



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 1 December 2006

16137/06

LIMITE

**CIVCOM 555
PESC 1211
RELEX 867
COSDP 1000
COHOM 185
JAI 668**

PUBLIC

NOTE

From: Committee for Civilian Aspects of Crisis Management
To : Political and Security Committee

Subject : Draft Concept for ESDP Border missions in the framework of Civilian Crisis Management

In view of the meeting of the Political and Security Committee on 5 December 2006, delegations will find enclosed the draft Concept for ESDP Border missions in the framework of Civilian Crisis management as finalised in the meeting of the Committee for Civilian Aspects of Crisis Management on 30 November 2006.

DRAFT

Concept for ESDP Border missions in the framework of Civilian Crisis Management

INDEX

- I INTRODUCTION
- II AIM
- III FRAMEWORK OF ESDP MISSIONS
- IV SCENARIOS LEADING TO ESDP MISSION
- V MISSION TYPES AND TASKS
 - a. ESDP Border Monitoring missions
 - b. ESDP Border Strengthening missions
 - c. ESDP Border Substitution missions
- VI EXPERTISE REQUIREMENTS
- VII MISSION STRUCTURES
- VIII EU INTERNAL CO-ORDINATION

ANNEX 1 Relevant Terminology and Definitions for ESDP Border missions

ANNEX 2 ESDP Border Mission Organisation - illustrative example

REFERENCE DOCUMENTS

- *Presidency Conclusions - European Council of Laeken of 14 and 15 December 2001*
- *Concept for EU monitoring missions (doc. 14536/03)*
- *EU Concept for Crisis Management Missions in the field of Civilian Administration (doc. 15311/03)*
- *Guidelines for Integrated Border management in the Western Balkans (EU Commission working paper 2004)*
- *EU Concept for ESDP support to Security Sector Reform (SSR) (doc. 12566/4/05)*
- *Border Security and Management Concept; Framework for Co-operation by the OSCE Participating States (OSCE 6 December 2005)*

Concept for ESDP Border missions in the framework of Civilian Crisis Management

I INTRODUCTION

1. Effective and integrated border management services are critical to ensuring the safety and security of citizens, promoting regional stability, and facilitating trade and development. However, in many countries, ineffective border management systems frustrate efforts to detect and prevent organised crime and terrorism and enable trafficking in illicit arms, commodities and human beings, which in turn fuel conflict and insecurity. They can also be associated with corruption that reduces state revenues and discourages trade and economic activity.
2. Border related issues have become an increasingly important aspect of civilian crisis management. An ESDP intervention can be envisaged if the security situation at the border indicates that an ESDP Border mission would provide added value.
3. The EU is providing a Third Party presence through the EU Border Assistance Mission at the Rafah crossing point between Gaza and Egypt. An EUSR border support team in Georgia is encouraging reform efforts with a view to developing a reform of the Georgian Border Guards and to increase the communication between the border posts and the central level. In Moldova-Ukraine, an EUSR border team is involved in border reform efforts to improve transparency at the common border, alongside the EU Border Assistance Mission to Moldova/Ukraine operating under the TACIS programme, which is staffed to a large extent by seconded experts from EU Member States. Border related issues have been one of the key EU priorities in the Western Balkans as a political follow up of the Ohrid Framework Agreement, as subsequently taken up in EUPM and PROXIMA missions and in the EC guidelines for Integrated Border Management in the Western Balkans. Also, a possible future ESDP engagement in Kosovo will have to integrate a border and / or boundary related focus. Overall, requests for EU engagement in border related tasks are likely to increase in the future, also building on ESDP experience so far.

4. In June 2004, the European Council adopted the Action Plan for Civilian Aspects of Crisis Management of ESDP emphasizing that the EU's political objectives must be clearly identified in any given crisis management situation. The European Council recognised that in the future it will be necessary to broaden the range of expertise - among others in the field of border control.
5. ESDP Border mission, as part of the broader EU policy towards a country or region, may be deployed where there is a current or planned use of Community Instruments in the field of border issues, including, for example, the provision of equipment and training. Close liaison with the Commission on such activities will be essential in both the planning and conduct phase of the ESDP Border mission.

II. AIM

6. The aim of this document is to define a concept and a general understanding of the main principles for the planning and conduct of ESDP Border missions in the framework of Civilian Crisis management. Such missions might either be the central element of an ESDP civilian crisis management mission, or one component of a complex crisis management operation. This document builds on existing EU practice and objectives, taking into account experience so far in the above-mentioned operations. It also aims to further develop the ESDP monitoring capacity related to border issues as defined in the Concept for EU Monitoring missions (doc. 14536/03).
7. In most situations, the EU will need to use several instruments, either simultaneously or in a phased approach. As the aim of this document is to define a concept for ESDP Border missions in the framework of Civilian Crisis Management, its scope is limited to actions carried out under Title V of the TEU. The draft concept is therefore without prejudice to the competences of the other EU actors. A case-by-case analysis is needed to assess whether, in a specific security or crisis environment, border mission activities are most appropriately carried out through ESDP, taking into account both the civilian and the military aspects, or Community and Member States actions or through a combination of both in order to ensure effective EU action.

III FRAMEWORK OF ESDP BORDER MISSIONS

8. For the purposes of this document, an ESDP Border mission is defined on the basis of aspects related to border security, delineation of border and, in some cases, to security related aspects of border management. The context in which an ESDP mission could take place vary considerably and modulate the type of the intervention.
9. The **main functions** at the border are the control of people and goods and the protection of the territory. In most existing border systems, the border police or the border guards are responsible for the control of people and fight against border threats (such as trans-border crime, trafficking of human beings, illegal migration). The customs ensure the control of goods with the purpose of collecting taxes and enforcing the prohibition regimes (such as smuggling of drugs, weapons, chemicals, explosives, WMD) and liaise closely with specialised services such as veterinary or phytosanitary services. The border is also an important area of action for State Intelligence services. The mandate of border law enforcement agencies is frequently contained to a limited border zone. Therefore, coordination with national law enforcement services operating on the national territory will be a key element of effectiveness.
10. The protection of human rights and the appropriate prosecution of crimes on the border imply a close involvement of the justice system in the action of the border law enforcement services.
11. In some cases, the military forces ensure the protection and the integrity of the state territory (land/green border, blue border, air border). This might affect the Integrated Border Management, which is a key element of effective border security.
12. ESDP border missions could, where necessary, cover **multidimensional interventions**:
 - support to the delineation of the border; support to the setting up of new border capacities, taking into account possible EC programmes;

- border management support, including control of persons and goods (border guards, border police, customs, intelligence services) in a pre or post-crisis situation, mentoring and monitoring, development of mutual understanding and cross border cooperation, taking into account possible EC programmes;
- crisis aspects of border security, such as transition from a militarised border regime towards a civilian one in a post conflict situation, assistance for setting up of a coordination mechanism with defence agencies / military forces involved in border security (e.g. air and sea borders), assistance for the setting up of robust reaction capacities against violent or criminal intrusion attempts, coordination / cooperation between civilian and military forces for the control of the border.

13. ESDP border security operations, of a purely military nature, are not considered in this document. Interservice cooperation - such as border guard services, border police / police, customs, veterinary and phyto-sanitary inspection services and when appropriate, defence authorities - is essential to ensure more efficient border control regarding both flows of persons and goods and fight against cross-border crime. The cooperation between the various services - out of which only a few are actually stationed at the borders - would cover the vertical as well as horizontal cooperation.

14. The objective of this concept is to cover the above mentioned aspects in a comprehensive approach. This does not imply that all ESDP interventions in this field should necessarily have such a broad scope, nor that such an intervention should be exclusive: often other EU instruments, for example those deployed by the European Community or Member States bilateral programmes, or actions of other international actors, would already exist in theatre. In these cases ESDP activities would build on and complement existing EU activities. If an ESDP Border mission is deployed in an early stage, its presence could also contribute to identifying border issues elements for further long term assistance under Community assistance.

15. Border management and security related aspects can also be seen as a part of a wider Security Sector Reform (SSR). An ESDP Border mission could provide, where necessary, assistance in assessing needs, defining policies, objectives and rules related to border management and security related aspects and assisting in the establishment and implementation of an overall strategy and policies for the management of borders.
16. Territorial conflicts regarding the boundaries are amongst the primary reasons for armed confrontations between nations. The establishment of relations between disputing countries, the delineation and demarcation of the shared border through a bilateral agreement would constitute significant steps towards promoting peace and security in the region concerned. An ESDP Border mission could provide support to the parties to assist in this process and also promote negotiations between the parties.
17. Physical elements of the border impact on the planning of ESDP border missions.
As legal boundaries are often identical to natural boundaries, geographical factors have a particular effect on the planning and conduct of an effective ESDP Border mission. High hilly or mountainous terrains, maritime, lakes and rivers, climate features with heavy season rains and / or snowing in the mountains are factors which have to be considered, not least in relations to the costs, resources, scope and aim of a possible ESDP Border mission which should be equipped accordingly. The difficult geographical features are in many cases worsened by poor or damaged inland infrastructures and communication equipments.

IV SCENARIOS LEADING TO ESDP BORDER MISSION

18. The EU may undertake an ESDP Border mission following an invitation from the host governments / parties involved or an authorisation by the UN Security Council or otherwise in accordance with the UN Charter or another authorisation permitted under international law. The invitation to establish an ESDP Border mission could be part of an agreement between the parties involved.

19. There are essentially three scenarios in which an ESDP Border mission in the context of Civilian Crisis Management could be envisaged as a response to one such request.

These scenarios are not mutually exclusive and could also be combined:

- *International interim administration*: it refers to a situation where the international community is authorised to provide an interim administration (Kosovo, East-Timor). In such a case, an ESDP Border mission would also include substitution tasks related to border management and security as far as the transfer of the competencies can be completed. Professional and sustainable border management conducted by an ESDP Border mission would serve the interests of all parties involved. Such a situation may require extensive organisational and structural changes in the countries involved, to which an ESDP Border mission can contribute.
- *Border dispute settlement between independent states*: this refers to a situation where hostilities in the border region of the countries concerned may have taken place due to a foreign occupation or other border hostilities, and where the international community has been invited to monitor the implementation of the agreement reached by the parties. The parties involved may invite the EU to monitor and/or strengthen the border management and security only at one identified border crossing point or at several identified border crossing points. In rare cases, an ESDP Border mission could include, inter alia, monitoring of a cease-fire at the border; the monitoring and verification of the relocation and redeployment of forces from the border area; and the monitoring of possible demilitarised / security / buffer zones. In particular, in such a case, an ESDP Border mission would need to work in close cooperation with possible military operations in the area.
- *Confidence building in the border region*: this scenario refers to a situation where there is mistrust between the countries involved in the management of border issues and where the parties have invited the international community / EU to facilitate confidence building.

One party could also request EU engagement to improve the professionalism of its border control which in turn might help to minimize a neighbour's mistrust and improve border security. Notwithstanding the existence of possible actions undertaken under Community programmes, the objective of an ESDP Border mission is to promote negotiations and / or confidence building between the parties in the region in order to contribute to facilitating a political settlement or improve bilateral relations, especially as regards the security of the border. A possible objective can also be to build the preconditions for a settlement to a related or partially related conflict.

V MISSION TYPES AND TASKS

20. An ESDP Border mission can fulfil monitoring, strengthening (including advising) or substitution tasks. Depending on the specific crisis situation, any combination of different kind of mission types or tasks can be envisaged when deploying an ESDP Border mission. In any kind of an ESDP Border mission, close liaison with the Commission and EU Member States on current or planned Community or bilateral activities regarding border issues will be essential in both the planning and conduct phase of the ESDP Border mission. Liaison with other actors, the military and international organisations, active in border issues is as well essential.

a. ESDP Border Monitoring Missions

21. The primary activity of this kind of an ESDP Border mission is to observe, monitor and report on border-related issues, taking into account the general political and security situation in the host country or in relation to a specific agreement. The protection of human rights must be guaranteed in all actions and gender issues should be implemented in line with EU policy, based on UNSCR 1325. In particular, these kinds of missions can be envisaged in the context of the scenario referring to *Confidence building in the border region*. Monitoring missions do not have any executive tasks, although they could activate or manage conflict resolution mechanism.

22. Monitoring tasks can include the following:

- providing a third party presence in a possible mistrust or conflict between disputing parties / neighbouring states;
- monitoring of the implementation of an agreement signed by the parties (for example agreement on one particular, in the agreement identified border crossing point, cease-fire agreement at the border between the parties, agreement regarding cessation of hostilities at the border, agreement on border management regarding security at the border). In some of these cases, it will be necessary to consider either a civilian ESDP Border mission using military expertise or an ESDP Border mission working closely in cooperation with the military operation;
- monitoring of the implementation of legislation, rules and regulations related to the border crossing of persons, goods and services as well as the security related aspects;
- monitoring of movement control, follow-up actions and search operations by the local border authorities. Searching includes the searching of persons crossing the border illegally; the searching of persons and vehicles at roadblocks and vehicle control points and checks needed in respect of restrictions justified on grounds of public policy and security, the protection of health and life of humans, animals and plants, the protection of national treasures with artistic, historic or archaeological value or protection of industrial and commercial property;
- monitoring of the behaviour of border authorities;
- liaising with parties in dispute and with other possible neighbouring countries responsible for border control in the area agreed;
- ensuring co-ordinating mechanism at all levels both horizontal and vertical level, including information / intelligence flow between all relevant actors;
- establishing cross border liaison fora to communicate with the border officials of the parties in dispute and other possible neighbouring countries involved;
- keeping a record of the general political and security situation in relation to a specific agreement, the conduct of and achievements of the mission;
- analysing the situation and achievements.

b. ESDP Border Strengthening Missions

23. Notwithstanding the possible need for institution building tasks, which could be carried out under Community programmes, there can be crisis and security related situations in which there is a request for an ESDP Border mission. Such an ESDP Border mission could address the strengthening of the essential functions of border-related issues in the field of border management, security and delineation and demarcation of borders. In case of a strengthening mission, an ESDP Border mission could be used as a tool to contribute to efforts to strengthen the capacity of the parties involved in all aspects of border control by advising, monitoring and mentoring the process. It could also address the operational and strategic needs and issues regarding the establishment of a credible and adequate border control mechanism. Strengthening missions can especially be envisaged in the context of the scenario referring to *Confidence building in the border region* as well as the scenario *Border dispute settlement between independent states*.

24. Strengthening tasks can include the following:

- providing border management support including assistance to the control of persons and goods in a crisis situation;
- provide border security support in transition from militarised border control towards a civilian border management, where appropriate;
- assisting to set up of robust reaction capacities against violent or criminal intrusion attempts;
- providing coordination between civilian and military forces for the control of the border;
- contributing to efforts to strengthen border management and security, in terms of advising, monitoring and mentoring the process, in close coordination with the European Commission, as appropriate;
- assessing the performance of local authorities in border management and security;
- facilitating contacts between the disputing parties;
- contributing to confidence-building between the parties involved and with other neighbouring countries, for example through liaison;
- ensuring co-ordination at all levels including information / intelligence flow between all relevant actors.

c. ESDP Border Substitution Missions

25. An ESDP Border mission could also be called upon to substitute, with executive powers, local authorities in charge of border management and other border related tasks. Such a mission would mainly respond to a situation where the international community / EU is responsible for an interim administration. ESDP Border substitution missions can especially be envisaged in the context of the scenario referring to *International Interim Administration*. In case of a more risky environment, a possible integrated civilian-military ESDP Border Mission could be envisaged. A substitution mission would also include monitoring and strengthening tasks taking into account the progress towards local ownership to build local capabilities. In order to allow for the local ownership and to ensure the exit strategy, a possibility for a partial substitution should be seen.

26. Substitution tasks can include the following:

- setting up arrangements related to the management of the border (including rules and regulations);
- implementing of legislation, rules and regulations related to the border management and security;
- management of border crossing points;
- controlling movement, conducting follow-up actions and search operations. Searching includes the searching of persons crossing the border illegally; the searching of persons and vehicles at roadblocks and vehicle control points. This could also include their detention or their orientation to asylum seekers structures;
- patrolling of the borderline between pre-identified official border-crossing points, using foot, vehicle, water and air patrols;
- liaising with disputing parties and with other possible neighbouring countries responsible for borderline control in the area agreed;
- ensuring co-ordinating mechanisms at all levels including information / intelligence flow between all relevant actors;
- establishing cross-border liaison fora to communicate with the border officials of the disputing parties and the other possible neighbouring countries involved;

- contributing to confidence-building between the disputing parties and with other neighbouring countries;
- strengthen local capacities to perform border related tasks.

VI EXPERTISE REQUIREMENTS

27. The expertise needed for an ESDP Border mission depends on the nature of a given mission and has to be examined on a case by case basis. ESDP Border missions may include cross-cutting ESDP capabilities and requiring expertise from the different crisis management priority areas identified by the Council - mainly from the field of police/border guards/gendarmerie, rule of law and civilian administration. When necessary, ESDP Border missions must be able to draw on military expertise. In this context as well it has to be noted that ESDP Border missions can be deployed autonomously, alongside or in close cooperation with military operations.

28. The necessary standards can only be met by using specialised trained professionals in border guard duties.

- *Border Guard functions* would be needed for tasks related to border checks, border surveillance, law enforcement measures and investigation in order to maintain internal security And also for tasks related to protecting the country from terrorists, as well as stopping illegal human trafficking, drug smuggling and investigating any form of cross-border crime / organised crime. Persons performing border police duties should be specialised trained professionals. Depending on the circumstances, specific air or maritime expertise might also be needed.
- *Border police/criminal police expertise* would be needed for supporting these functions.
- *Customs expertise*, would be required for controlling the illegal entry of goods and services, including agricultural products; illegal trade, enforcement of embargos, fight against WMD, arms/drugs trafficking.

- *Rule of Law expertise in the domain of border management* would be required especially in border dispute situations and generally to support the modernisation of the border legal frame, the integration of human rights, gender, fight against corruption, all of which should be reflected as principles in applicable legislation. Expertise regarding asylum and immigration issues would also be necessary. Legal Advisor(s) would provide support to the Head of Mission.
- *Human rights* is to be mainstreamed through special expertise among the monitors, whether they are under military or civilian capabilities. The mission should have a HR advisor to support the Head of Mission, as appropriate.
- *Gender issues* should be implemented in line with EU policy, based on UNSCR 1325. This is particularly important for ESDP Border missions where mission members must be able to deal with issues such as trafficking in human beings and refugees or asylum seekers, including women and unaccompanied minors among potential refugees and asylum seekers. Therefore it is crucial to have an adequate gender balance among mission personnel. Appropriate training for all the mission staff on gender issues is equally important.
- *Military expertise* would be especially required when an ESDP Border mission would include contributing the monitoring of cease-fire or cessation of hostilities or such a mission would be deployed in war zones. Military expertise is also needed for liaison with the local military forces responsible for the border. Military expertise may also be needed in relation to the enforcement of the integrity of airspace and territorial waters, as appropriate. In most cases this is a responsibility of military authorities, although shared with other authorities as well. To advise on the enforcement of the integrity of airspace for sure this will require military expertise in the border mission as appropriate. Also in a case of transferring border management from military to civilian border authorities, military expertise is required.

29. The following recommendations regarding border management staffing and some of its recommendations would be applied in the framework of ESDP Border missions:

- A high standard has to be applied in the selection of staff. Staff selection should be based on a particular training provided by Member States.
- This training should include aspects of the neighbouring state's legal system with a special focus on the structures of its authorities, administration and police services.
- The job description should include flexibility and communication skills.
- Effective border checks and surveillance require that a number of staff must be familiar with risk assessment analysis systems commonly used for border and cross-border activities.
- International experience, particularly in crisis areas with multi-national and international organisations, would be desirable.

30. The essential requirements, already used for ESDP operations, would be adopted for ESDP Border missions. Additional desirable requirements will depend on the specific operation.

VII MISSION STRUCTURES

31. The structure of an ESDP Border mission is depending on its type, size and expected duration and has to be adapted to the specific circumstances of each mission encounters. Certain structural requirements are common for any ESDP Border Mission in the framework of Civilian Crisis Management.

32. An ESDP Border mission headquarter (HQ) could be located either at the border, near the border area or in the (regional) capital of the host country. Especially when the mission has several district / regional headquarters or in case of a substitution or strengthening mission, the main HQ could be located in the capital.

33. HQ staffing could include, apart from the Head of Mission, a Political Adviser, Legal Adviser, Media Advisor, Human Rights / Gender issue Adviser, Security advisor, Military Liaison Officers and the mission support staff as described in the Initial Concept of Mission Support for ESDP Civilian Crisis management Missions (doc. 12457/06). Additionally the HQ would include also a reporting and analysis section / cell while monitors are located to the district / regional HQs. The HQ should ensure the information / intelligence flow between all relevant actors in the field.
34. In cases of ESDP Border strengthening missions some border experts could be co-located to the national ministries / services responsible for border issues in order to assist the local authorities in developing their policies related to border issues.

VIII EU INTERNAL CO-ORDINATION

35. In border related crisis situations there might be at present also other active international actors, such as OSCE, IOM and UN agencies or EU Member States. Activities carried out by these international actors might also be financed by the Community. Close cooperation and liaison with other active international actors on the ground should be ensured.
36. There might also be cases where other ESDP civilian or military missions would be deployed or would deploy in the same country or region. Coordination with these ESDP operations would be necessary.
37. Close coordination with the Commission, when Community instruments are involved, is essential to ensure overall coherence of the EU external action in the field of border security.
38. ESDP Border missions should benefit, as appropriate, from expertise of and liaise with the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX).
-

ANNEX 1

Relevant Terminology and Definitions for ESDP Border missions¹

For the purposes of ESDP Border missions the following terminology and definitions shall apply:

- 1) **"external borders"** means the Country's land borders, including river and lake borders, sea borders and it's airports, river ports, sea ports and lake ports;
- 2) **"management of external borders"** means the activities carried out by public authorities of the Country to:
 - (a) carry out checks and surveillance at external borders;
 - (b) gather, analyse and exchange any specific intelligence or general information enabling the border guard to analyse the risk that a person, object or asset constitutes for the internal security, law and order or the national security of the Country;
 - (c) analyse the development of the threats likely to affect the security of the external borders and to set the priorities for action of by border guards accordingly;
 - (d) anticipate the needs as regards staff and equipment to ensure security at external borders.
- 3) **"border crossing point"** means any crossing-point authorised by the competent authorities for the crossing of external borders;
- 4) **"security at external borders"** means capacity of the external borders to constitute a barrage, or at least a reliable filter, for the Country against potential threats to:
 - (a) the effectiveness of checks and surveillance;
 - (b) compliance with national regulations;
 - (c) the level of internal security of the country;
 - (d) law and order or the national security of the Country;

¹ The terminology and definitions have been drawn from *Regulation of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (PE-CONS 3643/2/05) and Guidelines for Integrated Border management in the Western Balkans (EU Commission working paper 2004)*

- 5) **"internal security"** means level of protection enjoyed within the national borders by natural persons and bodies corporate, goods and properties of all kinds, capital, the provision of services and all lawful commercial transactions, as well as intellectual and artistic property rights, against attacks on their interests or threats to their integrity caused by:
- (a) failure to comply with national regulations;
 - (b) crime, terrorism, trafficking in human beings, crimes against children, arms trafficking, corruption and fraud as well as traffic in narcotic drugs.
- 6) **"border control"** means the activity carried out at a border in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance;
- 7) **"border checks"** means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Country or authorised to leave it;
- 8) **"border surveillance"** means the surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border checks;
- 9) **"second line check"** means a further check which may be carried out in a special location away from the location at which all persons are checked (first line);
- 10) **"border guard / border police"** means any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border who carries out, in accordance with national law, border control tasks;
- 11) **"carrier"** means any natural or legal person whose profession it is to provide transport of persons;
- 12) **"demarcation / delimitation"** means defining (delimitation) and commonly marking (demarcation) of the state-border in order to be able to recognise the beginning / end of application of national laws.

