



Briefing

Frontex: cooperation with non-EU states

Chris Jones, March 2017

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1. Brief overview of the Frontex agency

Frontex – originally known as the European Agency for the Management of Operational Cooperation at the External Borders of the European Union, and now officially called the European Border and Coast Guard Agency – is the EU's border agency.

It was established through a November 2004 Regulation,¹ which was subsequently amended twice (in July 2007² and November 2011³). These measures have now been replaced by a Regulation agreed between the European Parliament and the Council in September 2016.⁴

Under the 2004 Regulation, the agency's overarching purpose was "improving the integrated management of the external borders of the Member States of the European Union." The 2016 Regulation includes a similar clause, and adds:

This includes addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension, to ensure a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within it.

A comparison of the agency's main tasks under the 2004, 2011 and 2016 Regulations is contained in the annex to this report.

The agency's headquarters is in Warsaw, and its foreseen budget for 2016 is €254 million, with a staff of 225. Both figures have increased significantly in recent years – the 2014 budget was just under €98 million, and in the same year the agency employed 152 people.

2. Cooperation with third countries: purpose and legal basis

The purpose of cooperation between Frontex and third countries is principally to try to minimise the number of people arriving at the EU's borders by extending the use of EU "border management" policies, techniques and technologies to those countries. Indeed, "measures in third countries" make up the first step of the "four-tier access control model" that was part of the EU's original concept of 'Integrated Border Management'. The other three were "border control, control measures within the area of free movement, including return".⁵ The "concept"

¹ COUNCIL REGULATION (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, <http://www.statewatch.org/semDOC/assets/files/council/REG-2004-2007.pdf>

² REGULATION (EC) No 863/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers,

http://www.statewatch.org/observatories_files/frontex_observatory/Frontex-2007-RABIT.pdf

³ REGULATION (EU) No 1168/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, <http://www.statewatch.org/semDOC/assets/files/council/REG-2011-1168.pdf>

⁴ REGULATION (EU) 2016/1624 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, <http://statewatch.org/news/2016/oct/eu-council-border-agency-regulation.pdf>

⁵ Council of the European Union, 'Press release,, 2768th Council meeting, Justice and Home Affairs, 4-5 December 2006, https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/91997.pdf. This concept

has subsequently been extended and its current content is set out in Article 4 of the 2016 Regulation.

The 2016 Regulation governing the organisation and activities of Frontex came into force on 6 October. Numerous provisions on cooperation with third countries are scattered throughout the text, although one particular provision – Article 54, ‘Cooperation with third countries’ – sets out the key points:

- 1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate and encourage technical and operational cooperation between Member States and third countries, within the framework of the external relations policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement. The Agency and the Member States shall comply with Union law, including norms and standards which form part of the Union acquis also when cooperation with third countries takes place on the territory of those countries. The establishment of cooperation with third countries shall serve to promote European border management and return standards.*
- 2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation with the support of, and in coordination with, Union delegations. When doing so, it shall act within the framework of the external relations policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement. It shall also act within the framework of working arrangements concluded with those authorities in accordance with Union law and policy. Those working arrangements shall specify the scope, nature and purpose of the cooperation and be related to the management of operational cooperation. The draft arrangements shall have received the Commission's prior approval. The Agency shall inform the European Parliament before a working arrangement is concluded. The Agency shall comply with Union law, including norms and standards which form part of the Union acquis.*
- 3. In circumstances requiring increased technical and operational assistance, the Agency may coordinate operational cooperation between Member States and third countries with respect to management of the external borders. The Agency shall have the possibility of carrying out actions at the external borders involving one or more Member States and a third country neighbouring at least one of those Member States, subject to the agreement of that neighbouring third country, including on the territory of that third country. Operations shall be carried out on the basis of an operational plan that has the agreement of the Member State or Member States bordering the operational area. The participation of Member States in joint operations on the territory of third countries shall be on voluntary basis. The Commission shall be informed of such activities.*
- 4. In cases where it is envisaged that teams will be deployed to a third country in actions where the team members will have executive powers, or where other actions in third countries require it, a status agreement shall be concluded by the Union with the third country concerned. The status agreement shall cover all aspects that are necessary for carrying out the actions. It shall in particular set out the scope of the operation, civil and criminal liability and the tasks and powers of the members of the teams. The status agreement shall ensure the full respect of fundamental rights during these operations.*

was expanded upon significantly and included in the 2016 Frontex Regulation (Article 4, ‘European integrated border management’). Although the phrase “four-tier access control model” has gone, the principles remain.

5. *The Commission shall draw up a model status agreement for actions on the territory of third countries.*
6. *The Agency shall cooperate with the competent authorities of third countries on return, including on the acquisition of travel documents.*
7. *The Agency may, with the agreement of the Member States concerned, invite observers from third countries to participate in its activities at the external borders referred to in Article 14, return operations referred to in Article 28, return interventions referred to in Article 33 and training referred to in Article 36, to the extent that their presence is in accordance with the objectives of those activities, may contribute to improving cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member States concerned regarding the activities referred to in Articles 14, 19, 28 and 36 and only with the agreement of the host Member State regarding those referred to in Articles 14 and 33. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive appropriate training from the Agency prior to their participation. They shall be required to adhere to the codes of conduct of the Agency while participating in its activities.*
8. *The Agency shall participate in the implementation of international agreements concluded by the Union with third countries within the framework of the external relations policy of the Union and regarding matters covered by this Regulation.*
9. *The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the external relations policy of the Union. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation.*
10. *When concluding bilateral agreements with third countries, Member States may, in agreement with the Agency, include provisions concerning the role and competence of the Agency in accordance with this Regulation, in particular regarding the exercise of executive powers by members of the European Border and Coast Guard teams deployed by the Agency during the joint operations, pilot projects, rapid border interventions, return operations or return interventions. The Member States shall notify the Commission of any such provisions.*
11. *The Agency shall inform the European Parliament of activities conducted pursuant to this Article. It shall include an assessment of the cooperation with third countries in its annual reports.*

Provisions relating to cooperation with international organisations are set out in Article 52, while subsequent provisions (Article 55, ‘Liaison officers in third countries’) set out the rules surrounding the deployment of Frontex liaison officers to non-EU states. This power was originally afforded to the agency by the 2011 amendments and intended to bolster the already-existing “local or regional cooperation networks of immigration liaison officers and security experts of the Union and of the Member States.”⁶ The purpose of these networks is: “Reduction of migratory flows towards the EU.”⁷

⁶ The first EU law in this area came in 2004: COUNCIL REGULATION (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network, <http://www.statewatch.org/semidoc/assets/files/council/REG-2004-377.pdf>

⁷ Frontex, ‘Single Programming Document 2016-19’, p.37, http://frontex.europa.eu/assets/About_Frontex/Governance_documents/Work_programme/2016/Programme_of_work_2016.pdf

While the 2016 Regulation now governs all the agency's activities, all of the agreements between Frontex and third countries were made when the 2004 Regulation was still in force (either in its original form, or as later amended). It is thus important to take into account what that Regulation says.

Article 14 of the 2004 Regulation ('Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries') stipulated that:

In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate the operational cooperation between Member States and third countries, in the framework of the European Union external relations policy.

The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty.

This broad and rather vague provision was subsequently amended by the November 2011 Regulation, which added more detail and some safeguards to Article 14 of the Regulation:

- 1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate operational cooperation between Member States and third countries, within the framework of the external relations policy of the Union, including with regard to human rights.*

The Agency and the Member States shall comply with norms and standards at least equivalent to those set by Union legislation also when cooperation with third countries takes place on the territory of those countries.

The establishment of cooperation with third countries shall serve to promote European border management standards, also covering respect for fundamental rights and human dignity.

- 2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation within the framework of working arrangements concluded with those authorities, in accordance with the relevant provisions of the TFEU. Those working arrangements shall be purely related to the management of operational cooperation.*
- 3. The Agency may deploy its liaison officers, who should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of immigration liaison officers of the Member States set up pursuant to Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (*). Liaison officers shall only be deployed to third countries in which border management practices comply with minimum human rights standards. Their deployment shall be approved by the Management Board. Within the framework of the external relations policy of the Union, priority for deployment should be given to those third countries, which on the basis of risk analysis constitute a country of origin or transit regarding illegal migration. On a reciprocal basis the Agency may receive liaison officers posted by those third countries also, for a limited period of time. The Management Board shall adopt, on a proposal of the Executive Director and in accordance with Article 24, the list of priorities on a yearly basis.*
- 4. The tasks of the Agency's liaison officers shall include, in compliance with Union law and in accordance with fundamental rights, establishing and maintaining contacts with the competent authorities of the third country to which they are assigned with a view*

to contributing to the prevention of and fight against illegal immigration and the return of illegal migrants.

5. *The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the external relations policy of the Union. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation.*
6. *The Agency may also, with the agreement of the Member State(s) concerned invite observers from third countries to participate in its activities referred to in Articles 3, 4 and 5, to the extent that their presence is in accordance with the objectives of those activities, may contribute to improving cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member State(s) concerned regarding the activities referred to in Articles 4 and 5 and only with the agreement of the host Member State regarding those referred to in Article 3. Detailed rules on the participation of observers shall be included in the operational plan referred to in Article 3a(1). Those observers shall receive the appropriate training from the Agency prior to their participation.*
7. *When concluding bilateral agreements with third countries as referred to in Article 2(2), Member States may include provisions concerning the role and competence of the Agency, in particular regarding the exercise of executive powers by members of the teams deployed by the Agency during the joint operations or pilot projects referred to in Article 3.*
8. *The activities referred to in paragraphs 2 and 3 of this Article shall be subject to receiving a prior opinion of the Commission, and the European Parliament shall be fully informed of those activities as soon as possible.*

Meanwhile, cooperation with international organisations was governed by Article 13 ('Cooperation with Europol and international organisations'):

The Agency may cooperate with Europol and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty and the provisions on the competence of those bodies.

The 2011 amendments built upon this:

The Agency may cooperate with Europol, the European Asylum Support Office, the European Union Agency for Fundamental Rights ("the Fundamental Rights Agency"), other Union agencies and bodies, and the international organisations competent in matters covered by this Regulation within the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the TFEU and the provisions on the competence of those bodies. In every case the Agency shall inform the European Parliament of any such arrangements.

Onward transmission or other communication of personal data processed by the Agency to other Union agencies or bodies shall be subject to specific working arrangements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor.

The Agency may also, with the agreement of the Member State(s) concerned, invite observers of Union agencies and bodies or international organisations to participate in its activities referred to in Articles 3, 4 and 5, to the extent that their presence is in accordance with the objectives of those activities, may contribute to the improvement

of cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member State(s) concerned regarding the activities referred to in Articles 4 and 5 and only with the agreement of the host Member State regarding those referred to in Article 3. Detailed rules on the participation of observers shall be included in the operational plan referred to in Article 3a(1). Those observers shall receive the appropriate training from the Agency prior to their participation.

It is the provisions in the 2004 Regulation (including after the 2011 amendment) that have, broadly speaking, governed the content of agreements Frontex has signed with non-EU states over the last ten years. With whom those agreements have been signed and what they contain is explored below.

3. Agreements with third countries

a. Authorities, dates, legal bases

Frontex currently has 17 agreements with third countries and two with regional organisations whose membership is made up of third countries. The table below gives details of the counterpart authority in each country/organisation, the date of signature, the legal basis and administrative decision that sanctioned the signing of such an agreement (if stated); and the provisions for expiry and termination of the agreement (if stated).

| State or organisation | Counterpart authority | Signed | Legal basis; administrative decision | Expiry; termination |
|-----------------------|---|------------------|--|----------------------------|
| Albania | Ministry of Interior | 19 February 2009 | Art. 14, Reg. 2007/2004; Management Board Decision, 12 June 2008 | No provisions |
| Armenia | National Security Council | 22 February 2012 | Not stated | Open-ended; 90 days notice |
| Azerbaijan | State Border Service | 16 April 2013 | Not stated | Open-ended; 90 days notice |
| Belarus | State Border Committee | 21 October 2009 | Not stated | No provisions |
| Bosnia | Ministry of Security | 3 April 2009 | Art. 14, Reg. 2007/2004; MB Decision, 12 June 2008 | No provisions |
| Canada | Border Services Agency | 21 October 2010 | Art. 14, Reg. 2007/2004; not stated | Open-ended; 90 days notice |
| Cape Verde | Polícia Nacional | 14 January 2011 | Art. 14, Reg. 2007/2004; MB Decision, 25 May 2007 | No provisions |
| CIS ⁸ | Coordination Service of the CIS Border Commandants' Council | 16 December 2010 | Article 13, Reg. 2007/2004; CIS Border Commandants' Council Decision, 19 October 2006; | No provisions |

⁸ Commonwealth of Independent States (a regional organisation made up of a number of the former Soviet republics).

| State or organisation | Counterpart authority | Signed | Legal basis; administrative decision | Expiry; termination |
|-----------------------|---|--|--|---|
| | | | MB Decision, 25 May 2007 | |
| Georgia | Ministry of Internal Affairs (represented by the MIA Border Police) | 4 December 2008 | Not stated | No provisions |
| Macedonia | Ministry of Internal Affairs | 19 January 2009 | Art. 14, Reg. 2007/2004; MB Decision, 22 February 2007 | No provisions |
| MARRI ⁹ | MARRI | Not stated (signed by exchange of letters) | Not stated | No provisions |
| Moldova | Border Guard Service | 12 August 2008 | Not stated | Open-ended; 90 days notice |
| Montenegro | Police Directorate of Montenegro ("representing the interests of the relevant authorities of Montenegro") | 18 June 2009 | Art. 14, Reg. 2007/2004; MB Decision, 12 June 2008 | No provisions |
| Nigeria | Immigration Service | 19 January 2012 | Art. 14, Reg. 2007/2004; MB Decision, 26 May 2010 | Open-ended; 90 days notice |
| Russia | Border Guard Service of the Federal Security Service | 14 September 2006 | Not stated | No provisions |
| Serbia | Ministry of the Interior | 17 February 2009 | Art. 14, Reg. 2007/2004; MB Decision, 12 June 2008 | No provisions |
| Turkey | Ministry of Foreign Affairs | 28 May 2012 | Not stated | Open-ended; 90 days notice |
| Ukraine | Administration of the State Border Guard Service | 11 June 2007 | Not stated | No provisions |
| USA | Department of Homeland Security | 28 April 2009 | Art. 14, Reg. 2007/2004; Homeland Security Act 2002 | Can be terminated at any time, preferably with 90 days notice |

b. What kind of agreements?

The 2004 Regulation governing Frontex gave the agency permission to cooperate with third countries "in the framework of working arrangements". The 2011 amendments appeared to limit the possibilities for working arrangements somewhat by adding a further sentence: "Those working arrangements shall be purely related to the management of operational cooperation," and the 2016 Regulation contains a provision stating that arrangements "shall... be related to the management of operational cooperation." Nevertheless, a significant number of the agreements are geared towards both operational cooperation and technical

⁹ Migration, Asylum, Refugees Regional Initiative (MARRI), Regional Centre (made up of Albania, Bosnia and Herzegovina, Croatia, Montenegro, Macedonia and Serbia: "The Forum serves for exchange of information, experience and for making decisions of common interest to its Member States"). For more detail, see: Ministry of Foreign Affairs of the Republic of Serbia, 'The Migration, Asylum, Refugees Regional Initiative (MARRI)', <http://www.mfa.gov.rs/en/foreign-policy/eu/regional-initiatives/marri>

cooperation, for example in the area of research and development; or border control technologies.

Of the 19 agreements, 16 are defined as “working arrangements”. Three others have slightly different terms applied to them. The agreement between Frontex and CIS is a “memorandum”; Frontex and Russia cooperate on the basis of “terms of reference”; and Frontex and Turkey have signed a “memorandum of understanding” to govern their cooperation. These three agreements differ considerably from the majority of the working arrangements in both their form and content, although they are presumably considered from a legal standpoint to be “working arrangements” as understood in the context of the Regulation. This (admittedly minor) issue has, to the best of our knowledge, never been raised with Frontex or any other EU authority (for example, the European Commission or the EU Ombudsman).

c. Human rights clauses

Issues and complaints related to human rights (or fundamental rights, to use the EU terminology) have long been directed at Frontex. Complaints have come from well-known NGOs such as Human Rights Watch¹⁰ and the EU Ombudsman has launched two investigations into the agency (regarding its general compliance with human rights and regarding human rights during forced return operations).¹¹ Groups such as Frontexit have long-campaigned against the agency as a whole.¹²

With regard to Frontex’s agreements with third countries, the 2011 amendment to the 2004 Regulation added human rights requirements, in Article 14(1):

The Agency and the Member States shall comply with norms and standards at least equivalent to those set by Union legislation also when cooperation with third countries takes place on the territory of those countries.

The establishment of cooperation with third countries shall serve to promote European border management standards, also covering respect for fundamental rights and human dignity.

This therefore introduced a specific requirement upon the agency to act with regard to EU fundamental rights standards (beyond the general requirement for the agency to act in line with those standards). These provisions also form part of the 2016 Regulation.

However, specific human rights clauses have not been a frequent feature of agreements with third countries. Just four of the 19 Frontex has signed contain specific statements on human rights. The agreement with Armenia states:

In the implementation of the intended cooperation, Frontex and the NSC [National Security Council of Armenia] afford full respect for human rights.

The agreement with Azerbaijan contains similar wording:

(ii) In the implementation of the intended cooperation, Frontex and the SBS afford full respect for human rights, related international laws and principles.

As does the agreement with Nigeria:

¹⁰ ‘The EU’s Dirty Hands’, 21 September 2011, <https://www.hrw.org/report/2011/09/21/eus-dirty-hands/frontex-involvement-ill-treatment-migrant-detainees-greece>

¹¹ See *Statewatch News Online*: Fundamental rights and forced returns of migrants: Ombudsman opens investigation, <http://database.statewatch.org/article.asp?aid=34154>; FRONTEX REJECTS OMBUDSMAN RECOMMENDATION, <http://database.statewatch.org/article.asp?aid=33240>

¹² <http://www.frontexit.org/en/>

In the implementation of the intended cooperation, Frontex and the competent authorities of the Federal Republic of Nigeria afford full respect for human rights.

And that with Turkey:

In the implementation of the intended cooperation, Frontex and the competent Turkish authorities shall, in their respective capacities, afford full respect for human rights.

The agreement with the USA does not mention human rights specifically, although Article 6 includes the statement:

"All activities under this Working Arrangement are to be carried out in accordance with applicable laws, regulations, and policies."

Of course, whether or not an agreement contains specific provisions on human rights, Frontex is still bound to work within the requirements and limitations established by EU law. Nevertheless, given that “the establishment of cooperation with third countries shall serve to promote European border management standards, also covering respect for fundamental rights and human dignity,” one would at least hope that such clauses would be included in the text of all the agreements that Frontex has signed.

d. Cooperation foreseen by the agreements

The types of cooperation outlined in Frontex’s agreements with third countries can be divided into eight main types: operations; returns; training; information processing and exchange; research and development; pilot projects; technical assistance; and interoperability. There are also a number of agreements containing clauses that do not fit neatly under any of these headings.

i. Operations

A large number of the agreements provide the possibility for officials from the non-EU state in question to participate in Frontex-coordinated joint operations as observers, provided the EU member state hosting the operation agrees. This is the case for: Albania, Armenia, Bosnia, Cape Verde, Macedonia, Montenegro, Nigeria and Serbia.

Other agreements commit the parties to: “Elaboration and coordination of joint operational measures and pilot projects for maintaining and improving border control.” This is the case for those with Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine.

Other clauses commit Frontex and its counterpart authority to ensuring “close cooperation and participation” when Frontex-coordinated operations are carried out at a shared border. The agreement with Albania, for example, says:

Subject to the agreement of the hosting EU Member State, Frontex coordinated joint operations at borders between EU Member States and the Republic of Albania should be conducted in close cooperation and with participation of the Border and Migration Department of Mol of Albania. Restrictions to this coordination are to be justified by legal or operational reasons only.

Similar clauses are contained in the agreements with Bosnia, Cape Verde, Macedonia, Montenegro, Nigeria and Serbia. Exactly what borders there are between EU member states and Nigeria remains unclear, although it may be that the agreement would permit operations at airports in Nigeria or in the EU at which flights from Nigeria land.

Indeed, connected to such clauses is another – the agreements between Frontex and all the states listed in the previous paragraph also contain clauses such as the following:

The Border Police of the [state in question] may second Border Police Officers to Focal Point Offices located at the external borders of the EU Member States on the basis of a proposal by Frontex and upon agreement of the hosting Member State.

Thus, the deployment of officers to a “Focal Point Office” would facilitate the foreseen “close cooperation and participation”. The “memorandum of understanding” with Turkey contains a similar clause:

Secondment of national officers of the Turkish authorities competent in border management to Focal Points established for specific Frontex activities on the basis of a proposal by Frontex after securing agreement of the hosting EU Member State

Other agreements contain more unique provisions. That with Canada, for example, commits the parties to:

Participation in joint operations (including, but not limited to, removals or returns, airport operations, and maritime operations), where appropriate and permitted by the relevant legal framework applicable to each Participant.

The agreement with the USA contains almost exactly the same clause, differing only in saying “where appropriate and permitted by applicable laws and regulations.”

Finally, the agreement between Frontex and the CIS merely includes: “Exploring the possibilities to carry out parallel organised joint operations by Frontex and the SKPV Coordination Service.”

ii. Returns

The 2004 Regulation gave Frontex a role in return operations, stating that the agency should “provide the necessary assistance for organising joint return operations of Member States,” and that it should “identify best practices on the acquisition of travel documents and the removal of illegally present third-country nationals.” The 2011 amendment extended this latter point to make clear that the identification of “best practices” should take place in cooperation with the relevant authorities of third countries.

Article 54(6) of the 2016 Regulation states that: “The Agency shall cooperate with the competent authorities of third countries on return, including on the acquisition of travel documents,” and provides the possibility for third country officials to be invited as observers on return operations. Its main tasks (Article 8) now include a requirement to “assist Member States in circumstances requiring increased technical and operational assistance to implement the obligation to return returnees, including through the coordination or organisation of return operations,” and to “set up and deploy European return intervention teams during return interventions.”

While returns from the EU are regulated by bilateral agreements between the EU and/or its Member States, the possibility of cooperating on return operations features in a number of the agreements between Frontex and non-EU states. As noted above, this includes the USA and Canada, as well as Albania, Bosnia, Cape Verde, Macedonia, Montenegro, Nigeria, Serbia and Turkey.

The text of some agreements is more forceful than others – while those with Albania, Bosnia Macedonia, Montenegro, Serbia and Turkey state that Frontex and the relevant authorities “may explore possibilities to develop cooperation in the field of Frontex coordinated joint return activities,” Frontex and Cape Verde “will explore possibilities”. Frontex and Nigeria, meanwhile, “continue to develop cooperation” on Frontex-coordinated return operations.

In all the agreements but those with Canada, the USA and Turkey, the text contains provisions saying that there will be promotion of “the active participation” of the third country authorities in “Frontex coordinated joint return operations on a case-by-case basis as decided by the Executive Director of Frontex and upon agreement of the organising EU Member States.” The agreement with Turkey says the two parties will “promote the active facilitation and participation of the competent Turkish authorities in such activities.”

iii. Training

The issue of training features in every agreement signed by Frontex with a non-EU state or organisation except for that with Russia. There are two generic clauses, the first being along the lines of that contained in the agreement with Albania:

Within the meaning of the Article 5 of the Frontex Regulation, cooperation in the field of training may take place on a case-by-case basis upon decision of the Executive Director of Frontex.

This also features in the agreements with Bosnia, Cape Verde, Macedonia, Montenegro and Serbia, while the agreement with the CIS simply refers to: “Cooperating in the field of training, which would take place on the basis of mutual consent.”

The second generic clause commits the parties to: “Development of activities in the field of training as well as in the field of research and development related to border management.” This features in the agreements with Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

Other agreements are more specific. That with Armenia says the parties may explore:

Development of capacity building activities aimed at enhancing and supporting integrated border management, particularly in the field of training, including supporting efforts of the competent authorities of Armenia to train its staff, as well as in the field of research and development related to border management.

The agreement with Canada covers: “Training (including but not limited to the exchange of trainers, participation in seminars, courses, and visits of experts and border control authorities).” The same wording is included in the agreement with the USA.

The agreement with Nigeria states:

Cooperation may be taken forward related to the development of capacity building activities aimed at enhancing and supporting integrated border management, particularly in the field of training as well as activities in the field of research and development related to the border management which should be decided upon on a case-by-case basis by the Executive Director of Frontex.

Finally, the agreement with MARRI says the parties may: “Explore the possibility, in appropriate cases, of MARRI RC assisting in implementation of Frontex training modules in the Western Balkans region,” while the agreement with Turkey commits the parties to cooperating on: “Border management related training activities as well as research and development work.”

iv. Information processing and exchange

Information exchange is another topic that features in every agreement apart from that signed between Frontex and Russia, and this is hardly surprising: one of the Frontex’s main purposes is to act as a source of information and data to EU institutions and member states, through

public and restricted “risk analyses”, assessments, reports and so on.¹³ The agency’s work in risk analysis has expanded considerably since 2004, and:

Frontex currently manages four regional intelligence-sharing communities similar to FRAN with non-EU countries and they include: the Western Balkans Risk Analysis Network (WB-RAN), Eastern European Borders Risk Analysis Network (EB-RAN), Turkey-Frontex Risk Analysis Network (TU-RAN) and Africa-Frontex Intelligence Community (AFIC).¹⁴

The Eastern European Borders Risk Analysis Network (EB-RAN) was recently renamed and is now the Eastern Partnership Risk Analysis Network (EaP-RAN), due to the integration of Armenia, Azerbaijan and Georgia “under the EU-funded Eastern Partnership Integrated Border Management Capacity Building Project.”¹⁵ For more information on the Africa-Frontex Intelligence Community, see Section 5 of this briefing.

Some agreements make clear the concerns of Frontex and its counterparts when it comes to information-gathering and exchange. For example, the agreement with Turkey stipulates:

2. Exchange of relevant strategic information and analytical products, based in general on the principle of reciprocity and in accordance with their respective legislation;

Strategic information may include the following:

a. Activities that might be useful to improve integrated border management of the Member States of the European Union and of Turkey;

b. Periodical statistical information related to border management;

c. New methods challenging border security, facilitating illegal/irregular migration and cross border crime;

d. Trends and developments in the methods used to commit cross-border crime;

e. Observations and findings resulting from the successful application of relevant new aids and techniques;

f. Routes and changes in routes used in particular in smuggling of migrants and illegal/irregular migration;

g. Prevention strategies and methods for management, to define border security priorities;

h. Threat assessments, risk analyses and situation reports.

¹³ The role of “knowledge” in the work of Frontex and other EU agencies has been the subject of a critical examination in a paper published by the *Centre for European Policy Studies*. One conclusion of the study was that: “The knowledge (co)produced, applied and disseminated by EU Home Affairs agencies relies predominately on ‘expert’ knowledge drawn from networks of representatives from national law enforcement bodies, interior ministries as well as professionals and practitioners from security industries, while the input of independent, academic (university-based) social science research is marginalised. This results in a narrow form of expertise, embedded in a specific security or law enforcement culture, one which does not take into account wider debate and critiques surrounding the ultimate effectiveness or broad societal impacts of EU security policies, nor of their implications for civil liberties and fundamental rights.” See: Joanna Parkin, ‘EU Home Affairs Agencies and the Construction of EU Internal Security’, *Centre for European Policy Studies*,

¹⁴ Frontex, ‘Strategic analysis’, <http://frontex.europa.eu/intelligence/strategic-analysis/>

¹⁵ <http://www.eap-ibm-capacitybuilding.eu/>

It also provides for: “Exchanging information on meetings and conferences on matters of common interest,” and: “Exchange of relevant experiences and best practices in the field of border control (border checks, border surveillance and risk analysis)”.

Once again the agreements with Canada and the USA contain almost the same text. As it is put in the agreement with the USA, cooperation includes:

The exchange of relevant information, (including but not limited to reports, data, analysis on incidents, trends, patterns, threats, enforcement actions, observations and findings resulting from the successful application of such actions, migration routes, mass migration planning and prevention strategies) where appropriate and permitted by applicable laws and regulations. This Working Arrangement does not authorise the transmission of personal data related to an identified individual or identifiable individuals.

Both agreements also provide for: “Collaboration on joint reports regarding the smuggling of people trafficking in human beings and related cross border crime,” as well as: “Sharing of experiences and best practices on integrated border management in order to contribute to the strengthening of border security management,” (USA) and: “Sharing of experiences and best practices on integrated border security/management.”

One generic clause included in a number of agreements (Albania, Bosnia, Cape Verde, Macedonia, Montenegro, Nigeria, Serbia) states that the two parties intend to exchange information “within the meaning of Article 4 of the Frontex Regulation.” This deals with risk analysis, or in the words of the Regulation:

The Agency shall develop and apply a common integrated risk analysis model.

It shall prepare both general and tailored risk analyses to be submitted to the Council and the Commission.

The Agency shall incorporate the results of a common integrated risk analysis model in its development of the common core curriculum for border guards’ training referred to in Article 5.

This provision was updated by the 2011 amendment, which obliged member states to “provide the Agency with all necessary information regarding the situation and possible threats at the external borders.” It also permitted Frontex to:

[A]ssess, after prior consultation with the Member States concerned, their capacity to face upcoming challenges, including present and future threats and pressures at the external borders.

These issues are now covered by Article 11 of the 2016 Regulation.

While information “within the meaning of Article 4 of the Regulation” refers to risk analyses, the agreements with all those countries listed above include a further clause:

Frontex may provide the [relevant authority] with relevant analytical products, in particular those related to border security management issues affecting Serbia and the Western Balkans region. The access to Frontex tailored Risk Analyses or other Risk Analyses information will be decided on a case-by-case basis by the Executive Director of Frontex.

These requirements seem to suggest that the “information exchange” envisaged by the agreements refers more to non-EU states providing relevant information to Frontex, rather than more general sharing of data between the two parties.

Other clauses stipulate that the third country will appoint an official to “participate as an observer in relevant sessions of the meetings of the Frontex Risk Analysis Network (FRAN).” This applies to Albania, Bosnia, Cape Verde, Macedonia, Montenegro, Nigeria, Serbia and Turkey, although quite how this clause relates to the actual practices of the various risk analysis networks is unclear.

While the agreements permit participation of third country officials as “observers”, Frontex says the information contained in the Western Balkans Risk Analysis Network (WB-RAN) reports, for example, “is compiled by the Frontex Risk Analysis Unit (RAU) and analysed in cooperation with the regional partners on a quarterly and annual basis.” The relevant countries for the WB-RAN are Albania, Bosnia, Kosovo (with which Frontex does not yet have an agreement, although it intends to), Macedonia, Montenegro and Serbia. Whether the analysis offered by “the regional partners” goes beyond their role as “observers” is an open question.

Another of Frontex’s regionally-focused groupings is the Eastern Partnership Risk Analysis Network (EaP-RAN), which consists of EU member states, Frontex and other EU officials, and Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The agreements with those six countries all contain the same clause, promising: “Development of activities in the field of information exchange and risk analysis among Frontex, the competent authorities of EU Member States and those of Armenia.”

The agreements with Armenia, Azerbaijan and Nigeria also feature a second element:

In respect of the-possible exchange of classified information or intelligence, a separate security agreement or protocol on the requirements and procedures to be adopted by Frontex and the competent authorities... shall be concluded where necessary.

It seems that the EaP-RAN is developing in earnest:

Representatives of 21 European Union Member States/Schengen Associated Countries, as well as all six Eastern Partnership countries – Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine – held their first meeting on 9 March to discuss the preliminary findings of the draft 2016 Eastern European Borders Annual Risk Analysis (EB ARA). The meeting in Warsaw was also attended by representatives of the European Asylum Support Office (EASO), European Union Border Assistance Mission to Moldova and Ukraine (EUBAM), Frontex Risk Analysis Unit (RAU) and Frontex International and European Cooperation Unit (IEC).¹⁶

The two international organisations with which Frontex has reached agreements have their own clauses on information exchange. The agreement with CIS provides for: “Exchanging unclassified (strategic level) information and analytical materials related to matters falling within the scope of legal authority and considered to be of mutual interest,” and: “Sharing respective experiences and best practices related to border security management”.

¹⁶ Eastern Partnership Integrated Border Management Capacity Building Project, ‘Newsletter’, 1st quarterly newsletter 2016, p.3, <http://www.eap-ibm-capacitybuilding.eu/images/files/7867Newsletter-4.pdf>

The agreement with MARRI covers: “Exchange of relevant information and documentation related to migration management and control issues (excluding personal and operationally sensitive data),” as well as: “Sharing of relevant respective bulletins and newsletters.”

v. Research and development

Frontex’s has long-displayed an interest in research and development activities, in particular with regard to the deployment of new technologies in border control.¹⁷ Article 6 of the 2004 Regulation (‘Follow-up to research’) said:

The Agency shall follow up on the developments in research relevant for the control and surveillance of external borders and disseminate this information to the Commission and the Member States.

This provision was upgraded in 2011, giving the agency the possibility to participate in research:

The Agency shall proactively monitor and contribute to the developments in research relevant for the control and surveillance of the external borders and disseminate that information to the Commission and the Member States.

Article 37 (‘Research and innovation’) of the 2016 Regulation now governs the agency’s involvement with these activities. Article 37(1) obliges the agency to monitor and contribute to relevant research, “including the use of advanced surveillance technology”.

Frontex has been heavily involved in the EU’s security research programme both with a seat on the committee that sets the research agenda, and as a participant in research projects. The agency runs an ‘Advisory Group on Border Security Research’ that offers it advice on research topics, and it is also responsible for ‘Border TechNet’, “a web-based platform for sharing, exchanging and disseminating information in the field of Research and Development in the border-security domain. The 2016 Regulation, in particular articles 37(2) and (3) outline Frontex’s role in identifying research themes for the security research programme and also provide the agency a direct role in implementing certain aspects of the programme.

It is therefore not surprising to see research and development feature in every agreement Frontex has signed with non-EU countries, except Russia. One standard clause is:

Technical cooperation in the field of research and development, within the meaning of the Article 6 of the Frontex Regulation, may take place on a case-by-case basis upon decision of the Executive Director of Frontex.

This applies to Albania, Bosnia, Cape Verde, Macedonia, Montenegro and Serbia.

Another standard clause is contained in the agreements with Armenia, Azerbaijan, Belarus, Georgia, Moldova, Nigeria, Turkey and Ukraine. These agreements all tie research and development up with the issue of training. The agreement with Azerbaijan, for example, covers: “Development of activities in the field of training as well as in the field of research and development related to border management.” The agreement with Nigeria stipulates that this should “be decided upon on a case-by-case basis by the Executive Director of Frontex.”

¹⁷ See, for example, ‘Frontex presses on with aerial surveillance projects’, *Statewatch News Online*, August 2014, <http://database.statewatch.org/article.asp?aid=33883>; ‘Seeing through trees: Frontex commissions study on “solutions for under-foliage detection”’, *Statewatch News Online*, February 2014, <http://database.statewatch.org/article.asp?aid=33257> ‘People Pay for Research Against Migrants’, *Inter Press Service*, 11 January 2013, <http://www.ipsnews.net/2013/01/people-pay-for-research-against-migrants/>

Once again the agreements with Canada and the USA are worded identically, stipulating:

Collaboration on existing technologies and on Research and Development issues, (including but not limited to capability studies, actual projects, testing and evaluation, mobile biometric data collection and the development of land and sea border surveillance systems).

Whether these agreements have led to concrete projects on, for example, “mobile biometric data collection”, is currently unknown.

vi. Pilot projects

In line with its remit to enhance the surveillance and control of the external borders of the EU, Frontex is empowered by its legal basis to launch pilot projects, as initially set out in the 2004 Regulation:

The Agency shall evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States.

The Agency may itself, and in agreement with the Member State(s) concerned, launch initiatives for joint operations and pilot projects in cooperation with Member States.

It may also decide to put its technical equipment at the disposal of Member States participating in the joint operations or pilot projects.

2. The Agency may operate through its specialised branches provided for in Article 16, for the practical organisation of joint operations and pilot projects.

3. The Agency shall evaluate the results of the joint operations and pilot projects and make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and efficiency of future operations and projects to be included in its general report provided for in Article 20(2)(b).

4. The Agency may decide to co-finance the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency.

The 2011 amendment added provisions outlining the possibilities for the host member state or the agency to terminate a pilot project; the new Regulation (2016) outlines the launching of pilot projects as one of the agency’s main tasks (Article 8(1)(q), Article 37) and also permits the collection and processing of personal data during those pilot projects. These projects may cover the field testing of new equipment (for example unmanned aerial vehicles (drones) or optionally-piloted aircraft); the improvement of inter-agency cooperation and communication (for example on coast guard functions¹⁸); or the extension of Frontex’s operational capabilities.¹⁹

Once again the agreements between Frontex and third countries differ between the countries of the western Balkans region and those of the ‘Eastern Partnership’. The agreements with Albania, Bosnia, Macedonia, Montenegro and Serbia (as well as with Cape Verde and Nigeria), all outline the possibility for Frontex to offer invitations “to participate in pilot projects on a case-by-case basis and upon decision of the Executive Director of Frontex.” There is a

¹⁸ Frontex, ‘5th Meeting of Contact Group of European Coastguard Functions hosted in Warsaw’, 26 May 2016, <http://frontex.europa.eu/news/5th-meeting-of-contact-group-of-european-coastguard-functions-hosted-in-warsaw-ld13kn>

¹⁹ For example: Frontex, ‘Greece will host first Frontex Operational Office’, 5 February 2010, <http://frontex.europa.eu/news/greece-will-host-first-frontex-operational-office-WBNAQp>

reciprocal clause with Bosnia: Frontex may be invited by the authorities to participate in Bosnian pilot projects.

The agreements with the Eastern Partnership states (Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine) state a commitment to:

Coordination of joint operational measures and pilot projects for maintaining and improving border control between EU Member States and [the country in question], elaboration of ideas on technical improvement of these measures.

However, the agreements with Armenia and Azerbaijan do not mention “technical improvement” of the measures in question.

The agreement with the CIS refers to: “Launching on the basis of mutual consent, pilot projects related to border security involving representatives of Frontex and the SKPV Coordination Service,” while that with MARRI makes no mention of pilot projects. The agreements with the USA and Canada refer to collaboration on “capability studies” and “actual projects”, while the memorandum signed with Turkey says:

Frontex, in cooperation with the competent Turkish authorities and with the relevant authorities of the EU Member States develops joint projects, including those with possible EU financial support, in order to enhance the collective capacity to fight against illegal/irregular migration.

vii. Technical assistance

The agreements with Armenia, Azerbaijan, Belarus, Cape Verde, Georgia, Moldova, Russia and Ukraine all foresee:

Active discussion on development at technical level of border procedures, aiming at more efficient border control, best practices, improvement of technical equipment and technological upgrading at the borders.

There are no other mentions of technical assistance, although there is – in theory at least – some crossover with provisions on interoperability.

viii. Interoperability

The issue of interoperability – which could refer to technology, standards, procedures, policies and/or practices – was not explicitly included in legislation governing Frontex until the 2016 Regulation was agreed, although the need for uniformity in standards and procedures have meant the agency has long been concerned with the issue. The new legislation requires the agency the specific task (Article 8(j)) to:

[S]upport the development of technical standards for equipment, especially for tactical-level command, control and communication as well as technical surveillance to ensure interoperability at Union and national level.

All the agreements except that with the CIS (no mention of operability) and Russia refer to the need to improve “operational interoperability”. The agreement with Russia states that the parties will seek: “Improvement of interaction between command / management structures and units responsible for border control of the national borders between EU Member States and Russia.” Thus, just as Frontex is supposed to ensure that EU member states’ authorities can work together through “interoperable” technology, procedures, etc., the intention in the agreements is to try to ensure that this is also the case with non-EU countries.

ix. Other types of cooperation

A number of the agreements – those with Canada, the CIS, MARRI, Turkey and the USA – contain provisions for forms of cooperation that do not fit under any of the previous headings. For example, the arrangements with Canada and the USA permit:

Consultative visits, research, and professional exchanges as authorised by law, which may include the assignment of liaison officers as appropriate and pursuant to a specific liaison officer agreement or arrangement.

As well as: “Cooperation on capacity building with third countries where appropriate and permitted by applicable laws and regulations.”

A provision in the EU-Turkey agreement states:

“Frontex and the competent Turkish authorities may explore possibilities of further development of cooperation in other Frontex activities, including the development of debriefing and language analysis techniques.”

The agreements with the CIS and MARRI contain a variety of more particular clauses, presumably due to the types of organisation that they are. The agreement signed between Frontex and the CIS foresees:

Establishing, when necessary, expert working groups with a view to considering specific border security management related issues and elaborating commonly agreed corresponding recommendations.

And: “Inviting mutually competent experts to workshops, meetings and conferences, dedicated to the issues of border security management.”

The agreement with MARRI includes the following bases for cooperation:

- “Identification of best practices in relation to border management”;
- “Explore the possibility, in appropriate cases, of Frontex supporting relevant projects initiated by MARRI RC”;
- “Reach a coherent approach in respect of ongoing or future programmes or projects related to border security and migration management, within their respective remits”;

And finally:

In addition to the existing operational contact points established between Frontex and the MARRI Member States, Frontex may use MARRI RC State Officials representing MARRI Member States in the MARRI RC as contact points for their respective seconding countries in respect of broader, regional overarching issues related to the Western Balkans as a whole.

4. Coordination and management

According to Frontex’s “single programming document” for the years 2016-2019, it is the task of a unit called RELEX-TC (an abbreviation of External Relations – Third Countries) to “manage the implementation” of working arrangements with non-EU states, “in coordination with the other units of Frontex.”²⁰ The issue of how coordination and management of

²⁰ Frontex, ‘Single Programming Document 2016-19’, p.38, http://frontex.europa.eu/assets/About_Frontex/Governance_documents/Work_programme/2016/Programme_of_work_2016.pdf

cooperation is to be managed is covered in all of the agency's agreements with third countries and international organisations, and generally has three main aspects.

Firstly, all of the agreements (aside from that with MARRI) refer to the establishment and maintenance of a "structured dialogue", usually between the Executive Director of Frontex and the head of whichever agency has signed the agreement with Frontex. There are some minor divergences – the agreement with Nigeria makes no mention of executives but instead refers to a structured dialogue in general, "with the participation of other competent authorities and agencies where appropriate." The agreement with the CIS refers simply to a "dialogue concerning the practical implementation of the present Memorandum."

Secondly, more regular contact is assured through the designation of contact points within Frontex and each of its counterpart agencies. Thirdly, all the agreements but those with the CIS, MARRI and Turkey refer to the possibility of establishing "expert working groups" for the consideration of specific issues and the elaboration of "corresponding recommendations".

5. Other third countries

a. Forthcoming agreements

Frontex currently has plans to sign working arrangements with eight other countries, according to the 'Single Programming Document 2016-19'. These are Brazil, Egypt, Kosovo, Libya, Mauritania, Morocco, Senegal and Tunisia. The agency's Management Board has issued a decision approving the signing of working arrangements with those countries, although it is not currently known when that decision was taken nor whether it contains specific requirements for agreements with any of the countries in question.

b. The Africa-Frontex Intelligence Community

Some more is known about the Africa-Frontex Intelligence²¹ Community:

The Africa-Frontex Intelligence Community was set up in 2010 to provide a framework for regular knowledge and intelligence sharing in the field of border security between Frontex and African countries. The concept of this collaboration was broadly based the model of the Frontex Risk Analysis Network (FRAN) and following the two already-established regional Risk Analysis Networks [Western Balkans and Eastern Borders, now Eastern Partnership].

One crucial difference between the AFIC and its "regional Risk Analysis" counterparts is that Frontex has working arrangements – and thus some form of legal basis – to exchange and analyse information with the countries involved. In the case of the AFIC, Frontex only has working arrangements with Cape Verde and Nigeria. The first report issued by the "intelligence community" was published in 2012 (although it was not made public until some time later) and involved the authorities from: Benin, Burkina Faso, Cape Verde, The Gambia, Ghana, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo.

According to the report:

²¹ Given that "intelligence" usually refers to information gathered by security and spy agencies, this is presumably a preference for a rather pompous name rather than a description of the type of information-gathering and activities being undertaken by the group.

*Representatives came from different authorities, including Ministries of the Interior, National Polices or Gendarmeries, Immigration Services, or agencies fighting trafficking like NAPTIP in Nigeria.*²²

The report noted AFIC's "unique format and informal nature" – also known as lack of a specific legal basis, something that has not prevented the group's expansion and even formal approval from the European Commission. The 2012 report looked at links between migrant smuggling and "other cross-border criminal activities"; "changes in the traditional irregular migration routes from West Africa to the EU"; and gave a "brief overview of migratory movements from Asia to West Africa." The 2013 report was divided into sections covering "main migration routes from Africa to the EU"; the "situation in the Sahel – impact of the Mali crisis on regional border security and movements of migrants"; and document fraud.²³

While the 2012 and 2013 reports were released in whole with significant chunks of them censored after formal access to documents request to the agency, a "non-classified sensitive" version of the 2014 report was published by Frontex on its own initiative. It included an update on irregular migration between Africa and Europe; a section on "regional security risks"; and "issue in focus – Ebola virus disease outbreak in West Africa during 2014".²⁴

Similarly, the most recent report (2015) was also made public by Frontex without any prompting.²⁵ By this point the AFIC had expanded to include Ivory Coast, Liberia, Cameroon and the Democratic Republic of the Congo as full members, and officials from Tunisia, Chad, Egypt, Sudan, South Sudan, Eritrea, Djibouti, Somali and Kenya as observers (Angola also participated as an observer in 2014). There has been little scrutiny of the AFIC, whether by civil society organisations, journalists, parliamentarians (at national or European level) or others.

²² 'Frontex-AFIC joint report 2012', p.8, <http://www.statewatch.org/news/2014/oct/eu-frontex-africa-intell-2012.pdf>

²³ 'Africa-Frontex Intelligence Community Joint Report 2013', <http://www.statewatch.org/news/2014/oct/eu-frontex-africa-intell-2013.pdf>

²⁴ 'Africa-Frontex Intelligence Community Joint Report 2014', <http://statewatch.org/news/2014/dec/eu-africa-frontex-intell-report-2014.pdf>

²⁵ 'Africa-Frontex Intelligence Community Joint Report 2015', http://frontex.europa.eu/assets/Publications/Risk_Analysis/AFIC/AFIC_report_2015.pdf

Annex: Evolution of Frontex' main tasks, 2004-2016

For general information, the table below shows the development of the agency's principal tasks through a comparison of the 2004 Regulation, its 2011 amendment, and the 2016 Regulation establishing a European Border and Coast Guard Agency. (The 2008 Regulation amended the 2004 Regulation but by added new provisions on 'Rapid Border Intervention Teams', made up of border guards from other EU Member States acting in the territory of another EU Member State deemed to be facing a significant inflow of people. It did not alter the *principal* tasks established by the 2004 Regulation.)

| 2004 Regulation | 2011 Amendment | 2016 |
|---|---|--|
| Article 2 – Main tasks | Article 1 – Amendments (amended some articles and also added new ones) | Article 8 - Tasks |
| (a) coordinate operational cooperation between Member States in the field of management of external borders; | | |
| (b) assist Member States on training of national border guards, including the establishment of common training standards; | | (p) assist Member States on training of national border guards, other relevant staff and experts on return, including the establishment of common training standards; |
| (c) carry out risk analyses; | (c) carry out risk analyses, including the assessment of the capacity of Member States to face threats and pressures at the external borders; | (a) monitor migratory flows and carry out risk analysis as regards all aspects of integrated border management; |
| | | (b) carry out a vulnerability assessment including the assessment of the capacity and readiness of Member States to face threats and challenges at the external borders; |
| | | (c) monitor the management of the external borders through liaison officers of the Agency in Member States; |
| (d) follow up on the development of research relevant for the control and surveillance of external borders; | (d) participate in the development of research relevant for the control and surveillance of external borders; | (q) participate in the development and management of research and innovation activities relevant for the control and surveillance of the external borders, including the use of advanced surveillance technology, and develop pilot projects regarding matters covered by this Regulation; |
| | '(da) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, taking into account that some situations may involve humanitarian | (d) assist Member States in circumstances requiring increased technical and operational assistance at the external borders by coordinating and organising joint operations, taking into account that some situations |

| | | |
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| | emergencies and rescue at sea; | may involve humanitarian emergencies and rescue at sea in accordance with Union and international law; |
| (e) assist Member States in circumstances requiring increased technical and operational assistance at external borders; | (e) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, especially those Member States facing specific and disproportionate pressures; | (e) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, by launching rapid border interventions at the external borders of those Member States facing specific and disproportionate challenges, taking into account that some situations may involve humanitarian emergencies and rescue at sea in accordance with Union and international law; |
| | | (f) provide technical and operational assistance to Member States and third countries in accordance with Regulation (EU) No 656/2014 and international law, in support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea; |
| | (ea) set up European Border Guard Teams that are to be deployed during joint operations, pilot projects and rapid interventions; | (g) set up and deploy European Border and Coast Guard teams, including a rapid reaction pool, that are to be deployed during joint operations and in rapid border interventions and within the framework of the migration management support teams; |
| (f) provide Member States with the necessary support in organising joint return operations. | (f) provide Member States with the necessary support, including, upon request, coordination or organisation of joint return operations; | (l) assist Member States in circumstances requiring increased technical and operational assistance to implement the obligation to return returnees, including through the coordination or organisation of return operations; |
| | (g) deploy border guards from the European Border Guard Teams to Member States in joint operations, pilot projects or in rapid interventions in accordance with Regulation (EC) No 863/2007; | (k) deploy the necessary equipment and border guards and other relevant staff from the rapid reaction pool for the practical execution of the measures needed to be taken in a situation requiring urgent action at the external borders; |
| | (h) develop and operate, in accordance with Regulation (EC) No 45/2001, information systems that enable swift and reliable exchanges of | (r) develop and operate, in accordance with Regulation (EC) No 45/2001 and Framework Decision 2008/977/JHA, information |

| | | |
|--|--|--|
| | information regarding emerging risks at the external borders, including the Information and Coordination Network established by Decision 2005/267/EC (*); | systems that enable swift and reliable exchanges of information regarding emerging risks in the management of the external borders, illegal immigration and return, in close cooperation with the Commission, Union bodies, offices and agencies as well as the European Migration Network established by Council Decision 2008/381/EC (1); |
| | (i) provide the necessary assistance to the development and operation of a European border surveillance system and, as appropriate, to the development of a common information sharing environment, including interoperability of systems. | (s) provide the necessary assistance for the development and operation of the EUROSUR and, as appropriate, for the development of a common information-sharing environment, including interoperability of systems, in particular by developing, maintaining and coordinating the EUROSUR framework in accordance with Regulation (EU) No 1052/2013; |
| | | (h) set up a technical equipment pool to be deployed in joint operations, rapid border interventions and in the framework of migration management support teams, as well as in return operations and return interventions; |
| | | (i) within the framework of the migration management support teams at hotspot areas: (i) deploy European Border and Coast Guard teams and technical equipment to provide assistance in screening, debriefing, identification and fingerprinting; (ii) establish a procedure for referring and providing initial information to persons who are in need of, or wish to apply for, international protection, in cooperation with the European Asylum Support Office (EASO) and national authorities; |
| | | (j) support the development of technical standards for equipment, especially for tactical-level command, control and communication as well as technical surveillance to ensure interoperability at Union and national level; |
| | | (m) within the respective mandates of the agencies |

| | | |
|--|--|---|
| | | concerned, cooperate with Europol and Eurojust and provide support to Member States in circumstances requiring increased technical and operational assistance at the external borders in the fight against organised cross-border crime and terrorism; |
| | | (n) set up pools of forced-return monitors, forced-return escorts and return specialists; |
| | | (o) set up and deploy European return intervention teams during return interventions; |
| | | (t) cooperate with the European Fisheries Control Agency and the European Maritime Safety Agency, each within its mandate, to support the national authorities carrying out coast guard functions as set out in Article 53, by providing services, information, equipment and training, as well as by coordinating multipurpose operations; |
| | | (u) assist Member States and third countries in the context of technical and operational cooperation between them in the matters covered by this Regulation. |

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