

Future of EULEX?

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—
October 9, 2017



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By Umberto Cucchi

With April 2018 just around the corner, the 9th anniversary of the European Union Rule of Law Mission in Kosovo (EULEX) is swiftly approaching. Established with the purpose of introducing a rule of law culture in Kosovo, improving negotiations vis-à-vis Serbia and strengthening local institutions, EULEX has achieved mixed results, in the past 8-and-half years. The two divisions of the Mission: (1) Executive and (2) Strengthening, have focused, over the years, on investigations, criminal cases, monitoring and supporting police forces, courts and customs. With an annual budget for the 2017/2018 of over 90 million euros, being EU's biggest abroad mission, the amount of results and successes achieved in almost 9 years is often considered below par.

The organization has often been put under accusations, depicted as lacking accountability and transparency. The poor results obtained have fueled a sense of dissatisfaction with EULEX, both internally and externally. In the past years, these voices asking for the shutdown of EULEX have rapidly increased. These voices, locally lead by Vetëvendosje, the main opposition party, are demanding the complete cessation of activities of EULEX, due to its significantly weak results. With its mandate expiring in June 2018, EULEX's future is still full of uncertainties. Although it is true that the mandate has been extended multiple times, 2010, 2012, 2014 and 2016, the future of the organization, considering its past results, is still turbid. Following the mandate's renewal of 2016, EULEX, with blessing of the government of Kosovo, substantially shifted several competencies (i.e. criminal investigations, new trials, and formation of judicial panels) to local authorities, limiting its involvement to unique and special circumstances related to trials and investigations. What is more, the marginalization of EULEX in investigations over war crimes allegations, due to the establishment of a special chamber in the Netherlands, has been another major change in EULEX's new mandate.

Where to go from here? What will happen after next June? The 'pullout' phase began in this mandate will probably see his natural continuation in the following mandates beginning next summer. A continued reduction of EULEX's competencies could find its roots in these two arguments: (1) local judicial authorities will never be able to establish solid and meaningful competencies if the international presence is causing a marginalization of local authorities. Properly enabling local jurisdiction to carryout significant and meaningful tasks, only resorting to international guidance in the most difficult and thorny cases, is among the best recipe for building accountable and efficient institutions. What is thus foreseeable is the continuation with a very similar mandate (in terms of competences) for 2016-2018 and see additional competences shifted in the mandate that will likely start in the summer of 2018. (2) *Pontius Pilate Effect*. The continuation of a pullout phase will allow EULEX to slightly detach itself for a long series of failures in the judicial field in Kosovo. By maintaining its presence in the country, EULEX will still be able to intervene in delicate and difficult circumstances, while the perpetuation of lack of success in fighting corruption and establishing corruption could only be attributed to the Kosovo judicial authorities. In more than once instance, nonetheless, the mildness of EULEX towards a tough war against corruption has been interpreted as a political move necessary to prevent an alteration of the precarious equilibrium of the Pristina-Belgrade dialogue.

As it was already clear in the Jacqué Report of 2014 (Review of the EULEX Kosovo Mission's implementation of the mandate), EULEX prior to the current mandate was in a severe need of reforms. Hence, the restructuring asked by Jacques, was (and is) necessary to allow EULEX to be

effective in strengthening Kosovo authorities' competencies. The fact that the EU is constantly extending the mandate of an organization that since its day one knew it will be shut down at the end of a completion of set of goals, is, by default, an acknowledgment of the lack of success up to today. Moreover, as in every other European matter, the positions of the 28-member states over the continuation (or finalization) of EULEX are of different nature and are well-distributed through the totality of the spectrum. Countries like Belgium, although in favor of Kosovan independence, have urged to proceed carefully with the transition of competences. However, for the sake of argument, most of these fears originate from migration concerns coming from many capitals in Europe.

In conclusion, EULEX's future has often been questioned, and probably will continue to be questioned for its whole existence. Even if some success has been achieved, with the beginning of the transfer of competences and the improvement of relationships with Serbia following the Brussels Accord, the still heavy presence of corruption and political interference tarnished any minor success achieved up to today. Ironically enough, those areas where EULEX has been able to achieve success are the ones where local judges are showing the most dependency upon international colleagues' guidance and instructions. What is more, in order to proceed during the following EULEX mandates with a swiftly transition of competences, the establishment of an efficient system of management and communication is necessary, avoiding any possible scandal like the one of 2014, that severely undermine the credibility of the whole mission. The introduction of the Programmatic Approach, a mechanism to analyze EULEX achievements on a monthly basis, marked a good starting point for a better management and communication. It is thus easily arguable that a concrete improvement in management and communication would then allow a smoother and faster transition of competences from EULEX to local institutions. In this way, Kosovo will be finally able to strengthen its rule of law and reduce its corruption levels, while the European Union will be able to maintain its credibility and reputation in the Western Balkans region.

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