and Home Affairs institutions are limited.
 - (c) The Community is under pressure to obtain high contracting rates and the recipients' and beneficiaries' budgetary, procedural and political constraints might therefore be disregarded. This might hamper the effectiveness of the outputs, especially when aiming to improve administrative capacities.
 - (d) Based on previous experience, compliance with Justice and Home Affairs criteria is one of the most, if not the most, difficult issues in enlargement⁴.

⁴ Concerning the latest enlargement in 2007, Bulgaria and Romania have still progress to make in the Justice and Home Affairs sector. The EU decided to establish a special cooperation and verification mechanism to help the newest Member States to address outstanding shortcomings.

4. The objectives of the Commission's programmes were to:

- (a) reinforce the rule of law, human rights and relationships with civil society;
- (b) support judicial reform and harmonisation of national legislation with EU requirements;
- (c) reform the police in general, and border police more specifically, and ensure public order;
- (d) fight against corruption, illegal migration, organised crime and terrorism;
- (e) facilitate development, trade relations and traffic;
- (f) strengthen institutional and operational capacities, e.g. in asylum and migration, visa and integrated border management matters.

⁵ Technical assistance is a resource used in many development projects and programmes of different types and can be defined as 'experts contracted for the transfer of know-how and skills and the creation and strengthening of institutions'. Reference made to Court's Special Report No 6/2007 on the effectiveness of technical assistance in the context of capacity development (OJ C 312, 21.12.2007, p. 3).

⁶ Launched in 1998 for accession assistance, twinning provides the framework for administration and semi-public organisations in the recipient countries to work with their counterparts in Member States.

5. The Community Justice and Home Affairs assistance is implemented by financing investments in infrastructure and equipment or through institution-building projects. Investments are either works or supply contracts. Institution-building via technical assistance⁵ or twinning⁶ establishes standards and ground rules for public service, e.g. laws and strategies with the necessary training.

AUDIT SCOPE AND APPROACH

6. The European Union helps the western Balkan countries mainly through specific programmes and project assistance. The purpose of the Court's audit was to assess the effectiveness of the European Commission's (EC's) projects in the areas of Justice and Home Affairs for the western Balkans. The audit work included a sample of 33 Justice and Home Affairs projects, i.e. 30 national and three regional, over the 2001–05 annual programmes⁷. Both types of assistance, i.e. investments and institution-building, were equally represented in the sample. The list of audited projects with the results and the Court's findings is given in **Annex I**. Details of the audit methodology and sample are given in **Annex II**.
7. The main objectives of the audit were to assess the extent to which:
- Justice and Home Affairs needs were properly identified and the projects were relevant to the identified needs⁸, and
 - the intended outputs had been delivered and the expected results were achieved and sustainable⁹.
8. The Commission used two basic management approaches in the western Balkans: devolved and indirect centralised management. In devolved management the Commission's Delegations in Albania, Bosnia and Herzegovina and Croatia are responsible for project preparation, contracting, and financial and technical implementation. In the indirect centralised management approach, the European Agency for Reconstruction (EAR) managed the programmes in the former Yugoslav Republic of Macedonia, Kosovo (under UNSCR 1244/99), Montenegro and Serbia until the end of 2008. The Court examined whether there was any evidence that one management approach was more effective than the other as regards the Justice and Home Affairs projects¹⁰.
- ⁷ As provided in the CARDS regulation, the annual programme, drawn up for each country receiving Community assistance, contains a list of projects to be financed and specifies the relevant amounts. The management committee, composed of representatives of Member States and chaired by the Commission, gives its opinion on the annual appropriations.
- ⁸ The audit assessed the extent to which the Justice and Home Affairs projects were justified in the light of the scope and specifications of the needs and whether alternative approaches had been considered and properly analysed. Furthermore, it assessed whether the objectives were in line with priorities defined in Commission, Council and national strategy documents.
- ⁹ The audit assessed the extent to which the beneficiary used given EU-funded assistance (for example equipment, infrastructure and training) effectively and whether the results of the projects were financially and operationally sustainable.
- ¹⁰ This additional component of the audit was included at the request of the European Parliament. Reference was made to the European Parliament resolution of 22 April 2008 with observations forming an integral part of the decision on discharge in respect of the implementation of the European Union general budget for the financial year 2006, section III — Commission.

9. The European Commission is financially the most significant donor in the western Balkans. More than half of the grants given to the region come from the EU budget (*Annex III*). In this context, the audit examined how the recipient country government had harvested the benefits from donor coordination.
10. The report is structured according to the form of assistance, investment and institution-building projects and discusses their relative strengths and weaknesses. The horizontal issues of management approach and donor coordination are dealt with in a third section.

MAP OF THE WESTERN BALKANS



OBSERVATIONS

EU INVESTMENT SUPPORT MOSTLY SUCCESSFUL BUT SUSTAINABILITY AT RISK

- 11.** This section first deals with the relevance of investment projects and the needs assessments on which the projects were based. It goes on to present the findings on achievement of results and on the necessary alignment of EU and national priorities, and then continues with the issue of sustainability, divided in two parts: one on the importance of maintenance, and one on the need for sufficient institutional capacities for ensuring sustainability.

¹¹ The emergence of six new states from the break-up of the former Yugoslavia has created over 5 000 kilometres of new international borders in the region that have to be properly controlled.

REAL NEED FOR INVESTMENTS DUE TO EU STANDARDS AND DILAPIDATED INFRASTRUCTURE

- 12.** Because of years of underinvestment and changes in geopolitics¹¹, the investment needs in the western Balkans to bring infrastructure up to EU standards are significant and in most cases are beyond the means of national budgets. The investment requirements result from two main factors:

BOX 1

EXAMPLES OF STRATEGIC AND NON-STRATEGIC INVESTMENTS PROJECTS

Case 1: Project following strategic objectives

Albania's prison system is below international standards. Prisons and pre-trial detention centres are heavily overcrowded. At the time of the audit Albanian prisons were occupied by 3 049 inmates, although their capacity was 1 510 people. This means an overpopulation of 102 %. Therefore, the construction of Fushe Kruja prison to accommodate 312 detainees could be considered a key and relevant priority.

Case 2: Project not following annual programme

In the former Yugoslav Republic of Macedonia, the approved asylum project documents allocated a budget of 2 million euro to institution-building activities such as drafting legislation, strategies and national action plans. This was not done. Instead, a reception centre for asylum seekers was built.

- (a) EU standards for completely new institutions¹² have to be complied with. For example, EU standards require a professional border surveillance service. This is a challenge because until recently the borders were mainly controlled by military conscripts¹³. In addition, the new borders should be open to legitimate movements of persons and goods but at the same time be secure and controlled.
- (b) Dilapidated Justice and Home Affairs infrastructure. The current infrastructure in the western Balkans is poor and inadequate. For example, when external evaluators¹⁴ visited 38 court buildings in Albania in 2004–05, they could not usually distinguish judges from defendants or members of the public or prosecutors and cases were handled in corridors.

¹² For example, in Bosnia and Herzegovina the border police is the oldest of the state-level institutions but less than 10 years old in 2009.

¹³ For example, in Serbia the army was controlling the borders until 2007.

¹⁴ 'Master plan for judicial infrastructure' — study carried out by external consultants between January 2004 and April 2005.

¹⁵ The Court's Special Report No 5/2007 on the Commission's management of the CARDS programme (OJ C 285, 27.11.2007, p. 1) concluded that the strategic guidance was very general. This was adequate for the reconstruction phase but not for the more challenging institution-building objectives.

- 13.** The audit identified that in around 70 % of cases Justice and Home Affairs investment projects stayed within the broadly defined boundaries of strategic objectives¹⁵, i.e. to create stability and security and to enhance association with the EU. The remaining projects were not in line, or only partly in line, with the objectives in the annual programme (**Box 1**).
- 14.** The audit revealed that the assistance was triggered without adequate feasibility studies defining the scope and specifications of the projects. Performing studies is a demanding task given that the beneficiary institutions did not have soundly formulated national strategies or action plans which would have set priorities. Out of the 17 audited investment projects, there were only two highly satisfactory studies describing beforehand the importance of the selected project (**Box 2**).

BOX 2

EXAMPLE OF HIGHLY SATISFACTORY NEEDS ANALYSIS

The construction of the two Courts of Appeal in Korça and Vlora in Albania were the two top priorities in the 'Master plan for judicial infrastructure' study. The study analysed the situation and prospects of all district and appeal courts in Albania. The master plan was well prepared and detailed.

15. Weaknesses at the planning stage both by the recipient country and, in some cases, the Commission led to inefficient and ineffective distribution and use of EU-funded equipment (**Box 3**).

¹⁶ The national integrated border management strategy was adopted in Albania in November 2006, in Bosnia and Herzegovina in July 2005, in the former Yugoslav Republic of Macedonia in October 2005, in Montenegro in February 2006 and in Serbia in January 2006.

MIXED RESULTS FOR A MAJOR CATEGORY OF INVESTMENT PROJECTS: BORDER MANAGEMENT AND SECURITY

16. The EU–western Balkan summit in Thessaloniki in June 2003 emphasised that border insecurity is one of the real obstacles to the rule of law and constitutes a major priority for the Union. The Commission has been heavily involved in the sector of integrated border management, to which a major share of Justice and Home Affairs funding (37 %) has been committed. The sector has two components — border management and border security. The Court audited eight integrated border management investment projects, including the construction of several border crossing points. The results of these investments were generally more satisfactory when combined with institution-building measures such as drafting national strategies for integrated border management¹⁶. An effective border management system requires a balance between open, but secure borders¹⁷. This balance has been achieved in Serbia, for example (**Box 4**).

¹⁷ It should be noted that the EU *acquis communautaire*, the Schengen standards or Community custom code do not provide a universal, 'one-size-fits-all' model for border management. Nevertheless, the standards do require the system to be effective and risk adjusted.

BOX 3

EXAMPLES OF INEFFICIENT AND INEFFECTIVE DISTRIBUTION AND USE OF EU-FUNDED EQUIPMENT

In the former Yugoslav Republic of Macedonia some of the EU-financed motorcycles provided in summer 2005 to the border police were hardly used for the first 18 months because the government did not provide the police with the necessary protective gear as agreed. Some pieces of equipment were still missing in 2007. The government launched the complementary equipment tender in September 2008 and the contract should be signed during the first quarter of 2009.

The opening of the asylum centre in the same country was also delayed by one year because the government failed to provide the necessary equipment.

Computers supplied to the Albanian police were still in cardboard boxes eight months after the contract signature awaiting the decision of the authorities concerning the allocation of the computers to the final beneficiaries.

PHOTO 1

The EU-financed Batrovci border crossing point on the Belgrade–Zagreb motorway has led to significant reductions in passenger waiting times.



BOX 4

EXAMPLE OF HOW THE USE OF MODERN EQUIPMENT STRENGTHENS BORDER CONTROLS WHILE PASSENGER WAITING TIMES ARE REDUCED

In Serbia the new infrastructure and the equipment at the Batrovci border crossing point made a difference compared to the past (**Photo 1**). Thanks to the project, the throughput increased and waiting times were reduced. The waiting time for lorries has fallen from several hours to 30 minutes. Passenger traffic waiting times during peak season have decreased from 12 hours to around 20 minutes.

The border crossing point was also supplied with modern equipment so that the border guards could detect forged documents, even well forged ones. The 'docubox' was used 100 times a day on average and since putting it into operation the authorities have discovered almost one forged document a day.

- 17.** Modern border security is based on four elements: mobility, communication, intelligence and firepower. The Commission's support has covered all of these except arms. In Shkodra, in Albania, the border police were obviously better able to patrol the northern land borders with their four-wheel drive vehicles than previously on foot. Also the land border between the former Yugoslav Republic of Macedonia and Greece and the sea border between Albania and Italy are now better controlled than before (see **Photos 2** and **3**). The number of attempts for illegal border crossings from and into the former Yugoslav Republic of Macedonia decreased substantially from 2005, when the vehicles were delivered, to 2008.
- 18.** Although the overall picture remains rather positive some weaknesses were identified in this area that relate not only to the lack of political will and legal means in the recipient countries (see paragraphs 36 to 39) but also to certain specific weaknesses in the Commission's management (**Box 5**).

BOX 5**EXAMPLE OF A NON-IMPLEMENTED BORDER CROSSING POINT PROJECT**

The Gorica border crossing point (BCP) in Bosnia and Herzegovina is located on the busy international road from Mostar (BiH) to Split (Croatia). The Croatian authorities had already constructed a BCP of their own but the Bosnian side lacked proper infrastructure. The Commission signed a 3 million euro works contract without checking that the land expropriation process was complete. Because of disputes over the valuation of the land, the project never started and the contract expired in December 2006¹⁸.

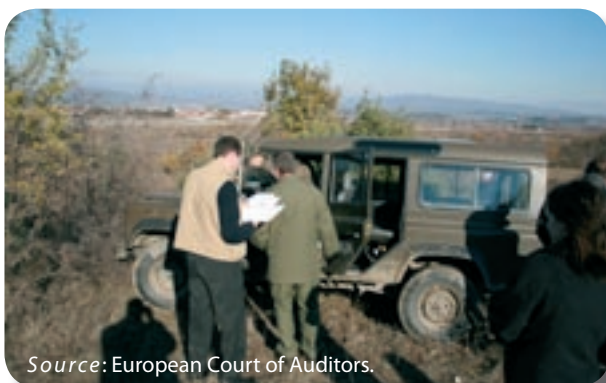
The consequence is that a 'customs terminal' on the Bosnian side is being run by a private legal entity which withholds 70 % of fees for access to the customs terminal (amounting to approximately 20 euro per lorry). There is no plan for the government to take over this infrastructure.

¹⁸ As the Commission could not honour the contract, the contractor filed a request for over 550 000 euro for losses and damages and an amicable settlement procedure was ongoing at the time of the audit.

- 19.** The break-up of the former Yugoslavia created over 5 000 kilometres of new international borders in the region. The most cost-effective way to control these borders would have been to construct joint border crossing points (BCP). However, the Commission continues to finance the BCP projects using national allocations instead of the regional allocation. This approach does not support the development of regional cooperation.

PHOTO 2

All projects except one were audited on the spot. Here an EU-financed four-wheel drive vehicle is being checked by Court staff in Gevgelija on the border of the former Yugoslav Republic of Macedonia facing Greece.



Source: European Court of Auditors.

PHOTO 3

A result of the strengthened sea border control in Albania: a confiscated speedboat used by organised crime to smuggle people into EU.



Source: European Court of Auditors.

ALIGNMENT OF EU AND NATIONAL PRIORITIES A NECESSARY PRE-CONDITION FOR SUCCESS

- 20.** Reforms in the Justice and Home Affairs sector, whether related to investment or institution-building, are a huge and complex undertaking. However, the national budgets do not provide sufficient funding for Justice and Home Affairs priorities, particularly in the economically less developed western Balkan countries¹⁹.
- 21.** Even though the Commission is the major donor in the western Balkans, EU funds are not enough to cover all investment needs. The Commission therefore usually financed pilot projects, which showed the beneficiary the advantages of up-graded infrastructure. An example of this kind of assistance is the EU-financed 'state-of-the-art' Court house in Vlora, which improved the transparency of justice (**Box 6**).
- 22.** The level of national funding varied considerably between the countries concerned. The audit identified a case where donor dependence was no longer a reality. In Serbia the costs of the EU-funded court renovation projects were approximately 5 % of the total Serbian Justice and Home Affairs budget for the years between 2003 and 2007 (**Box 7**).

¹⁹ In the former Yugoslav Republic of Macedonia, the academy for training judges and public prosecutors is partly financed from the state budget under a specific law. This ensures its educational independence. But 63 % of the total funding to the academy in 2008 came from international donors. A more balanced financial framework is needed to ensure the operational independence of the institution.

BOX 6

EXAMPLE OF AN INVESTMENT ENFORCING THE RULE OF LAW

Construction of the Court of Appeal in Vlora, Albania

The Commission invested 770 000 euro in the construction of the Court of Appeal in Vlora, Albania. The short-term result of the project was positive. In the new building the average number of cases judged during the first operational year (2007) more than doubled compared with the cases judged on the old premises. Also for the first time, the Court of Appeal had proper courtrooms. This increased the transparency of the proceedings and improved the 'reality of justice' in general.

However, at the time of the audit, there was no electricity from the national power grid and the annual budget for heavy oil for the generators had already been exhausted four months before the year end. For this reason, computers could not be used. This reduced the throughput of the cases and diminished the overall effectiveness of the investment.

PHOTO 4

The new and more secure Court of Appeal building in Vlora Albania was financed by the European Union. The works were completed in 2006.



Source: EC Delegation in Tirana.

BOX 7

EXAMPLE OF A SUFFICIENT NATIONAL BUDGET COMMITMENT

Renovation of the biggest court building in Serbia

Following the assassination of the Serbian Prime Minister Zoran Djindjic in March 2003, the authorities arrested a high number of suspected criminals. However, the Serbian authorities lacked suitable facilities to enable them to try high-profile cases in a safe and dignified manner. The renovation work financed from the EU budget provided the Belgrade District Court with, for example, a modern courtroom. Since the opening of the courtroom in June 2006, it was used for 35 trials in 2006 and 40 trials during 2007 — most of them related to high-level organised crime and war crimes. Since then the Serbian government has allocated considerable resources to reconstruction of court houses throughout the country.

- 23.** When the EU and national priorities are not aligned, the result is ineffective assistance. For example through the Stabilisation and Association Agreements (SAA) the Commission obliges the western Balkan countries to implement readmission provisions²⁰. But the provisions have not been successfully applied because the recipient countries have not reserved sufficient funds in the national budgets. For example, in Albania a lack of staff in the border and migration directorate of the state police put at risk Albania's ability to fulfil its obligations under the agreement. Even when the Commission financed the national strategy on migration and readmission for Albania and highlighted the agreement's conditionalities during the high-level committees meeting, progress was slow.

²⁰ The western Balkan countries and the European Union have signed a readmission agreement as part of the SAA. This agreement provides for western Balkan and EU member countries to accept the return of citizens who have illegally entered or illegally remained on the territory of any of the other countries, as well as to accept illegal migrants who are citizens of third countries or stateless individuals who have come to the territory of one of the countries through the territory of the other country. The agreement essentially obliges western Balkan countries to share responsibility for EU security with the European Union.

IMPACT AND SUSTAINABILITY OF INVESTMENT PROJECTS AT RISK

- 24.** Six out of the 16 audited investments projects had problems affecting their sustainability. Although the countries visited had carried out some maintenance of the infrastructure and equipment put in place, the level of maintenance was not sufficient to ensure the sustainability of the investments. At the time of the audit the beneficiary did not have to provide evidence of a proper maintenance plan and budget prior to receiving EU funding.

BOX 8

EXAMPLE OF INFRASTRUCTURE PROJECT WITH LACK OF IMPACT

The Commission invested over 3 million euro to upgrade the border crossing point (BCP) in Kamensko in Bosnia and Herzegovina to the level of a 'first category' BCP, i.e. all types of goods can enter and leave the country. However, since the completion of this EU project, the government has revised its decision and down-graded the status of Kamensko BCP. Because of this decision, several types of goods (e.g. petrol) can no longer be declared there. The traffic levels have decreased although the road is the most practical road for traffic from Split in Croatia to the centre-west and north of Bosnia and Herzegovina. The Commission was not aware of this change.

25. The Delegations were not always aware of the situation on the ground because the use of infrastructure and equipment is not monitored. Therefore, the impact and sustainability of investment projects could not be assured by the Commission (**Box 8**).

²¹ The Delegation's own four-wheel drive vehicle is not serviced in Tirana but driven to a neighbouring country.

26. Although the procurement rules allow for the inclusion of after-sales services in the procurement process, this provision is not sufficiently applied. In Albania the Delegation procured four-wheel drive vehicles for the border police although it knew that there would be problems in maintaining the equipment²¹. The relevant beneficiary institutions in charge of maintenance are also not systematically invited as voting members to tender evaluation committees nor were they sufficiently involved in earlier stages in the tendering procedure.

INVESTMENTS NOT MATCHED WITH NECESSARY INSTITUTIONAL CAPACITIES

27. In many cases the situation improved on the ground because of the EU assistance with equipment or infrastructure. However, the investments on their own will not achieve the overall objectives for a target institution. For example, it is not enough to build a modern border crossing point: the working practices of the border police have to change accordingly.

28. Other examples of investments that were not matched with necessary institutional capacities were the audited IT projects. Even when the equipment supplied was relevant to the work of the police or judiciary and addressed current and future needs, the projects' potential effectiveness could not yet be adequately exploited because of:

- (a) the low number of border police stations and court buildings that were connected to the networks. For example, in Montenegro only three out of 26 border crossing points were interconnected;

- (b) projects relating to public authorities' information systems require a solid legislative framework and adequate security policies if they are to be sustainable, as confidential data are exchanged. At the time of the audit, no country had a law on data protection which was fully aligned with the Community *acquis*. In the case of Bosnia and Herzegovina, a data protection law had been enacted in 2006 but still needs to be updated to align with the Community requirements;
- (c) none of the three IT software projects audited had written instructions for access controls. Access control is a key process that controls and limits access to the resources of a computer system; it should be designed to protect against unauthorised entry or use.

SIGNIFICANT INSTITUTION-BUILDING NEEDS BUT ONLY LIMITED CHANGE RESULTING FROM EU SPENDING

- 29.** This section first deals with reasons for limited achievements in institution-building projects and the lack of measurement of achievements. Factors critical for sustainability are presented in the next subsections: stability of key staff and an environment free of corruption, specific factors relating to training projects, and ownership at the level of the beneficiaries.

CHANGE MANAGEMENT AND INSTITUTION-BUILDING LIMITED AND POORLY MEASURED

- 30.** A Justice and Home Affairs project can be said to be potentially effective if it addresses recognised needs and weaknesses, produces expected benefits, is supported by a commitment to sustainability by the beneficiary and is part of a coordinated strategy to address institution-building.
- 31.** The results of the Commission's projects improved the situation of the beneficiaries. This was most evident in supply and works contracts but the greatest challenge remained with the sustainability of institution-building projects.

32. For cases where institution-building projects did not achieve their objectives, three main reasons were identified by the Court:

- (a) administrative instability in the region, e.g. significant turnover of staff after elections;
- (b) training delivering fewer results than expected;
- (c) lack of country ownership of reform.

²² The first step in the process of decentralised implementation is the national accreditation of beneficiary authorities on the basis of capacity assessments. The next step is the conferral of management from the Commission to the recipient country.

33. The audit also noted the opposite, i.e. when there is stability in the civil service, when training is well targeted and when the top management of the beneficiary is committed to change, progress is achieved. For example, in Albania the government is committed to finalising its de-mining efforts, in Bosnia and Herzegovina the Constitutional Court solved the backlog of pending human rights cases and the court in Sremska Mitrovica in Serbia became a model court using case management software.

34. The Commission introduced few specific activity-based management indicators in this area. In various activity statements the Commission notes that progress in the justice, freedom and security area in the western Balkans has been made, as judges and prosecutors have received training and police and prosecutors have improved cooperation. However, it is not clear how the Commission measures the impact of these activities.

35. The Commission used to measure the success of its assistance by focusing solely on contracting and disbursement rates. In 2002 the Commission started aiming for sustainable capacity development of institutions, which is more difficult to measure. The western Balkan countries are preparing for a decentralised implementation system of assistance, which is positive as the conferral of management indicates a sufficient level of management capacity. However, the Commission has not yet fully integrated the measurement of capacity development into the accreditation process of the beneficiary authorities²².

SUSTAINABILITY OF INSTITUTION-BUILDING COMPROMISED BECAUSE OF CHANGES IN KEY STAFF AND CORRUPTION

- 36.** Only two of the 15 institution-building projects achieved satisfactory sustainability. A common feature of the institution-building projects audited was the disruptive effect of changes of beneficiary personnel. The positive results of institution-building training projects were almost always diluted by staff changes in key positions (**Box 9**).
- 37.** The audit also noted a few positive examples of increased capacities. These have resulted in improvements at operational level (**Box 10**). Despite the high staff turnover, the strategic objectives, i.e. maintaining security and stability and keeping public order, were ensured. This was achieved only through continuous EU assistance.

BOX 9

UNSTABLE STAFFING SITUATION IN PUBLIC ADMINISTRATION IN ALBANIA AND THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

In Albania, three out of the eight JHA projects audited included training. There were some positive results but staff changes, for example in the migration area, continued to hinder capacity building and delayed decision-making. Immediately after the parliamentary elections in 2005 in Albania, all 20 persons in the regional employment offices dealing with migration issues were replaced.

In the police of the former Yugoslav Republic of Macedonia, 30 key managerial positions were identified. Twenty-eight of these positions were subject to staff changes within months of the elections in 2006, i.e. staff turnover of 93 %.

38. The audit noted inadequate cooperation between law enforcement agencies affecting the sustainability of projects. For example although the police surveillance equipment and the fingerprint system were relevant to the Bosnian police and should enable better detection rates in crime cases, it was not used to its fullest potential due to lack of police cooperation²³.

²³ It should be recognised that in Bosnia and Herzegovina 13 different police forces exist, two at entity and 10 at cantonal level in addition to the autonomous police of Brcko District.

39. The integrity of Justice and Home Affairs institutions can be bolstered by fighting corruption. There are indications that things have improved somewhat in the countries audited, although the progress is fragile. One possible overall indicator of the effectiveness of EU spending is the corruption perception index issued by Transparency International. **Annex IV** shows how the rating (ranking and score) has improved slightly since the year 2004.

BOX 10

EXAMPLES OF ENHANCED OPERATIONAL CAPACITY

In the former Yugoslav Republic of Macedonia the 'Mountain Storm' operation in November 2007 was planned, executed and concluded by specialised police units. In this operation, a major arms cache, sufficient to equip 650 soldiers, was discovered, including anti-aircraft weaponry. It was found in the possession of what was initially described as an 'organised crime group' but was later labelled a terrorist cell. The operation was carried out without civilian casualties. According to the international observers interviewed by the Court, an operation of this magnitude would have been impossible a couple of years ago.

In July 2008, the Mountain Storm trial verdict sentenced 17 people to a total of 192 years' imprisonment. According to the judgement, the group's goal was to create insecurity among the citizens and jeopardise the constitutional order of the country.

In Albania the EU has helped the police to strengthen the authorities' law enforcement capacity since 1997. Assistance to the police will continue until at least 2011.

TRAINING — MORE OUTPUTS THAN RESULTS

- 40.** A key element of the process of introducing reforms and change is through the provision of training to civil servants (**Box 11**). This has been an important Commission priority. For example, all three regional projects²⁴, with a total budget of 10 million euro, involved training. The training outputs (seminars, workshops and conferences) were delivered satisfactorily, but the impact was limited (**Box 11**).
- 41.** Getting civil servants from different western Balkan countries around the same training table is of course a worthwhile aim in itself, given the recent history of the region. But the specific objectives of the Commission's projects were more ambitious, e.g. to develop regional strategies in asylum, migration and visa matters based upon a set of commonly accepted EU technical standards and principles.

²⁴ Because of past conflicts, regional cooperation has been a challenge in the western Balkans. Therefore the Commission's regional programme focused on promoting relations between western Balkan states. The EU has made it clear that regional cooperation is a prerequisite for progress towards accession. Some 10 % of the CARDS funding was directed to supporting this objective and the regional programme has always focused on the rule of law and Justice and Home Affairs issues.

BOX 11

EXAMPLES OF JUDICIAL TRAINING CENTRES (JTCs)

The Court audited two training institutes for the judiciary. The overall objective of the JTCs was the same, i.e. to become a fully fledged training institute in line with best European practices, offering high-quality and targeted training to judges, prosecutors, court staff and advocates.

In the former Yugoslav Republic of Macedonia, the EU experts' advice was overlooked when establishing the institution. The ministry did not invite any of the international experts to participate in the draft JTC law, which was then heavily criticised by the donors because it was not compliant with European standards. Furthermore, the curriculum for the initial training of 24 months was cut to 15 months, with a risk of reducing the impact of the training.

In Serbia, the training institute for judges lacked direction and a clear legal base. Furthermore, the 'training of trainers' programme proposed the use of modern teaching methods, i.e. small training groups with a lot of interaction. In reality only 'ex cathedra' training was delivered.

42. It is inherently difficult to develop common targets for regional training projects because of the differing stages of advancement within the individual countries. The situation in Croatia was usually more advanced than in the other countries. The Commission rightly considered that the regional dimension had to be used to put the knowledge of the most developed national system at the service of the other recipient countries. However, the Commission rarely measured how the training changed policies or working practices, despite this being a good practical approach to alignment with EU standards.

²⁵ The Commission has contracted external monitors to assess the implementation of the projects.

43. The Commission did not establish any system for measuring the regional judicial cooperation project's performance, not even after it was criticised by its own monitors²⁵. The indicators did not allow the measurement of the impact as they were activity-driven and formalistic rather than evaluative, e.g. number of meetings or conferences. The objectives were also vague and unclear, e.g. to enhance regional dialogue or to facilitate operational cooperation. Attainment of objectives could therefore not be measured because they were not directly linked to the activities.

44. At the national level too, the Commission's training projects did not fully meet their objectives, because they were run without the commitment of the top management. Two special training courses within the Albanian police project (PAMECA II) can be mentioned. 'Strategic Command Courses' were given to 60 middle-ranking to senior-ranking officers. When the trained police managers returned to implement the theory they faced resistance from their superiors. To try and remedy the potential lack of impact, a 'Senior Executive Programme' had therefore to be launched involving 34 of the most senior police officers. Although the Commission can be complimented for taking this corrective action, it would have been preferable to ensure the commitment of the top management before presenting the course to middle management.

45. Learning-by-doing and on-the-spot training are effective ways of developing a modern and efficient administration. Handing over administrative responsibilities can be done as long as staff turnover is not excessive (**Box 12**). Twinning projects with Member States and grant contracts with international organisations are used more since the CARDS programme was reorientated from a reconstruction-driven to a reform-driven programme.

BOX 12

EXAMPLES OF 'LEARNING-BY-DOING' PROJECTS IN BOSNIA AND HERZEGOVINA

Case 1: Complete hand-over of responsibilities to the beneficiary — Human Rights Commission

In 2004 the Commission signed a grant contract with the Constitutional Court of Bosnia and Herzegovina (BiHCC) to establish a special judicial body within BiHCC, the Human Rights Commission (HRC), in order to address a back-log of almost 9 000 human rights cases²⁶. During the first year the Human Rights Commission (HRC) resolved more than 3 000 cases. The HRC started operating with international staff, but since 2005 the HRC was composed of national staff only. During the project the national staff applied the European Convention of Human Rights and other international instruments on a daily basis. The project succeeded because 9 out of the 10 key staff stayed with the Constitutional Court. In June 2007 all back-log cases had been resolved. According to the beneficiary, the project made a significant contribution to the awareness of human rights standards in Bosnia and Herzegovina.

Case 2: Incomplete hand-over of responsibilities to the beneficiary — War Crimes Chamber

The War Crimes Chamber (WCC) in BiH is the first permanent and specialised state-level organ designed to deal with grave breaches of international humanitarian law and part of the International Criminal Tribunal for the former Yugoslavia's completion strategy²⁷. The number of war crimes suspects in Bosnia and Herzegovina is estimated at several thousand. At the time of the audit the handover from international experts to national experts was delayed. The actual number of active trials exceeded the number forecast, which is positive, but the Court's workload well exceeded its capacity. This situation was aggravated by the turnover of international judges.

²⁶ There are four main types of human rights violation cases in Bosnia and Herzegovina: equality before the law, property rights, right to work and receive education and missing persons ('Srebrenica cases').

²⁷ Reference made to UN Security Council Resolution 1503.

LOCAL OWNERSHIP A KEY SUCCESS FACTOR IN IMPROVING THE RULE OF LAW

- 46.** One of the most common strategic objectives of the audited projects was to reinforce the rule of law in the western Balkans. The western European concept of rule of law is in essence the principle that no one is above the law. Cementing the rule of law in the western Balkans is essential for stability and security in Europe. Despite some progress, the rule of law in the western Balkans is still weak (**Box 13**).
- 47.** In many of its progress reports, the Commission has expressed dissatisfaction at the slow speed of reforms. The project approach adopted by the Commission has its limitations. It is not a 'cure all remedy'. Success in the Commission's Justice and Home Affairs projects requires a change in attitudes of national authorities and continuity of government structures. These factors lay beyond the Commission's direct powers and their negative impact, in particular on institution-building, should not be underestimated.

BOX 13

RULE OF LAW CONCEPT IN WESTERN BALKANS WEAK

The 'rule of law' is weak in the region and confidence in the government and institutions is low. The citizens distrust the legal system and they feel it benefits only certain status groups. When asked whether 'some people are above the law in this country', the percentage of positive responses in certain countries of the region was the following²⁸:

Montenegro: 69 %;

Serbia: 81 %;

The former Yugoslav Republic of Macedonia: 85 %.

It should be noted that those who feel most strongly that society is unfair and that people lack equality before the law are the most educated and the best politically informed.

²⁸ See the research paper by Alina Mungui-Pippidi: 'Deconstructing Balkan particularism — The ambiguous social capital of south eastern Europe', 2005..

48. However, the Commission has learnt the lesson of previous experiences. Compared with the Commission's earlier pre-accession programme (Phare), important structural reforms in Justice and Home Affairs are now tackled earlier in the enlargement process.

²⁹ Reference made to Delevic, Milica 'Regional cooperation in the western Balkans,' EU-ISS Chaillot Paper No 104, July 2007.

49. Until now most reform initiatives did not come from within the region but from the European Commission and other external agents²⁹. The resulting lack of ownership weakens the projects' long-term results. The first serious initiative within the region is the Regional Cooperation Council, which was launched in February 2008, as the successor of the Stability Pact for South Eastern Europe. The work of the Cooperation Council will focus on six priority areas. One of them is Justice and Home Affairs. Almost two decades after the collapse of the former security and stability structure in South-Eastern Europe, this new institution, based in Sarajevo, aspires to become the first regional forum of its kind through a regionally owned and led framework that also supports European integration.

MANAGEMENT APPROACHES AND DONOR COORDINATION

50. This section presents the results of the audit on two horizontal issues, covering both types of projects: the comparison between the two management approaches used by the Commission and donor coordination.

NO SIGNIFICANT DIFFERENCE BETWEEN MANAGEMENT APPROACHES

51. In the western Balkans the Commission used two basic management approaches (see **Annex V**), through the European Agency for Reconstruction (EAR) or through Commission Delegations. The Court analysed the audit results obtained on projects in order to determine if there was evidence that one management approach was more effective than the other.

52. Out of the 30 Justice and Home Affairs projects audited in the recipient countries, 18 were managed by the Delegation, and 12 by the EAR (see **Annex I**). While the overall performance of the projects audited was mixed, there was no significant difference in the degree of success achieved in projects managed by the Delegations compared with those managed by the EAR. One of the strengths of a devolved Delegation is the close link between policy dialogue and the annual programming process. On the other hand, the EAR's headquarters contributed to the dialogue with additional expertise for the region as a whole.

BENEFICIARY-LED DONOR COORDINATION NOT ENHANCED

53. The Commission has committed itself to playing an active role in fostering donor coordination in the western Balkans. Donor coordination is one of the principles of the 2005 Paris Declaration on Aid Effectiveness and the EU Code of Conduct on Division of Labour. The Commission subscribes to these principles. The Court found that it was difficult for the Commission to put donor coordination into practice on the ground.
54. Justice and Home Affairs constitute a sector where there is common donor interest. The Commission, the international financial institutions, the Member States and the non-EU donors are all active in the western Balkans (**Annex VI**). The principle that the recipient country should lead the donor coordination process could not be applied, because the recipient countries' capacity to operate was still weak. Moreover, the beneficiaries did not receive sufficient support to enhance their capacity to lead donor coordination. Even when the beneficiary had a clear vision of how to implement their preferred solution, they were faced with uncoordinated donor activities (**Box 14**).

- 55.** The lack of donor coordination was not limited to investment projects only. In institution-building cases the beneficiary was confused by recommendations given by different EU operators. An overload of advice with mixed messages was most obvious in the former Yugoslav Republic of Macedonia. In 2004–05 five separate EU entities (the EC Delegation, EAR, EU special representative, EUPOL-Proxima and EU monitoring mission) were active in the area of police development. Additionally, the Organization for Security and Co-operation in Europe, International Criminal Investigative Training Assistance Programme (a police project funded by the USA) and a number of EU Member State bilateral programmes were operating simultaneously. The problem was especially damaging where advice was of a contradictory nature.

BOX 14**EXAMPLE OF UNCOORDINATED MULTI-DONOR INVESTMENT ACTIVITY**

One aid harmonisation principle deals with aid alignment and untied aid. However, because of uncoordinated multi-donor activities, where each donor gave cars, lorries and vans originating from their country, the police of the former Yugoslav Republic of Macedonia uses over 40 types of vehicle. This makes it impossible to run the fleet cost-effectively. The police aims to use only 12 types of vehicle in the future.

CONCLUSIONS AND RECOMMENDATIONS

- 56.** The incentive of EU membership has contributed to making the EU the biggest and most influential stakeholder in the western Balkans. Unlike the previous accession programmes, the Commission has prioritised the Justice and Home Affairs sector and attempted to tackle these important structural reforms earlier in the enlargement process. The Justice and Home Affairs projects managed by the Commission take place in a difficult political and organisational environment. Against this background the Commission's management has been largely effective. However, the Court's audit identified some shortcomings in Commission management which, if addressed, could have resulted in an even higher rate of project success, particularly in terms of the sustainability of their results.
- 57.** The Court concludes that needs analyses were sometimes inadequate and that there was a lack of donor coordination. Although not all investment projects achieved fully satisfactory results, and the sustainability is at risk, the investment assistance financed by the Commission has made a relevant and useful contribution to the national infrastructure and institutions. On the other hand the Court found that the results of institution-building projects were only partially satisfactory and unlikely to be sustainable. This was due to continued political weakness and lack of commitment (ownership) by the beneficiaries, as most reform initiatives do not come from within the region but from the European Commission or other external stakeholders.

TABLE 1

MAIN CONCLUSIONS ON INVESTMENT AND INSTITUTION-BUILDING PROJECTS

Audit question	Needs		Project outputs	Results	
	Relevance	Assessment		Achieved	Sustainability
Investment	S	PS	S	S/PS	S/PS
Institution-building	S	S	S	PS	US

Rating: S = Satisfactory, PS = Partly Satisfactory and US = Unsatisfactory;
S / PS means that the rating falls between Satisfactory and Partly Satisfactory.

- 58.** While the overall performance of the projects audited was mixed, with regard to the management approaches, there was no significant difference in the degree of success achieved in projects managed by the Delegations compared with those managed by the European Agency for Reconstruction.

RECOMMENDATION 1

The Commission's rationale for working in the Justice and Home Affairs sector in the western Balkans is clear but project results would be even better if:

- (a) when designing Justice and Home Affairs projects, the Commission gave appropriate weight to project objectives and ensured that project activity-based impact indicators are set;
- (b) investment projects were matched more closely with institution-building projects;
- (c) all donors active in the area, including the Commission as the main donor, coordinated better with each other, for example one donor could fund or co-fund a project designed by another donor;
- (d) the procurement process for equipment was reconsidered by the donor community. Wherever possible, joint investment pools managed by the recipient countries should be considered, although tight monitoring of the procurement process by the beneficiary organisations will still be necessary.

RECOMMENDATION 2

The sustainability of projects would improve if:

- (a) beneficiary involvement were increased, e.g. in the public procurement process;
- (b) no projects were launched without a maintenance plan;
- (c) the Commission monitored more closely the distribution and evaluated the use of EU-funded equipment and infrastructure and took corrective action when necessary;
- (d) the Commission used impact indicators to measure results;
- (e) the delivery of technical assistance was adequately complemented by active encouragement for institutional change.

RECOMMENDATION 3

The regional aspect would be enhanced if infrastructure interventions in the integrated border management area were designed and implemented in a way that would foster regional cooperation. For example, joint border crossing points, financed from the regional allocation, should be given priority.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 15 and 16 July 2009.

For the Court of Auditors



Vítor Manuel da Silva Caldeira
President

CARDS JUSTICE AND HOME AFFAIRS PROJECTS AUDITED AND AN ASSESSMENT OF THEIR EFFECTIVENESS

	PROJECT DESCRIPTION	CARDS Annual programme	AMOUNT IN EURO (contracts)	
Investment				
Albania	Office equipment for police stations	2001	419 093	
Albania	Construction of Fushe Kruja prison	2001	2 874 708	
Albania	Appeal courts in Korça and Vlora	2003	1 636 375	
Albania	Border control and green border management	2003	2 127 106	
Bosnia and Herzegovina	Supervision and construction of Kamensko BCP	2001	3 349 597	
Bosnia and Herzegovina	Construction of Gorica BCP	2002	2 971 834	
Bosnia and Herzegovina	Supervision and rehabilitation of premises for the BiH Judiciary	2002	2 310 367	
Bosnia and Herzegovina	Equipment for police forces	2003	1 576 604	
Bosnia and Herzegovina	Supervision and construction of the border police HQ of BiH	2003	2 589 621	
Bosnia and Herzegovina	Provision of IT telecommunication system	2003	2 597 772	
The former Yugoslav Republic of Macedonia	Provision of vehicles for border police	2003	2 799 813	
The former Yugoslav Republic of Macedonia	Construction of reception centre for asylum seekers	2002	1 419 580	
Montenegro	Construction of border crossing points D. Brijeg and S. Polje	2001	3 685 662	
Montenegro	IT and special equipment for the border police	2003	1 683 038	
Serbia	Construction and supervision of border crossing Batrovci	2002–03	5 134 209	
Serbia	Renovation and maintenance of the main courtroom in Belgrade	2003	1 196 963	
Serbia	Supplies to border police	2003	2 782 209	
		Subtotal	41 154 551	

	PROJECT COMPLETION	MANAGED BY	NEED		OUTPUT COMPLETED	RESULTS	
			RELEVANCE	ASSESSMENT		ACHIEVED	SUSTAINABILITY
			Satisfactory (S), Partly satisfactory (PS), Unsatisfactory (US)		Yes/Partial/No	S, PS, US, N/A	Satisfactory/ Unsatisfactory/ N/A
	September 2005	Delegation	US	US	Yes	US	Unsatisfactory
	March 2007	Delegation	S	US	Partial	PS	Unsatisfactory
	May 2006	Delegation	S	S	Yes	S	Unsatisfactory
	February 2006	Delegation	S	US	Yes	PS	Unsatisfactory
	October 2005	Delegation	S	S	Yes	PS	Unsatisfactory
	Never started	Delegation	S	S	No	N/A	N/A
	December 2004	Delegation	S	PS	Yes	S	Satisfactory
	July 2005	Delegation	S	S	Yes	S	Satisfactory
	July 2008	Delegation	PS	PS	Yes	PS	Satisfactory
	December 2006	Delegation	S	S	Yes	S	Satisfactory
	June 2005	EAR	S	PS	Yes	PS	Unsatisfactory
	November 2006	EAR	PS	S	Yes	S	Satisfactory
	July 2005	EAR	PS	S	Partial	PS	Satisfactory
	March 2005	EAR	S	S	Yes	S	Satisfactory
	August 2006	EAR	S	S	Partial	PS	Satisfactory
	May 2005	EAR	PS	S	Yes	S	Satisfactory
	May 2005	EAR	S	US	Yes	S	Satisfactory

	PROJECT DESCRIPTION	CARDS Annual programme	AMOUNT IN EURO (contracts)	
Institution building				
Albania	National strategy of migration	2001	1 000 000	
Albania	Albanian mine action programme	2002	2 000 000	
Albania	Pre-screening of asylum seekers and migrants	2003	2 000 000	
Albania	PAMECA II – police mission	2004–05	6 314 404	
Bosnia and Herzegovina	Support to the prosecutor's office in BiH	2002	916 668	
Bosnia and Herzegovina	Support to Human Rights Commission	2003	645 705	
Bosnia and Herzegovina	Support of the high judicial and prosecutorial council	2004	3 120 986	
Bosnia and Herzegovina	Support to the war crimes registry in BiH	2004	3 500 000	
The former Yugoslav Republic of Macedonia	Training institute for judiciary	2001	1 188 405	
The former Yugoslav Republic of Macedonia	Support to the national police reform strategy	2001	1 457 533	
Serbia	Judicial training centre	2004	2 499 175	
Serbia	Capacity building of Ministry of Justice	2004	1 491 029	
Regional	Establishment of EU-compatible framework in asylum, migration and visa matters	2002	2 922 700	
Regional	Support to and coordination of IBM strategies in the western Balkans	2002–03	1 999 984	
Regional	Establishment of an independent, reliable and functioning judiciary and enhancing the judicial cooperation	2003	5 499 579	
		Subtotal	36 556 168	
Investment and Institution building				
Serbia	IT support to the court administration, case management	2004	3 232 093	
		TOTAL	80 942 812	

Audit criteria for relevance: The project objectives were in line with JHA priorities for the country.

Audit criteria for needs assessment: The projects were justified and alternative approaches had been considered.

Audit criteria for outputs: The completed activities had delivered the outputs as planned.

Audit criteria for results achieved: The EU-funded assistance was used effectively.

Audit criteria for sustainability: The results of the projects were financially and operationally sustainable.

N/A: Not applicable.

	PROJECT COMPLETION	MANAGED BY	NEED		OUTPUT COMPLETED	RESULTS	
			RELEVANCE	ASSESSMENT		ACHIEVED	SUSTAINABILITY
			Satisfactory (S), Partly satisfactory (PS), Unsatisfactory (US)		Yes/Partial/No	S, PS, US, N/A	Satisfactory/ Unsatisfactory/ N/A
	January 2005	Delegation	S	S	Yes	US	Unsatisfactory
	May 2006	Delegation	S	S	Yes	S	Satisfactory
	February 2006	Delegation	S	S	Yes	PS	Unsatisfactory
	December 2007	Delegation	S	PS	Yes	PS	Unsatisfactory
	May 2005	Delegation	S	PS	Yes	PS	Unsatisfactory
	March 2005	Delegation	S	S	Yes	S	Satisfactory
	January 2006	Delegation	S	S	Yes	S	Unsatisfactory
	January 2008	Delegation	S	S	Yes	S	Unsatisfactory
	October 2005	EAR	S	S	Yes	S	Unsatisfactory
	September 2005	EAR	S	PS	Yes	PS	Unsatisfactory
	October 2007	EAR	S	PS	Partial	US	Unsatisfactory
	September 2007	EAR	S	S	Partial	PS	Unsatisfactory
	December 2005	DG ELARG HQ	S	S	Yes	PS	Unsatisfactory
	March 2007	DG ELARG HQ	S	S	Yes	PS	Unsatisfactory
	April 2007	DG ELARG HQ	S	US	Yes	PS	Unsatisfactory
	November 2005	EAR	S	S	Yes	PS	Satisfactory

AUDIT METHODOLOGY AND SAMPLE

1. The audit work included a review of strategy and planning documents, e.g. country strategy papers, multiannual indicative programmes and European partnership documents, as well as monitoring and evaluation reports. A sample of 30 projects over the 2001–05 annual programmes was audited in the following countries of the western Balkans: Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia. The projects were managed either by the European Agency for Reconstruction or by the European Commission's Delegations¹. Three additional regional-level projects were audited which were managed by DG Enlargement (DG ELARG) in Brussels.
2. Altogether contracts of around 81 million euro, covering 17 % of the CARDS 2001–06 JHA commitments, were audited. The projects were selected in the light of the following criteria: (i) financial importance, (ii) coverage of all sub-sectors of JHA and (iii) coverage of all types of contracts, i.e. grant, service, supply and works. In order to allow meaningful observations on outputs, results and the sustainability of the projects, 29 of 30 national projects were visited on the spot.

¹ The EAR closed down at the end of 2008. It had operational centres in the former Yugoslav Republic of Macedonia, Montenegro and Serbia. The EC Delegations are implementing programmes in Albania and Bosnia and Herzegovina. The EAR also had an operational centre in Kosovo and there is a Delegation in Croatia but these were not audited.

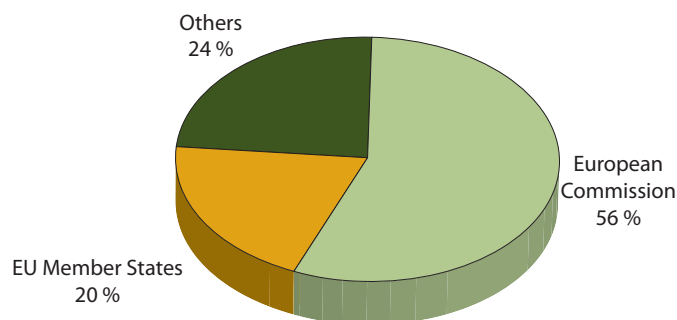
TABLE 1: ELIGIBLE NUMBER OF PROJECTS PER COUNTRY IN APRIL 2007

Country	Number of projects	Amount in million euro
Albania	21	38
Bosnia and Herzegovina	30	48
The former Yugoslav Republic of Macedonia	12	15
Regional programme	6	15
Serbia and Montenegro	14	21
Total	83	137
Audited	33	81
Coverage	40 %	59 %

- 3.** The audit focused on projects that were mature but not too old, thus limiting the audit to those projects that started not earlier than 48 months ago and not later than 18 months ago when the audit started. With these criteria the contracted amount in the audited countries was 137 million euro, and the audit coverage was 59 % of the contracted amount. Except in one case (Gorica border crossing point project in Bosnia and Herzegovina) that was never started, other projects were completed ones. There was thus sufficient material to identify and analyse the main effectiveness problems.

ANNEX III

TOTAL GRANT ASSISTANCE DURING 2006–08, 4 240 MILLION EURO BY SOURCE



Source: European Commission/World Bank Joint Office for South Eastern Europe.

ANNEX IV

LEVEL OF PERCEIVED CORRUPTION — THE WESTERN BALKANS

	2008		2007		2006		2005		2004	
	Ranking	CPI score	Ranking	CPI score	Ranking	CPI score	Ranking	CPI score	Ranking	CPI score
Albania	85	3,4	105	2,9	111	2,6	126	2,4	108	2,5
Bosnia and Herzegovina	92	3,2	84	3,3	93	2,9	88	2,9	82	3,1
The former Yugoslav Republic of Macedonia	72	3,6	84	3,3	105	2,7	103	2,7	97	2,7
Montenegro	85	3,4	84	3,3	N/A		97	2,8	97	2,7
Serbia	85	3,4	79	3,4	90	3,0				

The Corruption Perception Index (CPI) is calculated for 180 countries, with the ranking of 1 for the country that is perceived as the least corrupt and 180 for the country that is perceived as the most corrupt country.

The CPI score ranges from 0 to 10 and expresses the level of perceived corruption, i.e. the lower the score the higher the level of perceived corruption.

Source: Transparency International (<http://www.transparency.org>).

THE COMMISSION'S MANAGEMENT STRUCTURE IN THE WESTERN BALKANS

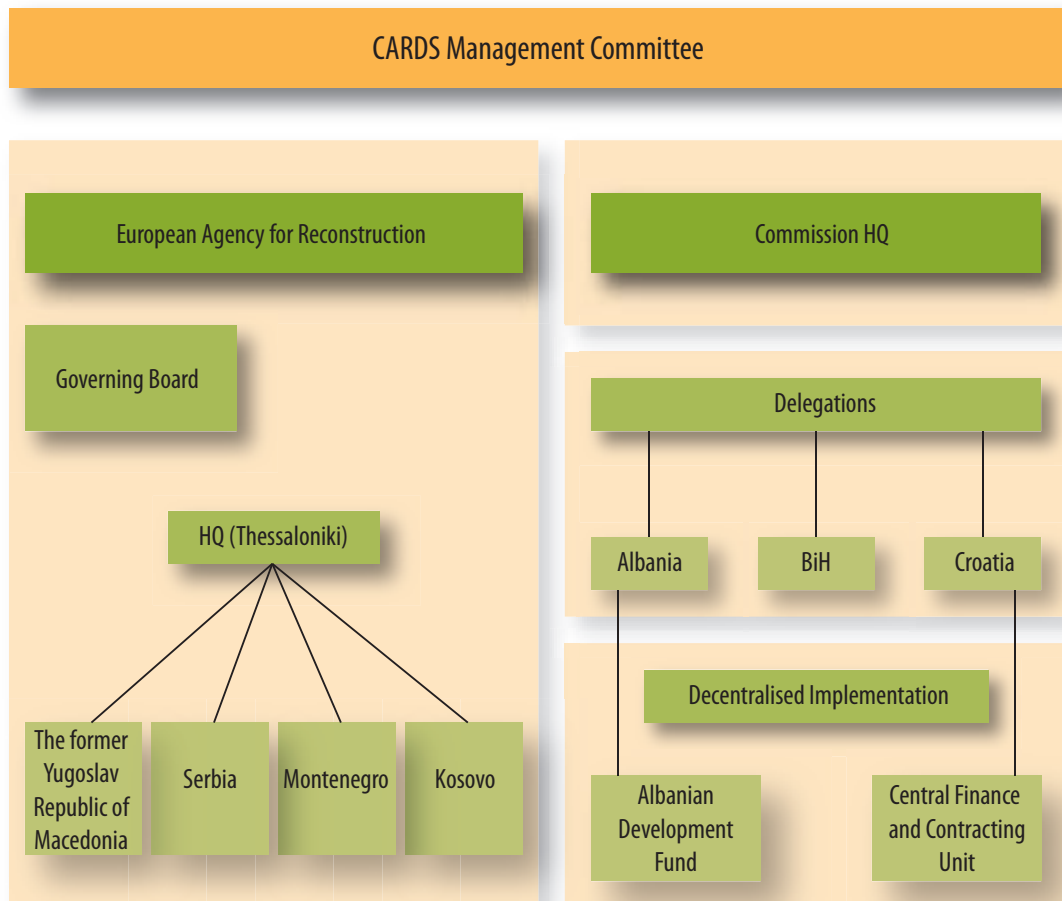
CARDS is mainly implemented through two out of a total of four different management structures (see **Diagram 1**):

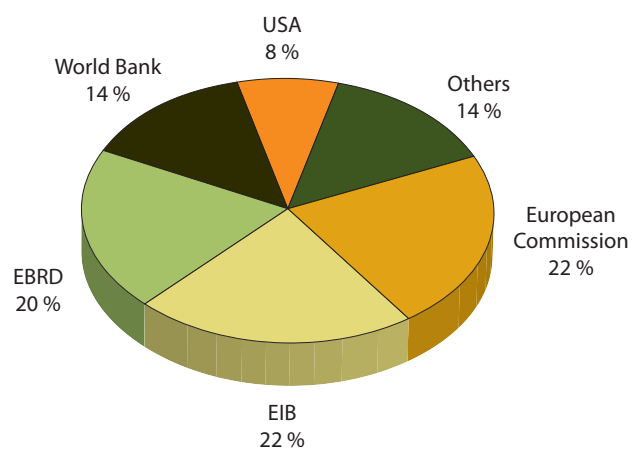
- (a) The EC Delegations in Albania, Bosnia and Herzegovina and Croatia manage the projects, from identification and formulation to tendering, contracting, implementation and evaluation¹.
- (b) The European Agency for Reconstruction (EAR)², an independent agency of the EU, manages the programme in Serbia and Montenegro, including Kosovo, and the former Yugoslav Republic of Macedonia. It was created as a response to the need to act quickly and efficiently when addressing the urgent post-conflict needs of the population in Kosovo in the immediate aftermath of the 1999 crisis.
- (c) DG Enlargement (and earlier EuropeAid) manages the Regional Programmes directly from the headquarters.
- (d) Implementing Agencies of the beneficiary countries manage the Local Community Development Programmes in Albania and a part of the CARDS 2002 programme in Croatia in a decentralised way.

¹ The devolution process started in Bosnia and Herzegovina in 1998. This was done in order to improve the speed of EC external aid, while ensuring robust financial procedures.

² The EAR was established in February 2000; its predecessor, the Task Force for Kosovo, had already started operation in 1999. In 2001, the agency's mandate was extended to Serbia and Montenegro and in 2002 to the former Yugoslav Republic of Macedonia.

DIAGRAM 1: CARDS MANAGEMENT STRUCTURE



**TOTAL GRANTS AND LOANS DURING 2006-08,
10 488 MILLION EURO BY SOURCE**

Source: European Commission/World Bank Joint Office for South Eastern Europe.

REPLY OF THE COMMISSION

EXECUTIVE SUMMARY

I.

The Justice and Home Affairs (JHA) area has continued to be a priority area in the programming of the Instrument for Pre-accession Assistance (IPA). The total amount allocated to projects in this area was 58.6 million euro in 2007 and 75.5 million euro in 2008.

III.

- (a) The Commission has always given high priority to providing support to countries for meeting the requirements under the Political Criteria, including Justice and Home Affairs, as witnessed in the earlier Phare and Transition Facility and CARDS programmes. JHA continues to be a priority area under IPA.
- (b) Sustainability of projects is essentially dependent on the commitments of the beneficiary countries and resources allocated to a project after its completion. The Commission is addressing this issue through project conditionalities and co-financing by the beneficiaries.
- (c) Needs were generally identified in the framework of the Progress Reports, which include an assessment of the state of play in the area of JHA in candidate countries and potential candidate countries.
- (e) The Commission concurs that institution-building is most effective when supported by strong political will for reform.
- (f) The European Agency for Reconstruction has been an efficient tool for the area it was designed for, thanks to its speed in delivery which was essential in the reconstruction phase.

REPLY OF THE COMMISSION

IV.

- (b) The Commission generally combines equipment and infrastructure investment with institution- and capacity-building. The provision of equipment and infrastructure is combined with support for training and organisational reforms.
- (c) Under IPA, the Commission has put greater emphasis on aid effectiveness, and is committed to ensuring efficient donor coordination on the ground. This has resulted in various donor coordination conferences organised by the Commission since 2007, as well as concrete initiatives on the ground for coordination at sector level, including the preparation of joint projects with other donors.
- (d) As the Financial Regulation allows the Commission to implement external actions together with other actors, this type of action will be considered when deemed applicable.

V.

- (a) Beneficiaries are now involved in the procurement process from project preparation to the evaluation of bids (where a representative of the beneficiary is always present as a voting member). More generally, to enhance ownership by beneficiaries, regional coordination meetings are organised regularly with EC Headquarters, EC Delegations and beneficiaries, and from an early stage beneficiaries are consulted on the Multiannual Planning Document and the outline project fiches.
- (b) In order to enhance sustainability and ownership of projects under IPA 2007 and 2008 programmes, project fiches include specific conditionality on infrastructure maintenance.
- (c) The Commission embarked on a regional financial assistance project to improve monitoring in the JHA area of performance of authorities and financial assistance in March 2009.
- (d) Financial assistance is complementary to the political process of stabilisation and association. Progress reports and the European Partnerships include specific recommendations as to the required institutional changes. Some projects also directly support reforms in the area of JHA. For example, in the programming of IPA 2009, discussions are being held with the beneficiaries in order to deliver better programmes responding to beneficiaries' needs in the area of JHA, from a regional EU integration perspective and linked to the strategy paper, country reports, and Accession/European Partnerships.

REPLY OF THE COMMISSION

INTRODUCTION

2.

After CARDS, the JHA area has continued to be a priority area in the programming of IPA.

The guidelines for the annual action programmes indicate that the amounts to be earmarked under the Political Criteria, including JHA projects within the IPA component for technical assistance and institution-building, should reach between 30 % and 35 % of the total. The total amount allocated to projects in this area was 58.6 million euro in 2007 and 75.5 million euro in 2008.

3.

- (a) The Commission's risk assessment confirms the Court's findings. However, risks related to sustainability and ownership of projects under IPA 2007 and 2008 programmes are now mitigated by conditionalities and measures included in the projects, such as project co-financing.
- (c) The Commission applies principles of sound and efficient financial management, and assesses the level of risks associated with individual projects. Contracts will not be signed, or may be suspended, if there is no reasonable assurance that the conditions for project implementation will be met.

OBSERVATIONS

13.

In implementing annual projects the Commission had to take into account changing circumstances while remaining within the boundaries of the broader strategic objectives.

Box 1 — Examples of strategic and non-strategic investments projects

Case 2: Project not following annual programme

The need for building capacities in the field of asylum has been identified at a policy level. The Commission's regular report of 2002 called upon the country to 'improve capacity to process asylum applications', whereas the first assessment mission in the JHA area, carried out in June 2002, recommended that 'adequate reception facilities for asylum seekers should be established'.

14.

When projects are funded, the strategic framework is always taken into account.

The Commission has consistently encouraged the Ministries of Justice and Interior to develop their selection procedure.

Box 3 — Examples of inefficient and ineffective distribution and use of EU-funded equipment

Motorbikes provided by CARDS were allocated to the border police stations to patrol the green border. The Ministry of Interior undertook to provide the protective gear. A tender was launched and an offer chosen in early 2009.

REPLY OF THE COMMISSION

The equipment purchase was initially the responsibility of the Ministry of Labour and Social Policy. The Commission and UNHCR jointly raised this issue with the government. Some of the equipment was installed in the centre by April 2008, and the rest at the end of summer 2008.

The Commission has since enhanced its overall supervision through site visits operated by EC Delegation staff and periodic reporting on the utilisation of assets, and by interacting closely with the Albanian state police.

Box 5 — Example of a non-implemented border crossing point project

Based on firm commitment by the Council of Ministers of Bosnia and Herzegovina and Grude Municipality that the land expropriation process would be completed by the end of September 2004, the Commission signed the 2.9 million euro works contract for construction of the Gorica border crossing point in October 2004. Such a situation was not uncommon given the legal uncertainties due to the transfer of competencies related to customs and border matters from the Entities to the State of BiH. In addition, the Gorica BCP was nominated for construction as the priority border crossing by the Federal Ministry of Transport of BiH. In this particular case, the Commission faced unexpected resistance which could not be overruled by the state against the expropriation from the local authorities because of the valuation of the land.

For sustainability and ownership of projects under the IPA 2007 and 2008 programmes, project fiches include measures to avoid difficulties with construction permits and land ownership.

The BiH Indirect Taxation Administration (ITA) is planning to construct an inland customs terminal in Mostar (within the ITA Regional Centre Mostar) that would be owned by the ITA. The ITA would then be in a position to collect 100 % revenues related to usage of the customs terminal facility. Construction of inland customs terminals is also stipulated in the BiH Integrated Border Management Strategy (revised version adopted in July 2008). The ITA envisages construction of four inland customs terminals in BiH, within four ITA Regional Centres, namely Mostar, Sarajevo, Banja Luka and Tuzla.

19.

The decision for or against a joint BCP is subject to a number of factors, cost being only one of them. In addition, there are some examples of joint border crossings between western Balkan countries (or them and their neighbours) supported by EU funds. A joint border crossing can certainly enhance cooperation between the two countries concerned, but there are also other ways of bilateral cooperation at the border.

The Commission is currently examining whether the Schengen *acquis* on joint BCPs between western Balkan countries and their neighbours will apply in the case of an asylum request being lodged by an asylum seeker on the territory of the third country (but physically at the joint BCP). The EU perspective on western Balkan countries requires that such EU internal reflections are taken into account when making policy recommendations in relation to those countries.

REPLY OF THE COMMISSION

Box 6 — Example of an investment enforcing the rule of law

Construction of the Court of Appeal in Vlora, Albania

Since the time of the audit, the supply of energy throughout the country has greatly improved and, consequently, the frequency of electricity cuts on the power network has been dramatically reduced. In parallel to this, as of the beginning of 2009, the Ministry of Justice has increased the operational and maintenance budget for the entire justice infrastructure.

In this respect, it is worth noting that the budget administration and management in judicial institutions is steadily becoming more transparent and more standardised.

23.

Albania has concluded a Community readmission agreement, which entered into force on 1 May 2006, and Bosnia and Herzegovina, Montenegro, Serbia and the former Yugoslav Republic of Macedonia have all concluded such agreements, which entered into force on 1 January 2008. Each of these agreements stipulates that the implementation of the agreement is to be monitored by a joint readmission committee with representatives from both the Commission and the national authorities. The joint committees have regular meetings in which also representatives of the Member States participate. The correct implementation of these agreements is a condition for lifting the EU visa obligation. The assessments made in this context have confirmed that the agreements are implemented correctly and in a timely manner.

24.

In the meantime, the situation has improved: For sustainability and ownership of projects under IPA 2007 and 2008 programmes, project fiches include specific conditionality on infrastructure maintenance.

25.

The Commission is aware that better monitoring of the assets could have a positive effect on the impact and sustainability of the investment projects.

Box 8 — Example of infrastructure project with lack of impact

Operations at the BCP are at present regulated by the instruction issued by the ITA director. According to the relevant BiH authorities this instruction does not represent a valid document for official recategorisation (downgrading) of the border crossing point since, in order to be valid, such a decision must be adopted by the relevant BiH institutions and published in the official gazette, which was not the case in this instance. In their opinion, this instruction letter issued by the director of the ITA could not be seen as an official decision for recategorisation, although the regime at the border crossing point is governed by that particular instruction.

26.

Beneficiaries are now involved in the procurement process from project preparation to the evaluation of bids (where a representative of the beneficiary is always present as a voting member).

REPLY OF THE COMMISSION

After-sales services are not quantifiable at the time of tendering, and generally exceed the period of implementation of the Commission programmes. Usually, the provision of after-sales services is a requirement under EC supplies tenders, but the contract for such services must be negotiated by the beneficiary and is not financed by the EC.

Investments not matched with necessary institutional capacities

27.

The Commission generally combines equipment and infrastructure investment with institution- and capacity-building. When it comes to border management the provision of equipment and infrastructure is combined with support for training of the border police and organisational reforms. The overall objectives for each country are based on an integrated border management strategy.

28.

The project is a step in a more long-term strategy. IT supplies have resulted in a significant improvement of working methods and immediate transfer of data between the linked police stations and the central IT unit of the ministry, allowing further processing to relevant police departments. This was the intended and immediate objective of the project. Further extension of the network is planned in several phases.

(a) Currently in Montenegro, seven BCPs (covering 85 % of the traffic) are now connected to the central database and the Interpol database. One additional BCP was to be connected by June 2009. Montenegro has in the ongoing visa liberalisation dialogue declared that all border crossing points will be connected to the central database by the end of 2009 and that this will be financed with national funds.

(b) In the other western Balkan countries, new laws on data protection have been adopted in the meantime¹. In some of the countries further legislative and administrative measures are still required to establish sufficient personal data protection.

(c) Written instructions on access controls are the responsibility of national authorities. The Commission also supports the implementation of access control procedures, through technical assistance or twinning.

34.

The reform strategies on JHA topics contain performance indicators. Policy notes have been developed, which serve to give guidance on programming and on the results to be achieved with financial assistance. Peer reviews by experts from the Member States assess the overall situation and offer recommendations on what should be achieved with future assistance. In addition, annual progress reports contain an assessment of the degree to which values of freedom, security and justice (e.g. rule of law, respect of fundamental rights) are respected in each western Balkan country.

¹ New laws on data protection have been adopted in 2007 (Croatia) and in 2008 (Albania, Serbia, Montenegro and the former Yugoslav Republic of Macedonia).

REPLY OF THE COMMISSION

Box 9 — Unstable staffing situation in public administration in Albania and the former Yugoslav Republic of Macedonia

Understaffing and turnover of staff following elections is a source of concern. The Commission has made a point of stressing regularly to the national and local authorities the importance of maintaining staff as a guarantee of increasing effectiveness of the public administration.

Some improvements since the audit can be reported in the migration area where the Directorate for Migration Policies at the Albanian Ministry of Labour has been strengthened and additional staff have been hired.

Changes were made by the Ministry according to the legislation in force and based mainly on so-called unsatisfactory performance. This created a temporary slowdown of the reform process and was brought up by the Commission. The new staff deployed took some time to settle in but performance indicators for the holders of all the positions in question are comparatively better now than three years ago.

Box 10 — Examples of enhanced operational capacity

The Community assistance may have contributed to providing the infrastructural and organisational capacity and skills necessary to plan and execute an operation of this importance, but was neither a direct nor an indirect factor in its execution.

38.

Although the Commission encourages the different services to cooperate, internal tensions and fragmented, uncoordinated policymaking between the State and the Entities in Bosnia and Herzegovina constitute the main obstacle to smooth operation of institutions and to creating better functioning and more efficient state structures. The lack of political consensus on the main direction of the country inevitably also affects the results of the financial assistance.

Box 11 — Examples of judicial training centres (JTCs)

Initially, the Ministry of Justice did not invite any of the project's international experts to participate in the drafting process for the law governing the Academy for the Training of Judges and Prosecutors. As a result of pressure from the donor community, the experts were eventually consulted and some of their recommendations have been included in the final legal text. Nevertheless the current law still has shortcomings which need to be addressed. The Ministry of Justice has included the preparation of amendments on the 2009 legislative agenda.

Currently the academy is fully functional for both initial and continuous training. As regards initial training, the first generation of students graduated from the academy in February 2009 and the second generation is now undergoing training. As for the continuous training, the academy has constantly widened the scope of its activities and the categories of special training provided.

REPLY OF THE COMMISSION

The decision to abandon a previously agreed Training of Trainers strategy to improve teaching techniques was taken by the local authorities.

During the project implementation, the Commission was faced with changing priorities due to different ministers of justice, presidents of the Supreme Court and directors of the judicial training centre — having differing views on the role of the JTC.

41.

As the projects launched under the programme were the first CARDS regional projects in the area of JHA, experts from the EU Member States performed JHA assessment missions in the region in May-June 2002 and identified several important common needs that the projects launched thereafter aimed to cover.

43.

Concise summaries of progress towards achieving the specific objectives will be prepared for future projects. The Commission wishes to underline that all the outputs as set in the project description were delivered.

44.

The Commission has learned from these past experiences and now acts according to a formalised approach which sees the beneficiary in the driving seat of the assistance process, taking full responsibility for the anticipated objectives, methodologies and results.

Further enhancement of the projects' ownership by the beneficiaries is a priority under IPA.

Box 12 — Examples of 'learning-by-doing' projects in Bosnia and Herzegovina

Case 2: Incomplete hand-over of responsibilities to the beneficiary — War Crimes Chamber

In terms of staff hand-over, the war crimes project entailed a five-year implementation period, i.e. from 2005 to 2009 inclusive. Since the audit, the prospect of ending the mandates of all international judges and prosecutors has been reconsidered, especially in light of the remaining backlog and 15% budgetary reductions for the Court for 2009. Hence, for political, technical and budgetary reasons the Court (and the prosecutor's office) is in favour of their continuation beyond the original December 2009 cut-off point.

46.

The Commission now takes the degree to which values of freedom, security and justice, such as the rule of law and respect for fundamental rights, are respected in key third countries (including the countries that have been subject to this audit) as an important impact indicator related to one of the general objectives of the justice, freedom and security area.

47.

The history of implementation of several institution-building projects shows that the Commission has repeatedly and steadily attempted to exert a positive influence in order to foster the sustainability of the projects.

REPLY OF THE COMMISSION

48.

In order to enhance ownership by beneficiaries, regional coordination meetings are organised regularly with EC Headquarters, EC Delegations and beneficiaries. Moreover, from an early stage beneficiaries are consulted on the Multiannual Planning Document and the outline project fiches.

As regards JHA regional programming under IPA 2009, discussions are held with the beneficiaries in order to deliver better programmes responding to beneficiaries' needs, from a regional EU integration perspective and linked to the strategy paper, country reports, and Accession/European Partnerships.

49.

The Regional Cooperation Council took over in the first half of 2008 the role of the former Stability Pact as facilitator of regional donor cooperation in the JHA area and is organising conferences to this end.

Within that context, donor cooperation meetings are also organised by the individual initiatives such as the Migration, Asylum, Refugees Regional Initiative (MARRI) and the Regional Anti-Corruption Initiative (RAI).

52.

The European Agency for Reconstruction has successfully fulfilled its mandate of post-crisis reconstruction and stabilisation. The Commission considers that the agency has been an efficient tool for the area it was designed for, thanks to its speed in delivery which was essential in the reconstruction phase.

53.

Donor coordination is already considered a priority within CARDS as a donor coordination meeting was held in Brussels at the end of 2005 where best practices carried out in Albania were presented and different coordination aspects discussed.

Under IPA, the will to ensure efficient donor coordination on the ground has developed into a top priority: further conferences on aid effectiveness in the western Balkans and Turkey were organised in Brussels in October 2008 and in Tirana in April 2009. A follow-up conference is scheduled for October 2009.

54.

The Commission strives continuously to improve donor coordination. An internal network was reestablished in early 2008 for improving policy and programming coordination in the JHA area. Regular meetings involving also the EC Delegations are held within this network. Thematic notes have been developed in this context with policy and programming recommendations on judiciary reform and the fight against corruption and organised crime.

REPLY OF THE COMMISSION

Box 14 — Example of uncoordinated multi-donor investment activity

Since 2002 all donors have both provided local authorities with vehicles and left them as a donation at the end of their projects. The uncoordinated approach in terms of local authorities' lack of strategic planning for budget and international organisations' response to the lack of vehicles created, in a couple of years, a non-homogeneous fleet with rising maintenance costs. The problem was spotted by the Ministry of the Interior. Last year the Ministry of the Interior started a coordinated revision of its fleet by tendering for and then buying some 50 vehicles. All the vehicles come from a single leading EU carmaker and it is expected that this will impact positively on the maintenance expenditure.

55.

The problem of conflicting advice, confined to certain issues and restricted to a specific period, was meanwhile solved as the other players left the field, and no longer persists as the Commission has promoted the progressive harmonisation of advice.

CONCLUSIONS AND RECOMMENDATIONS

56.

The JHA area has continued to be a priority area in the programming of the Instruments for Pre-Accession Assistance and measures have meanwhile been introduced to ensure the sustainability of project results.

57.

In endeavouring to coordinate donors, the Commission maintains regular contacts for policy and financial assistance coordination with the Council of Europe, the Venice Commission, UN High Commissioner for Refugees, International Office of Migration, International Criminal Tribunal for the former Yugoslavia and bilateral donors. Meetings are held regularly between the EC Delegations and the Member States' embassies for coordinating their bilateral financial assistance with that of the Community. The Commission organised conferences in autumn 2008 and in April 2009 with the main donors, aimed at improving donor coordination methodologies. The next conference, which will mainly focus on the practical aspects of coordination on the ground, is scheduled for October 2009.

The Regional Cooperation Council took over during the first half of 2008 the role of the former Stability Pact as facilitator of regional donor cooperation in the JHA area and is organising conferences to this end. Donor cooperation meetings are also organised through regional initiatives.

REPLY OF THE COMMISSION

Recommendation 1

- (a) The Commission now sets impact indicators which are part of the activity-based management cycle. They include the degree to which values related to freedom, security and justice are now respected in key third countries, including the countries in which the audit has been conducted; the values include the rule of law and respect for fundamental rights.
- (b) The Commission generally combines equipment and infrastructure investment with institution- and capacity-building. The provision of equipment and infrastructure is combined with support for training and organisational reforms.
- (c) Practical aspects of donor coordination are now being examined; concerning this particular possibility, initiatives have been taken by the Commission in the context of a 'projects fair' organised in the spring of 2009.
- (d) As the Financial Regulation allows the Commission to implement external actions together with other actors, this type of action will be considered when deemed applicable.

Recommendation 2

- (a) Beneficiaries are now involved in the procurement process from project preparation to the evaluation of bids (where a representative of the beneficiary is always present as a voting member). More generally, to enhance ownership by beneficiaries, regional coordination meetings are organised regularly with EC Headquarters, EC Delegations and beneficiaries, and from an early stage beneficiaries are consulted on the Multiannual Planning Document and the outline project fiches.
- (b) For sustainability and ownership of projects under IPA 2007 and 2008 programmes, project fiches include specific conditionality on infrastructure maintenance.
- (c) The Commission is aware of the situation and in March 2009 embarked on a regional financial assistance project to improve monitoring in the JHA area of performance of authorities and financial assistance.
- (d) The Commission now sets impact indicators which are part of the activity-based management cycle. They include the degree to which values related to freedom, security and justice are now respected in key third countries, including the countries in which the audit has been conducted; the values include the rule of law and respect for fundamental rights.

REPLY OF THE COMMISSION

(e) Financial assistance is complementary to the political process of stabilisation and association. Progress reports and the European Partnerships include specific recommendations as to the required institutional changes. Some projects also directly support reforms in the area of JHA. For example, in the programming of IPA 2009, discussions are being held with the beneficiaries in order to deliver better programmes responding to beneficiaries' needs in the area of JHA, from a regional EU integration perspective and linked to the strategy paper, country reports, and Accession/European Partnerships.

Recommendation 3

The Commission agrees that a joint border crossing point can certainly enhance cooperation between the two countries concerned, but there are also other ways of bilateral cooperation at the border.

Practical issues linked to the applicability of the Schengen *acquis* on joint BCPs in case of asylum requests are to be taken into account when making policy recommendations in relation to those countries.

European Court of Auditors

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IN THIS REPORT, THE EUROPEAN COURT OF AUDITORS ANALYSES THE EFFECTIVENESS OF THE EUROPEAN COMMISSION'S PROJECTS IN THE AREA OF JUSTICE AND HOME AFFAIRS FOR THE WESTERN BALKANS. THE REPORT COVERS BOTH INVESTMENT AND INSTITUTION-BUILDING PROJECTS IN THE FOUR JUSTICE AND HOME AFFAIRS SUB AREAS: ASYLUM AND MIGRATION, INTEGRATED BORDER MANAGEMENT, JUDICIARY AND POLICE.

AGAINST THE BACKGROUND OF A DIFFICULT POLITICAL AND ORGANISATIONAL ENVIRONMENT, THE COMMISSION'S MANAGEMENT OF JUSTICE AND HOME AFFAIRS PROJECTS HAS BEEN LARGELY EFFECTIVE. HOWEVER, THE COURT IDENTIFIED SHORTCOMINGS, PARTICULARLY IN TERMS OF OWNERSHIP AND SUSTAINABILITY OF RESULTS. THE REPORT CONTAINS RECOMMENDATIONS WHICH COULD HELP THE COMMISSION TO PROVIDE MORE EFFICIENT AND EFFECTIVE ASSISTANCE.



EUROPEAN COURT OF AUDITORS



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