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**Accompanying document to the**

**COMMUNICATION FROM THE COMMISSION**

**Report on the evaluation and future development of the FRONTEX Agency**

**IMPACT ASSESSMENT**

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## **1. POLITICAL ORIENTATIONS, PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES**

### **1.1. Political orientations**

The Treaty of Amsterdam sets out Community competences in the area of combating illegal immigration in its Title IV. Article 62 TEC as the legal base for measures relating to border controls and visa policy, and Article 63 (3) TEC as the legal basis for measures on illegal immigration and illegal residence, including repatriation of illegal residents.

Addressing illegal immigration through an enhanced European approach to border controls has been a central part of the European common migration policy since its inception. In particular, the Communication Towards integrated management of the external borders of the Member States of the European Union<sup>1</sup>, served as the basis for the Plan for the management of the external borders of the Member States of the European Union of June 2002.

The Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control, which is a necessary precondition to the free movement of persons within the European Union and a fundamental component of an area of freedom, security and justice. To this end, the establishment of common rules on standards and procedures for the control of external borders is foreseen.

An efficient implementation of the common rules calls for increased coordination of the operational cooperation between the Member States. On the basis of the experiences of the External Borders Practitioners' Common Unit, acting within the Council, a specialised expert body tasked with improving the coordination of operational cooperation between Member States in the field of external border management has been established by Council Regulation (EC) No 2007/2004 of 26 October 2004<sup>2</sup> in the shape of a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter referred to as the FRONTEX Agency).

### **1.2. Procedural issues and consultations with interested parties**

Lead Directorate General: DG Justice, Freedom and Security.

It should be noted from the outset that it is the first time an 'Evaluation report' issued by the Commission is subject to an impact assessment

According to the CLWP 2008 the main aims of this strategic initiative are:

- contributing to the creation of a truly integrated management of the external borders at European level,

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<sup>1</sup> COM (2002) 233, 7.5.2002.

<sup>2</sup> OJ L349 of 25.11.2004, 1

- improvement of the operational cooperation among the services of Member States responsible for controlling the external borders of the European Union and managing migration,
- curbing illegal immigration along the external borders,
- suppressing smuggling in human beings into the territory of the Union taking duly into account the humanitarian dimension (e.g. saving lives put at risk whilst crossing the external borders illegally) of this phenomena.

The Commission's Impact Assessment Board provided its opinion on 3 December 2007. To take into account the recommendations of the Impact Assessment Board the following changes have been introduced:

- detailed explanation to clarify that the current evaluation is distinct from the one foreseen in article 33 of the FRONTEX Regulation, which will be carried out by the Management Board of the Agency in the course of 2008;
- the recommendations under policy option 2 have been further elaborated i.e. to look for possible alternatives, to determine if the recommendations can take place within the current mandate of the Agency or if a change of the mandate would be necessary, to provide further explanations regarding the expected costs and benefits as well for the FRONTEX-budget as for the budgets of the Member States;
- the possible impacts of the recommendations on human rights and third countries have been revisited;
- details have been provided on the modus operandi of the consultations that have taken place prior to the elaboration of the Evaluation Report.

This report has been drafted with input from numerous contacts between the Directorate-General for Justice, Freedom and Security and FRONTEX. This resulted in a series of indicators which can be found in a separate document prepared by the Agency entitled 'List of indicators for the evaluation of the FRONTEX Agency'. (Doc. SEC XX of XX2008).

Input for this impact assessment has been provided through regular discussions and information exchange with Member States in the context of the Management Board meetings of the Agency and through reports by FRONTEX to stakeholders. Consultations have taken place between Commission officials dealing with the FRONTEX Agency and their counterparts in the Agency.

Consultations of the Commission have taken place at different levels within FRONTEX. A list of indicators, which can be found in a separate document that will be made available at the same time of the Evaluation Report, served as the basis for those discussions.

Similar consultations have taken place with MS in the context of the numerous FRONTEX Management Board meetings. By the end of 2007, 14 meetings of this board will have taken place bringing together all MS and the associated Schengen countries (Norway and Iceland).

During those meetings the Commission took note of the different comments formulated by MS. Details about the proceedings of those meetings can be found at the website of FRONTEX at:

[http://www.frontex.europa.eu/minutes\\_and\\_decisions/minutes\\_of\\_management\\_board\\_meet/](http://www.frontex.europa.eu/minutes_and_decisions/minutes_of_management_board_meet/).

Furthermore the Executive Director of the Agency is reporting, with the participation of the Commission, on a regular basis to the Justice and Home Affairs Council at different levels and to the LIBE Committee of the European Parliament.

A dedicated Commission Interservice meeting took place on 20 November 2007 with representatives of DGs FISH, ENTR, TAXUD, RELEX and the Service Juridique. The IA report contains the suggestions formulated by DGs RELEX and TAXUD; other services did not have comments to make.

From the discussions it became clear that the current initiative is not of a horizontal cross cutting nature regarding competencies and matters covered by several DGs.

To ease the understanding of the complex nature in which the activities of the FRONTEX Agency take place, the current impact assessment contains, as an annex, a series of explanatory background notes.

## **2. PROBLEM DEFINITION**

### **2.1. General**

The Hague Programme as adopted by the European Council on 4/5 November 2004 requested the Commission to submit an evaluation of the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) to the Council before the end of 2007.

The evaluation which will be of a political character, should contain a review of the tasks and mandate of the Agency and an assessment of whether the Agency should concern itself with other aspects of border management, including enhanced cooperation with customs services and other competent authorities for goods-related security matters, against the background of the overall development of the common border policy of the Community.

The current evaluation report is different from the evaluation foreseen in Article 33 of Council Regulation No 2007/2004 which requires the Management Board of FRONTEX to commission an independent external evaluation on the implementation of that Regulation within three years from the date the Agency has taken up its responsibilities. As the Agency has taken up its responsibilities on the 1<sup>st</sup> of May 2005, the independent evaluation will be carried out in the beginning of the year 2008.

The Article 33 evaluation shall examine how effectively the Agency fulfils its mission and assess the impact of the Agency and its working practices. It shall take into account the views of stakeholders, at both European and national level.

The current Report on the evaluation of FRONTEX and its future development is the reply from the Commission to the aforementioned invitation by the Council. The purpose of the Report is: is

- to evaluate an existing legal entity whose activities are decided by its Management Board;
- to perform an evaluation which is of a political i.e. putting emphasis on the political developments related to the activities of the Agency and not of a legal nature;
- to look into the identification of policy problems that would not require immediate legislative proposals from the Commission;
- to be complementary to the independent evaluation which will take place, as foreseen in Article 33 of the FRONTEX Regulation, during the year 2008 – as a result of that evaluation the Commission will, as appropriate, launch the necessary legislative proposals.

Two years after the Agency became operational the reasons for setting up the Agency remain fully valid. The evaluation does not give rise to any other conclusion than that the mandate of the Agency remains appropriate; it would be premature to call into question whether a wholly different approach should be pursued for the matters covered by this mandate. As such the evaluation report aims to provide details on the context in which the evaluation has taken place i.e. taking into account the limitations of the legal framework, the multiple expressions of political desiderata and the horizontal issues raised in the Hague Programme such as the cooperation with Customs.

The problems, or more exactly the shortcomings, that can be defined at this stage are therefore rather linked to whether the implementation allows for reaching the overall policy objectives in the most optimal way: is FRONTEX growing too fast, are certain activities more successfully implemented than others, are Member States contributing or able to contribute to the activities of the Agency, are expectations and punctual requests for action coherent and realistic, or do they entail a risk for ad hoc priorities bringing the Agency "off course" in the longer term.

The Commission's recommendations to solve these problems are composed of short/medium term recommendations and possible items for discussion for the elaboration of a longer term vision.

It is to be understood that these actions will take place on the basis of Community law (Art 62 EC-Treaty) under which the Agency has been established and in full respect of the subsidiarity and proportionality principles. The recommendations for future actions that would involve an amendment of the legal basis will be carefully assessed from this angle.

## **2.2. High political expectations**

The political expectations on the Agency have been very high since its inception. The Agency has been forced to rapidly become fully operational and expand its activities dramatically over just two years to respond to these expectations.

Its budget has risen exponentially and is already beyond what was foreseen in the initial forecasts of the financial perspectives. As an example the 2008 budget will be approximately 70 million € which is as high as the 2013 budget initially foreseen for the Agency.

The Council as well as the European Council have responded to crisis situations and problems faced at the external borders by repeatedly, in the form of political conclusions, calling on FRONTEX to take forward specific initiatives (see annex, part II).

Against this background the following points must be considered:

- How can the potential of FRONTEX be maximised for the purpose of reaching the policy objectives, having regard to the continuous challenges involved in managing the external borders;
- How can a coherent development be assured whereby attention is paid to all parts of the FRONTEX mandate;
- How can an appropriate priority setting of the activities of the Agency be achieved.

The following sections outlines the specific shortcomings identified based on the activities carried out by the Agency so far.

## **2.3. Joint operations**

In its short existence FRONTEX has faced high expectations from EU institutions, Member States and the public at large to take forward operational coordination to counter illegal immigration. This is particularly true for the coordination of operations at the southern maritime borders. As a result the main attention has been on the sea border operations carried out by FRONTEX, in particular the operations carried out off the Canary islands and in the central Mediterranean.

For 2008 the budgetary authority has raised the budget of FRONTEX significantly. This increase should be seen in the light of the Council Conclusions of 18 September 2007, where the Council invited Member States and FRONTEX to identify and implement measures of a longer-term nature concerning maritime patrols at the southern external borders.

During the years 2006 and 2007 FRONTEX has conducted 33 joint operations and 10 pilot projects. The duration of those operations is limited; some have a duration of a week, others of several months.

However, in view of the constant and high migratory pressure at certain parts of the EU border, which a single Member State cannot face alone, the cooperation between



Member States needs to be further enhanced compared to what has been the case so far. Because of their short term duration operations conducted at high risk areas in 2006 and 2007 are not sufficient to ensure effective border controls and surveillance, due largely to a lack of human and financial possibilities this could not always be realised in the past.

As a result there is a need for a more permanent nature (throughout the year) of the joint operations at specific high-risk areas.

More permanent operations require an increase in the budget and the human resources of the Agency, which the budgetary authorities have taken into account for the year 2008.

#### **2.4. Technical equipment**

The Council Conclusions of October 2006 invited the Agency to set up a Central Record of Available Technical Equipment (CRATE) for border control. Although the setting up of this record of equipment was foreseen in Article 7 of the FRONTEX Regulation, the Agency had difficulties in convincing Member States to make the necessary equipment available. This is understandable to a certain degree given the substantial cost of for instance vessels, aircraft or helicopters. Progress has been made recently and today the CRATE database contains over a hundred vessels, around 20 aircraft and 25 helicopters and several hundreds of border control equipment such as mobile radar units, vehicles, thermal cameras and mobile detectors.

The use of this technical equipment was primarily foreseen to take place on a bilateral basis between Member States. So far only a modest use of equipment has been made for the purpose of FRONTEX joint operations i.e. once border check equipment and on another occasion an aircraft has been used during a joint operation.

The use of technical equipment part of CRATE has become easier for all parties as the Agency has entered into Memoranda of Understanding with the Member States, specifying in detail the conditions in which the equipment can be used as well as provisions on the financial implications related to the use of such equipment, including the reimbursement of the costs.

The Agency itself has no own technical equipment which would be useful to remedy possible shortcomings during joint operations or whilst deploying Rapid Border Intervention Teams (RABITs) at very short notice. The deployment of a RABIT team can be combined with technical assistance in accordance with the provisions of Article 8 of the FRONTEX Regulation. Such a deployment will be decided within 5 working days. At such a short notice most Member States may not be in a position to decide, prepare and send the necessary technical equipment to the region where the RABIT will be deployed.

As such there is an evident lack of usage of the equipment put at the disposal by Member States to the Agency, which hinders the implementation of more extensive joint operations. The real potential of the technical equipment part of CRATE remains untapped. So far the Agency has not been in a position to make extensive use of this equipment. Notably Member States are not obliged to provide equipment to

FRONTEX even if the equipment have been included in CRATE. In addition Member States can be faced with situations at home requiring that specific technical equipment.

The expected increase of the level of intensity, especially when more operations will become 'permanent', of joint operations, demands a substantial commitment from Member States to make human resources and, especially, equipment such as vessels and aircraft, available often at short notice. With the political commitment in place together with the necessary budgetary means, the equipment is the remaining 'missing link' for making semi-permanent operations a reality.

## **2.5. Specialised branches**

Article 16 of Regulation (EC) 2007/2004 provides for the possibility to set up specialised branches of the Agency in the Member States to develop best practices with regard to particular types of external borders. By doing so the Agency should ensure the coherence of the actions and operations for which they are responsible.

In addition Article 3 (2) of the aforementioned Regulation stipulates that the Agency may operate through its specialised branches provided for in Article 16, for the practical organisation of joint operations and pilot projects.

It is a reality that numerous emergencies are happening at the EU Southern maritime borders. When the level of control is rising at one point, migration routes are adapted. Taking into account the continuous rise in intensity and duration of joint operations (cf previous point) the Agency may not always be in a position to coordinate effectively between Member States or to adapt its strategies and operations to tackle in an effective manner these new phenomena.

No specialised branches have been established by FRONTEX so far, the establishment of which could enhance the coordination between different operations at the southern maritime borders.

## **2.6. Relation between joint operations and the EPN**

Following a request from the European Council in December 2006, the European Patrol Network (EPN) started in May 2007. FRONTEX and the Member States concerned (Portugal, Spain, France, Italy, Slovenia, Malta, Greece and Cyprus) are working on a regional basis with bilateral cooperation between neighbouring states. Patrols have mainly been limited to areas close to the coasts of the Member States involved.

Conducting numerous joint operations together with the EPN in the same geographical area, results unavoidably in overlaps, taking into account the development towards semi-permanent operations (cf previous sections). Both initiatives are intended to be of a more structural, long-term character, but have so far developed independently. Tackling these overlaps and enhancing the coordination between different activities in the same geographical area will represent an economy of scale of human and financial resources, and enhance the coordination capacity of the Agency.

## **2.7. Risk analysis**

Risk analysis is the cornerstone for effective border management and represents an important part of the work of the Agency. So far the Agency did not put a dedicated information system in place connecting it to all Member States. This is likely to happen from 2008 onwards.

Given the importance of risk analysis to tackle illegal immigration in the most effective way, joint risk analysis with Europol, international organisations and relevant third countries (based on the respective working arrangements) should be encouraged. FRONTEX has been contributing to the Organised Crime Threat Assessment Report (OCTA) and has presented with Europol a report on the high risk routes regarding illegal immigration in the Western Balkan countries. More frequent geographical and/or theme oriented joint risk analysis, with relevant partners, should be considered.

Europol has been identified as a key partner for the Agency. Its analytical work files contain information which is particularly relevant for the risk analysis work of FRONTEX. For that reason both, FRONTEX and Europol, have engaged in a working arrangement allowing for the mutual exchange of relevant information.

FRONTEX has also initiated preliminary talks with Interpol, to come to a similar working arrangement. It is understood that these working arrangements, once duly in place, will enable the relevant partners to join their forces to prepare joint risk analysis reports. By doing so, Member States, the competent Community Agencies and the Institutions at large, will benefit from crucial information enabling them to set the policy priorities for future operational activities.

Although the Agency is setting up a FRONTEX Risk Analysis Network with correspondents from Member States, the level of cooperation with other law enforcement agencies such as Europol, Interpol and relevant counterparts in third countries is lagging behind. So far only a single joint risk analysis has been carried out with Europol.

## **2.8. Management of ICONet (Information and Co-ordination Network for Member States' Migration Management Services)**

Based on a proposal from the Commission, on 16 March 2005, the Council adopted Council Decision 2005/267/EC<sup>3</sup> establishing a secure web-based Information and Coordination Network (hereinafter: ICONet) for Member States' Migration Management Services. Subsequently on 15 December 2005, the Commission adopted a Decision laying down detailed rules for the implementation of Council Decision 2005/267/EC<sup>4</sup>. The purpose of the Commission's managed ICONet is to provide for a platform for the exchange of strategical, tactical and operational information concerning illegal migratory movements and on the fight against such phenomena. It is not envisaged to exchange personal data of illegal migrants or facilitators via the ICONet.

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<sup>3</sup> OJ 2005 L 83, p. 48.

<sup>4</sup> C(2005)5159 final

ICONet is composed of:

- *An Early Warning System*

The ICONet serves to enable Member States to transmit confidentially early warning messages relating to the different aspects/elements of illegal immigration, in particular, to first indications of illegal immigration and facilitator networks, perceptible changes in routes and methods of immigration or other events and incidents which herald new developments in the field of illegal immigration and facilitation and which represent a threat such that immediate counter-measures are required. This "early warning function" is to replace the old 1999 fax-based system.

- *Support for Immigration Liaison Officer Networks*

The ICONet is also a useful tool for enhancing co-operation among immigration liaison officers (ILO), posted abroad by the Member States in accordance with Council Regulation (EC) No 377/2004 of 19 February 2004<sup>5</sup>(hereinafter: ILO Regulation), by providing for easy access to all relevant information with regard to their activities. For instance, in the framework of the implementing work regarding the European Council's Conclusions on "Priority Actions on Africa and the Mediterranean", the Commission services created separate subsections in ICONet for the regional ILO networks which are to be established along the main migration routes in Africa. All relevant information – including the situation reports concerning illegal immigration in the countries of origin and transit – will have to be uploaded onto these subsections, and thus made available for the ILOs and decision makers both on policy and executive levels.

- *Visa, Borders, Travel documents*

Information exchange via the ICONet on the use of visas, borders and travel documents relating to illegal immigration may cover, in particular, information on visa and document forgeries encountered, on best practices in combating counterfeiting and forgeries, on new techniques and modi operandi of migrant smugglers and human traffickers, and on best practice in combating these two phenomena.

- *Return*

The ICONet may also help Member States in their efforts to increase co-operation and co-ordination in the field of return by exchanging information on

- relevant Community and national laws in force;
- best practices in establishing the identity of third country nationals and obtaining travel documents in order to facilitate their return;
- planned or scheduled joint return flights;

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<sup>5</sup> OJ 2004 L 64, p. 1.

- requests/notifications of planned or scheduled transit removal operations.

The FRONTEX Agency has been connected to ICONet in 2007 and uses it for exchanging information with Member States regarding risk analysis, preparation of joint operations and return.

FRONTEX is setting up the FRONTEX Information System (FIS). The FIS is at an early stage of inception, but once it will be put in place it will provide for a highly secured direct communication channel between the Agency and the Member States.

The Agency is currently working on the development of a Situation and Monitoring Centre to ensure that all relevant information related to the development of illegal immigration towards the external borders of the European Union are timely gathered and assessed thus enabling Member States to give an appropriate operational response whenever it is needed.

As such numerous information systems exist that are dealing with the same type of data collection but structured in different ways.

## **2.9. The Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI)**

CIREFI was set up by a decision of the Ministers responsible for immigration on 30 November and 1 December 1992. In 1994, it was decided to expand its activities assisting the Member States in exchanging information on legal immigration, in preventing illegal immigration and unlawful residence, on combating smuggling of human beings, improving the detection of false or falsified travel documents and on ways of improving return practices. Based on this information, regular and ad hoc reports are drawn up commenting on trends, developments and changes. Occasionally CIREFI also provides an analysis of the information in order to draw conclusions and gives recommendations for appropriate counter-measures.

For the time being the logistical back-up is provided by the Council Secretariat with the necessary administrative and organisational assistance. Personal data may not be processed and, in particular, may not be communicated by or to CIREFI and it is not empowered to give instructions to Member States' authorities, just like FRONTEX.

There is a logical development in the field of information exchange related to illegal immigration, starting from the establishment of CIREFI in 1992, expanding its mandate to data collection in 1994, establishing an Early Warning System (EWS) on illegal immigration in 1999. ICONet took over the EWS from CIREFI in 2004 when FRONTEX was tasked with risk analysis, for which information gathering has a paramount importance. This leads to the only possible conclusion i.e. to centralise the exchange of operational information related to illegal immigration in FRONTEX.

There is an obvious overlap between the activities covered by CIREFI and the ones carried out by the Agency, with regard to gathering, analysing and disseminating information related to illegal immigration; therefore the need for taking over CIREFI by the Agency seems to be self-evident. Given that information compiled in CIREFI usually have to be treated as restricted, the Agency's existing document management and security rules would ensure such treatment. Furthermore, the above-referred

FRONTEX Information System would allow for gathering and disseminating that information electronically.

## **2.10. Training**

The activities of FRONTEX as concerns training follows from the previous Ad Hoc Centre for Border Guard Training, whose activities were fully taken over by FRONTEX on 31 December 2005. Including training of border guards as well as "training of trainers", a total of 97 trainings, meetings and workshops have been organised with a total of 1 341 participants.

With the adoption of the RABITs Regulation end of July 2007, FRONTEX has been given additional training and exercises tasks. The Agency shall also provide border guards who are part of the Rapid Pool with advanced training relevant to their tasks and powers and shall conduct regular exercises with those border guards.

The common core curriculum is currently subject to review. An expert meeting with large participation from the relevant actors to discuss the initial draft has taken place in September 2007 in Cesena, Italy. Further work is necessary to test the various components of the core curriculum with the academic world and the practitioners. The impact of training on raising the competence of border guards for the purpose of a coherent application of the Schengen acquis and the smooth running of operations coordinated by FRONTEX can only be assessed in the longer term.

While the competences of border guards to apply in a correct and consistent manner the Schengen acquis must remain the core of the training made available, the experiences of joint operations show that border guards are confronted with situations involving persons seeking international protection or in distress situations at sea. International law is subject to different interpretations and is implemented at national level with different guidelines. Not all border guards are regularly confronted with, for instance, search and rescue situations involving immigrants. Respect for international law remains a fundamental obligation for Member States and will contribute to the overall policy objectives of the Agency.

Based on practical experiences, training courses should therefore respond to the need to address topics which are not directly within the area of border controls, but which are closely linked to them e.g. search and rescue.

## **2.11. Research**

FRONTEX has so far implemented 6 projects and 7 workshops/seminars on research and development. While these activities have not been priorities for the Agency in its initial set-up phase its importance for the future should not be underestimated. New technologies and their contribution to further developing the integrated border management system were discussed at the Informal Council of Justice and Home Affairs Ministers during the Portuguese Presidency. New technologies play a vital role for the proposals made in the two Communications presented by the Commission in parallel with this report, on an entry-exit system and measures to automate border control and on a European Border Surveillance System. For the former the BIOPASS

project implemented by FRONTEX on the use of biometrics at airports and national registered traveller's schemes provided important input.

The Agency will take an active part in the work of the newly set up European Security Research and Innovation Forum, where a separate working group on border security has been set up.

A key priority for the future must be to ensure that the specific interests of border control authorities are duly reflected. FRONTEX has a unique capacity for ensuring a two-way communication at European level between research providers and end users. The experience of the border guards participating in joint operations is instrumental to define in an accurate manner what is needed from an operational perspective. Research should focus on that type of equipment which is providing added value for those operating border controls.

There is a major difference between how border controls are organised in practice between different types of borders i.e. land, sea and air border. Controls do not use the same type of equipment and border crossing points are subject to different physical constraints in terms of how to organise the passenger flows and the checks of each person. As an example checks using biometric readers pose different challenges at air borders and land borders respectively. As a further example maritime border controls favour the use of satellite monitoring systems to identify vessels; the same systems would be difficult to implement to identify passengers in vehicles. Future developments in research should take into account these practical differences for the purpose of identifying practical solutions that should be tested on the ground in close cooperation with Member States' authorities. In view of the need for uniform European standards and to achieve economies of scale coordination at European level can greatly serve to enhance the availability of new technologies and thereby contributing to the further development of the integrated border management system.

## **2.12. Return**

Article 9 of Regulation 2007/2004 establishing FRONTEX stipulates that the Agency 'shall provide the necessary assistance for organising joint return operations of Member States'. The Agency has provided such assistance at 9 occasions over the past two years.

Return, in full respect of fundamental rights, remains a cornerstone of EU migration policy. One of the tasks of FRONTEX is to provide the necessary assistance for organising joint return operations of Member States. In this perspective the Agency shall also identify best practices on the acquisition of travel documents and the removal of illegally present third-country nationals.

The Agency has provided assistance for the organisation of nine joint return operations, involving a total of 361 returnees. A further 6 projects have been taken forward on issues such as best practices for the acquisition of travel documents and in order to regularly identify common needs for joint return operations.

These low figures illustrate that there is a lack of return operations involving the Agency and that most of the return operations are organised by Member States on a

bilateral basis with third countries, or a in a joint effort undertaken by a group of Member States. In those cases FRONTEX has not been involved.

According to the current legal framework the equipment forming part of the Central Record of Available Technical Equipment (CRATE) can not be used by the Agency for return operations. The situation may occur that Member States have equipment at their disposal for return operations but at that time no returnees. Putting this kind of equipment in CRATE could be beneficial for those Member States that do have returnees at that moment provided the CRATE equipment can be used for return operations. It would necessary to expand the use of CRATE for this purpose to allow for sharing of such equipment between Member States also.

### **2.13. Cooperation with third countries**

The facilitation of operational cooperation between Member States and third countries and the cooperation between FRONTEX and third countries is an important strand of the tasks of the Agency. Cooperation with third countries is a key component of the integrated border management model and can support the successful implementation of joint operations, enhance the added value of risk analysis, and support capacity building in third countries. FRONTEX has been concentrating its efforts on those third countries that share common goals in terms of border security with the EU. To that extent a series of working arrangements (protocols and/or memoranda of understanding) have been concluded between FRONTEX and third countries in accordance with the relevant provisions of the Agency's founding Regulation.

Working arrangements have been concluded with Russia, Ukraine and Switzerland, while negotiations are well-advanced with Croatia. Mandates have been given by the Management Board to negotiate further arrangements with FYROM, Turkey, Egypt, Libya, Morocco, Mauritania, Senegal, and Cape Verde. According to the Work Programme of 2008 the Agency foresees requesting mandates in the short/mid-term for the other Western Balkan states, Moldova, Georgia, countries of West Africa, the US and Canada.

As called for by the Council conclusions of September 2007 efforts must be reinforced to reinforce cooperation with third countries on border related matters within the framework of the global approach. The measures of a technical character that can be taken by FRONTEX through its working arrangements with the competent authorities of the third countries concerned must be seen in this context.

As an integral part of this policy the EU will help partners to enhance their capacity to better manage migration flows and set up their own integrated border management systems.

Cooperation with third countries is a resource demanding task for the Agency in view of the need to identify the appropriate interlocutors and negotiate working arrangements on a country-by-country basis. While a vast range of countries can be identified as potential partners a priority setting would ensure that the cooperation with key third countries is taken forward more quickly.



Moreover, the current mandate of Frontex limits the degree of possible cooperation in the sense that projects aiming, for example, at technical assistance cannot be carried out by FRONTEX in third countries. While cooperation based on the working arrangements, or on ad hoc fact finding missions to third countries, can identify concrete follow-up measures, Frontex cannot carry out those measures itself. Follow-up is therefore not in the hands of Frontex, although the Agency may have the relevant expertise at its disposal, but is dependant on finding other organisations or national authorities that could implement such projects based on available funding instruments.

#### **2.14. Horizontal integration**

Integrated border management calls for better interaction with other border management authorities. Key players in this perspective are the national Customs authorities. At the time of the elaboration of the Hague Programme, the respective roles and competencies of FRONTEX (control of persons) and the national customs authorities (control of goods) were under discussion. Part of the discussions concentrated on the creation of a single portal for border controls. Nowadays customs are focussing on the modernisation of Community customs legislation and IT-capacities. As such there are few overlaps with the activities of FRONTEX which relate to the control of persons.

Today there is limited cooperation with other controlling authorities e.g. customs controls, although cooperation is another important component of the European Integrated border management concept. Cooperation tends to be reactive rather than based on a common identification of aims and synergies.

It is against this background, i.e. to determine the level of cooperation between relevant competent authorities in the field of customs and border control that the European Council have called upon the Commission to evaluate the activities of FRONTEX and to look at possible synergies.

In line with this important policy development there is a need to explore a more proactive approach to possible cooperation mechanisms between the customs authorities and other border control authorities.

#### **2.15. Integrated border management**

Since Frontex was created a number of developments have been taken forward in parallel to enhance the integrated border management system of the EU. New initiatives that could not be considered at that time must therefore be assessed from the angle of whether a role of Frontex could have an added value when defining those initiatives.

A longer term vision requires the Agency to expand all of its activities, and sometimes to go beyond its current mandate. Keeping the Agency up to speed with these developments through changes in the mandate are necessary at regular interval to ensure that potential added value is not restricted i.e. where the mandate does not reflect new components of the Integrated Border Management system.

Together with the Evaluation Report of FRONTEX the Commission is presenting a Communication on a European Border surveillance System. A review of the Schengen evaluation mechanisms is planned for end of 2008. In view of the capacity of Frontex with regard to coordination, information exchange, risk analysis and training it could clearly enhance the extent to which these initiatives can reach their policy objectives.

As a long-term vision, the Commission launched the concept of a European Border Guard in its Communication of 2002. However, a series of legal and political constraints remain today, including the difficulty to grant the prerogatives of public authority entitled to perform border controls on the territory of the Member State where they are deployed.

Through the establishment of the RABITs indications will be provided on the added value at the European level of the deployment of these 'EU teams' as well as whether the legal framework put in place by the RABIT Regulation, which also covers guest officers serving in joint operations, provides for sufficient clarity and efficiency when coordinating operations between Member States. At this stage it is too early to evaluate the impact of the RABITs as no deployments have taken place so far.

Operational coordination has already proved itself as the key instrument of the European Union in ensuring operational solidarity and channelling resources to the sections of the external border with the greatest needs i.e; the Southern maritime borders. Whether current tools are sufficient for meeting the objectives of coordinating Member States' efforts in controlling the external borders must be kept under close review.

This includes also the substantial financial means made available through the financial support mechanism provided by the European Border Fund. Both the EBF and the Agency aim at supporting the same policy objectives in a complementary fashion, and their impact in the longer term will be monitored carefully by the Commission.

### **3. OBJECTIVES**

The evaluation report is the response of the Commission to the request of the European Council as included in the Hague Programme.

The policy objectives, whilst responding to the specific request of the European Council in the Hague Programme and against the problem definition described in section 2 above are identified below. They correspond to the objectives set for the Agency at the time of its inception (Regulation No 2007/2004) and are still valid for the integrated border management policy of the Union as a whole.

#### **3.1. General policy objectives**

The general policy objectives can be defined as follows:

- 1) contribute to an integrated management of the external borders at European level

- 2) effective control of the external borders
- 3) facilitate the application of existing and future Community measures relating to the management of the external borders by ensuring the coordination of operational cooperation between Member States.

### 3.2. Specific policy objectives

The specific policy objectives can be defined as the enumeration of tasks in the current mandate of the Agency; see Article 2(a-g) of the Frontex Regulation. All specific objectives contribute to all general policy objectives, but the most direct links are explained below.

- Coordinating operational cooperation between Member States in the field of management of external borders. This involves notably the implementation of joint operations based on contributions and participation of Member States including technical equipment and the implementation of the European patrols Network, which allows for reinforcing controls at specific sections and developing best practices between Member States. This specific objective contributes directly to the second and third general policy objective.
- Assisting Member States on training of national border guards, including the establishment of common training standards. This contributes directly to all three policy objectives, as all are dependant on competent staff of national border guard authorities, and in particular the policy objective of facilitating the application of the acquis.
- Carrying out risk analyses. This may include also measures to facilitate the exchange of information relevant for the tasks of the Agency and the Member States, as well as cooperation with other agencies and international organisations. This contributes to all three policy objectives, as the results feed into all four levels of the integrated border management, especially measures in cooperation with third countries, measures at the border, and measures within the Schengen area. Risk analyses allows for focussing resources in response to threats and therefore to an effective control of the borders, and also to identifying needs for operational cooperation between Member States.
- Following up on the development of research relevant for the control of external borders. This objective contributes directly to the first policy objective as it allows for developing the integrated border management model as a whole, and indirectly to the other two policy objectives.
- Assist Member States in circumstances requiring increased technical and operational assistance at external borders. This may include also making use of any equipment acquired by the Agency. This contributes to, in particular, maintaining an effective control in times of particular pressure at specific sections of the border.
- Provide Member States with the necessary support in organising joint return operations. This contributes to the first policy objective, as returns form an important part of the integrated border management system as a whole.

- Deploy Rapid Border Intervention Teams to Member States. This contributes to, in particular, maintaining an effective control in times of particular pressure at specific sections of the border.

To the specific objectives listed in Article 2 of the Frontex Regulation should also be added the facilitation of operational cooperation between the Agency and third countries, and cooperation between the Agency and the authorities of third countries. Such cooperation may cover exchange of information and common risk analyses, training, and joint operational activities. This specific objective contributes directly to the first policy objective, and indirectly to the second and the third having regard to potential effects on more effective border control and more effective operational coordination.

#### 4. POLICY OPTIONS

This Section elaborates the policy options that contribute to reaching the overall objectives and provide solutions to the identified problems referred to in section 2.

The policy options include 15 separate recommendations which have been grouped into three policy options:

Policy Option 1: A **status quo** policy option;

Policy Option 2: An option including mainly non-legislative recommendations that should be relatively inexpensive, uncontroversial and straightforward to implement in the **short/medium term**;

Policy Option 3: An option including all of the recommendations of policy option 2 plus additional recommendations for the **longer term** that will require further discussion.

The policy options are outlined in Table 4.1. The recommendations have been **numbered and classified** according to whether they **could imply a legislative (L) or non legislative action (NL)**, i.e. whether they would require an amendment to the current mandate (Council Regulation 2007/2004) of the Agency through a legislative proposal from the Commission or whether they can be undertaken **within** the current mandate.

##### 4.1. Table – Overview of Policy Options

Description of policy option	
<b>Policy Option 1</b>	No changes are made to the current situation
<b>Policy Option 2</b>	<b>1. Technical equipment</b> The potential of CRATE, and the commitments made by Member States, must be exploited to the full for all activities of

## Description of policy option

the Agency (NL)

### **2. Specialised branches**

Consideration should be given to the setting up of specialised branches in the relevant geographical areas (NL)

### **3. Relation between joint operations and the EPN**

FRONTEX to analyse how semi-permanent joint operations can be merged with the European Patrol Network (NL)

### **4. Risk analysis**

Joint risk analysis with Europol, international organisations and relevant third countries, and frequent geographical and/or theme oriented joint risk analysis, with relevant partners, should be encouraged (NL)

### **5. Management of ICONet**

Task FRONTEX with the management of ICONet, under the present or another technical platform such as the FRONTEX Information System (NL)

### **6. Management of CIREFI**

Task FRONTEX to centralise the exchange of operational information related to illegal immigration (NL)

### **7. Own technical equipment**

To ensure the availability of equipment through FRONTEX acquiring its own equipment for border control, for instance to be used by the RABIT teams (NL)

### **8. Return**

Strengthen the role of FRONTEX regarding return operations – examine the possibility to use CRATE as a means for sharing technical equipment between member States (L)

### **9. Training**

Training offered to border guards should take into account and include relevant provisions of European and international rules on asylum, the law of the sea and fundamental rights. Specialised training courses should therefore be offered by FRONTEX on these aspects, in order to increase the availability of border guards with the necessary competences

Description of policy option	
	<p>and contribute to a consistent approach to situations involving search and rescue coordination (NL)</p> <p><b>10. Research</b></p> <p>Implement joint projects aiming at real life operational testing of new technologies, to assess their feasibility and impact on current procedures as border crossing points (NL)</p>
<p><b>Policy Option 3</b></p>	<p><b>All measures mentioned under Policy option 2 plus:</b></p> <p><b>1. Schengen evaluation</b></p> <p>The mechanism to perform Schengen evaluations is currently under review. The Commission will present a proposal to that effect in the second half of 2008. In that perspective it is clear that FRONTEX could provide added value to such an evaluation mechanism through its expertise on external border control and on the potential links to its other activities, notably training and risk analysis (L)</p> <p><b>2. Cooperation with third countries</b></p> <p>Priority should be given to strengthened cooperation with those third countries that have been identified as problem areas through the joint operations coordinated by FRONTEX. Evaluate a possible extension of the current FRONTEX mandate allowing the Agency to implement pilot projects with third countries as beneficiaries. (L)</p> <p><b>3. Future operational coordination</b></p> <p>Initiate an in-depth reflection on the long-term strategy, including issues related to an EU border guard. (L)</p> <p><b>4. Border surveillance</b></p> <p>Frontex to take on the role as a hub for information exchange in a future European border surveillance system and take on the development of a pre-frontier intelligence picture. (l)</p> <p><b>5. Customs and horizontal integration</b></p> <p>Pilot projects at European level could support the coordination between the activities of national border guard authorities and national customs authorities. FRONTEX, the Commission and Member States should explore the possibility of conducting</p>

Description of policy option	
	FRONTEX-led joint operations in coordination with cooperation projects of national customs authorities (NL)

## 5. ASSESSMENT OF THE IMPACTS OF POLICY OPTIONS

The policy options and their component recommendations have been assessed against the following criteria.

- Does the option/recommendation contribute to meeting the policy objectives?
- Does the recommendation have an impact on external countries/partners?
- Can the involved costs be (or become) part of the FRONTEX budget and how high are they; what are the implications for the budgets of the Member States?
- What are the possible impacts on fundamental rights?
- Are the envisaged actions, following the recommendations, within the existing mandate of the Agency or not?
- Do other options/recommendations exist that would equally achieve the policy objectives?

The policy options are a combination of recommendations. Most of the recommendations are complementary rather than alternative means to achieve the same ends. In these circumstances it is necessary to consider each action individually.

### 5.1. Policy Option 1 – Status quo

- No changes are made to the current situation i.e. the current European legislative instruments are maintained without change and priority setting is left to the internal procedures of the Agency and Council conclusions as may be relevant

#### a) Does the option/recommendation solve the identified shortcoming?

The status quo provides for an improvement on the quality of border control at the external EU borders. Maintaining the existing level does not allow for the necessary fine-tuning of the activities of the Agency in the short/medium term perspective to take into account the results of the evaluation, which in turn would help in reaching the policy objectives in a more enhanced manner. The status quo would not meet expectations of the Council and the EP having regard to their expectations on the Agency and interest in that the Commission initiates a debate on its future directions and priorities.

- b) **Does the option/recommendation have an impact on external countries/partners?**

The impact on the external partners remains at its actual level.

- c) **Can the involved costs be (or become) part of the FRONTEX budget and how high are they?**

No impact on the FRONTEX budget

- d) **What are the possible impacts on fundamental rights?**

Impact remains at the current level, with limited support to Member States for meeting their obligations.

- e) **Are the envisaged actions, following the recommendations, within the existing mandate or not?**

Yes

## **5.2. Policy Option 2 – Short and medium term recommendations**

This option provides for a series of ten recommendations related to the activities of the Agency which can be implemented in the short to medium term. Their specific advantage is that the majority of them do not require changes to the current mandate.

The recommendations are made on the basis of the experiences gathered so far and take into account the political desiderata and remedy some shortcomings in the functioning of the Agency.

**The impacts they have on the budget are minimal** taking into account that the budgetary authorities have already substantially enhanced the budget of the Agency as from 2008.

The relation with other Community policies and more in particular with the European Integrated Border Management policy, is positive as the recommendations that are part of this policy option maximise the activities the Agency can conduct within its current mandate.

The ten recommendations of policy option 2, except the recommendation on return, do not require a change of the current legislative framework in which the FRONTEX Agency coordinates the operational cooperation between Member States in the field of management of external borders.

All the recommendations concern intensifying the coordination role of FRONTEX, therefore the impact on the administrative burden of Member States should remain unchanged compared to maintaining the status quo.

### **5.2.1. Technical equipment**



**Recommendation:** The potential of the equipment part of CRATE, and the commitments made by Member States, must be exploited to the full for the multiple activities of the Agency.

**a) Does the option/recommendation solve the identified shortcoming?**

An enormous effort has already been undertaken by Member States and FRONTEX to find the most appropriate ways to put technical equipment at the disposal of joint operations. Experience has demonstrated that the technical equipment is mostly provided by those Member States which are hosting joint operations.

As there is a general political commitment of all Member States to provide technical equipment when the need arises, its broader usage will be beneficial for the operational activities of the Agency. Enhancing joint operations will contribute to an effective control at the external borders in those areas where the migratory pressure is the highest.

**b) Does the option/recommendation have an impact on external countries/partners?**

No direct impact as the question of returns needs to be managed separately.

**c) Can the involved costs be (or become) part of the FRONTEX budget and how high are they?**

The costs can be integrated in the FRONTEX budget. They are likely to be medium depending on the further evolution in the numbers of joint operations carried out by the Agency. The Agency is co-financing the equipment deployed during joint operations and RABITs – the more intense usage of equipment, especially as operations are gradually taking place over longer periods of time, will cost more for the Agency and the Member States. According to the rules of procedures of the Agency a maximum of 80 % of the total eligible costs of the operations is supported by the Agency budget.

As an example for the year 2007 an amount of approximately 15 million € will be spent by the Agency on operational coordination. This means that 3,75 million will be paid by those MS participating in the joint operations.

In this context it should be noted that the magnitude of the costs is very difficult to project because costs are:

- directly linked to the number and duration of joint operations coordinated by the FRONTEX Agency;
- these operations are based on risk analysis – thus very difficult to predict where operations will take place;
- MS are invited by FRONTEX to participate in the joint operations – impossible to predict which MS will participate in future operations, nor

which means will they put at the disposal of the Agency for the operations.

Regarding the impact on the budget of MS, it is equally difficult to predict how for instance operations of a longer duration will affect the budgets of MS. An overview of the different components of the national budgets has been carried out by DG JLS in the year 2003. It demonstrates that there are substantial differences between MS on how they calculate the expenses for border control.

Some MS calculate the expenses for transport, surveillance equipment, information systems, salaries of personnel, training and various types of investments. Others add expenses related to overall administrative costs, rent and maintenance of buildings, uniforms. Some MS have an additional breakdown as they have different border control authorities in place (e.g. Italy, Guardia di Finanza, Coast Guard, Ministry of Interior, etc.).

**d) What are the possible impacts on fundamental rights?**

No direct impact.

**e) Are the envisaged actions, following the recommendations, within the existing mandate or not?**

The recommendation to use the technical equipment forming part of CRATE **does not need a revision of the current mandate of the Agency.**

**f) Do other options/recommendations exist that would equally achieve the policy objectives?**

In addition to the 'status quo' scenario of policy option 1, the only alternative that would address this shortcoming would consist in FRONTEX buying all the necessary technical equipment to be used in joint operations. This would mean buying several airplanes, helicopters, radars, vessels, trucks, etc. which is not a realistic option from a financial perspective.

5.2.2. Specialised branches

**Recommendation:** The setting up of a specialised branch for the southern maritime border, which would handle the day-to-day coordination of operations in that region.

**a) Does the option/recommendation solve the identified shortcoming?**

The setting up of specialised branches in key areas will enhance the level of coordination of the activities by the Agency. It allows for more direct contacts with the host Member State(s) and real-time coordination of the operation(s). The efficiency of joint operations would therefore be enhanced and contribute to more effective border control as well as facilitate the application of Community law by enhancing operational coordination.

**b) Does the option/recommendation have an impact on external countries/partners?**

The establishment of specialised branches could allow for better and sustained contacts with relevant third countries in the region.

**c) Can the involved costs be (or become) part of the FRONTEX budget and how high are they?**

Although already part of the tasks, but not implemented yet, the setting up of specialised branches by the Agency in Member States will represent a certain additional cost for the budget of the Agency, especially for administrative expenditure. The precise impact would need to be quantified by the Agency based on different scenarios for the size and precise tasks that such a branch would have.

No direct impact on the budgets of Member States.

**d) What are the possible impacts on fundamental rights?**

None

**e) Are the envisaged actions, following the recommendations, within the existing mandate or not?**

As the setting up of specialised branches is explicitly foreseen in the current legal framework, **no changes to the mandate of the Agency are necessary.**

**f) Do other options/recommendations exist that would equally achieve the policy objectives?**

No alternatives are known that would address the identified shortcoming regarding the setting up of specialised branches within the existing legal framework.

5.2.3. Relation between joint operations and the EPN

**Recommendation:** FRONTEX to analyse how the semi-permanent joint operations can be merged with the European Patrol Network.

**a) Does the option/recommendation solve the identified shortcoming?**

Numerous illegal immigration routes are aiming to cross the European Southern maritime borders. To tackle this phenomenon a series of joint operations are taking place in that area and since 2007 the EPN is taking place in the same geographical area. That region is qualified as a 'hot spot', frequent and more permanent activities should take place to tackle effectively illegal immigration in that area. To ensure a coherent approach the merge of the joint operations and the EPN at the Southern maritime borders could be envisaged. The impact can only be assessed based on a deeper analysis to be carried out by Frontex, but the recommendation should contribute to the objectives of more effective border control and better coordination.

Questions relating to the complementarity of the various initiatives and activities of the Agency are often put by stakeholders.

**b) Does the option/recommendation have an impact on external countries/partners?**

No

**c) Can the involved costs be (or become) part of the FRONTEX budget and how high are they?**

A merge of the joint operations and the EPN taking place on the maritime borders will avoid the current risk of overlaps whilst at the same time represent an important economy of scale in the deployment of human and financial resources. This will have positive repercussions on the budget of the Agency and of Member States. See explanatory details on the impact on the budget of FRONTEX and the Member States under 5.2.1. (c).

**d) What are the possible impacts on fundamental rights?**

None

**e) Are the envisaged actions, following the recommendations, within the existing mandate or not?**

This would not require a change in the current mandate of the Agency.

**f) Do other options/recommendations exist that would equally achieve the policy objectives?**

The only alternative is to keep the current situation i.e. continue to conduct in parallel joint operations and the European Patrol Network in the same geographical area. By doing so the Union is missing a possibility to realise some important economies of scale in financial and human resources.

**5.2.4. Risk analysis**

**Recommendation:** Joint risk analysis with Europol, international organisations and relevant third countries should be encouraged, as well as more frequent geographical and/or theme oriented risk analysis with relevant partners.

**a) Does the option/recommendation solve the identified shortcoming?**

Risk analysis is the key for a successful coordination of operational activities conducted by Member States. Conducting common risk analysis with Member States, Europol, International organisations and third countries will provide added value to the quality of the European risk analysis model FRONTEX is tasked to develop. Risk analysis underpins however not only operational coordination but essentially all activities of the Agency and is of key value for the Member States also. The action should therefore have a positive impact on all three objectives.

**b) Does the option/recommendation have an impact on external countries/partners?**

Initiating and performing joint risk analysis with relevant partners and third countries has an impact on the working relation with third countries. These activities should remain subject to the overall EU external policy. A positive impact is that through these newly established arrangements and joint reports; the information exchange on existing problems and tendencies is enhanced, thus also benefiting third countries for carrying out their own risk analysis and enhancing the control of their own borders.

**c) Can the involved costs be (or become) part of the FRONTEX budget and how high are they?**

These costs are part of the budget. The expected cost impact of this recommendation is low.

**d) What are the possible impacts on fundamental rights?**

None

**e) Are the envisaged actions, following the recommendations, within the existing mandate or not?**

This does not require a change of the current mandate of the Agency.

**f) Do other options/recommendations exist that would equally achieve the policy objectives?**

No alternatives are known to address this shortcoming within the current mandate. Member States cannot act as a partner to Europol or other organisations for the purpose of risk analysis at European level.

5.2.5. Management of ICONet (Information and Co-ordination Network for Member States' Migration Management Services)

**Recommendation:** Task the Agency with the management of ICONet under the present or another technical platform, i.e. the FRONTEX Information System

**a) Does the option/recommendation solve the identified shortcoming?**

The action responds to the operational needs of the Member States' migration management services providing a flexible structure of the technical platform, which can be adopted rapidly to the evolving needs and priorities.

The structure and methods of information gathering and supply will be the responsibility of the Agency (already tasked to provide general and tailored risk analysis).

The FRONTEX Information System could be designed as the relevant communication network including the handling of classified information - a

large part of the strategic and operational information/intelligence related to border management requires formal classification.

Multitude of similar systems poses difficulties to obtain the most reliable information and complicates unnecessarily the work of those i.e. competent national authorities providing this kind of information.

The action should have a positive impact on all three objectives having regard to the links with risk analysis (see previous action).

**b) Does the option/recommendation have an impact on external countries/partners?**

No

**c) Can the involved costs be (or become) part of the FRONTEX budget and how high are they?**

The management of ICONet will have an impact on the budget of the Agency. However it should be noted that this impact could be weakened to a large extent as ICONet already provides structures and information flows that the FRONTEX Information System otherwise will need to set up.

Centralising the management of the ICONet will reduce the administrative and budgetary burden for Member States. The positive impact on the budgets of Member States is difficult to assess as the budget structures of MS are heterogeneous.

**d) What are the possible impacts on fundamental rights?**

None

**e) Are the envisaged actions, following the recommendations, within the existing mandate or not?**

This will require a change of the legal base and the implementing rules of the ICONet, but should fit within the existing mandate of Frontex having regard to the provisions on information exchange.

**f) Do other options/recommendations exist that would equally achieve the policy objectives?**

No alternatives are known to address this shortcoming within the current mandate, i.e. no other entity apart from the Commission or FRONTEX would be in a position to manage this network.

**5.2.6. The Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI)**

**Recommendation:** Task the Agency to centralise the exchange of operational information related to illegal immigration.

**a) Does the option/recommendation solve the identified shortcoming?**

Yes, as it responds to the operational needs of the Member States' migration management services, it provides a flexible structure of the technical platform. In addition the methods of information gathering and supply will be the responsibility of the Agency.

The action should have a positive impact on all three objectives having regard to the links with risk analysis (see previous action).

**b) Does the option/recommendation have an impact on external countries/partners?**

None

**c) Can the involved costs be (or become) part of the FRONTEX budget and how high are they?**

The management of CIREFI will have a limited impact on the budget of the Agency as the CIREFI structure already exists and is easily adaptable from a technical perspective.

Centralising the management of the CIREFI will reduce the administrative and budgetary burden for Member States. The positive impact on the budgets of Member States is difficult to assess as the budget structures of MS are heterogeneous.

**d) What are the possible impacts on fundamental rights?**

None

**e) Are the envisaged actions, following the recommendations, within the existing mandate or not?**

The integration of CIREFI into FRONTEX is to be seen as part of the Information System the Agency is putting into place as of 2008 onwards. It would require a change to the Decision on CIREFI.

**f) Do other options/recommendations exist that would equally achieve the policy objectives?**

No alternatives are known to address this shortcoming within the current mandate. The Commission could take on the management of CIREFI itself, but this would not address the current problem of dispersing information linked to risk analysis of several different activities.

**5.2.7. Acquisition of technical equipment**

**Recommendation:** To ensure the availability of equipment at short notice FRONTEX shall acquire its own equipment for border control, for instance to be used by the RABIT teams

a) **Does the option/recommendation solve the identified shortcoming?**

Yes, it ensures the availability of equipment at short notice and facilitates the coordination by FRONTEX of the needed technical equipment during operations. As such, it addresses the timing problem - for instance the deployment of a RABIT may not allow for the preparation or sending of the appropriate equipment.

It goes without saying that the type of envisaged equipment is to be understood as 'small equipment' such as portable border surveillance equipment, night vision equipment, portable radar detection units, etc. (and not vessels, aircraft or helicopters).

The action contributes to an effective control of the borders in situations of particular pressure at specific sections.

b) **Does the option/recommendation have an impact on external countries/partners?**

No

c) **Can the involved costs be (or become) part of the FRONTEX budget and how high are they?**

The acquisition of own equipment (even when it is small equipment) for the Agency will have a medium impact on the budget of FRONTEX.

d) **What are the possible impacts on fundamental rights?**

None

e) **Are the envisaged actions, following the recommendations, within the existing mandate or not?**

The buying of equipment **can take place within the current mandate**. The acquisition by FRONTEX of own equipment is foreseen in Regulation Nr. 2007/2004 establishing the FRONTEX Agency. Its Article 8 (3) provides that: *"The Agency may acquire technical equipment for control and surveillance of external borders to be used by its experts for the duration of the deployment in the Member State(s) in question."*

f) **Do other options/recommendations exist that would equally achieve the policy objectives?**

No alternatives exist within the current legal framework that would address this shortcoming.

Furthermore the added value of equipment owned by FRONTEX over similar equipment owned by MS is illustrated by the following:



- equipment owned by FRONTEX can be deployed within very short time limits (a condition sine qua non for the effective deployment of RABITs);
- FRONTEX is aware of the operational plan and knows what type of equipment will be necessary (compared to MS which do not have the overall picture);

Furthermore the practical implementation of equipment can only take place after an in depth analysis of the needs by FRONTEX.

#### 5.2.8. Return

**Recommendation:** Strengthen the role of FRONTEX regarding return operations – examine the possibility to use CRATE as a means for sharing technical equipment between member States (1)

**a) *Does the option/recommendation solve the identified shortcoming?***

Yes, it will enable FRONTEX to fulfil in an enhanced manner its role of assisting Member States for joint return operations. The strengthening of the role of FRONTEX in this regard has been called for at numerous occasions. Various stakeholders consider in the context of the European Return policy that the support offered by FRONTEX is too weak. On the one hand there is the limitation of the current mandate of FRONTEX i.e. 'provide the necessary assistance'; on the other hand there is a lack of demand for concrete operations in this area.

Enhancing the activities of FRONTEX in this regard was the subject of an in-depth discussion during the German Presidency, resulting in the adoption by the Council of a set of conclusions in June 2007.

The action contributes to the objective of enhancing the integrated border management system, of which returns play a vital role.

**b) *Does the option/recommendation have an impact on external countries/partners?***

Return operations do have an impact on external countries. It should be noted however that this recommendation is only targeting to enhance the support for return operations organised by Member States, and cooperation of third countries for the purpose of accepting returns will require negotiations for that purpose.

**c) *Can the involved costs be (or become) part of the FRONTEX budget and how high are they?***

The Agency is co-financing the equipment deployed during joint operations and RABITs – the possible use of equipment for return operations could cost more for the Agency and the Member States. An in-depth analysis will be carried out at the time of the legislative proposal to modify the mandate of the Agency.

d) ***What are the possible impacts on fundamental rights?***

No direct impact.

e) ***Are the envisaged actions, following the recommendations, within the existing mandate or not?***

Using CRATE for equipment to be used in return operations will require a change in the mandate, i.e. Article 7.

f) ***Do other options/recommendations exist that would equally achieve the policy objectives?***

Apart from maintaining the 'status quo' some alternatives exist to address this shortcoming. These will be analysed in depth when the recommended change to the FRONTEX mandate will be elaborated, together with aspects related to subsidiarity.

### 5.2.9. Training

**Recommendation:** Training offered to border guards should take into account and include relevant provisions of European and international rules on asylum, the law of the sea and fundamental rights.

a) ***Does the option/recommendation solve the identified shortcoming?***

Yes, it increases the level of knowledge of border guards by offering comprehensive training modules including training on international rules regarding asylum, law of the sea and fundamental rights.

Training offered to border guards on relevant provisions of European and international rules on asylum, the law of the sea and fundamental rights will address the identified shortcoming and increase the knowledge of border guards. The specialised training courses will furthermore increase the availability of border guards with the necessary competences and contribute to a consistent approach to situations for instance involving search and rescue coordination. It will contribute to the objective of effective control by maintaining public confidence and trust in the operations carried out to control the borders.

b) ***Does the option/recommendation have an impact on external countries/partners?***

Yes, to the extent that the coordination of search and rescue operations may require cooperation with the relevant authorities of third countries, and to the extent that it involves ensuring a human and dignified treatment of third country nationals.

c) ***Can the involved costs be (or become) part of the FRONTEX budget and how high are they?***

Yes, training is part of the budget. The cost for FRONTEX to set up such training modules is expected to be low. No impact on the budgets of the Member States.

**d) *What are the possible impacts on fundamental rights?***

Positive: This kind of training will contribute to a consistent approach regarding the protection of fundamental rights throughout the various operations, which in turn will enhance their effectiveness and the respect of international obligations. It will also be complementary to the ongoing work on the guidelines related to the Law of the Sea.

**e) *Are the envisaged actions, following the recommendations, within the existing mandate or not?***

Training is **part of the current mandate**.

**f) *Do other options/recommendations exist that would equally achieve the policy objectives?***

No alternatives exist within the current mandate that would remedy the identified shortcoming. No other entity at European level has the capacity or the competence to provide coherent training to border guards of all the EU Member States on these issues. Training at national level will not be uniform and not take into account the dimension of operational coordination between Member States, nor allow for sharing experiences between Member States facing vastly different challenges.

5.2.10. Research

**Recommendation:** Ensure that the specific interests of border control authorities are taken into account through joint projects aiming at real life operational testing of new technologies

**a) *Does the option/recommendation solve the identified shortcoming?***

The development of instruments and equipment integrating new technologies according to the specific needs of border control authorities will provide border guards of the EU with state of the art equipment and technology. This will enable them to perform their duties quickly and efficiently whilst taking into account the interests of legitimate persons entering the European Union.

This action will contribute to developing the integrated border management of the Union as a whole by exploiting the possibilities of new technologies in all relevant activities related to border control.

**b) *Does the option/recommendation have an impact on external countries/partners?***

No.

- c) ***Can the involved costs be (or become) part of the FRONTEX budget and how high are they?***

Entering into a dialogue with industry and research institutes is already a reality. Emphasising the expectations and test real life conditions of future equipment of border guards should as such not represent a major impact on the FRONTEX budget. Funding of major research projects or costs related to implementation are not covered by the Frontex budget as such but by relevant European programmes, including the European Border Fund, and national budgets. As such it could represent an economy of scale for national budgets.

- d) ***What are the possible impacts on fundamental rights?***

None

- e) ***Are the envisaged actions, following the recommendations, within the existing mandate or not?***

Yes, research activities are part of the current mandate.

- f) ***Do other options/recommendations exist that would equally achieve the policy objectives?***

No alternatives exist within the current mandate that would remedy the identified shortcoming. No other entity at European level can provide coordination and contacts between users (border guards) and the research community.

### **5.3. Policy Option 3 – Long term recommendations**

This section, which is dealing with long term recommendations, addresses political issues and is therefore not linked to specific concrete actions of the Agency at this stage.

It should be understood as a series of topics for discussion with the relevant partners and within the appropriate institutional framework, to forge a vision on the possible future developments of the Agency.

For instance the cooperation with third countries and international organisations by FRONTEX is based on working arrangements. Actually 3 working arrangements (within 2 years) have been concluded with Russia, Ukraine and Switzerland.

The conclusion of these working arrangements require:

- a mandate of the Management Board of FRONTEX to start the talks;
- preparation of the terms of reference of the working arrangement;
- negotiations with the third country on the content of the working arrangement;
- an agreement on the content of the working arrangement by the Management Board of FRONTEX;

- the implementation and monitoring of the working arrangement with the third countries on a permanent basis.

The full impact they might have on external partners, horizontal Community policies, and the budget of the Agency is too early to assess. Stakeholders attitude will need to be explored based on the discussions that will take place on the basis of the Communication.

Against this background **the Commission will address** the impact of the five longer term recommendations when the views of the stakeholders will be known and whilst preparing the necessary legislative proposals following those in-depth discussions. In this case further separate Impact Assessments for the legislative proposals will be conducted.

#### 5.3.1. Schengen evaluation

**Recommendation:** FRONTEX to provide added value to the Schengen evaluation mechanism through its expertise on external border control and the potential links to its other activities, notably training and risk analysis.

**a) *Does the option/recommendation solve the identified shortcoming?***

The mechanism to perform Schengen evaluations is currently under review. The Commission will present a separate proposal to that effect in the second half of 2008, aiming at setting in place a complementary mechanism for evaluating existing Schengen states.

The Schengen evaluation is at the core of maintaining high and uniform levels of control at the external border of the entire Schengen area. Enhancing the evaluation mechanism therefore contributes to all three policy objectives, but this should be further assessed in relation to the upcoming proposal itself.

**b) *Does the option/recommendation have an impact on external countries/partners?***

Too early to assess.

**c) *Can the involved costs be (or become) part of the FRONTEX budget and how high are they?***

Too early to assess.

**d) *What are the possible impacts on fundamental rights?***

Too early to assess.

**e) *Are the envisaged actions, following the recommendations, within the existing mandate or not?***

This would fit well within the overall framework of the current mandate, having regard to the role of FRONTEX in facilitating and rendering more

effective the application of existing and future Community measures related to the management of external borders. However, this will need to be further assessed once the more precise role of Frontex in the new mechanism has been elaborated further.

### 5.3.2. Cooperation with third countries

**Recommendation:** Priority should be awarded to strengthened cooperation between FRONTEX and those third countries that have been identified as problem areas through the joint operations coordinated by FRONTEX.

Consideration should be given to whether Frontex should have the possibility of carrying out pilot projects with third countries as beneficiaries.

a) ***Does the option/recommendation solve the identified shortcoming?***

The recommendation aims to open new ways to enhance the cooperation with third countries which is key to a successful EU policy on border management.

In that context a closer examination is needed of:

- the added value FRONTEX projects would bring compared to what can currently be implemented under the relevant RELEX-programmes, and
- whether the mandate of FRONTEX be expanded to finance such projects or whether FRONTEX be eligible to apply for funds under the relevant programmes.

These possibilities should be looked at further in the context of future working arrangements with third countries and be analysed by the Commission on the basis of ex ante evaluations.

Both actions should contribute to the integrated border management system of which cooperation with third countries is a crucial element, notably by enhancing the quality of risk analysis, improving day-to-day cooperation at specific border crossing points, and by enhancing the capacity of third countries to manage their own borders, which can relieve the pressure on the EU external borders.

b) ***Does the option/recommendation have an impact on external countries/partners?***

In depth consultations with third countries and relevant Commission services will need to be organised by the Agency within the context of the EU external policy and within the limits of the mandate.

c) ***Can the involved costs be (or become) part of the FRONTEX budget and how high are they?***

Costs are expected to be low as concerns priority setting. For projects to be carried out in third countries the budgetary impact could be more significant, but this depends on the outcome of the ex ante evaluation.

**d) *What are the possible impacts on fundamental rights?***

Too early to assess.

**e) *Are the envisaged actions, following the recommendations, within the existing mandate or not?***

Priority setting does not require a change of the mandate. The current mandate of FRONTEX is limited in the sense that projects aiming e.g. at technical assistance cannot be carried out with third countries as beneficiaries; should the solution be chosen to give FRONTEX this possibility the mandate would have to be changed.

**5.3.3. Long term strategy on operational coordination**

**Recommendation:** Start the reflection on defining to what extent the coordination of Member States' resources should be replaced with the assignment of border guards and equipment on a permanent basis.

**a) *Does the option/recommendation solve the identified shortcoming?***

At this stage no specific shortcomings can be identified beyond what is noted in relation to option 2. However, it is also too early to say that current tools and methods for coordination of operational cooperation are sufficient. Therefore more experience needs to be gained from practical implementation. The question arises nevertheless already as to whether the current system of allocating resources to sections of the border subject to a particular pressure is optimal. This involves whether sufficient equipment and human resources can be put at the disposal of the Member State in need using the mechanisms in place, as well as whether the European Borders Fund is meeting its objectives in reinforcing individual Member States based on the risks at the external borders.

It also involves questions related to whether it is cost-effective to send equipment long distances for one operation at the time, on an ad hoc basis, and whether the best coordination is achieved by punctual requests from FRONTEX for participation by Member States in each individual operation.

Ad hoc contributions of equipment and human resources give rise to administrative costs for the Agency itself as well for the Member States involved, for the administration and coordination of the resources in question as well as, for example, travel costs.

As this recommendation is matter of launching a debate, to which further experiences should feed in continuously, it is too early to define concrete actions and therefore to assess the impact on the policy objectives.

- b) ***Does the option/recommendation have an impact on external countries/partners?***

Too early to assess.

- c) ***Can the involved costs be (or become) part of the FRONTEX budget and how high are they?***

Too early to quantify.

- d) ***What are the possible impacts on fundamental rights?***

Too early to assess.

- e) ***Are the envisaged actions, following the recommendations, within the existing mandate or not?***

Too early to assess.

#### 5.3.4. Border surveillance

**Recommendation:** In parallel with this current evaluation report the Commission presents a Communication outlining a roadmap for the development and setting up of a European Border Surveillance System. The role of FRONTEX is crucial for the successful preparation of such a system, as already noted in the section devoted to research and development in this report.

In more operational terms FRONTEX could take on the role as a "hub" for an improved system of exchange of real-time, operational information between Member States. In addition, giving FRONTEX access to surveillance information in a more systematic and structured manner could serve as the basis for the development of a 'FRONTEX intelligence led information system' targeting the external borders of the EU.

- a) ***Does the option/recommendation solve the identified shortcoming?***

Activities by FRONTEX in this context should contribute to all three policy objectives. The impact of the surveillance system is considered more in-depth in the impact assessment attached to that Communication.

- b) ***Does the option/recommendation have an impact on external countries/partners?***

See separate impact assessment.

- c) ***Can the involved costs be (or become) part of the FRONTEX budget and how high are they?***

See sub b)

- d) ***What are the possible impacts on fundamental rights?***



See sub b)

- e) ***Are the envisaged actions, following the recommendations, within the existing mandate or not?***

At the current stage of development of the European Border Surveillance System the tasks envisaged for Frontex should fit within the current mandate.

- f) ***What is the stakeholders attitude regarding each policy option?***

See sub b)

#### 5.3.5. Customs and horizontal integration

**Recommendation:** Launch pilot projects to improve cooperation between customs and other border control authorities of the Member States with FRONTEX. Member States and the Commission to explore the possibility of conducting FRONTEX-led joint operations in coordination with cooperation projects of national customs authorities, ie the implementation of two parallel projects on control of persons and on control of goods respectively at the same time and at the same border crossing points.

- a) ***Does the option/recommendation solve the identified shortcoming?***

Cooperation with relevant authorities remains a key element in the integrated border management model, whereby persons and goods are controlled using similar working methods and risk management approaches. Pilot projects at European level will support the coordination between the activities of national border guard authorities and national customs authorities.

Experience of the past has shown that an increased cooperation is necessary to avoid for instance that different authorities conduct quasi at the same time, without informing each other, re-enforced controls at the same points of entry into the European Union. Increased cooperation will represent economies of scale but also be beneficial for the results of apprehending the respective target groups and enable an increased exchange of relevant information between the competent authorities.

The action will contribute to the policy objective of enhancing integrated border management.

- b) ***Does the option/recommendation have an impact on external countries/partners?***

No

- c) ***Can the involved costs be (or become) part of the FRONTEX budget and how high are they?***

Cooperation is part of the budget. The impact of launching these pilot projects is expected to be low.

d) *What are the possible impacts on fundamental rights?*

None

e) *Are the envisaged actions, following the recommendations, within the existing mandate or not?*

The current mandate allows for the launch of pilot projects conducted by FRONTEX.

## **6. COMPARISON OF THE POLICY OPTIONS AND ELABORATION OF THE PREFERRED OPTION**

The process of defining policy options involved grouping the proposals for recommendations into three policy options.

Assessment and weighing of the pro's and cons of the policy options has involved systematically considering each of the individual recommendations described within the policy option. Many of the recommendations are complementary, but in a small number of cases they could themselves be alternative means of achieving the objectives.

### **6.1. Policy option 1**

As a starting point, maintaining the status quo would mean that the Commission ignores the numerous requests made by the European Council to look at possible ways to improve the functioning and the operations of FRONTEX. The findings of the evaluation would not result in any suggestions for how the shortcomings could be remedied, shortcomings which are directly linked to how the policy objectives can be reached. It would equally mean that no debate is launched on the long term directions on how FRONTEX should further develop in the context of the European Integrated Border Management concept, including to what extent the scope of the current mandate should be revisited. This policy option therefore represents a lost opportunity in exploring how the policy objectives can be reached in the best way.

For those reasons the Commission does not prefer maintaining the status quo.

### **6.2. Policy option 2**

As indicated above the evaluation identifies shortcomings and gaps in the current mandate and proposes recommendations to address these in the short/medium term. Addressing the identified shortcomings and meeting the objectives listed in section 3 is necessary to work towards an integrated European border management policy.

Such an approach is consistent with the aim of the Commission to render border controls at the European level more effective. For that reason the evaluation is taking stock of the different issues surrounding the functioning of the FRONTEX Agency, it is looking at the possibilities to optimise the activities within the current mandate and it recommends a series of possibilities that can be implemented within short delays to

optimise the work of the Agency and to further enhance a uniform European approach on the various aspect of border controls.

On this basis this option has identified a number of actions that would contribute to at least one of the policy objectives while the impact on the budget remains overall very limited, and, with only one exception, can be taken forward within the current mandate. These actions allows for a clear priority setting when considering the future actions of the Agency in the context of its work programme for the next 1-3 years. The option therefore provides a substantial improvement of the current situation. However, it has a major drawback as it is not providing a longer term vision (see above on status quo).

### **6.3. Policy option 3**

The added value of the short-term recommendations remains the same as under option 2.

To address the evaluation of the FRONTEX Agency in a comprehensive manner, a strategy to develop a longer term policy is needed. The longer term recommendations form the basis for engaging into a deeper reflection which will enable the relevant actors to take into account the full picture of the numerous evolving policies (Schengen area, Customs, border surveillance, horizontal integration, relations with third countries, enhanced operational coordination) that have an important impact on all three policy objectives. A longer term strategy is necessary to avoid that the tasks of the Agency becomes dispersed or lose focus over time based on ad hoc priorities focussing on the short term only. On the other hand it is clear that the further definition of concrete actions in this regard will need to take into account, in most cases, further experiences from the activities of the Agency as well as discussions on related policy initiatives.

### **6.4. Preferred option**

Options 1 and 2 have major shortcomings to deliver on all of the policy objectives.

The Commission considers that the only possible way forward to work in a constructive manner towards an integrated EU policy on border management consists of choosing policy option 3 i.e. to implement short/medium term recommendations and to engage into a dialogue with EU Institutions, the Agency and relevant European and international partners to explore how the policy objectives can be met in the longer term based on gradual development and in keeping with the resources made available and the administrative capacity of the Agency.

Policy option 3 addresses in a comprehensive manner:

- the identified shortcomings of the Agency;
- the general and specific objectives of the evaluation;
- a priority setting mechanism for the short term, covering all aspects of the activities in the current mandate;

- an overall mapping of requests for enhancing existing actions or to develop new ones, without overloading the Agency with new and unforeseen tasks;
- opening the discussion on policy orientations enabling FRONTEX to remain efficient for the long term;
- possibilities for reinforced cooperation between customs and other border control authorities which need to be tested due to different levels of European competencies of these authorities and to derive the difficulties originating from the difficulties in the working territories (Community Customs Territory and the Schengen Area)

#### **6.5. EU added value of the preferred option, proportionality and subsidiarity**

As outlined above, the need for a comprehensive approach to border control management at EU level has repeatedly been underlined by the Member States (see also Annex Part II) and underpinned the very creation of the Agency. This remains valid and there is no reason, having regard to the evaluation report, to call into question the added value of EU action in this form. The same applies to proportionality and subsidiarity. Both options are clearly linked to the current mandate and they meet the policy objectives currently guiding the activities of the Agency. A further detailed assessment in this regard would nevertheless be made when any legislative proposals would be presented to extend the mandate.

The issue of legislative simplification will need to be assessed when the results of the independent evaluation foreseen in Article 33 of Regulation 2007/2004 are available. This evaluation will take place during the year 2008 and will amongst others assess whether the FRONTEX founding Regulation 2007/2004 needs to be updated.

To that end the Management Board of FRONTEX will report to the Commission who will initiate, when appropriate, the necessary legislative proposals.

As regards the impact for administrative burden (cutting red tape) the recommendations contained in the evaluation report do not require substantial changes to the current set up of the Agency. As such no new or additional reporting demands are addressed to the MS.

### **7. MONITORING AND EVALUATION**

Monitoring and evaluation of the implementation of the future actions and measures set out in the preferred policy option will be an important element to ensure their effectiveness. All activities of FRONTEX are included in its work programme accompanied by indicators for each action, which allows for monitoring based on the annual activity report of the Agency. This would apply to the recommendations put forward here also.

A continuous monitoring of the activities of the Agency also takes place through the Management Board which meets, normally, six times per year, and through direct reporting by the Agency at meetings of the Council and the EP.

## ANNEX

### 1. Part I: Context

#### 1.1 The political framework

Since the entry into force of the Treaty of Amsterdam in 1999, a number of common measures have been adopted to manage better the external borders of the European Union in accordance with Article 62 (1) and (2) of the EC Treaty.

In 2002, following the Commission's Communication on an integrated management of the external borders of the EU Member States<sup>6</sup>, the Council adopted a plan for the management of the EU external borders<sup>7</sup>, containing the following five components of a common policy of integrated management of external borders:

- a common operational co-ordination and co-operation mechanism,
- common integrated risk analysis,
- personnel and inter-operational equipment,
- a common corpus of legislation and
- burden sharing between the Member States and the Union.

Built around the three pillars of common legislation, common operations and financial solidarity, key steps were taken towards the implementation of these five components with the adoption of the Schengen Borders Code<sup>8</sup>, the Practical Handbook for Border Guards (Schengen Handbook)<sup>9</sup> and the rules for local border traffic<sup>10</sup>, the establishment of the FRONTEX-Agency<sup>11</sup>, the creation of the Rapid Border Intervention Teams<sup>12</sup> and the creation

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<sup>6</sup> Communication COM(2002)233 final of 7 May 2002 from the Commission to the Council and the European Parliament, "Towards integrated management of the external borders of the Member States of the European Union".

<sup>7</sup> "Plan for the management of the external borders of the Member States of the European Union" agreed by the JHA Council on 13 June 2002, doc. 10019/02 of 14.6.2002.

<sup>8</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105 of 13.4.2006, 1.

<sup>9</sup> Commission Recommendation C(2006)5186 final of 6 November 2006 establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons.

<sup>10</sup> Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external borders of the Member States and amending the provisions of the Schengen Convention, OJ L 29 of 3.2.2007, 3.

<sup>11</sup> 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, OJ L349 of 25.11.2004, 1.

<sup>12</sup> 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, OJ L199 of 31.7.2007, 30.

of the External Borders Fund<sup>13</sup>. Furthermore, in order to cope with the current migration pressure in the Mediterranean Sea and the Canary Islands, the European Patrols Network (EPN) has been set up<sup>14</sup>.

All these steps have to be seen within the framework of a concept for integrated border management, which consists of the following dimensions:<sup>15</sup>

- Border control (checks and *surveillance*) as defined in the Schengen Borders Code, including relevant risk analysis and crime intelligence;
- Detection and investigation of cross border crime in coordination with all competent law enforcement authorities;
- The four-tier access control model (measures in third countries, cooperation with neighbouring countries, border control, control measures within the area of free movement, including return)<sup>16</sup>;
- Inter-agency cooperation for border management (border guards, customs, police, national security and other relevant authorities) and international cooperation;
- Coordination and coherence of the activities of Member States and Institutions and other bodies of the Community and the Union.

As defined in the Schengen Borders Code and in the Practical Handbook for Border Guards (Schengen Handbook), border control, which is in the responsibility of the Member States, consists of checks carried out at border crossing points (*border checks*) and surveillance of borders between border crossing points (*border surveillance*).

The Hague Programme sets the agenda for stepping up the fight against all forms of illegal immigration in a number of policy areas; border security, illegal employment, return and cooperation with third countries. Concerning border checks and the fight against illegal immigration, the European Council requested the Commission to submit an evaluation of the FRONTEX Agency before the end of 2007. The evaluation should contain a review of the tasks of the Agency and an assessment of whether the Agency should concern itself with other aspects of border management, including enhanced cooperation with customs services and other competent authorities for goods-related security matters.

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<sup>13</sup> Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows", OJ L 144 of 6.6.2007, 22.

<sup>14</sup> **EPN I:** As of May 2007, a permanent joint operation by FRONTEX and Member States on patrolling activities covering defined areas of the Mediterranean Sea and the Atlantic Ocean is being carried out.

**EPN II:** Until the end of 2008, FRONTEX and Member States shall establish the organisational structure, in particular by setting up the National Coordination Centres (NCCs) which shall strengthen the cooperation and coordination among the Member States involved in the EPN.

<sup>15</sup> Conclusions of the 2768th Council Meeting on Justice and Home Affairs, Brussels, 4-5 December 2006, doc. 15801/06 (Presse 341), 26.

<sup>16</sup> The model in its entirety has been described in the EU Schengen Catalogue on External borders control, Removal and readmission: Recommendations and best practices, February 2002.

The Report on the evaluation and future development of the FRONTEX Agency is the reply from the Commission to the aforementioned invitation by the Council. It should be noted that this report is distinct from the 'Evaluation' foreseen in article 33 of Regulation 2007/2004 establishing the FRONTEX Agency. That evaluation will be carried out by the Management Board of the FRONTEX Agency and will take place during the year 2008. It will serve as the basis for recommendations to the Commission regarding changes to the Regulation, the Agency and its working practices. Therefore the discussions and outcomes of the current evaluation report will be closely linked to the evaluation work supervised by the Management Board of FRONTEX.

## **1.2. The current legal framework**

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) has been established by Council Regulation (EC) 2007/2004<sup>17</sup>.

It aims to improve the integrated management of the external borders of the Member States of the European Union by facilitating and render more effective the application of existing and future Community measures related to the management of external borders. It should be noted from the outset that the primary responsibility for the control of external borders lies with the Member States. As a result, the Agency has been established to ensure the coordination of Member States' actions in the implementation of Community measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States.

The FRONTEX Agency is also providing the Commission and the Member States with the necessary technical support and expertise in the management of the external borders and to promote solidarity between Member States.

It merits clarification that the notion of 'external borders' referred to in the Regulation establishing the FRONTEX Agency means *the land and sea borders of the Member States and their airports and seaports, to which the provisions of Community law on the crossing of external borders by persons apply*.

The main tasks of FRONTEX are described in articles 2 to 14 of its founding Council Regulation (EC) No 2007/2004, which has been modified in 2007 by Regulation (EC) 863/2007 of the European Parliament and of the Council establishing a mechanism for the creation of Rapid Border Intervention teams<sup>18</sup>.

Subsequently the tasks of the FRONTEX Agency can be summarised as following:

- coordinate operational cooperation between Member States in the field of management of external borders;
- assist Member States on training of national border guards, including the establishment of common training standards;
- carry out risk analysis;

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<sup>17</sup> OJ L 349, 25.11.2004, p.1.

<sup>18</sup> OJ L 199, 31.7.2007, p. 30.

- follow up on the development of research relevant for the control of external borders;
- assist Member States in circumstances requiring increased technical and operational assistance at external borders;
- provide Member States with the necessary support in organising joint return operations:
- evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States;
- launch, in agreement with the Member States concerned, initiatives for joint operations and pilot projects;
- set up and keep centralised records of technical equipment for control of external borders belonging to the Member States (also known as Central Record of Available Technical Equipment – CRATE);
- take all necessary measures to facilitate the exchange of information relevant for its tasks with the Commission and the Member States;
- facilitate operational cooperation with Ireland and the United Kingdom to the extent required for the fulfilment of its tasks, including the organisation of joint return operations;
- cooperate with Europol and international organisations competent in matters covered by Regulation 2007/2004;
- facilitate the operational cooperation between Member States and third countries in the framework of the European Union external relations policy;
- conclude working arrangements with the authorities of third countries competent in matters covered by Regulation 2007/2004;
- deploy, for a limited period one or more Rapid Border Intervention Teams to Member States in accordance with Regulation 863/2007, at the request of a Member State faced with a situation of urgent and exceptional pressure, especially at the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State illegally.

Effective control of external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly, there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, including return of third-country nationals illegally present in the Member States, was an important step in this direction.

The activities of FRONTEX are based on a common integrated risk analysis model. The Agency carries out risk analysis for the Community and the Member States as to provide adequate information for appropriate measures to be taken or to tackle identified threats and risks with a view to improving the integrated management of external borders.

It should also be noted that the responsibility for the control of the external borders lies with the Member States of the European Union. The activities of FRONTEX are therefore limited



to the facilitation and coordination of operational cooperation regarding border management matters between Member States. As such FRONTEX does not own any vessels or aircraft to carry out its duties. In the operational sphere its duties are limited to the planning and coordination of joint operations or deploying Rapid Border Intervention teams together with Member States whereby the technical equipment is provided for by Member States on a voluntary basis.

To provide a complete overview of the current legal framework reference should also be made to Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007<sup>19</sup> establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' in order to contribute to the strengthening of the area of freedom, security and justice and the application of the principle of solidarity between the Member States, requests FRONTEX to provide risk analysis for the purpose of the annual distribution of resources.

Its article 15 tasks FRONTEX to:

*"Article 15*

*Risk Analysis carried out by the Agency for the purpose of the annual distribution of resources*

*1. For the determination of the weighting, as referred to in Article 14(8), the Agency shall provide the Commission, by 1 April of each year, with a specific report describing the difficulty in carrying out border surveillance and the situation at the external borders of the Member States, paying special attention to the particular proximity of the Member States to high risk areas of illegal immigration for the previous year taking also into account the number of persons having entered those Member States irregularly and the size of those Member States.*

*2. The report shall, in accordance with the Common Integrated Risk Analysis Model referred to in Article 4 of Regulation (EC) No 2007/2004, analyse the threats that affected security at external borders of the Member States in the previous year, taking into account the political, economic and social developments in the third countries concerned, in particular in neighbouring third countries, and shall set out possible future trends on migratory flows and unlawful activities at the external borders.*

*This risk analysis shall be based primarily on the following information gathered by the Agency, provided by Member States or obtained from the Commission (Eurostat):*

*(a) the number of third-country nationals refused entry at the external border;*

*(b) the number of third-country nationals apprehended when crossing or attempting to cross the external border illegally;*

*(c) the number of facilitators intercepted who have intentionally assisted the unauthorised entry of third-country nationals;*

*(d) the number of forged or false travel documents and the number of travel documents and visas issued on false grounds which have been detected at border crossing points in accordance with the Schengen Borders Code.*

*Where the reference figures have not been provided as statistics produced by the Commission (Eurostat) but by Member States, the Agency may request from those Member States the necessary information to evaluate the quality, comparability and completeness of the*

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<sup>19</sup> OJ L 144, 6.6.2007, p. p. 22.

*statistical information. The Agency may request the help of the Commission (Eurostat) in such an evaluation.*

*3. Finally the report shall, in accordance with paragraphs 1 and 2, identify the current levels of threat at the external borders of each of the Member States and determine the following specific weighting-factors for each section of the external border of that particular Member State:*

*(a) external land border:*

*(i) factor 1 for normal threat*

*(ii) factor 1,5 for medium threat*

*(iii) factor 3 for high threat;*

*(b) external maritime border:*

*(i) factor 0 for minimum threat*

*(ii) factor 1 for normal threat*

*(iii) factor 3 for medium threat*

*(iv) factor 8 for high threat."*

### **1.3. The Rapid Border Intervention Teams (RABIT)**

The European Parliament and Council adopted in June 2007 Regulation (EC) No 863/2007 establishing a mechanism for the creation of Rapid Border Intervention teams and amending Council Regulation (EC) No 2007/2004 (i.e. the FRONTEX founding Regulation) as regards that mechanism and regarding the tasks and powers of guest officers.

The mechanism of RABIT aims to provide rapid operational assistance for a limited period of time to a requesting Member State facing a situation of urgent and exceptional pressure at points of the external borders of large numbers of third-country nationals trying to enter illegally the territory of the Member State.

This regulation foresees that Member States shall contribute to a pool of border guards. The total target number for the pool and the required profiles are defined by the Management Board of FRONTEX. The total number of border guards amounts to in between 500 and 600.

The recently adopted Regulation can be summarised as follows:

- RABIT teams will be deployed for a limited period in situations of urgent and exceptional pressure, especially the arrivals of large numbers of third-country nationals trying to enter illegally into the European Union;
- FRONTEX decides to deploy the teams at the request of a Member State within five days upon receiving the request, based on an assessment of the situation and the findings of its risk analyses;
- If FRONTEX approves a request for deployment an operational plan is drawn up immediately. The plan will specify the duration, tasks and composition of the teams;

- Member States are obliged to send border guards for a specific deployment, unless they themselves face an exceptional situation substantially affecting the discharge of national tasks;
- The teams act under the command of the host (requesting) Member State. The members of the teams can perform border checks and surveillance in accordance with the Schengen Borders Code. The members of the teams have broadly the same powers as the border guards of the host Member State;
- The members of the teams can use force and service weapons, provided the host and the home Member States give their consent. The members can always exercise self-defence in accordance with national law of the host Member State. In principle, rules on civil and criminal liability are those of the national law of the host Member State;
- Members of the teams will have a special accreditation document. They will wear their own uniform and a blue armband with the insignia of the EU and FRONTEX. A coordinating officer is deployed by FRONTEX together with the teams;
- All costs related to training, exercises and deployment, except regular salaries, are covered by FRONTEX. This includes travel, accommodation and subsistence allowance;
- The Regulation as such does not contain specific rules on the deployment of technical equipment, but FRONTEX / Member States can make use of existing possibilities such as the Central Records of Available Technical Equipment (CRATE) (*see hereafter*) in combination with the deployment of a team.

#### **1.4. The Centralised Records of Available Technical Equipment (CRATE)**

Article 7 of Regulation (EC) N° 2007/2004 of 26 October 2004 establishing FRONTEX provides that:

*"The Agency shall set up and keep centralised records of technical equipment for control of external borders belonging to Member States, which they, on a voluntary basis and upon request of another Member State, are willing to put at the disposal of that Member State for a temporary period following a needs and risks analysis carried out by the Agency."*

FRONTEX has adopted the practical procedures for the use of this technical equipment put on the centralised records by Member States through the conclusion of 'Memoranda of Understanding' with the Member States. For the time being the overall contributions in terms of the number of aircraft, vessels and other equipment contributed by Member States are in total 21 aircraft, 27 helicopters, 116 vessels, 3 mobile radar units, 392 border surveillance and border checks equipment).

It should be highlighted that

- Contributions are made on a voluntary basis and upon request of another Member State;
- There are no limitations to the types of technical equipment that are covered by this article. In principle, it could range from binoculars to vessels or planes, provided the equipment can be used for checks and surveillance of the external borders;
- The equipment in the "CRATE" remains the property of the contributing Member State;

- The pool of technical equipment is managed by FRONTEX. The equipment can only be used by another Member State for a temporary period. Furthermore the Agency has to agree with the request of a Member State for technical equipment from the "CRATE" through its independent findings as regards the needs of, and the risks faced by, the requesting Member State;
- The financing through the FRONTEX budget of pure bilateral operations between MS, i.e. without the involvement of FRONTEX, is not allowed;
- The list of technical equipment is an evolving list, which will be adapted on a regular basis to take into account new or changing situations related to the checks and surveillance of external borders belonging to the MS.

### **1.5. The European Patrol Network**

The European Patrol Network (EPN) was called for by the Council of December 2006 and was implemented in the first half of 2007. It will help the Member States to develop mutual trust and to exchange regularly relevant information.

The Patrol Network brings together, to a large extent, the already existing patrolling activities of Member States. This, combined with a regular exchange of information, should lead to more efficient control of the maritime borders and reduce the related costs according to the principle of burden sharing.

A regional approach has been chosen as the first step, on the basis of bilateral cooperation between neighbouring states. FRONTEX has assisted in drawing up the operational plans, in defining the areas to be covered and the intensity and use of resources.

FRONTEX and the Member States concerned (Portugal, Spain, France, Italy, Slovenia, Malta, Greece and Cyprus) carry out joint and/or co-ordinated patrols in border regions – initially in their respective territorial waters – between each pair of Member States (Portugal/Spain, Spain/France, etc.). The first phase of the European Patrol Network's operational activities started on 24 May 2007. It will be followed by an evaluation of the operations, and the establishment of permanent operational co-operation. Later on the EPN should incorporate the joint operations and their respective operational areas, carried out in the Mediterranean.

The EPN is a new mechanism that will need further development. The involvement of third countries is non-existent for the time being. Such an involvement would at this stage be limited to training purposes. It should be underlined that the involvement of third countries at that stage will become increasingly important.

It merits to be highlighted that the EPN is not meant to be put in competition with the joint operations carried out by FRONTEX, but should take place in a fully complementary way.

### **1.6. Joint operations co-ordinated by FRONTEX**

FRONTEX's operational activities are planned and carried out in accordance with Risk Analysis and the Annual Work Programme of the Agency approved by its Management Board. Even if special attention is paid to the so called 'high risk areas' such as the illegal migratory routes via the Mediterranean and the Atlantic, joint operations are also covering all other types of the external borders (land, sea and air).

Member States' border guard authorities, under the co-ordination of FRONTEX, are implementing major maritime operations in the Central Mediterranean and other areas of the Mediterranean Sea as well as between the Canary Islands and the West African coast aiming at a more effective surveillance of the Union's Southern maritime borders and the open sea with a view of curbing seaborne illegal immigration and of preventing humanitarian tragedies.

It has to be stressed that FRONTEX has no executive power and does not dispose over own assets (thus it is not a European Border Guard). The role of FRONTEX concerning the joint operations is to draw up together with the participating Member States the operational plans and to ensure appropriate co-ordination of the operational activities. The necessary (law enforcement) measures are being taken by the Member States' border guard authorities participating in the operation.

Detailed descriptions of joint operations can be found in the enclosed document: *List of indicators for the Report on the evaluation of FRONTEX*.

### **1.7. Law of the Sea issues related to FRONTEX Joint Operations**

In accordance with International Law, any vessel has an obligation to render assistance to any ship or person found in distress at sea, regardless of the nationality or status of the victims or the circumstances in which they are found, and every coastal State shall organise an effective search and rescue service and cooperate with neighbouring countries for this purpose, including for the disembarkation of the persons rescued as soon as reasonably practicable. Whether part of a FRONTEX coordinated operation or not, these rules apply to each Member State and any state vessel carrying out border surveillance.

The Commission has engaged with Member States' experts on reaching a joint understanding of the rights and obligations that apply under the law of the sea in relation to FRONTEX operations. This and the structural cooperation with third countries is however by necessity a medium/long term issue.

At an expert meeting organised by the Commission on 8<sup>th</sup> June 2007, participants expressed themselves in support for the establishment of clear practical guidelines for the execution of joint operations coordinated by FRONTEX that could clarify issues such as when there is a distress situation and what is the most appropriate place of disembarkation, but also underlined that tackling illegal immigration is a much wider issue that involves a need for solidarity between Member States, and the necessity of getting third countries of departure and transit to cooperate.

Currently there is a need to agree on practical solutions and the Member States participating in joint operations are invited to agree amongst them before the start of a given operation on how to deal with the issues at stake, including the involvement of third countries. Therefore parties agreed to start the work on preparing guidelines that could lead into general applicable arrangements. FRONTEX will be closely involved in this work.

### **1.8. Cooperation of FRONTEX with third countries**

Apart from coordinating cooperation of EU Member States, FRONTEX also cooperates with third countries in line with the EU External Relations Policy. Cooperation with third countries that share common goals in terms of border security with the EU, are targeted to sustainable partnerships. In the gradual process, in which such partnerships are developed, working arrangements (protocols and/or memoranda of understanding) are concluded between

FRONTEX and its third country partner in accordance with the relevant provisions of Council Regulation EC 2007/2004 which precede practical measures.

a) General principles

To establish third country cooperation FRONTEX builds and maintains, at the operational level, a reliable, accessible, and effective network of partnership with third countries. This network provides the strategic framework for intensifying the operational cooperation with third countries.

FRONTEX coordinated operational cooperation with third countries is exercised and developed gradually and is targeting sustainable partnerships. Each third country partner will be considered individually; as the situation of a specific third country is not comparable to another one (for instance the working arrangement with Russia can not be transposed to countries on the African continent for obvious reasons).

FRONTEX performs its duties with and in third countries that have common goals in terms of border security. Prior to taking practical measures, purely technical working arrangements between FRONTEX and the third country partner are concluded according to specific provisions of the Management Board.

b) Priorities

Accession and candidate countries attract the highest priority in terms of operational cooperation with countries other than EU Member States. Then priority is given to neighbouring third countries and those third countries, which according to risk analyses, are considered being either countries of origin or transit in terms of illegal immigration.

c) Joint measures with third countries

FRONTEX third country partners are basically those authorities who are (operationally) in charge of border control.

Operational cooperation might include, in particular, the exchange of information and experience. FRONTEX emphasises the development of a reliable third country information system with the aim to provide their risk analyses unit with appropriate information to integrate in future risk analysis reports.

In addition cooperation on training, appropriate joint activities and secondment of border guards to Member States units responsible for border control are possible areas of third country cooperation.

Third countries will be encouraged to participate in joint operations coordinated by FRONTEX when operational security and other conditions are met.

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## **2. Part II: Council Conclusions**

### **2.1. Justice and Home Affairs**

#### ***Justice and Home Affairs Council of 2-3 June 2005 - Council conclusions:***

*"THE COUNCIL:*

*...calls upon the Member States and the Commission to implement swiftly the measures listed in the Annex, and calls upon the Member States to intensify, in particular in the framework of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (the "Agency"), their cooperation on maritime external borders in the Mediterranean area and invites the Agency to include among its priorities in the working programme for 2005 and 2006 concrete operational actions on this issue;"*

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#### ***Council conclusions of 5-6 October 2006 on reinforcing the Southern external maritime borders***

*The Council adopted the following conclusions:*

*"The Council:*

- 4. recognising that while the development of a sustainable political framework with the countries of origin and transit is more pressing than ever, such a development requires a long-term perspective, and must be coupled with an integrated approach including the launch of further operational measures to reinforce control of the external maritime border and to ensure the protection of persons in need of international protection, measures which can be efficiently implemented among Member States in the short and medium term, building on the experience gained from the operations carried out by FRONTEX this year and paying special attention to cooperation with third countries of origin and transit;*
- 5. recognising the important role that FRONTEX has played in coordinating the response to these developments and reaffirming the pivotal role to be played by FRONTEX in the context of the EU integrated border management system in implementing operational cooperation and coordination between the Member States;*

*The Council:*

- 3. recalls its intention to analyse in-depth the role of FRONTEX on the basis of the Commission's evaluation report that will be presented in 2007;*
- 5. invites the Commission, with the cooperation of FRONTEX and taking into account the responsibilities of Member States, the feasibility study on the establishment of a Mediterranean Coastal Patrol Network (MEDSEA) and experience gained in joint operations, to present a Communication to the Council before the end of 2006 identifying those further operational measures that can be taken in the short-term to equip the Union with the necessary capacity to help assist in preventing and managing migration crisis situations. In this context, the Commission should:*

- *examine urgently the needs and possibilities for reinforcing FRONTEX by way of additional personnel and increasing its budget allocation in order to allow its further development and increase its capacity to respond immediately to crisis situations, in particular through speedy coordination procedures with Member States participating in FRONTEX operations within the existing financial framework of the European Union;*

6. *invites FRONTEX*

- *to take forward work on the feasibility study on the establishment of a European Surveillance System capable of initially covering the whole of the southern maritime border of the Community and the Mediterranean Sea (BORTEC) and invites the Commission to identify the appropriate follow-up to be given to the outcome of the study and to report to the Council by March 2007;*
- *to continue preparations to urgently activate Article 7 of the Council Regulation EC 2007/2004 in order to establish a centralised record of technical equipment belonging to Member States which could be put at the disposal of another Member State following a needs and risk analysis carried out by the Agency;*
- *to reflect on the creation of interconnected regional centres at the disposition of FRONTEX for operational matters in the different maritime zones or sub-zones.*

7. *invites Member States to actively contribute to the centralised record of technical equipment, in order to have an extensive central pool of assets and equipment available in particular for the maritime border for operational needs by summer 2007;*

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***Justice and Home Affairs Council of 4-5 December 2006 – Council Conclusions on Integrated Border Management***

*"The Council concludes the following:*

...

2. *Calls on FRONTEX and the Member States to improve the effect and uniformity of border control, in particular by further developing the Common Integrated Risk Analysis. Common measures should be widened to cover operational and tactical level assessments and activities.*
3. *Calls on FRONTEX and the Member States to continue the development of regional border management initiatives and to involve partner countries in those activities.*
4. *Calls on Member States to contribute to joint operations under the aegis of FRONTEX by providing personnel and equipment.*
5. *Invites FRONTEX to define, in cooperation with Member States, the eligible cost of personnel and equipment for joint operations.*
6. *Invites Member States to improve national inter-agency cooperation, particularly in terms of exercising joint crime intelligence and risk analysis in order to better*



*combat of all forms of cross-border crime and illegal immigration, and facilitate the movement of traffic.*

7. *Requests the relevant bodies of the Community and the Union to further develop their cooperation with regard to integrated border management.*
10. *Commits itself to deepen and widen the discussions on future steps towards the further development of integrated management of the external borders in the light of the Hague Programme, the Communication of the Commission on reinforcing the southern external maritime borders and the Communication of the Commission on Policy priorities in the fight against illegal immigration of third country nationals, while taking into account the evaluation of the tasks of FRONTEX, in particular an assessment of whether the Agency should concern itself with other aspects of border management, including enhanced cooperation with customs services and other competent authorities for goods-related security matters, to be carried out by the Commission in 2007."*

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### ***Justice and Home Affairs Council of 27-28 April 2007 - Council Conclusions on trafficking in human beings***

*For the fight against trafficking in human beings to be most effective, analytical work, including the Organised Crime Threat Assessment (OCTA), and the support functions of Europol should be maximised. Furthermore Europol, Eurojust, FRONTEX and the Police Chiefs Task Force shall regularly address this matter in order to provide for the appropriate cooperation measures.*

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### ***Council conclusions on improved operational cooperation on joint return operations by air (12/13 June 2007)***

*The Council of the European Union, underlining that joint return operations constitute an important tool for the efficient implementation of the return policy of the Union, considers that:*

*FRONTEX, subject to a precise definition of the scope of its responsibilities in this area, should play a coordinating role in the organisation of joint charter flights and provide the necessary assistance. When identifying its specific tasks special attention should be paid in particular to criteria of economic efficiency and to the need to accelerate and facilitate the relevant procedures;*

*FRONTEX should be given access to ICO-NET<sup>20</sup> in order to perform its tasks and should use this system as a platform for its communication with the Member States;*

- *Member States which organise joint charter flights or which plan to organise them to involve FRONTEX, in accordance with the FRONTEX Regulation;*

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<sup>20</sup> See Council Decision of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services (2005/267/EC) (OJ L 83, 1.4.2005, p. 48).

- *Member States and FRONTEX to define practical arrangements for their cooperation in the organisation and implementation of joint charter flights on the basis of the lessons learned and of the best practices, to take the necessary action for this purpose and to keep them under review on the basis of the experience acquired;*
- *the Commission to conclude agreements with FRONTEX with a view to enabling access to and the use of ICO-NET;*
- *FRONTEX to draw up, in consultation with the Member States, common training standards for officers responsible for removals on the basis of existing national training curricula as well as organising training courses specifically directed to officers responsible for removals and accompanying personnel during joint return operations."*

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***Justice and Home Affairs Council of 12-13 June 2007 - Council Conclusions on the improvement of cooperation between Member States, the Commission and FRONTEX in the field of return***

...

*It is also important to ensure stronger cooperation and interaction between the Council and Commission bodies which deal with return issues and FRONTEX and its structures. The question of the establishment of a body dealing with joint return operations issues in the framework of the FRONTEX structures, in full respect of its prerogatives and competence in this area, should also be the subject of consideration in the future.*

...

1. *The Council calls on FRONTEX to assist Member States' competent authorities with return by land, sea and air, by the following means:*
  - *regularly presenting FRONTEX's plans, as well as thinking and experience, both at Community and national level, with regard to joint return operations;*
  - *identifying any need for joint return operations;*
  - *providing the appropriate coordination and assistance to joint return operations carried out by Member States;*
  - *taking part in advance missions (together with the organising and participating Member States) in countries of destination, to prepare for joint return operations and assist with the necessary work at the destination;*
  - *establishing best practice with respect to the provision of the travel documents which are necessary to implement return;*
  - *applying for and providing EU budgetary resources, particularly financing from the Return Fund;*
  - *promoting and constantly updating the ICONet platform as an information network for Member States;*

- *setting training objectives and security standards for escorts involved in joint return operations;*

*In order for FRONTEX to perform these tasks to the extent necessary, it should be provided with sufficient staffing and funding. The Council calls on FRONTEX to play an active part in cooperation between Member States under points 1 and 2.*

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### ***Justice and Home Affairs Council of 24 July 2007***

*Commission Vice-President Franco Frattini and the Executive Director of the European Agency for the Management of operational cooperation at the External Borders of the Member States of the EU (FRONTEX), Mr Ilkka Laitinen, reported on the current state of implementation of the Global Approach, in particular regarding measures in the Mediterranean and Atlantic areas on coastal patrolling, identification of illegal migratory routes and surveillance of maritime borders.*

*The Council welcomed these measures and emphasised the need to strengthen operational cooperation, in particular by developing joint operations.*

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## **2.2 European Council**

### ***Conclusions of the European Council of December 2005 on a Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean***

- *Call on FRONTEX to:*
  - *implement border management measures in the Mediterranean region, in particular joint operations and pilot projects, as early as possible in 2006;*
  - *present a Risk Analysis report on Africa, building on recent studies, by May 2006;*
  - *launch a feasibility study on reinforcing monitoring and surveillance of the southern maritime border of the EU, namely in the Mediterranean Sea, and on a Mediterranean Coastal Patrols Network involving EU Member States and North African countries, as early as possible in 2006.*

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### ***Conclusions of the European Council of December 2006:***

*FRONTEX is invited urgently to finalise its ongoing work on creation of a centralized record of technical equipment offered by Member States which could be put at the disposal of another Member State; and to report on the progress made to the Council by the end of April 2007. The Member States are invited to contribute actively to this process with national means and resources,*

*Priority will also be given to examining the creation of a European Surveillance System for the southern maritime borders; FRONTEX is invited to establish as soon as possible, together*

*with the Member States of the region, of a permanent Coastal Patrol Network at the southern maritime borders.*

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