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Frontex

## **External evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union**

Final Report

January 2009

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## Abbreviations

| Abbreviation    | Full name   |
|-----------------|---|
| <b>ARA</b>      | Annual Risk Analysis                                |
| <b>Art</b>      | Article   |
| <b>CA</b>       | Contract Agent                                      |
| <b>TA</b>       | Temporary Agent                                     |
| <b>BRC</b>      | British Refugee Council                             |
| <b>CCC</b>      | Common Core Curriculum                              |
| <b>CEPOL</b>    | European Police College                             |
| <b>CIRAM</b>    | Common Integrated Risk Analysis Model               |
| <b>CRATE</b>    | Central Record of Available Technical Equipment     |
| <b>DED</b>      | Deputy Executive Director                           |
| <b>DG</b>       | Directorate General                                 |
| <b>DG AIDCO</b> | DG EuroAid Cooperation Office                       |
| <b>DG BUDG</b>  | DG Budget   |
| <b>DG DEV</b>   | DG for Development                                  |
| <b>DG ENTR</b>  | DG Enterprise and Industry                          |
| <b>DG JLS</b>   | DG Justice, Freedom and Security                    |
| <b>DG RELEX</b> | DG External Relations                               |
| <b>DSA</b>      | Daily Subsistence Allowance                         |
| <b>EC</b>       | European Commission                                 |
| <b>ECJ</b>      | European Court of Justice                           |
| <b>ECRE</b>     | European Council on Refugees and Exiles             |
| <b>ED</b>       | Executive Director                                  |
| <b>ECHR</b>     | European Court of Human Rights                      |
| <b>EMSA</b>     | European Maritime Safety Agency                     |
| <b>EP</b>       | European Parliament                                 |
| <b>EPN</b>      | European Patrol Network                             |
| <b>ETD</b>      | European Training Day                               |
| <b>EU</b>       | European Union                                      |
| <b>EUBAM</b>    | EU Border Assistance Mission to Ukraine and Moldova |
| <b>Europol</b>  | European Police Office                              |
| <b>EUROSUR</b>  | European Border Surveillance System                 |
| <b>FC</b>       | Field Coordinator                                   |
| <b>FIS</b>      | Frontex Information System                          |

|                       |   |
|-----------------------|---|
| <b>FJST</b>           | Frontex Joint Support Team  |
| <b>FPO</b>            | Focal Point Office  |
| <b>FSC</b>            | Frontex Situation Centre  |
| <b>ESRIF</b>          | European Research and Innovation Forum                            |
| <b>FRAN</b>           | Frontex Risk Analysis Network                                     |
| <b>FTD</b>            | Frontex Training Department                                       |
| <b>GR</b>             | General (annual) Report   |
| <b>HoS</b>            | Head of Sector  |
| <b>HoU</b>            | Head of Unit  |
| <b>HQ</b>             | Headquarter   |
| <b>IBM</b>            | Integrated Border Management                                      |
| <b>ICC</b>            | International Coordination Centre                                 |
| <b>ICMP</b>           | International Commission on Missing Persons                       |
| <b>ICMPD</b>          | International Centre for Migration Policy Development             |
| <b>IGC</b>            | Intergovernmental Consultations on Migration, Refugees and Asylum |
| <b>IO</b>             | International Organisations                                       |
| <b>IOM</b>            | International Organisation for Migration                          |
| <b>IT</b>             | Information Technology  |
| <b>JHA</b>            | Justice and Home Affairs  |
| <b>JLS</b>            | Justice, Freedom and Security                                     |
| <b>JO</b>             | Joint Operation   |
| <b>LCC</b>            | Local Coordination Centre   |
| <b>LIBE Committee</b> | Committee on Civil Liberties, Justice and Home Affairs            |
| <b>MB</b>             | Management Board  |
| <b>MEP</b>            | Member of the European Parliament                                 |
| <b>MEUR</b>           | Million Euro  |
| <b>MS</b>             | Member States   |
| <b>NFPOC</b>          | National Frontex Point of Contact                                 |
| <b>NGO</b>            | Non-governmental Organisation                                     |
| <b>NTC</b>            | Network of Training Coordinators                                  |
| <b>PM</b>             | Project Manager   |
| <b>PoW</b>            | Programme of Work   |
| <b>RA</b>             | Risk Analysis   |
| <b>RABIT</b>          | Rapid Border Intervention Team                                    |
| <b>RAU</b>            | Risk Analysis Unit  |
| <b>R&amp;D</b>        | Research and Development  |
| <b>SC</b>             | Steering Committee  |

|              |  |
|--------------|--|
| <b>SCIFA</b> | Strategic Committee on Immigration, Frontiers and Asylum |
| <b>SIS</b>   | Schengen Information System                              |
| <b>SNE</b>   | Seconded National Expert                                 |
| <b>SOP</b>   | Standard Operating Procedures                            |
| <b>ToR</b>   | Terms of Reference                                       |
| <b>TCG</b>   | Tasking and Coordination Group                           |
| <b>UNHCR</b> | UN High Commission for Refugees                          |
| <b>WA</b>    | Working Arrangement                                      |

## Executive Summary

Frontex has achieved remarkably much in its short existence. It has established itself as the focal point for community discussions on practical border management and it has developed a path that will enhance cooperation and data sharing among Member States.

Frontex has a limited mandate with a clear focus on coordination and facilitation since the overall responsibility for protection of the external borders still rests firmly with the Member States.

The fact that Frontex has not taken over the responsibility of guarding the external borders seems not always to be clear to a number of stakeholders - including some Member States - who expect Frontex to be able to take control of border operations, solve misunderstandings among Member States and to enter into working arrangements with third countries. In such matters Frontex has solely a coordinating role, relying on the self-interest and solidarity of Member States in an increasingly uniform and integrated management of the external borders, as well as on a close cooperation with the European Commission (EC).

Frontex has grown very rapidly through its three years lifetime, reflecting the increasing focus on the protection of the external borders. The total budget for 2008 was more than 70 MEUR - about twice that of 2007 and four times that of 2006 - Frontex' first full operational year.

The increase in funding is first of all reflected in increased interest and costs connected with *Joint border operations*, which cater for more than 75% of Frontex' total operational costs. These operations are at the core of Frontex' activities and the main interest for many stakeholders, especially Member States with exposed external borders.

Generally Joint Operations (JO) are regarded as successful in improving cooperation and knowledge sharing among Member States as well as in streamlining procedures and they are ensuring an increased degree of uniformity in handling illegal immigrants, traffickers etc.

The evaluation points to a number of areas where the planning and execution of JO could be improved - in terms of practical planning, uniform modalities for participating officers, slow reimbursement of costs, limited availability of equipment as well as language problems and lack of secure communication lines.

A fundamental question can be raised about the impact on especially the costly sea operations in territorial waters where the EU does not have agreements with bordering transit countries about returning intercepted attempted immigrants. According to several informants, there are signs that increased surveillance may lead to an *increase* in illegal immigration as the vessels intercepting illegal immigrants are unable to turn them back.

This raises the general point that although each Joint Operation is concluded with an evaluation of the activities, the evaluation usually only deals with the direct output of the activity not the impact.

*Training of border guards* is another important Frontex activity which supplements the national training of border guards. Frontex' training programme has succeeded in organizing a number of courses with short notice, has created a common core curriculum and established a network of experts in training. This is much appreciated by stakeholders who especially value the contacts to colleagues in other Member States and the spirit of common purpose. However, a more systematic assessment of the impact of the training through indicators and milestones would enhance the value of the individual activities.

Frontex has established a comprehensive *Risk analysis* facility that enables it to deliver relevant data on border management issues that can be analysed and used for e.g. prioritizing JO. As a consequence there is now better knowledge of displacements and an overview of European border weaknesses as well as more information on relevant third countries.

Risk analysis is seen as crucial by most stakeholders for its importance in feeding into planning of activities. In order to develop further the Risk analysis unit is in need for more qualified analysts.

*Research in border management issues* is seen as less crucial and less visible and most stakeholders have difficulties in seeing the value added compared to other research fora. They seem to favour that the Agency focuses on disseminating information on e.g. new technical equipment for improved border control. However, research institutions actually value the influence of Frontex and its ability to put border management issues on the agenda.

*Technical and operational assistance:* Most stakeholders agree that Member States must make personnel and equipment available for JO as countries should assist each other in situations of crisis. However, several stakeholders question the likelihood of a situation where Rapid Border Intervention Team (RABIT) will ever be deployed. It is suggested by some stakeholders including UNHCR that the RABIT pool should not be limited to border guards, but should also include specialists in asylum procedures and interviews to ensure full compliance with international obligations.

In terms of sharing equipment the Central Record of Available Technical Equipment (CRATE) system has some weak points: First of all that it is non-compulsory for states to deliver promised equipment. Frontex is often brought in a situation where the most appropriate equipment or assets are not actually made available by the Member State as planned. Furthermore, the fact that the equipment remains under the command of the Member State, combined with a variety of practical and operational differences between Member States, can make operations using such equipment quite challenging. Hence Frontex should consider seeking alternative or supplementary solutions such as leasing private equipment.



Frontex has harmonised procedures for *joint return operations*, created networks of border officers involved in return, and enabled a more coordinated pressure on the receiving third countries. This has i.a. created a sense that return operations are community issues. Whereas smaller Member States value the cost effectiveness of Frontex coordinating or organising joint return flights, others find that the Agency should focus its attention on practicalities such as ensuring proper travel documents etc.

*Cooperation with international organisations:* Frontex has initiated contacts and cooperation with a number of European and international organisations. Among these the cooperation with European Police Office (Europol) is crucial for both parties in terms of sharing information. UNHCR and International Organisation for Migration (IOM) are eager to expand their cooperation in order to ensure uniform and conditional handling of immigrants at all borders and during the various JOs. Given the limited capacity of Frontex it is regarded as essential that the Agency focuses its attention on the most important partners.

*Cooperation with countries outside EU:* Frontex has signed five working arrangements with third countries and more are on the way. Unfortunately these do not include some of the third countries that are acting as transit countries for most of the illegal immigrants to Europe such as Libya and Tunisia. This seriously hampers the effectiveness of JO in the neighbouring waters. Since Frontex has little to offer in return for such agreements, except for participating in training, they must be closely coordinated with EC foreign policy initiatives towards such countries.

In terms of *internal operations* the Agency also has its share of challenges:

*Financially* because the European Parliament (EP) has increased the budget repeatedly over and above what was anticipated in the PoW - making a considerable under-spending virtually unavoidable.

*In terms of recruitment of Frontex staff:* Several issues have been hampering the effective recruitment of the increasing staff for Frontex: The salary "correction coefficient" applied to Warsaw means that salaries offered by Frontex are lower and hardly competitive for highly skilled staff. Secondly the lack of a headquarters agreement with the Polish Government causes problems for staff as to the recognition of their status. Also the Staff Regulations are not fully in place. It is strongly recommended to give priority to solving these problems in the near future in cooperation with the EC.

*Daily Subsistence Allowance:* This has been an outstanding issue for a long time causing dissatisfaction among personnel from Member States with low allowances taking part in Frontex operations. Frontex has taken steps to find a solution to this problem late 2008.

*Financial management:* The heavy burden of increased funds and activities has not been fully reflected in a similar growth in the financial management which must be enabled to ensure timely payments and avoid exemptions.

*Management Board:* The management has played its designated role as a forum for ensuring cooperation, credibility and legitimacy from the Member States. The Board has fulfilled its formal obligations but has emphasised outputs rather than assessing the *impact* of Frontex operations and hence seeing Frontex and the challenges of border management in a greater context.

The *Executive Director* is highly appreciated for his effectiveness and result orientation. The participation of Member States in JOs and provision of assets and personnel are ensured by the Executive Director's face-to-face negotiations with these. The Executive Director has, however, had less focus on the internal processes of Frontex.

*The organisational structure:* The staff is highly motivated and possesses entrepreneurial spirit despite some of the demotivating factors described above. A new organisational structure is about to be implemented reflecting the increase in size and complexity of Frontex operations.

Due to the challenges confronting recruitment, an overly large part of Frontex staff is seconded from Member States and hence not permanent. The Frontex management has an important task in ensuring a common approach to Frontex by such staff as well as proper sharing of its knowledge lest it should be lost when the seconded staff returns to home countries.

The assessment of whether Frontex has managed to attain the objectives in the Regulation is limited by the fact that the evaluation is conducted at an early stage in the development of Frontex' organisation and its activities. Consequently the indications on implementation are still difficult to gauge.

However, on the basis of the findings, assessments and conclusion drawn up in the report and with the reservations mentioned, the Consultant can conclude that the main objectives of the Regulation are attained effectively.

All activities have room for improvement which fortunately most stakeholders are eager to participate in.

The main recommendations are to continue focus on improvement of planning and consolidation of procedures. In particular on a need for strategic planning, the use of impact assessment of JOs, rectifying outstanding issues and generally give priority to ensuring that the organisation works as efficiently in the internal organisation as in its interaction with Member States and external stakeholders.

## Introduction

The European Agency for the Management of Operational Cooperation of the External Borders of the Member States of the European Union (hereinafter called Frontex or the Agency) became operational on 3 October 2005 with the view of improving the integrated management of the external borders of the Member States of the European Union (EU).

Article 33 of the Frontex Regulation (EC) 2007/2004 under which Frontex was established stipulates that the Management Board shall commission an independent external evaluation of the implementation of the Regulation within three years from the date of the Agency having taken up its responsibilities and every five years thereafter. After completion of an EU tender process, COWI A/S was awarded the contract to undertake the evaluation. The evaluation covers the activities of Frontex in the period from 1 January 2006 - June 2008.

This document constitutes the Draft Evaluation Report which was presented to the Steering Committee in November 2008. The draft report was discussed at a meeting with the Steering Committee (SC) on 9 December 2008. On the basis of that meeting COWI is preparing the present Final Evaluation Report to be sent to the Management Board on 15 January 2009.

Finally, at the Management Board meeting on 3 and 4 February 2009, COWI will present the final report with its findings and recommendations for discussion and the Management Board will decide as appropriate on the follow-up on the report.

The subsequent sections of this chapter will present the objective of the evaluation, the methodologies and difficulties encountered as well as the applied benchmark and evaluation criteria.

### 1.1 Objective of the evaluation

The objective of the evaluation is defined in § 33.2 of the Founding Regulation that established Frontex. According to the Terms of Reference (hereinafter called ToR) the evaluation shall assess evaluation concepts of the working practices, the effectiveness and impact of the Agency.

*Text box 0.1 Definition of evaluation concepts as per ToR*

**Working practices:** Organisational solutions and procedures carried out to achieve the objectives of the Agency

**Effectiveness:** Achievement of an agreed objective

**Impact:** Consequence of actions on the improvement of integrated management of the external borders of the EU

Hence, compared to normal evaluation practices, the evaluation should not assess the *relevance* of Frontex but take its existence and mandate for granted. This approach was discussed with and approved by the SC for the evaluation.

As Frontex is a young organisation the assessment of impact will be on the short term basis as it is too early to assess a long-term impact.<sup>1</sup>

## 1.2 Fields of activities assessed

In accordance with the ToR, the following thematic areas have been assessed:

- a) The coordination of operational cooperation between Member States in the field of management of external borders
- b) The assistance to the Member States on training of national border guards, including the establishment of common training standards
- c) The work in the field of risk analysis carried out by Frontex
- d) The follow-up on the development of research relevant for the control and surveillance of external borders provided by Frontex
- e) The assistance Frontex provides to Member States and in circumstances requiring increased technical and operational assistance at external borders
- f) The assistance Frontex provides to the Member States in organising joint return operations
- g) The cooperation with Europol, other European and international organisations competent and/or working in the field of management of external borders
- h) The facilitation of operational cooperation between Member States and third countries

a) - f) above follow closely the Frontex tasks specified in the Frontex Regulation Article 2 (a) - (f). Article 2 (g) covering RABIT has been included into (e). g) and h) reflect the Frontex Regulation Articles 13 and 14.

---

<sup>1</sup> For further discussion of this subject refer to DG BUDG: Evaluating EU activities – [http://ec.europa.eu/budget/library/publications/financial\\_pub/eval\\_activities\\_en.pdf](http://ec.europa.eu/budget/library/publications/financial_pub/eval_activities_en.pdf)

*Structures assessed*

According to the ToR, the following structures have been assessed:

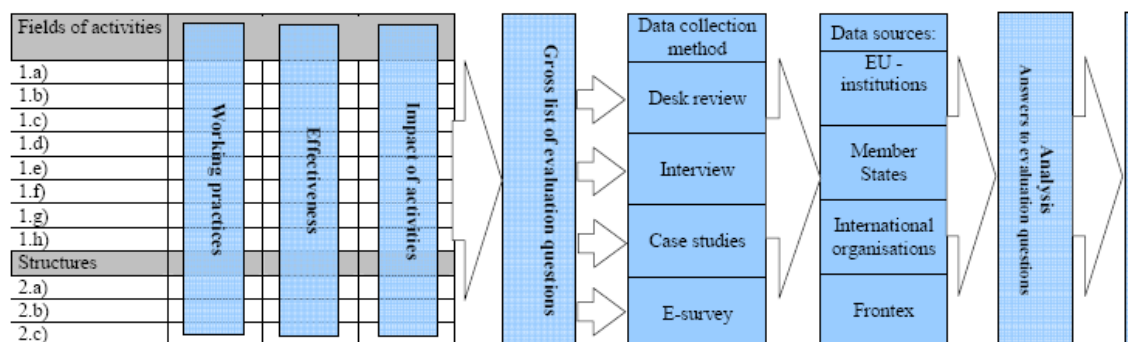
- a) The Management Board
- b) The Executive Director
- c) The organisational structure of the Agency

### 1.3 Methodology

The Consultant perceives the three evaluation concepts as links in a chain starting with the Frontex organisation and procedures (e.g. internal and external communication) resulting in achievements of agreed objectives (e.g. expressed in the annual work plan) eventually having an impact on the operational management of the external borders.

The evaluation is structured on the basis of the ToR giving the fields of activities and structures combined with working practices, effectiveness and impact forming the left part of Figure 0.1 and the Consultant defining the evaluation questions, data collection method and sources, analysis and results.

Figure 0.1 Evaluation flow



### 1.4 Analytical approach: Evaluation criteria and indicators

The analysis presents findings, assessments, conclusions and recommendations related to each of the eight fields of activity and the three levels of management structure. The results from the analysis of each area are presented in sub-chapters.

The analysis of each of the thematic areas provides the basis for the overall conclusions and recommendations regarding the implementation of the Frontex Regulation. Each field of activity and management structure is analysed separately, whereas the overall conclusions and recommendations link the fields of activity, management structures and the overall objectives of the Frontex Regulation.

The evaluation criteria are developed and applied via a gross list of questions (see Figure 0.1 above). Some questions are answered through one particular method and some questions apply several methods. This ensures room for adjustment in the evaluation process and flexibility regarding the findings.

Some questions have fixed response possibilities and others leave room for elaboration. The choice of questions has been refined and modified during the evaluation process, based on knowledge gained in the process.

The evaluation criteria are applied as benchmarks related to the levels of: 1) Fields of activity and 2) Management structure.

#### 1.4.1 Fields of activity

**Each of the main evaluation concepts are assessed with a main criteria:**

*Working Practices* are assessed on the basis of their efficiency. The question is: How efficient are they?

*Effectiveness* is assessed on the basis of the coherence between the objectives and goals listed in the PoWs and the results reported in the General Reports. The question is: How do the achievements match the prescribed goals and criteria of success?

*Impacts* are assessed on the basis of their fulfilment of Art. 1 and 2 in the Frontex Regulation. The question is: How does the impact match the overall objective and requirements found in the Frontex Regulation?

##### **Working practices/efficiency**

- How is the flow of information and actions between Frontex and the relevant Member States or others involved?
- Are proper contacts established and appropriate division of labour?
- Are appropriate resources available?
- Does comparable and adequate training (of Frontex personnel or others involved) take place?
- Are correct procedures applied?
- Is equipment/materials/research accessible, useful and actually used?
- Have appropriate contacts and cooperation with relevant third countries been established?

##### **Effectiveness/coherence between Programme of Work and General Report**

- Are the actual achievements in accordance with goals and criteria of success (number of projects/operations/courses, time schedule, budgets, etc.)?

### **Impact/coherence achievements - Frontex Regulation**

- What is the perceived impact of Frontex on the activities/operations?
- How do the activities correspond with Art. 1 and 2 (improvement of integrated management of external border control, facilitation and coordination of measures and activities, establishing common standards etc.)?

#### **1.4.2 Management Structure**

The evaluation criteria applied to the management structures (at the levels of the Management Board, the Executive Director and the Organisation) are based on a similar approach as described above. The tasks, goals and criteria of success are largely outlined in the Frontex Regulation with regard to the management structure. This reflects that the structure at management level is the basic platform affecting or outlining the work practices, effectiveness and impacts of the activities of the Agency.

The indicators are both quantitative and qualitative:

#### **Working practice at the level of MB, ED and organisational efficiency**

- Flow of information and communication
- Division of authority and competences
- Meetings
- Time schedules
- Budgets
- The establishment and implementation of procedures and PoWs
- Coordination of activities
- Number and competences of staff at different organisational levels
- Relation with other stakeholders
- Evaluation and follow-up

#### **Effectiveness/coherence achievements-PoW/Frontex Regulation**

- Does the Management Board function in accordance with relevant objectives and requirements of the Frontex Regulation (Art. 20, 22, 23, 24, 26, 29 and 32)?
- Does the Executive Director function in accordance with relevant objectives and requirements of the Frontex Regulation (Art. 25, 29 and 30)?
- Does the Frontex Organisation function in accordance with the PoWs and the relevant Articles of the Frontex Regulation?

#### **Impact at the level of MB, ED and organisational coherence achievements - Frontex Regulation**

- How do the management structures impact the activities of Frontex?
- How do the management structures impact Frontex' ability to meet Frontex' overall objectives?

#### **1.4.3 Comparison and robustness of conclusions**

The different methods applied will invariably lead to data pointing in different directions due to e.g. varying opinions expressed by different stakeholders. In

order to ensure transparency when comparing findings and establishing conclusions, the following guidelines regarding the robustness of conclusions have been applied:

*Categories of robustness of conclusions*

|                               |  |
|-------------------------------|--|
| <b>Very robust conclusion</b> | <ul style="list-style-type: none"><li>• Confirmed by all interviewees, and</li><li>• is supported by other data (data triangulation), and</li><li>• is in accordance with available theory, and</li><li>• appears plausible</li></ul>  |
| <b>Robust conclusion</b>      | <ul style="list-style-type: none"><li>• Confirmed by most of the interviewees and deviations in attitude/perception can easily be explained, and</li><li>• is supported by other data (data triangulation), or</li><li>• is in accordance with theory or appears plausible</li></ul> |
| <b>Tentative conclusion</b>   | <ul style="list-style-type: none"><li>• Confirmed by some interviewees and</li><li>• appears plausible/interesting and is probably also supported by other data or theories</li></ul>  |



## **European policies and legal framework for border management**

### **1.5 From third pillar to first pillar issues**

The Treaty of Amsterdam created Community competences in this field in its Title IV with Art. 62 TEC as the legal basis for regulations relating to border controls and visa policy. This also meant that with the entry into force of the Treaty of Amsterdam 1 May 1999 the external border provisions of the Schengen *acquis* were integrated into the European Community.

Prior to the entry into force of the Amsterdam Treaty in May 1999, external border control was treated as a third pillar matter, i.e. an intergovernmental framework matter under Justice and Home Affairs. Today the third pillar refers to Police and Judicial Cooperation in Criminal Matters.

Legally this means that the EP acting jointly with the Council and the Commission may use the following legally binding instruments: regulations, directives and decisions and recommendations and opinions as the non-legally binding instruments. The European Court of Justice (ECJ) has jurisdiction to interpret the legally binding instruments falling under the first pillar.

Previously under the third pillar the Council could use conventions as legally binding instruments which usually require ratification by national procedures. Furthermore, the ECJ had no jurisdiction on third pillar issues unless this was specified in the Convention.

### **1.6 Schengen acquis**

With the entry into force of the Treaty of Amsterdam in 1999 the Schengen *acquis*, i.e. the Schengen Agreements of 1985 and the Schengen Convention of 1990 (which only came into force 26 March 1995) became integrated into the EU legal framework. Subsequent amendments to the Schengen *acquis* have been made in the form of EU regulations such the Regulation (EC) No 1987/2006 of the EP and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

The main purpose of the establishment of the Schengen rules is the abolition of physical borders among European countries. The Schengen rules apply among most European countries and to a population of more than 400 million.

The Convention implementing the Schengen Agreement lays down the rules for *checks and surveillance* at the external borders of Member States party to the Schengen *acquis*<sup>2</sup>.

The content of these principles are laid down in Article 3-8 of the Convention and the detailed rules for applying them in a Common Manual for External Borders<sup>3</sup>. Article 3 provides that external borders may in principle only be crossed at border crossing points and during fixed opening hours. Article 5 lays down the conditions of entry for foreign nationals for a stay not exceeding three months. Article 6 lays down the Member States' obligations with regard to check and surveillance at external borders.

### 1.6.1 The Schengen Border Code

The above provisions have now been replaced by a Code on the crossing of borders (hereinafter referred to as 'the Schengen Border Code'), which in general has replaced the *acquis* provisions related to both internal and external border management<sup>4</sup>. EU Member States' activities in the field of border control and surveillance must comply with the Schengen Border Code. One of the training objectives of Frontex may be that national border guards apply the Schengen *acquis* and in particular the Schengen Border Code in a consistent manner throughout the Member States according to the principles laid down in the Code. A practical handbook has been developed to further this process.

#### Enhance the integrated border management

The Schengen Border Code intends to consolidate and enhance the legislative component of the *integrated border management* policy by setting out the rules for crossing external borders and for the reintroduction of checks at internal borders.

One of the key changes in the Schengen Border Code compared to the previous provisions relates to the scope of the Code as the Regulations do not affect the rights of persons enjoying the Community rights of free movement or the rights of refugees and persons requesting international protection. Article 3, states:

*"Scope*

*This Regulation shall apply to any person crossing the internal or external borders of Member States, without prejudice to:*

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<sup>2</sup> A total of 25 states, 22 EU Member States and 3 non-EU members (Iceland, Norway and Switzerland), have a full set of rules in the Schengen Agreement (as amended), and implemented its provisions so far. United Kingdom and Ireland are the only EU Member States that have not signed up to the original Schengen Convention of 1990, have opted out of core Schengen provisions and have only implemented the judicial and police cooperation rules.

<sup>3</sup> Regulation 790/2001 with subsequent amendments.

<sup>4</sup> Regulation (EC) No 562/2006. It was the first legislative instrument related to the area of freedom, security and justice where the EP acts as a co-legislator together with the Council.

*(a) the rights of persons enjoying the Community right of free movement;*

*(b) the rights of refugees and persons requesting international protection, in particular as regards non-refoulement."*

The definition of border control follows from Article 2 (9) of the Regulation which, states:

*"...border control" means the activity carried out at a border, in accordance with and for the purposes of this Regulation, in response exclusively to an intention to cross or the act of crossing the border, regardless of any other consideration, consisting of border checks and border surveillance"*

*Purpose of border surveillance*

The main purpose of border surveillance follows from Article 12 (1):

*["...to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally"]*

Article 5 lays down the requirements to a third country national to enter an external EU border.

*Need of international protection*

Article 13 lays down provisions related to refusal of entry which needs to be substantiated and which can be appealed in accordance with national law. For refugees and people in need of international protection they represent an exception to the requirements normally demanded of third country nationals for crossing the external borders and they cannot be refused on same grounds.

Finally, according to Article 6 (1) border guards are bound to perform their duties respecting human dignity and that their measures should be subject to the principle of proportionality.

## **1.6.2 Schengen Information System (SIS)**

The Schengen Convention also created the SIS, which is an international computerized and secure governmental database that allows countries to store and share information on aliens, asylum seekers, criminals, and those under surveillance by state security agencies.

## **1.7 Frontex role and legal status**

On 13 June 2002 the Council agreed on an Action Plan for the management of external borders.

Initially this was coordinated by the heads of border guards within the Strategic Committee on Immigration, Frontiers, and Asylum (SCIFA) framework. In

October 2003 it was decided that there was a need for a stronger institutional structure and cooperation between Member States and a need for an Agency.

A year later Frontex was established<sup>5</sup> with a view to improving the *integrated management of the external borders* of the Member States of the EU. Moreover Frontex should improve the integrated management of the external borders by facilitating the application of existing and future Community measures related to the management of external borders.

It follows from the Justice and Home Affairs (JHA) conclusions<sup>6</sup> that the dimensions of Integrated Border Management (IBM) are:

- 1) Border control (checks and surveillance)
- 2) Detection and investigation of cross border crime
- 3) The four-tier access control model (measures in Third Countries, cooperation with neighbouring countries, border control, control measures within the area of movements, including return)
- 4) Inter-Agency cooperation
- 5) Coordination and coherence on actions at EU level

### **1.7.1 Limits to Frontex' authority**

According to Article 1 (2) of the Regulation:

*["....the responsibility for the control and surveillance of external borders lies with the Member States...."]*

Frontex' coordinative role and main specific tasks pursuant to Article 2 (1) a - g of the Regulations (EC) 2007/2004 and (EC) 863/2007 are further described in Section 3 below.

*Balancing security and control with European and international human rights*  
One of the key complexities of external border control and integrated border management, which clearly stands out, is the balancing of Member States and European interest including security and control on one hand with international and European fundamental human rights and commitments on the other hand.

While it is vital to ensure measures for security and against smuggling and human trafficking and prevent illegal immigration, it is equally important to protect the fundamental rights of asylum seekers and refugees according to Community law and international obligations such as the non-refoulement principle as enshrined in Article 33 (1) of the 1951 Geneva Convention and Article 3 of the European Court of Human Rights (ECHR).

In reality and increasingly so, the line between the legal and illegal migrants, as well as the line between political, economic and environmental migrants, is

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<sup>5</sup> Council Regulation (EC) No 2007/2004 of 26 October 2004

<sup>6</sup> Council Conclusions of the Justice and Home Affairs Council, Brussels, 4-5 December 2006.

blurred. Managing external border control is therefore a matter of having adequate resources, capacity building of third states, linking relief and development and of applying appropriate measures and a comprehensive approach in line with European and international standards to make these distinctions in an objective and fair manner.

## Presentation of Frontex

Frontex was created by Council Regulation (EC) No 2007/2004. It started its operations on 3 October 2005 and it became financially independent for the implementation of the entire budget on 1 October 2006. The EP and Council Regulation (EC) 863/2007 amend this Council Regulation to establish a mechanism for the creation of Rapid Border Intervention Teams.

Frontex was established with a view to improving the integrated management of the external borders of the EU.

When improving the integrated border management, Frontex shall:

- Facilitate and render more effective the application of existing and future Community measures relating to the management of the external borders
- Ensure the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control of persons and surveillance of the external borders
- Provide the Commission and the Member States with the necessary technical support and expertise in management of the external borders
- Promote solidarity between the Member States

## 1.8 Main tasks

Pursuant to the Regulations (EC) 2007/2004 and (EC) 863/2007 Frontex is assigned the following tasks:

- Coordinate operational cooperation between the Member States in the field of management of external borders
- Assist Member States in training of national border guards by establishing common training
- Carry out risk analysis
- Follow up on the development of research on control and surveillance
- Assist Member States in circumstances requiring increased technical and operational assistance
- Provide Member States with the necessary support to organise joint return operations
- Deploy Rapid Border Intervention Teams to Member States
- Enter into bilateral agreements for cooperation with neighbouring and other relevant countries

## 1.9

### 1.10 Role of Member States

The Regulation also sets out the role of Member States in relation to Frontex:

- Member States can carry out activities that supplement or complement those of Frontex
- Member States shall refrain from activities that can jeopardise the functioning of Frontex
- Member States shall report their border management activities to the Agency.

### 1.11 Management

Frontex is managed according to the rules and practices of a regulatory EU Agency. Frontex functions under the authority of a Management Board which adopts the programme of work and the budget and delivers an opinion on the Agency's accounts.

#### 1.11.1 Management Board

The Management Board is composed of one representative and one alternate from each Member State. This also goes for the United Kingdom and Ireland which are not subscribing to the Schengen acquis.

Also the Schengen countries of Norway and Iceland as well as most recently Switzerland and Lichtenstein are represented on the Management Board. The European Commission has two members and two alternates on the Board.

The Management Board members are appointed by the Member States on the basis of their relevant senior experience and expertise in the field of operational cooperation on border management.

The Management Board appoints a Chairperson and a Deputy Chairperson. The terms for both are two years and the terms are renewable once.

### 1.11.2 The Executive Director

The Management Board appoints the Executive Director based on proposal from the Commission, establishes procedures for the Executive Director's decision making. The Management Board also establishes the organisational structure of the Agency and adopts the Agency's staffing policy.

The Executive Director is the Agency's legal representative and responsible for all Agency activities including development of realistic yet ambitious work plans, ensuring their proper implementation of the PoW and budget. The distribution of powers between the Management Board and the Executive Director is laid down by the Frontex Regulation (EC) 2007/2004. The Executive Director is also responsible for setting up, running and developing the Agency according to the PoW. He reports to the Management Board.

The Executive Director is assisted by a Deputy Executive Director appointed by the Management Board. The terms for the Executive Director and the Deputy Executive Director are five years and they are renewable once.

## 1.12 Organisational structure

The growth of Frontex has been a challenge for the organisational structure of the organisation.

Based on the experience so far the Management Board has adopted a new divisional structure for Frontex, comprising three divisions headed by a divisional director. The new structure has only become operational from September 2008<sup>7</sup>.

- **Operations division** covering JO, risk analysis and the situations centre
- **Capacity building division** covering training, pooled resources and research and development
- **Administrative division** covering finance, procurements and administrative service

Next to the divisions are the *executive support* to the Executive Director with his Aide-de-Camp and personal assistants and *specialist support* with special advisors on external cooperation, strategic development, controller, legal affairs, transparency and information.

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<sup>7</sup> The effect of the new organisational structure is not measurable at this point in time and the description and assessments in chapter 5 do not reflect the impact of this development.



Frontex presents its mission on their web site as follows:

- Frontex strengthens the freedom and the security of the citizens of the EU by complementing the national border management systems of the Member States.
- Frontex is a trustworthy operational European coordinator and contributor which is fully respected and supported by the Member States and external partners.
- Frontex actively promotes the cooperation among border-related law enforcement bodies responsible for the internal security at EU level.
- Frontex operational activities are intelligence driven. The effectiveness of Frontex is based on its highly motivated and professional personnel. In return Frontex will strengthen its status as a competitive employer.
- Frontex is a key player in the implementation of the concept of EU Integrated Border Management.

### 1.13 Staff

The number of staff has increased fivefold since Frontex was established by the end of 2005 corresponding to a substantial increase in activity.

Table 0.1 Number of filled staff posts from end 2005 to end 2008

|              | End 2005 | End 2006 | End 2007 | October 2008 | End 2008 |
|--------------|----------|----------|----------|--------------|----------|
| <b>TOTAL</b> | 43       | 72       | 131      | 181          | 219      |

The composition of staff is characterised by a high number of seconded national experts (SNEs) from the Member States. During their secondments to Frontex the SNEs are still employed by their home countries.

Almost half of the staff of Frontex is seconded national experts, which is a very large number<sup>8</sup>. SNEs are good gap fillers and can be recruited at short notice, which is important at a time of fast growth where the recruitment of permanent staff inevitably lags behind. However, SNEs will normally have shorter terms of office and dual allegiance to Frontex and their home Agency, which can cause problems for the Agency's sustainability and creation of institutional memory.

Capacity development of staff has been rapidly increasing during the first years of Frontex' existence, growing from € 16,000 in 2006 to € 117,000 in 2007. However, the amount still only represents 1.8 % of staff costs.<sup>9</sup>

<sup>8</sup> By comparison, only 8 % of the staff are SNEs at the European Maritime Safety Agency, EMSA, which is also quite new and of a similar size and somewhat similar functions.

<sup>9</sup> Frontex accounts 2007. Title 1 Staff payments amounted to Euro 6,332,000

## 1.14 Overall budget and finance

The annual budget is adopted by the Management Board. The budget only becomes final following the final adoption of the general budget for the EUn.

Table 0.2 Annual budgets in 2005 - 2008 (MEUR)<sup>10</sup>

| 2005                | 2006   | 2007   | 2008   |
|---------------------|--------|--------|--------|
| 6,280 <sup>11</sup> | 19,166 | 42,150 | 70,432 |

As it appears from above, the annual budgets have increased very rapidly since the establishment of Frontex in 2005 and up to 2008 reflecting the increase in the Agency's activities. The table also reflects a growth which has been considerably accelerated via the budgetary process.

Table 0.3 Breakdown of operating expenditure - budget 2008

| Activity                 | Amount MEUR   | Percentage of operating expenditure |
|--------------------------|---------------|-------------------------------------|
| Land borders             | 4,150         | 8                                   |
| Sea borders              | 31,100        | 62                                  |
| Air borders              | 2,070         | 4                                   |
| Pooled resources         | 1,130         | 2                                   |
| Return cooperation       | 560           | 1                                   |
| Risk analysis            | 1,760         | 4                                   |
| Training                 | 6,410         | 13                                  |
| Research and development | 600           | 1                                   |
| Miscellaneous activities | 1,855         | 4                                   |
| Operational reserve      | 1,000         | 2                                   |
| <b>Total</b>             | <b>50,635</b> | <b>100</b>                          |

It appears that almost two thirds of the total operational expenditure is budgeted for sea boarder operations with training of border guards as a distant second.

The budget for operational expenditure shows an increase of nearly MEUR 14 from 2007 to 2008.

<sup>10</sup> Frontex annual budgets 2005 - 2008

<sup>11</sup> "2005 only covers the 8 months from May when the Regulation entered into force. In practice, Frontex was only operational by October 2005.

## 1.15 Budget execution

Budget execution is a way of assessing an organisation's ability to absorb the adopted budget and turn the budget into commitments and payments. The 2007 budget was executed the following way:

Table 0.4 Budget execution 2007(MEUR)<sup>12</sup>

| Expenditure allocation | Appropriations under the final budget |             |                       |          |                     |
|------------------------|---------------------------------------|-------------|-----------------------|----------|---------------------|
|                        | Commitments and payments              | Commitments | Commitments execution | Payments | Payments executions |
| Staff                  | 9,379                                 | 7,762       | 83 %                  | 6,332    | 68 %                |
| Administration         | 5,267                                 | 4,018       | 76 %                  | 1,765    | 33 %                |
| Operating expenditure  | 27,496                                | 26,599      | 97 %                  | 5,214    | 19 %                |
| Total                  | 42,150                                | 38,384      | 91 %                  | 13,311   | 32 %                |

It appears that budget execution falls far short on payments. This is particularly the situation for payments relating to operating expenditure. This is mainly due to late payments of reimbursable expenses to Member States participating in JOs.

The commitments and payments for staff reflect that not all posts in the Agency have been filled and therefore have not required commitments or payments.

## 1.16 Financial and Staff Regulations

The Frontex Financial Regulation was adopted by the Management Board on 30 June 2005 and has recently been updated, including the changes originating from the revised general Framework Financial Regulation. The update has been forwarded to the Commission for comments and will thereafter be submitted to the Management Board for adoption.

The Implementing Rules on the Frontex Financial Regulation were adopted in December 2005, updated in June 2006 and will most likely be updated again in 2009. All updates are caused by revisions of the Implementing Rules related to the EU general Financial Regulation.

The Staff Regulations for officials of the European Communities apply to the Agency's staff according to Regulation 2007/2004 Article 17. On 30 June 2005 the Management Board adopted the rule that the general EC Implementing Rules for staff regulation shall apply by analogy.

However, only a part of the general Implementing Rules have yet been adopted and made operational despite Management Board decisions.

<sup>12</sup> Frontex Annual accounts 2007. Percentage figures calculated by COWI.

### **1.17 IT**

The IT sector too witnesses a steep growth in budgets. The framework contract for 2007-2009 of 6 MEUR was to cover 6 projects; the entire budgetary allocation was consumed within one year. The following framework contract for 2009-2012 has been increased to 24 MEUR in order to cover 24 projects.

The main emphasis for Frontex has been to get the IT infrastructure to work.

## **Execution of the evaluation**

The evaluation comprised desk studies of relevant documents, interviews, assessment of activities and an e-survey.

### **1.18 Qualitative semi-structured interviews**

This type of interview lets the interviewee come forward with his/her interpretation of the situation and at the same time organises the dialogue in order to shed light on the relevant questions. The qualitative interview is not well suited for collecting quantitative data like how many interviewees were of the exact same opinion on a specified subject.

#### **1.18.1 Methodology**

An interview guide was prepared and contained questions relating to Frontex activities and the structure. These questions were again grouped into working practice, effectiveness and impact.

The interview guide contained a number of tentative indicators used by interviewer to formulate relevant questions according to the situation. Due to the in-depth nature of the interview guide it was not possible to collect answers to all questions during an interview.

The data collected through the interviews were subsequently condensed and are presented in this report in the relevant chapters and sections.

### Target groups

The Consultant’s focus has been to interview the right variety of people in accordance with our proposed approach. The following stakeholders were interviewed.

Table 0.1 List of interviewed stakeholders

| Target Group                | Organisations   | Type of interview   | No of respondents |
|-----------------------------|---|---|-------------------|
| Member states               | Members of the Management Board   | Personal interviews (or telephone interviews)                               | 25                |
| EU                          | European Parliament; European Commission (DG ENTR, JLS and RELEX), European Council Europol, Cepol, EUBAM and JRC. EMSA were unable to take part in an interview. | Personal interviews (or telephone interview or mail reply to questionnaire) | 12                |
| International organisations | UNHCR, IOM, IGC, ICMPD, ECRE, British Refugee Council   | Personal and telephone interviews   | 6                 |
| Third countries             | Russia and Ukraine  | Telephone interviews  | 2                 |
| Frontex staff               | Executive Director; Heads of Sectors/Units, seconded national experts, executive and specialist support, internal auditor   | Personal interviews   | 25                |

Please refer to Appendix 2 for a full list of interviewees.

In addition to the formal interviews with stakeholders the Consultant received informal information as well as personal opinions from a substantial number of border guards from EU and non-EU member countries during field visits and participation in network meetings.

The Consultant only managed to get two interviews with EP-members: A member of the LIBE Committee and a member of the BUDG Committee. However, the evaluation team has received a communication from the EP dated 11 November 2008<sup>13</sup>, which gives an impression of the emphasis that the EP is putting on the development of Frontex.

### 1.19 Case studies

Case studies are a main source of data for the evaluation. The case studies are done as field visits or as participation in network meetings or training events. The case study summaries are presented in Appendix 4.

<sup>13</sup> Report (2008/2157) from the EP on the evaluation and future development of the Frontex Agency and of the European Border Surveillance System (EUROSUR)

### **1.19.1 Methodology**

A three-tier approach has been used for the case studies:

- 1) Preparatory work including desk study and meetings/phone conversations with relevant Frontex staff.
- 2) Field trips or participation in network meetings and training events. This included an assessment of the flow of information, actual execution, level of cooperation between participants, usefulness of equipment, cooperation with third countries and perceived impact. The collection of data will be done by observations and interviews.
- 3) Assessment of Frontex follow-up based on Frontex own evaluations.

The selection of case studies is based on more parameters: The size of the operation, broad geographical representation, presentation of thematic areas of JO (land, sea and air) and finally a timing of the case study which corresponds to the time schedule of the evaluation.

### **1.20 E-survey**

This section provides a brief presentation of the results of the e-survey conducted among Frontex Stakeholders.

The purpose of the questionnaire was to receive feedback from Frontex associates and cooperation partners in order to gain an assessment and evaluation of the services delivered by Frontex. The output from the e-survey was used as background information for preparing and conducting qualitative interviews.

The Survey was conducted as an assessment of the working practises, effectiveness and impact of the work of the Agency in relation to the management of the EU external borders.

The themes of the evaluation were converted into a number of questions in the questionnaire directed at different quality aspects, as well as an overall measure of satisfaction.

The questions are generally formulated as statements about the service and work of Frontex and the person responding to the questionnaire replies on a scale of agreement, whether they agree with the statement or not.

An e-mail with a link to an electronic version of the questionnaire was sent to the target groups of the questionnaire. The recipients of the e-mail were asked to fill in their answers and submit them online. After 3 weeks a reminder was sent out.

The target groups of the questionnaire are listed below:

Table 0.2 Target groups for e-survey

| Target group  |
|---|
| European Commission, Council and Parliament, external relations (third countries) |
| National Training Coordinators  |
| National Frontex Point of Contact   |
| Partnership Academies   |
| Stakeholders - EU institutions  |
| FRAN members  |
| Pooled resources network  |
| International organisations   |
| Stakeholders – Others   |

A total of 272 e-mails were sent to the target groups with links to the questionnaire. 69 respondents filled in the whole questionnaire and 23 filled the questionnaire in part. This gives a total response rate of 25% and of 33% if the partly filled questionnaires are included.

E-mailed surveys like this are relatively easy to develop and almost cost free to distribute, once you have the e-mail addresses of the respondents. However, the response rate is likely to be comparatively low and perhaps slightly biased. Hence the findings of electronic surveys must be viewed in this light and should primarily be used to reach otherwise inaccessible respondents or to check findings obtained through other methods as is the case here. On this background, a response rate of 25-33% is considered satisfactory.

The table below shows how the respondents categorise themselves:

Table 0.3 Categories of actual respondents

| 4 Please indicate which type of organisations most closely describes your organisation? | Total     |
|---|-----------|
| Army  | 2         |
| Border Guard  | 40        |
| Directorate General (DG)  | 7         |
| Ministry  | 11        |
| Public Agency   | 4         |
| National police force   | 22        |
| Local/regional police force   | 2         |
| Other law enforcement authorities   | 1         |
| Other   | 3         |
| <b>Grand Total</b>  | <b>92</b> |



The table above shows that the biggest response groups are border guards and the national police forces and they account for almost 2/3 of the responses.

The table below shows which network the respondents state that they are members of. Respondents can be members of more than one network therefore the total number of memberships exceed the number of respondents.

*Table 0.4 Networks of actual respondents*

| <b>6. Please state your relationship to or membership of the following Frontex related networks</b> (several answers possible per respondent) |            |                  |
|---|------------|------------------|
|   | Total      | Distribution (%) |
| Member States   | 48         | 52               |
| National Frontex point of contact (NFPOC)   | 39         | 42               |
| Frontex Risk Analysis Network (FRAN)  | 30         | 33               |
| Network of Training Coordinators (NTC)  | 20         | 22               |
| Training providers  | 16         | 17               |
| Other   | 12         | 13               |
| <b>Total</b>  | <b>165</b> |                  |

A little more than half of the respondents state that they belong to the Member State networks and a little less that they are a part of the National Frontex point of contact network. A detailed report on the answers to the e-survey can be found in Appendix 11.

## **Findings, assessments, conclusions and recommendations on activities**

The presentation in sections 5.1 to 5.8 is structured according to the operational activities of the Agency. Hence, for each overall activity the findings, assessments and conclusions are presented.

### **1.21 Coordination of operational cooperation - JO**

Article 2 (a) and Article 8 require Frontex to coordinate operational cooperation between Member States in the field of management of external borders and to organise the appropriate technical and operational assistance for the requesting Member State(s), by

- 1) assisting on matters of coordination between two or more Member States with a view to tackling the problems encountered at external borders
- 2) deploying its experts to support the competent national authorities of the Member State(s) involved for the appropriate duration

Furthermore Frontex 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<sup>14</sup>.

#### **1.21.1 Description of activity and findings on JO**

##### **Description of Joint Operation procedures**

JO are placed in the operations division and organised in three sectors: land (12 staff), sea (17 staff) and airport (9 staff).

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<sup>14</sup> The findings and assessments are based on the following data: Desk review of the relevant EC documents, Frontex documents and interview with Project Managers, other Frontex staff and field visits to JOs. The JOs visited was for land: EURO 2008 and FPO Dorohusk; for sea: Hera, Hermes and Poseidon; and for air operations: Hammer.

*Text box 0.1 Operational cooperation coordinated by Frontex*

- *Joint Operations* on sea, air and land borders are defined as activities where Frontex coordinate the planning and communication. The operation is hosted by one Member State. Other Member States may participate with personnel and/or equipment
- *Focal Points* are border crossings opened for a longer period by one host Member State for joint work with border guards from visiting Member States. The border guards of the host and the visitors learn from each other experiences and daily practice
- *Pilot projects* are first time - sometimes small scale - JO. If the pilot project is a success it may become a more regular joint operation.
- *Joint Support Teams* are pools of expert border guards from Member States that can be deployed during JO, Focal Points and pilot projects. The purpose is to develop a corps of border guards, which can be trained specifically to participate in Frontex operations.

### **JO preparation**

JO usually follows a standard preparation procedure:

- First a risk analysis is undertaken by the Risk Analysis Unit. If the outcome shows a need for a JO, a recommendation for a project is issued. The project proposal in standard template (objectives, indicators and outcomes clearly spelled out) is passed to the Executive Director. After the TCG appraisal, the ED approves the proposal<sup>15</sup>.
- In the next stage, Member States are invited for a planning meeting in which the project is explained, and they are invited to take part (both potential hosting countries and potential supporting countries)<sup>16</sup>. Suggestions from countries that offer to assist in the operation are assessed against the concrete needs (needed profile of experts, technical requirements of surveillance equipment, etc.).
- The operational plan is ultimately finalized by the Project Manager with the input from all participating Member States; reserving a predominant role for the host country. Frontex are co-financing the JO costs, salaries of the involved countries own staff paid by the MS.

<sup>15</sup> A proposal for a JO or a pilot project can also be generated by a member state facing a particular situation requiring assistance.

<sup>16</sup> It was pointed out by Frontex that Member States decisions to participate in JO and deploy technical equipment are political decisions taken at ministerial level in Member States

- After the planning meeting and drafting of the operational plan the relevant unit in Frontex HQ (Sea, Land or Air) coordinates planning of the JO and a period of gathering information follows. During this period operational and background information is collected.

### **Implementation of JO**

During implementation the following division of tasks is normally applied:

- When the planning is finalised, the appointed *Frontex Coordinator* (FC) takes over responsibility. As the head of the project team during the operation the FC will foster and monitor the cooperation between the guest officers and the hosting organisation in close cooperation with the local border guard authorities. The FC will update Frontex management and MS on the JO progress and if needed, the FC may propose changes to the *modus operandi*. If difficulties or unexpected problems emerge during the JO, the FC will take immediate action and inform Frontex Situations Centre (FSC - see below).
- Also, a *Frontex Analyst* is assigned to each JO to ensure that the agreed reporting system works smoothly. The analyst is placed in the Frontex HQ (In sea operations in the ICC, see below) and will collect and process the daily report and the incident reports. These analyses are communicated to Frontex's management. By the end of the operation, the analyst drafts an analytical assessment.
- *Frontex Situation Centre (FSC)* coordinates the exchange of information during the JO. The FSC is a new feature in the agency and shall support and monitor JO as well as managing emergency situations. It is mainly directed at land and air border operations. The intention is that the FSC shall function much as the International Coordination Centres (ICC) for sea operations (see below). It will function as the hub for exchange of information on a European level.
- For sea operations an *International Coordination Centre (ICC)* will be established at member state level for the management of the specific JO. It will be constituted by staff from Frontex, the host country and participating countries. It also acts as contact point between the Coordinators and FSC and keeps permanent contact with the Head Quarter Project Manager and Risk Analysis Unit. Furthermore, it is responsible for the practical arrangements, such as accommodation and travel arrangements of the guest officers.
- After a day of introduction day, the *operational phase* follows which is concluded with an evaluation session in order to draft a fresh evaluation report.

### **Planning and reporting procedures**

The *operational plan* contains all practical information; including for visiting officers. It includes information on the legal status and executive powers of the guest officers and on how to deal with the media.

After the end of the operation, it is evaluated and an *evaluation report* is produced. This final report is drafted and agreed upon by the working group and will be used by the Risk Analysis Unit for analysis and to impact the planning of future JO.

### **1.21.2 General Findings on JO**

The following represents key findings based on i.a. stakeholders' views and observations made during the evaluation. Para 5.1.3 will present the consultants' assessment:

The level of Member State participation in JO varies. Frontex tries to improve Member States' motivation, e.g. through arranging bilateral talks to present JO planned for the year to come. Nevertheless, it is entirely up to the countries themselves to decide on participating in JO.

Small Member States find it difficult to participate in numerous JO or for longer periods, since there are only few staff members who can replace those participating in the JO. Likewise, countries with more well established border police services and a tradition for cooperation tend to be more self-sufficient and have in some cases reservations towards some JO.

However, there is a widespread interest among Member States to participate in JO as it is seen to lead to a uniform approach to border management and established personal networks across countries, which is used for official and informal consultation and information exchange.

A common border guard's *lingo* is developing among participants in JO but language problems still constitute a considerable barrier in many operations. Although English has been agreed as the working language of Frontex' operations, it is not or poorly spoken by many hosting or guest officers in operations. This can cause confusion and misunderstandings and reduce operational effectively.

### **Land Operations**

Land JO can have a wide range of aims: Enhancing border control and green border control at the external EU borders and enhancing the operational cooperation with the neighbouring non-EU states at the external EU borders. Furthermore land JO is used to study the illegal routes into the EU and detecting illegal labourer and over-stayers and sometimes detects smuggling of stolen cars.

By way of example, the JO "EURO 2008" and ongoing and repeated operations as ATLAS and Focal Point Officers all focus on illegal crossings, detecting forged documents and breaking smuggling and trafficking rings.

*Text box 0.2 EURO 2008*

The European Football Championship **EURO 2008** took place in May-June 2008 and was hosted by: Austria and Switzerland. The Frontex operation of the same name was co-hosted also by Slovenia, Hungary, Slovakia and Poland. 22 Member States as well as Croatia, Turkey and Russia participated.

The objective of EURO 2008 was to prevent the flows of illegal immigration under the guise of football supporters; to prevent the flow of border related organized crimes (e.g. trafficking in human beings); to target the abuse of visas and documents and to determine high risk flights. The activities aimed at enhancing the operational coordination by focusing on daily and immediate information exchange related to the games; increased border controls and pro-active checks.

Activities during EURO 2008 included: Deployment of guest officers to Austria's and Switzerland's external borders and selected airports. Deployment of document advisors to the embassies and airports in participating countries. A Frontex Situation Centre was established in Frontex HQ to coordinate the activities in close cooperation with the HQ Vienna and the HQ Bern.

EURO 2008 supported the host countries and EU border guard by facilitating smooth travel of football supporters and avoiding undue delays at border crossing points. Furthermore it solved border related issues at the spot for citizens from the three participating non-Schengen countries Croatia, Turkey or Russia.

By focusing on identifying gaps and on identifying changing modus operandi (i.e. the constant change in ways of getting illegally into the EU) Frontex is capable of reacting to the different and shifting levels of threats towards the land borders. Different tools are used to accommodate the challenges border guards meet such as the intervention of dog handlers and the use of mobile units with detection instruments.

### **Sea Operations**

Sea JO detect immigrants by sea and identify traffickers and smugglers while increasing the cooperation and reciprocal assistance between Member States. Relying heavily on host nation equipment and management structures, joint sea operations offer additional resources to the national operations and provide insight into alternative border management methods to all stakeholders involved.

In 2008, the operations have become longer in duration and in some areas they represent a substantial capacity enhancement to the national activities. They

include operations such as Hera and Hermes (see below for details), Nautilus and Poseidon (see also Appendix 4).

Sea operation employs 60% of Frontex' operational budget and tend to grow in scope and length, thereby getting more complex as well as expensive (see section 1.14). The most expensive single operation so far has been Hera amounting to MEUR 10 - equalling 20% of the entire operational budget.

The *legal framework* governing sea operations is complex with many international conventions, which are implemented by Member States in very different ways. As an example, some Member States undertakes operation of search and rescue on almost every boat, some do not.

If the operation results in the apprehension of illegal immigrants from a boat, it is only possible to return the illegal immigrants to a relevant third country if EU has an agreement with that third country.

Examples of joint sea operations are Hera and Hermes which were held in 2008.

*Text box 0.3 Sea operation HERA and HERMES*

**HERA** 2008 took place from February to December 2008. It was hosted by Spain and Italy with Luxembourg, France, Portugal, Germany as well as Mauritania, Senegal and Morocco participating.

The objective of HERA 2008 was to tackle the illegal immigration across the external maritime borders of the EU from West African countries disembarking in Canary Islands.

The purpose of HERA was to undertake air and naval surveillance to detect immigrants by sea and identify and intercept traffickers and their routes. HERA should promote cooperation between Member States' officers, improve coordination and exchange of information, enhance analytical activities, information flow and reinforce operative systems

HERA ICC was hosted in the offices of the Spanish Guardia Civil, which also is the headquarters for the Coordination Centre for Gran Canarias (CCRC), the Spanish regional coordination centre for immigration issues.<sup>17</sup>

**HERMES** 2008 took place from July to September 2008 with Italy, Spain

<sup>17</sup> CCRC represents a broad array of Spanish governmental stakeholders, including army, navy, ministry of defence, national intelligence, maritime rescue operations, home affairs, integrated visual surveillance abroad, national police, Guardia Civil, ministry of economy (including customs with maritime assets who coordinates with CCRC but operates separately), ministry of labour and immigration and social affairs (with hospital vessel deployed in African waters to support Spanish fisherman and assist immigrants if in need), and the government of Gran Canarias (with its own 112 emergency response system).

and France participating. It had a total budget of MEUR 2, 5.

The objective of HERMES 2008 was to tackle illegal immigration from Africa across the Mediterranean Sea South of Sardinia disembarking in Italy and to improve awareness of these immigration flows. HERMES coordinated operational cooperation among MS by organizing joint patrols using the technical equipment provided by the MS in the predefined area.

HERMES ICC was established in the Guardia di Finanza Command in Porto Navale, Cagliari. National officials from the Member States were represented in the Joint Coordination Board. The ICC coordinated technical equipment and manpower for the operation.

The operation was managed by a Frontex Coordinator with two additional Frontex officers assigned to collect information and analytical support.

The technical equipment provided for by the Member States was operated by the crews of the country providing the equipment. During the operation crews were directed by their respective national officers. Additionally, the head of a crew (master pilot) reported to the national HQ, thereby coordinating all details to be agreed between the host country and the participating Member States. RAU collected information from the interviews undertaken during the operation.

### **Air Operations**

Air JO comprises enhanced border control in EU airports such as, targeting the abuse of visas and documents by third country nationals, detecting illegal immigrants, selecting high risk flights and initiating appropriate pro-active checks, updating the profiles and modus operandi of potential illegal immigrants, collecting, identifying and arresting human smugglers/traffickers. The operations are also used to study the illegal routes into EU.

The main challenge in airports is the huge number of passengers and finding the balance between upholding the capacity to detect possible illegal entries and at the same time uphold a smooth and efficient flow of all other passengers. 15 JO's have been undertaken (see text box below for an example).

#### *Text box 0.4* Air Operation HAMMER

**HAMMER 2008** runs from August 2008 to March 2009. 16 Member States plus the UK have participated in the first phase.

Hammer addresses illegal migration flows via air through new operational responses. The core idea is to develop a swifter approach to emerging regional challenges.

Hammer aims at targeting abuse of visas and documents by third country nationals and detect illegal immigrants travelling on false documentation,



through updating all relevant information routings, travel agencies and other related matters and establishing a common basis of knowledge on different phenomena. The first phase has been successful in terms of enhancing the exchange of information on how illegal immigrants get into Europe.

Hammer works within a flexible framework. Each of its five operational phases comprises two weeks, followed by two weeks of analysis. Experiences from previous JO and phases are used to decide on where to deploy officers in the next operational phases.

Hammer provides an opportunity for border guards to share experiences and enhance the efficiency of communication between border guard offices at EU airports.<sup>18</sup> Hammer is also the first operational performance of Frontex Joint Support Teams.

### 1.21.3 Assessment and conclusions on working practices

Based on the findings and observation of several JO, the consultant has the following observations and assessments:

#### Member states views

Analysing the stakeholder data further, a number of specific details emerge:

- Most Member States have a positive attitude towards JO. Countries which benefit from them are most positive, new Member States not the least because of the learning element involved.
- This is confounded by the e-survey: 75 of 92 respondents answered the question on the overall quality of JO and a majority find JO satisfactory.
- Focal Point Operations are a Member State favourite. The targeted approach is highly appreciated, especially by guest countries. As the operations are generally quite lengthy, there is time for participating officers to get acquainted and establish longer lasting relationships.
- Some Member States criticise some hosting countries for not planning JO properly: There are delays, uncoordinated response and reception of participants. Language can cause problems, incl. lack of translation, etc. There are also concerns that too much information gathered through the operations is not being properly used, partly because Frontex is not entitled to collect personal information.

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<sup>18</sup> During the visit of the consultant the JO took place in Frankfurt, Warsaw and Vienna. 13 officers were hosted in Vienna, two in Warsaw and 11 in Frankfurt. Different checks were carried out for risk flights from countries, agreed upon in the JO preparatory phase. The guest officers took part in checks on an equal basis and German passengers did not comment on being checked by an officer in an unknown uniform. During the first phase at Frankfurt Airport one facilitator with two clients were apprehended. Warsaw reports five incidents: Lack of visa and a forgery of an ID card. Vienna airport reported “a lot of incidents” without specifying numbers.

- Even though the risk analysis cycles<sup>19</sup> are functioning, some Member States perceive that the standard procedures are not always followed. It seems that Member States' political considerations in certain cases may overrule decisions based entirely on risk analysis<sup>19</sup>.
- Several Member States therefore raise the concern that without clear agreements with third countries, e.g. Libya and Tunis, little can be achieved in terms of reducing the flow of illegal immigrants to the EU. This has been recognised by the Commission who supports a close coordination between the development of a bi-lateral agreement between Frontex and Libya and the overall EU-Libya relationship
- Many Member States want Frontex's own evaluation reports to be more analytic and less descriptive. They would like an actual assessment of the impact of the various operations.
- Some Member States seem to be reluctant to contribute to JO. Reasons may be cost related, due to the co-financing procedures, and/or different internal Member States procedures.
- UNHCR is concerned about different JO approaches by Member States to giving access to the asylum procedure and suggests that a common approach and procedure towards respecting the rights of apprehended illegal immigrants in all JO, in accordance with international and EU standards.
- This concern is supplemented by ECRE and BRC who point out that Frontex should coordinate efforts to implement and ensure *protection* of the apprehended illegal immigrants as part of JO and suggest close cooperation with IOM and other international organisations.
- The national communication systems containing the SIS checking system should have English as functionality in the future for any Frontex operation to run smoothly (e.g. the Austrian system runs with German language).

In terms of *technical equipment*, Member States sometimes have difficulties in delivering the equipment they have promised to put at the disposal of a JO, especially in large scale sea operations. In those situations Frontex therefore might end up having no or inadequate equipment for a given operation. Also, vessels provided can be restricted to certain geographical areas: Out of 20 big vessels five can only be deployed in certain geographical areas. In some cases conflicting national rules between host and guest country also make effective management of the vessels difficult.

The influence and pressure of *humanitarian organisations* is different in different Member States, but in general Frontex has detected that the human rights issue has moved up on the Frontex agenda.

In conclusion, the consultant finds that Frontex has found a core role in coordinating operational activities. Member States get considerable added value through involvement in the operations, the exchange of experience and devel-

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<sup>19</sup> *Nautilus* is a case in point: Although the risk analysis had suggested that increased operations might prove counterproductive and attract rather than deter illegal immigrants than, the JO was approved and carried out. However, eventually the prediction turned out to materialise.

opment of a uniform approach. At the same it is also clear that there are challenges to be solved in the planning process as well as at the operational level.

#### **1.21.4 Assessment and conclusions on effectiveness**

Frontex' 2006 PoW was extensive and ambitious, but also rather broad in its description of activities planned. The consultant has noted that some of the more strategic activities were not implemented, such as establishing a system that assesses the relevance, appropriateness and cost-effectiveness of JO.

The 2007 PoW was equally extensive and ambitious. In numerical terms, the activity goals were achieved as the targeted number of JO was reached. It is difficult, however, to assess their effectiveness, since this is not addressed in the annual reports.

In conclusion, the degree of consistency between the descriptions in PoW and General Report has improved year by year. Still, it will benefit from more clear indicators and more detail in the future, although some JO's have clear indicators of impact.

The trend towards more *long-lasting operations* should enhance effectiveness of operations. Short-term operations tend only to have short term displacement effects. Hence, repetition on a more regular basis is the key to success<sup>20</sup>. Lengthy operations, especially at sea, may however develop a certain fatigue among participating officers which may impact effectiveness as well as interest in future JO's by participants. This should be taken into consideration.

Effectiveness and quality can be enhanced on different areas; extending the preparation time of some JO; securing that equipment and staff match needs in the specific geographical areas. Furthermore Frontex' planning and implementation of JO activities should reflect actual risk analysis in order to raise effectiveness.

#### **1.21.5 Assessment and conclusions on impact**

It is still difficult to measure the impact and what the JO actually achieve.

In terms of *operational impact*, there is clear evidence of increased cooperation between Member States in terms of scale of cooperation (number of countries involved) and numbers of operations. Without Frontex this would not be the case.

Also, improved transparency between the border guard services of Member States leads to better cooperation also bilaterally and many border officers start considering Frontex as their reference point.

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<sup>20</sup> Hammer is an example of such an improvement as it works in phases and not just as a short term deployment of extra manpower (see Text box above).

In terms of actually *controlling migration*, the picture is not unambiguous: JO has an immediate effect at land- and air borders in a) increasing apprehensions and then b) reducing the pressure on the particular border crossing as the migrants and the organisations behind them react to increased control. However, the effect seems only to be noticeable during the JO and will soon wane, once the JO is over.

At sea operations, the same pattern can be noticed in waters where the JO can return the apprehended persons to the country of their embarkation. Where this is not the case increased patrolling might actually *increase* the flow as the migrants recognise that they have a better chance of surviving their dangerous voyage and run no risk of *refoulement*. This, in turn, means that the operations have a positive impact on the human rights of the migrants as they see their chances of survival increasing!

## 1.22 Assistance to training of border guards

Article 2 (a) and Article 5 require Frontex to assist Member States with training of border guards, and with the establishment of common training standards. More specifically:

- a) establish and further develop a common core curriculum for border guards training
- b) offer additional training courses and seminars related to control and surveillance of the external borders and return of third country nationals
- c) undertake training activities in cooperation with Member States

### 1.22.1 Findings<sup>21</sup>

Assistance to Member States related to training of national border guards is carried out by Frontex' Training Department (FTD). The budget for operating expenditure amounts to MEUR 6.4 for 2008 (see 1.14).

Findings from the e-survey correspond closely with findings from the interviews. Generally training activities are valued and appreciated by the respondents. Services provided and cooperation between Frontex and Member States are appreciated by Member States. High marks are given, especially by new Member States, small countries and third countries. The possibility of learning from each other and establishing networks provided by Frontex is highly appreciated.

Most respondents have a very positive attitude towards harmonisation of training of boarder guards through a common curriculum, although it stands to reason that not all countries will apply all aspects. Use of existing European acad-

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<sup>21</sup> The findings and assessments are based on the following sources: Desk review of relevant documents, interview with project managers, other Frontex staff, participation in NTC meeting in Bucharest, training course organised by Lübeck Police Academy and e-survey, opinions of MB members, representatives of EU institutions and international organisations

emies in the training activities, as well as networks established among partnership academies and training coordinators are valued.

Most respondents find that courses and seminars organised by Frontex have the correct focus, are well prepared and in most cases implemented at a professionally high level. Frontex is able to involve training institutions of the Member States, thus creating a spirit of common venture.

Also, respondents refer to the course in helicopter border surveillance. These were in the first place developed for Cyprus but were subsequently sold to other Member States.

The lack of skills in English language is an obstacle on many training courses hampering communication between trainers and students and between students.

During a mid level course in 2008 the participants informed the Consultant of apparent deficiencies in FTD planning and lack of time for preparing courses and coaching teachers and students. According to the participants have complaints to FTD in these respects not resulted in visible improvements.

### **1.22.2 Assessment and conclusions on working practices**

Frontex management has chosen a model of training and capacity development predominantly based on outsourcing. Although some training programs/products are developed, managed and implemented by the staff of the FTD, most other activities are outsourced to partnership academies and/or to external experts. Present staff resources would not allow FTD to undertake all activities themselves.

An important side effect of the training programme is the creation of networks between training developers, trainers and students who have followed courses. This allows for the informal cooperation and exchange of information between Frontex, Member States and their training academies, and can create conditions for further professionalization of the border guard function.

Areas for possible improvement - as seen by stakeholders - include better planning and more lead time to prepare courses at partnership academies. Frontex can furthermore improve on reacting on feed-back from course participants and on the following formalities:

- Formal agreements with partnership academies are too superficial and do not always reflect the actual scope of services provided
- Work with universities providing similar services is organised differently from the work with partnership academies. The legal basis for cooperation with partnership academies and universities has to be clarified
- The procedures for nomination of - and mechanism for controlling performance of outsourced experts - are not transparent and have to be formalised

- Different approaches are applied to calculation and payment of daily allowances for different products; specific trainings, RABIT exercises, JO, participation in TCM, etc., and
- Substantial delays in reimbursement of costs to partnership academies for conducted courses jeopardise a generally good spirit of cooperation.

These deficiencies might be partly related to lack of capacity in the FTD. The number of staff which has the capacity to organize and lead development projects and also has expertise in border guard duties and their realities is too small. It has been decided to increase the number of staff to respond to increased financial allocations.

According to all Member States and third countries the Frontex training programme fills a need. It has succeeded in organizing a number of courses with short notice, has created a common core curriculum, and it has established a network of experts in training. Based on this, it is concluded that training activities are a significant contribution to the joint European border management.

### **1.22.3 Assessment and conclusions on effectiveness**

The annual general reports show lack of consistency between objectives, activities and outputs. E.g. training of RABIT is listed among objectives of the department of Pooled Resources, while it is reported as output of FTD. Many outputs are described in qualitative terms or described as being in process. The number of training courses, as well as the actual content of training modules, is generally not transparent in the annual report. The subject is elaborated further in Appendix 9 showing difficulties in comparing PoW and General Report. The lack of transparency is a problem covering all other activities as well.

FTD cooperates closely with UNHCR and IOM and cooperation is much appreciated. FTD however does not cooperate with CEPOL yet.

As observed by the Consultant, activities organised by the FTD were carried out professionally. The engagement of the department's staff supported the cooperation among members of the network of training coordinators and partnership academies and fostered a spirit of common purpose. The participants of the observed activities appreciated the programmes and were satisfied with the outputs. Hence, it is concluded that Frontex performs favourably in this aspect.

### **1.22.4 Assessment and conclusions on impact**

It is of course difficult, however, to evaluate the impact of training activities. Such impact is normally only measurable after 5-10 years. Generally speaking, FTD activities receive very favourable assessments of participants and partners, and considerable results have been produced. Hence, it is concluded that a positive impact may be expected.

## 1.23 Risk analyses

Article 2 (c) and Article 4 requires Frontex to carry out risk analysis. This is done by:

- a) Developing and applying a common integrated risk analysis model
- b) Preparing both general and tailored risk analysis
- c) Incorporating the results of a common integrated risk analysis model in the development of CCC

### 1.23.1 Findings

The Risk Analysis Unit (RAU) supports both Frontex general planning and single operations. The budget for operating expenditure amounts to MEUR 1.8 for 2008 (see 1.14).

The RA Unit has three main functions:

- Strategic long term risk analysis, in the form of annual risk analysis (ARA) looking 18 months ahead. ARA is the basis for the WP and provides the weights to be attached to risks in order to facilitate the setting of priorities. semi-annual risk analysis has been added recently to strengthen the strategic planning
- Strategic short term risk analysis - I-ARA (interim-ARA) - updates ARA and keeps it fit for use as the planning cycle proceeds. It identifies gaps in the ARA planning and areas for introducing changes. It has a structure similar to ARA.
- Operational short term risk analysis. RA provides support for JO.

RA is an integrated part of the operational cycle of Frontex; as part of JO standard planning procedure, first step is a risk analysis undertaken by the Risk Analysis Unit. If the outcome of the ongoing RA shows a need for a JO, a recommendation for a project is issued. RA is a part of the information background in any operational plan for a JO. After the end of an operation, the operation is evaluated and an evaluation report is produced. The evaluation is used by the Risk Analysis Unit for further analysis (contributing to the decision on future JO) and is sent to Member States.

In addition, tailored risk analyses (TRA) will be done for JO. This is a tool to assess specific problems (e.g. illegal migrations from East Africa). The issues to be investigated are discussed in FRAN by Member States and followed by TRA meetings and seminars.

RAU supports the Border Analysis in three ways:

- FRAN - Frontex Risk Analysis Network consists of Member States' and Schengen Associated Countries' Risk Analysis Units. The system for regular exchange of information (Incident Reporting System-IRS, monthly analytical reports and monthly statistical reports) was launched in late 2007
- ANTOOLS - Analytical tools: Developing and applying tools (i.e. statistical programmes, satellite data, etc) for undertaking analysis

- Common training, e.g. FRONBAC 2009-2011.

RAU uses the Common Integrated Risk Management Model (CIRAM) developed by a European Council Expert Group in 2002. The first CIRAM brings together aspects of crime intelligence (threat assessment) and risk assessment, the latter focusing on the weaknesses of border management systems at the external borders of the European Union. CIRAM provides for a common foundation on the risk analysis methodology that has to be applied at Member States level.

CIRAM was updated in 2007 by Frontex and Member States. The current CIRAM does not elaborate more sophisticated methodologies such as indicators to be used when assessing vulnerabilities in border controls at EU and Member State level or how to assess future developments. This leaves room for some further improvement, since the Council Conclusion<sup>22</sup> “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.”

The level of satisfaction with RA amongst e-survey respondents is high with 70% giving a positive or very positive overall score, 21% in a neutral position and 9% disagreeing. This finding corresponds with findings from interviews.

All Member States confirm the importance of risk analysis in Frontex' planning cycle and operations as well as the approach taken. However, problems occur due to the varying quality and timeliness of information from Member States which provide a substantial part of the data to the RAU. Despite these shortcomings, most were satisfied with the products of RAU given the time that is normally needed to build an adequate information and intelligence gathering facility in a new organization. In general, Member States find that tailored RAs are better than strategic since they are directly useful for operations<sup>23</sup>.

Europol welcomes and actively seeks cooperation with Frontex, not least in the field of RA. Europol finds that Frontex has been swift in producing outputs right from its start. In the field of RA the need for cooperation and coordination of instruments is felt broadly. Frontex has to find a way to deal with the *dark number*<sup>24</sup> problem, and to find tools to predict future trends. Prediction would require an entirely different set of data than the data Frontex presently has available.

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<sup>22</sup> Council Conclusion no. 2 15628/06 FRONT 229 COMIX 982, adopted by the Council on 4th December 2006

<sup>23</sup> Countries use them for JO and for operations within countries. The Netherlands for instance uses them for projects on Chinese illegal immigration. A number of Member States expressed hope that risk analysis would depoliticize decision making on JO.

<sup>24</sup> The unknown number of a specific event e.g. an illegal migrant crossing a border undetected is what is called the dark number. The dark number in the number of crossings is the difference between actual, **reported** crossings (apprehensions) and the postulated **unreported** crossings.



Europol is interested in remaining involved in the Frontex training of risk analysis units of Member States and Europol would like to further enhance the mutual cooperation in the field of threat and risk analysis. The present lack of secure communication lines to and from Frontex seriously inhibits the type of information that can be exchanged.

### **1.23.2 Assessment and conclusions on working practices**

Frontex has fulfilled the requirement laid down in article 4 of its Regulation. It applies a common integrated risk analysis model and has improved that model. The adoption of intelligence based border management is a state of the art way of managing Frontex planning and prioritization and preparing its operations.

In Frontex, RA has gained a good reputation. 95% of what is discovered during sea operations has already been predicted by RAU<sup>25</sup>. The level reached for operational analysis patterns allows for the identification of patterns of seasonality and pull and push factors. Frontex priority has been the establishment of a solid basis for the reporting of detected immigrants, through aligning national collection plans to the same concepts and indicators.

Criminal and military intelligence delivered from Member States to Frontex is very limited, probably due to the non-secure communication lines as well as to Frontex' limited mandate, which does not allow gathering or analysis of personal data from people that have been stopped and arrested - in consequence leaving this work to Europol and national police intelligence units in Member States. That limits the usefulness of Frontex RA.

JO is a good way for Frontex to get information from Member States. In JO, relevant personal data are sent to Europol for threat analyses and ten percent of the apprehended are being interviewed by Frontex staff. Hammer provides a good example of integrated analyses by Europol and Frontex, and is seen as a working practice in which intelligence and operations are brought together as closely as possible.

The structure of communication set up by Frontex for consultation and cooperation with Member States in the field of risk analysis is functioning well. It helps in creating a sense of partnership in RA in the EU and improves the exchange of information.

With the establishment of RAU, data relevant for border management and risk analysis are available at a central level and can be analyzed, used and returned to Member States. That is a major step forward. As a consequence, there is a better knowledge of displacements now and an overview of European border weaknesses as well as more information on relevant third countries. Finally, there is a good level of information flows during JO. Consequently, it can be concluded that Frontex' risk analysis working practices are satisfactory.

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<sup>25</sup> Some parts of Frontex are still somewhat hesitant about the added value of risk analysis, probably due to the action orientation of border guard organizations.

### **1.23.3 Assessment and conclusions on effectiveness**

Objectives in the field of RA for 2006 and 2007 (as per the plan of work) have been compared with reported achievements (as per the annual general report) over those years. It is safe to state that most objectives for 2006 were achieved; only the situations centre was delayed and realized later. For 2007, the achieved outputs are in accordance with the planned outputs<sup>26</sup>.

Based on the working practices established, the activities undertaken and the level of satisfaction of stakeholders, it is concluded the effectiveness in risk analysis is satisfactory.

### **1.23.4 Assessment and conclusions on impact**

Risk analysis is useful in the short run in relation to concrete operations. Their real value will be even more pertinent in the medium- to long-run. Given the achievements reached to date, it is expected that the impact of risk analysis will be positive in future.

## **1.24 Follow-up on the development in research**

Articles 2 (d) and 6 require Frontex to follow-up on development of research relevant for control and surveillance of external borders and disseminate the information to the Commission and Member States. The budget for operating expenditure amounts to MEUR 0,6 for 2008.

### **1.24.1 Findings**

The Research and Development Unit is part of the Capacity Building Division. The unit has presently six staff out of a scheduled staff of 11, reflecting difficulties in recruiting professionals with the right skills.

The unit's main activities are:

- Following the development in research and assessing the added value of new technology for border control
- Coordinate with policy makers in the European Commission and Member States
- Following and assessing end-users needs (border guards)
- Influencing EU research institutions

Coordination and cooperation has been established with the main key players: the Member States, the European Commission, i.e. DG JLS and DG ENTR in relation to the research framework programme FP7, especially focusing on border control.

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<sup>26</sup> The annual reports contain insufficient information concerning the achievements in risk analysis. The assessment is based on numerous other sources.

The head of the unit is part of the FP7 committee for the evaluation of proposals. The committee also provides technical assistance, helping companies to develop their bid and better defining the research projects. The head of unit is also a member of the advisory board developing future security research policy (ESRIF) and chairs the Border Security working group.

The Unit works closely with EU research Institutes, e.g. with ISPRA and ESRIF (European Research and Innovation Forum)<sup>27</sup>. Frontex cooperates with the US, European Defence Agency and EMSA<sup>28</sup>.

Although the unit maintains contact with Member States operational staff, it has proved difficult to identify the long-term needs of end-users as operational officers often focus mostly on short term issues.

As a part of its dissemination of information, R&D publishes studies (i.e. study on automated border control) and organise seminars with participation from industry, Member States, research institutes and end-users. R&D unit also prepares and disseminates an ad hoc information bulletin on research and development programmes to inform Member States.

Close to half the respondents in the e-survey responded concerning their level of satisfaction with the overall quality of the services of the R&D unit. Responses were quite varied, but generally the level of satisfaction is lower than the satisfaction with other Frontex activities. Detailed points of views include:

- Several Member States point to the fact that Frontex should focus on collecting information on new technologies (biometrics etc).
- Some Member States find Frontex information superfluous, since other entities are doing the same and better. Examples are ESRIF, Eurosur and Thalos<sup>29</sup>.
- According to DG ENTR the cooperation with Frontex is excellent and Frontex contributes well to regular meetings and to the preparation of research projects on border security especially under FP7.

#### **1.24.2 Assessment and conclusions on working practices**

R&D has spent many resources on participation in research frameworks and cooperating with other European R&D institutions. Within this cooperation R&D has consistently inserted the border issues on the agenda of these frameworks and especially highlighting the needs of stakeholders.

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<sup>27</sup> ESRIF is a joint initiative between DG JLS and ENTR. It is an advisory board to develop EU mid and long-term joint security Research Agenda. There is a committee on Border Security that is chaired by the head of the unit.

<sup>28</sup> With EMSA until now only at executive director level

<sup>29</sup> Or, as put by one Member State: "The R&D unit is composed of too many border police officers – and too few researchers"

R&D has to some extent been able to disseminate the knowledge it has collected during its cooperation with other institutions.

Achievements reached so far with respect to research are good - given the fact that the unit has not had a full contingency of staff.

### **1.24.3 Assessment and conclusions on effectiveness**

It is not clear to what extent the objectives formulated in the PoWs 2006 and 2007 were actually achieved. We have not been able to ascertain the actual production of a number of reports, feasibility studies, studies, bulletins and pilot projects that were originally planned for.

The fact that R&D, according to the findings, have focused heavily on participating in different European research frameworks, seems to have lowered the output on the set objectives.

### **1.24.4 Assessment and conclusions on impact**

It is clear that Frontex R&D has succeeded in involving itself in European research on border management issues. It is not yet clear which impact R&D has had on other Frontex activities and operations.

Applying research results is a long-term undertaking. Hence, it is too early to judge whether the R&D activities have had any significant impact on the improvement of integrated management of external border control.

However, especially the Commission (DG ENTR) is of the opinion that Frontex has an impact and gives legitimacy to research projects: Without Frontex, research on e.g. interoperability would not be financed.

## **1.25 Technical and operational assistance**

Article 2 (e) and Article 8 requires Frontex to assist Member States in circumstances requiring increased technical and operational assistance at the external borders. According to Article 8 this takes place through:

- a) assisting on matters of coordination between two or more Member States with a view to tackling the problems encountered at the external borders
- b) deploying Frontex experts to support the national authorities.

Article 2 (g) requires Frontex to deploy Rabid Border Intervention Teams (RABIT) to Member States. According to Article 8 (a) this is done upon the request of a Member State faced with a situation of urgent and exceptional pressure, especially the arrival at points of external borders of large numbers of third-country nationals.

### 1.25.1 Findings

The budget for operating expenditure amounts to MEUR 1,1 for 2008 (see 1.14). Three specific instruments have been assessed<sup>30</sup>:

- Rapid Border Intervention Teams (RABIT)
- Frontex Joint Support Teams (FJST)
- Central Record of Available Technical Equipment (CRATE).

#### **RABIT**

In 2007, the Frontex Regulation was amended with Regulation 863/2007 on the creation of a Rapid Border Intervention Team (RABIT)<sup>31</sup>. The RABIT Regulation entered into force on 20 August 2007. The instrument is aimed at dealing with extraordinary situations of urgent and exceptional pressure at the external borders of a Member State in which case the Member States can request Frontex to deploy a RABIT.

The RABIT regulation is legally binding for Member States. Member States have to contribute to the RABIT Pool, and have to make their border guards available for deployment. RABIT operations are based on the principle of ‘compulsory solidarity’.

A special unit has been created in Frontex - the Pooled Resources Sector - tasked with the implementation of the RABIT regulation. It is part of the Capacity Building Division. Activities are undertaken in cooperation with the Operation Division<sup>32</sup>. The following activities have been undertaken so far:

- Creation of a Rapid Pool Register. The profile of the members being:
  - Basic qualifications: several years of border control experience at external borders and working knowledge of English;
  - Core competencies: having expertise in specific sectors amongst different types of borders controls, second line interviews, threat and risk analysis, advanced documents expertise;
  - Optional skills: for example profiling of travellers, dog handling, law of the sea expertise, checking vessels, checking trains, checking containers, knowledge of languages, etc.

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<sup>30</sup> Data was collected through the e-survey, interviews with Frontex staff, members of the Management Board, and external stakeholders, as well as participation to a Pool Resources Network meeting; and a case study on RABIT, covering an interview with RABIT Project Manager; the assessment of two operation plans (Porto Airport in Portugal and Slovenian land borders), and the evaluation reports on the two previous exercises.

<sup>31</sup> The Regulation 863/2007 amends Frontex Regulation by adding a new article 2 (1) (g) on the deployment of Rapid Border Intervention Teams, and amends Article 8 (3) “Support to Member States in circumstances requiring increased technical and operational assistance at external borders” and Article 10 (exercise of executive power).

<sup>32</sup> The Unit suffers in particular from the lack of administrative support. This has resulted, for example, in operational officers and RABIT managers having to deal themselves with the reimbursements of Member States participating in RABIT training exercises.

- Members of Rapid Pool Register are nominated by Member States who have also to indicate the specific expertise of each nominee;
- Creation of a Handbook. The Handbook sets out detailed procedures and defines operational ways to deploy Rapid Border Intervention Teams;
- Training exercises for Rapid Border Intervention Team (3 exercises undertaken to date<sup>33</sup>);
- Organisation of seminars for raising awareness on the RABIT regulation and undertake training of members of the Rapid Pool;
- Creation of Frontex ID and armband for RABIT during operations;
- Testing and improving procedures and rules, i.e. Member States requests for Rapid intervention, Frontex' decision, preparation of Operational Plan, etc.;
- Member States have been asked to provide information on their national legislation which is relevant for the effective implementation of RABIT regulation (for example border guards' right to carry ammunitions and weapons).

### **Frontex Joint Support Teams**

FJST is a recently created pool of expert border guards that can be deployed during operations coordinated by Frontex (e.g. JO, Focal Points and pilot projects). The Frontex regulation does not refer to FJST, however, the Executive Directors of Frontex took this decision in May 2008, on the basis of Art. 25 (3)b of the Frontex Regulation enabling the Executive Director to take all necessary steps to ensure the functioning of the Agency in accordance with the overall objectives of the Agency. FJST is part of the RABIT Pool. Member States are encouraged to give priority to FJSTs when nominating border guards for Frontex led operations.

The following activities have been undertaken to date:

- The same profile of members as used with Rapid Border Teams has been applied in establishing the pool;
- 404 border guards have been nominated to be part of the pool.

### **CRATE**

The task of creating a Central Record of Available Technical Equipment - CRATE is set out in Article 7 of the Frontex Regulation: *"The Agency shall set up and keep centralised records of technical equipment for control and surveillance of external borders belonging to Member States, which they, on a voluntary basis and upon request from 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"*.

The necessity to create a centralised database on available technical equipment was endorsed by the European Council conclusions of 14-15 December 2006. The purpose is to implement the principle of 'border sharing' between Member States, and it should enable Frontex to better plan for operations at external borders.

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<sup>33</sup> The October exercise is not part of this evaluation.

The following activities have been undertaken so far:

- Member States have provided a list of technical equipment that can be temporarily used at external borders during operations coordinated by Frontex;
- The technical equipment made available is registered in a database describing in detail the type of equipment, the authority responsible, time needed to make the equipment available, time during which the equipment can be used, and possible limitation in their usage.

### **1.25.2 Assessment and conclusion on working practices**

Overall the majority of respondents have expressed positive judgements on the technical assistance provided to Member States by Frontex, with only approximately 10% having more negative views:

- The majority of the respondents in the e-survey (nearly 70%) are satisfied with the quality of services provided by the pooled resources, while only 10% tend to be not satisfied
- More than 50% of the respondents agree that Frontex is assisting Member States in situations requiring technical and operational assistance, while 15% tend to disagree with the statement
- More than 54% of the respondents agree that CRATE and RABIT are effective ways of supporting Member States in border management, 31% express a moderate agreement, while 13% tend to disagree.

From interviews, a number of specific points of views and assessments can be discerned which add detail to the overall assessment from the e-survey:

- Some Member States are sceptical about the effectiveness of RABIT and CRATE. In particular, there are issues with the cost associated with CRATE. For example, it is seen as far too expensive to move technical equipment from the Nordic countries to the Mediterranean area.
- On the other hand, other Member States feel that RABIT, CRATE and FJST are steps in the right direction to improve external border management and increase Member States cooperation and solidarity.
- European associations dealing with refugees have raised concerns over the lack of human and refugees' considerations in RABIT, and have suggested creating joint *asylum teams* to be deployed alongside RABIT teams.
- European institutions have pointed out that the initial Frontex regulation was not sufficient to deal with specific challenges, and therefore it was necessary to amend it with a new RABIT regulation. It has also been stressed that a mechanism such as RABIT could not possibly be conceived without a single European point of coordination such as Frontex.
- Many stakeholders find that in a short time significant progress has been made. Profiling of members of Rapid Border Teams has been established; standard procedures have been identified and set out in the RABIT Handbook. RABIT exercises have been conducted and their evaluations have been used to identify weaknesses and improve procedures.

- Also stakeholders express satisfaction with CRATE. In the absence of any obligations for Member States to provide technical equipment, CRATE creates a way to exercise “moral pressure” on Member States to contribute.

### 1.25.3 Assessment and conclusion on effectiveness

The annual reports do not provide for a logical assessment of the achievement of objectives as listed in the PoWs. There is a lack of consistency between targets set in work plans - and the actual achievements reported in the annual reports. The objectives and targets set in the 2006 PoW have not been reflected in the 2006 Achievements Annual Report. The achievements reported in the 2007 Annual Report are not clearly linked to the objectives set out in the 2007 PoW.

Furthermore, the objectives listed in the two PoWs do not make a distinction between RABIT, CRATE and FJST. And the PoWs do not make a distinction between strategic objectives and operational objectives, i.e. activities that have to be undertaken in order to attain the strategic objective.

#### RABIT

It is too early to assess the effectiveness of RABIT. Exercises undertaken so far have been evaluated positively. RABIT procedures need, however, to be further tested before they can be considered consolidated.

The development of RABIT basic training is essential for harmonising core competence but so far only a few border guards have taken the training. Likewise, the participation to RABIT exercises is crucial for developing the necessary skills but so far only a few border guards participated. A number of issues have to be dealt with in order to improve RABIT effectiveness:

- Member States need to improve formal procedures, e.g. replying on time, sending border guards from the Rapid Pool, specifying their skills, etc.
- A further problem is that Member States do not always send border guards with the right skills to RABIT exercises<sup>34</sup>
- National legislation differs significantly concerning procedures for carrying weapons and ammunitions and to some extent concerning self-defence. Currently, there is no clear picture of the differences among Member States<sup>35</sup>
- There are no clear guidelines on procedures for weapons and ammunition transportations.

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<sup>34</sup> For example, only a few border guards with land border expertise participated at RABIT training taking place at land borders in Slovenia.

<sup>35</sup> Frontex distribute a questionnaire to Member States but a number of Member States have not replied or have replied in-comprehensively.



### **Frontex Joint Support Teams**

The pool has just been recently created - and it is too early to assess its effectiveness. The fact that 404 border guards have already been nominated to be part of the pool is, however, promising..

### **CRATE**

Considerable progress in terms of effectiveness has been made. A number of issues must be dealt with in order to improve effectiveness, e.g.:

- The technical equipment listed in the record is not automatically available for Frontex operations. There is no obligation for Member States to deploy technical equipment.
- A further problem is that Member States do not always make it clear what are the national regulations and restrictions on deployment of technical equipment.

### **1.25.4 Assessment and conclusions on impact**

Concerning assistance to Member States facing exceptional and urgent pressure at external borders it is still too early to assess this. There has not yet been a case in which a Member State has requested the intervention of RABIT. However, further efforts and developments are needed. There is a problem with the lack of awareness amongst some Member States on the contribution that RABIT could bring and on the circumstances that would make a RABIT intervention legitimate (for example it is not clear what scenarios represent exceptional and urgent circumstance to justify RABIT deployment).

Concerning increased cooperation, mutual assistance and solidarity between Member States there are some initial results. RABIT enables Member States to share border guards in the event of urgent and exceptional circumstances. This is a step in the right direction to increase cooperation and solidarity at European external borders. It is also clear that RABIT would never take place without the inputs and coordination of Frontex. However, it will take some time before RABIT could become a consolidated part of solidarity and cooperation between Member States. The creation of FJST has the potential of increasing cooperation and solidarity as one Member State can benefit from the expertise of border guards from other Member States. Concerning CRATE there are some initial results. Member States are making available technical equipment to be used in other Member States. CRATE's potential of achieving higher cooperation and mutual assistance is high, however the main weakness is that technical equipment listed in CRATE is not automatically deployable, and it is expensive to move technical equipment at long-distances.

Concerning increased effective management of external borders there is limited impact so far. RABIT has, however, the potential of increasing the level of effective management of external borders by providing for a pool of expert border guards during exceptional circumstances. Also the creation of FJST has a high potential to increase the effectiveness of external borders management by creating a pool of highly expert border guards that can be deployed at external

borders during operations coordinated by Frontex. CRATE displays some partial results in relation to this aspect. Potentially more technical means are available for border controls. However, there are problems with deploying the most effective means, such as big vessels. Furthermore, in the case of sea operations, Member States have different regulations and restrictions on the use of vessels.

## 1.26 Joint return operations

Article 2 (f) and Article 9 requires Frontex to provide Member States with the necessary assistance in organising joint return operations by:

- a) providing the necessary assistance in organising joint return operations of Member States related to the implementation of Community legislation. Frontex may use EU financial return instruments beyond Frontex' own budget.
- b) identifying best practices on the acquisition of travel documents and the removal of illegal third country nationals<sup>36</sup>.

### 1.26.1 Findings<sup>37</sup>

The budget for operating expenditure have been rapidly increasing to a level of MEUR 2, 0 for 2008, reflecting an increasing ability for Frontex to co-fund JRO activities with participating Member States. Return operations is managed by a sector in the operations department consisting of eight staff. The number is planned to increase considerably in 2009.

The communication network was introduced to Member States in 2007 through two projects, aiming to develop ICONet return section and introduce its facilities to Member States.

JRO operations are as follows: When a flight carrying returnees is announced on ICONet by the Member States which initiates the flight, others can join in

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<sup>36</sup> FRONTEX and the Member States return operations are conducted in framework of different EU instruments:

Council Directives 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals; 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air.

Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (2004/573/EC) and

Council and European Parliament decision No 575/2007/EC L of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'

18 June 2008 The text for a Directive was adopted on "Common standards and procedures in Member States for returning illegally staying third-country nationals"

<sup>37</sup> Findings are based on desk review of the relevant EC documents, Frontex documents and Handbooks and interview with Project Manager and other Frontex staff, return activities was assessed.

on the flight<sup>38</sup>. The overall responsibility of a flight is placed on the announcing country, but Frontex will coordinate and increasingly also co-fund the operation just as Frontex staff may be present on board the flight. With the experience of 14 flights, Frontex can give practical advice on all aspects of a flight. Frontex sometimes takes part in the advance party sent to the return flight destination country<sup>39</sup>.

To facilitate Frontex operational flexibility the EC has accepted a broader interpretation of the regulation allowing Frontex to lease airplanes for joint return flights. A tender will be undertaken in 2009.

Third country task forces are invited to visit Member States, which intend to send illegal immigrants back. The third country task force then interview the persons intended for return in the involved Member States, to establish their identities. Two workshops on cooperation with third countries were organized in 2008, discussing actual return-related collaboration issues in order to reach common conclusions and recommendations.

The EC has approved proposals for two joint return operations funded outside the Frontex budget. The “Core Country Group for Return Matters” consisting of eight Member States are Frontex partners in the projects. 70% will be co-financed by the EU, the rest by the partner countries. The projects will be used to gain experience in larger joint return operations and on ways to deal with the financial aspects of such operations<sup>40</sup>. The first planned JRO (from Italy to Nigeria) was cancelled by the Nigeria.

In 2006 two projects on best practices were drafted and implemented by teams consisting of Member State experts. One team formulated best practices for forced removals the other team formulated the best practices for obtaining travel documents. They collected different experiences and produced two handbooks. Standardized training material for officers participating in joint return operations is attached as an annex to the handbooks. The two groups of experts continue to work to develop and update the handbooks. In February 2008 the handbooks were disseminated to the Member States on CD for their internal use. In addition, the handbooks can be downloaded via ICONet.

Representatives from the Member States have pointed out that Frontex has until now only played a coordinating role without the overall responsibility of any joint return flight. Some Member States expressed a wish that Frontex would

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<sup>38</sup> In the interviews some Member States stated that they wanted to get an overview from FRONTEX on planned JRO flights to different countries in order to be able to slot in. This lack of information was confirmed in the e-survey.

<sup>39</sup> Frontex also takes part in projects launched by Member States. One such project is a German project involving six African countries. And cooperation with third parties is beginning to form: In July 2008, Frontex signed a letter of agreement with IOM meaning i.a. that IOM will provide training on voluntary return.

<sup>40</sup> Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme ‘Solidarity and Management of Migration Flows’

have a broader mandate to arrange the returns directly and not rely on Member States for the repatriation agreements. On the other hand, several Member States realise that the role of Frontex could become difficult as long as appeal procedures, etc. vary widely between Member States<sup>41</sup>. Several smaller Member States point out that joint return is one way for them to solve difficult and very expensive problems<sup>42</sup>.

### **1.26.2 Assessment and conclusion on working practices**

The number of joined flights has increased since Frontex began to play a role in organising them. Frontex has built experience in all aspects of joint removal operation and as a result Member States request the presence of Frontex officers in joint return operations.

It is a conclusion that joint return operations are a cost effective way of supporting, especially smaller Member States. The tools provided by Frontex such as Handbooks and ICONet are considered useful. It is clear that Frontex can still improve the flow of information on return operations: Several stakeholders were not aware of the lists on planned return flights. It is also concluded that Frontex has been less proactive in its cooperation with European and international organisations in this area compared to other areas.

### **1.26.3 Assessment and conclusion on effectiveness**

The planned number of joint returns has been reached in 2006, 2007 and 2008 and even superseded in both 2007 and 2008 in relation to the PoW. It is difficult to assess to what extent they were successful according to best practices.

Hence, it is a favourable conclusion that Frontex' effectiveness in the field of return will be affected by the fact that Member States have the jurisdiction on this area in their national legal framework.

### **1.26.4 Assessment and conclusion impact**

The Agency has been instrumental in establishing, developing and offering Joint Return Operations and in harmonising return procedures. It has created networks of border officers involved in return, and Frontex involvement has made the approach towards third countries easier, because policies and pressure can be coordinated.

It is concluded that the fact that Frontex has facilitated and supported Member States jointly arranging and implementing return operations and published best practices has created a sense in the Member States that return is a community

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<sup>41</sup> Only 6 of the 92 respondents in the e-survey responded to the questions related to joint return operations.

<sup>42</sup> Some Member States suggest that instead of focusing on joint return operations and leasing their own airplanes, Frontex should rather assist in getting travel documents for the return of persons who do not have travel documents.

issue. As some Member States pointed out: It gives a strong European message to all illegal immigrants/would-be illegal immigrants that Europe has a common policy on this issue, even if the authority in fact still rests with the individual Member States.

## **1.27 Cooperation with international organisations**

Pursuant to Article 13 Frontex may cooperate with international organisations on the basis of an exchange of Letters of Cooperation in the framework of working agreements with these organisations.

### **1.27.1 Findings<sup>43</sup>**

Frontex has so far entered into working agreements with Europol, UNHCR and IOM. Agreements with other agencies and international organisations currently under development include EMSA, Interpol and CEPOL as well as ICMPD.

Member States are satisfied that an agreement with Europol has finally been concluded, although there is considerable criticism of the long time it has taken to finalise it.

Frontex core role is to coordinate Member States actions. Stakeholders, however, often expect Frontex to solve illegal migration. Other stakeholders are more realistic, and state that before the establishment of Frontex there was no coordination between Member States and less information sharing on best practices and Frontex work has had an impact on improving the level of cooperation. This is clearly an added value for the Member States.

Many stakeholders see a close cooperation with the European Parliament as essential given the relatively limited mandate of Frontex. Also, closer cooperation with UNHCR is seen positive and necessary by Member States, especially in light of the many rescue at sea operations in the Mediterranean. The overall aim of the working agreement with UNHCR was agreed on in June 2008. It aims at promoting an efficient integrated border management system which is fully compliant with human rights, including the right to seek asylum.

Other organisations such as CEPOL are in the process of formalising a working agreement with Frontex. Other European institutions and bodies have so far chosen to cooperate on an informal basis such as IGC, and - although not strictly speaking "International organisations" in relation to Frontex the Commission (DG Relex and DG Enterprise).

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<sup>43</sup> Data collection has included interviews with Frontex staff and a number of key stakeholders identified Frontex. In addition, we have interviewed ECRE and the BRC. These organisations both monitor and conduct relevant research in the field of EU asylum, immigration and the Schengen *acquis*.

### **1.27.2 Assessment and conclusions on working practices**

With regard to cooperation with Europol, the main achievement is the ability to exchange information. The main beneficiary of cooperation with Europol is the Risk Assessment department. Europol's data is important for planning of Frontex projects.

Working practices also benefit from the working agreement with UNHCR involving exchange of information, and inviting UNHCR to train in seminars and participate in some briefings. Cooperation in development of common projects is a future challenge and a next step.

Frontex has also established cooperation with IOM. Frontex and IOM can share expertise and Frontex in particular is able to learn on best practice of voluntary return as well as obtaining training tools. There is an agreement on early warning on projects under development that may be of mutual relevance.

It can be concluded that to date there has been no structured dialogue with civil society. This would be relevant as they can complement international organisations in the area of e.g. capacity building and training of border guards and/or third states. Article 13 clearly indicates that this task, contrary to the other tasks mentioned under Article 2 of the Regulation, is not mandatory.

### **1.27.3 Assessment and conclusions on effectiveness**

Interviewees from e.g. Europol, the Council and the Commission (DG JLS) stress that Frontex is a dynamic Agency which gave results from the very beginning. Almost all stakeholders state that the Agency is responsive and coordinates quickly while other stakeholders report that information sharing and cooperation can be improved. It is concluded that there is considerable room for improvement in this area once more staff and other resources are allocated.

### **1.27.4 Assessment and conclusions on impact**

The benchmark used by some stakeholders for measuring the effectiveness and impact of Frontex is sometimes unrealistically high - and misconstrued. The European Council, the Commission (DG JLS) and Europol as well as Frontex' own staff express that there are too high expectations of Frontex. In addition there is a lack of understanding of Frontex' mandate and role. The impact is too early to measure - and should in any case be measured based on realistic benchmarks.

## **1.28 Cooperation with countries outside the EU**

According to Article 1444 Frontex shall facilitate the operational cooperation between Member States and third countries in the framework of the European Union external relations policy. The Agency may cooperate with third countries

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<sup>44</sup> Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries.

in the framework of Working Arrangements (WA). This sets out two avenues for third country cooperation: where Frontex facilitate the operational cooperation between Member States and third countries<sup>45</sup> the other one, where Frontex itself establishes bilateral cooperation with a third country.

### 1.28.1 Findings<sup>46</sup>

Facilitation of operational cooperation with third countries is carried out by the three Relex Officers, of which one only arrived in December 2008. One more officer is expected in 2009.

*Text box 0.5 Example of operational cooperation between Member States and third countries*

During the JO Hera, Frontex co-financed an aeroplane based in Senegal (on the basis of the Spain/Senegal bilateral agreement on illegal immigrants). The plane is used for surveillance of the national waters of Senegal detecting un-safe situations for immigrant onboard boats leaving Senegal. Spanish or Senegal vessels return detected un-safe boats to Senegal.

Cooperation with third countries has to be carefully coordinated between the various players. This includes policies and programming of the European Commission (DG RELEX, AIDCO, JLS, ENLARG and DEV), which have to be coordinated and roles of each organisation must match the overall strategy.

Frontex cooperation with third countries starts with development of a Working Arrangement. Thus far five WAs have been signed and 6-7 are under preparation and expected to be concluded in 2009.

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<sup>45</sup> Art. 2.2 still leave room for direct cooperation between MS and third countries: may continue cooperation at an operational level with other Member States and/or third countries at external borders, where such cooperation complements the action of the Agency.”

<sup>46</sup> Data sources: Work agreements WA with third countries, interviews with representatives of countries with WA, i.e. Ukraine, Russia, with the External Relations Officer and with members of the Board, staff of other departments of Frontex, representatives of EU institutions, and finally responses to the e-survey.

Table 0.1 Status for working arrangements with third countries

| Countries with WA adopted by MB and signed by ED  | Countries with WA adopted by MB but not signed by ED | Countries with finalised negotiations on a WA | Countries where MB has given a mandate to ED to negotiate a WA  |
|---|--|---|---|
| Russia, Ukraine, Moldova, Croatia and Switzerland | Georgia, FYROM, Serbia and Albania                   | USA (EC has put the WA on hold)               | Turkey, Egypt, Libya, Cape Verde, Senegal, Mauritania, Morocco, Brazil, Bosnia and Herzegovina and Montenegro |

The WAs "shall not be considered as an international treaty" and as such are not legally binding. They are letters of intent and as such only work when such intent is present.

Several Member States<sup>47</sup> find that Frontex' activities, primarily the JO, are futile without agreements with third countries, incl. countries of origin. It was noted that the legal basis of Frontex allows for much broader cooperation with third countries than what actually is the case. It is also recognised, however, that Frontex has very limited influence on political issues related to cooperation with third countries, and Member States prefer that the Agency remain focused on the practical and operational cooperation issues while leaving the politics to the Member States and the European Commission.

Most third countries interviewed are satisfied with the work done by Frontex as it supplements their bilateral work with Member States. According to the limited number of interviewed persons, Russia is quite satisfied with its narrow scope. Ukraine is interested in expanding the list of activities implemented under the WA, and would like it to be legally binding and with broader application.

### 1.28.2 Assessment and conclusions on working practices

The resources allocated in Frontex do not correspond to the stated strategic importance of this activity. With the present human and financial resource allocation Frontex is not in a position to achieve the planned stated targets, nor to meet the growing expectations of the third countries.

### 1.28.3 Assessment and conclusions on effectiveness

Assessment of the work program and annual reports for 2006 and 2007 shows that there is no clear connection between the overall strategies of Frontex with the targets set up for the External Relations department. Formulated objectives and outputs are not always comparable and measurable indicators are missing.

<sup>47</sup> Only 8 respondents to the e-survey answered questions related to this Frontex activity.



#### **1.28.4 Assessment and conclusions on impact**

It is hard to measure any lasting impact of facilitation of operational cooperation between Member States and third countries due to the rather short time of operation of the Agency.

However, many Member States see international cooperation with third countries as being of major importance for the impact of JO if the combat against illegal immigrants crossing the external borders should have any success. This point of view is confirmed by the success of JO Hera.

## Findings, assessments and conclusions on structures

The structure of Frontex evolves as the Agency grows and takes on new tasks. Sections 6.1 to 6.3 present the findings, assessments and conclusions concerning the Management Board, the office of the Executive Director and Frontex' overall organisational structure, respectively.

### 1.29 Management Board

Pursuant to Art. 20 the Agency shall have a Management Board (MB). According to the Regulation's Preamble it is the role of the MB to effectively control the Agency.

#### 1.29.1 Findings

The primary source of data is interviews with 27 members of the Management Board and interviews with senior and executive staff of the Agency. A number of documents have been reviewed, including documents for the two Board meetings that the Consultants had the opportunity to attend.

Almost all Member States present a very positive view on the work of the MB, but several have critical remarks about how the dual role of the members is executed: On the one hand members are responsible for the overall planning and management of the Agency and on the other hand members are representatives of their respective governments. Hence, some members find that some members tend to "politicise" the MB and promote national interests at the cost of the overall effectiveness of the Agency.

The composition of the Board is widely discussed. According to the preamble in the Regulation members should be national border guard chiefs. However, in practice members have different backgrounds. This influences discussions in the Board with some members preferring the operational discussions and other members preferring political discussions.

Findings also include:

- The MB has initiated a process of preparing a multi-annual strategy
- The Regulation allows for establishing an executive bureau
- The chairperson and his way of conducting the meetings are appreciated by most members.

The active participation of Member States in the Board is regarded very important by Frontex senior management. Active Member States representatives in appropriately high positions in their home countries provide legitimacy and expertise to the Agency, and ensure commitments to supply equipment and personnel.

It is recognised by all that the European Commission and the European Parliament have very important roles in deciding the policy framework as well as the budget of Frontex. Frontex senior management would favour a closer relationship with the EP and suggests that key MEP should have access to take part in MB meetings as observers or otherwise getting more directly involved in Frontex overall management without however confusing the different responsibilities of MEP and agencies established under the EC.

### **1.29.2 Assessment and conclusions on working practices**

The division of authority between the Board, the chairman and the ED is clear. The meetings are conducted on time and voting very rarely takes place. The time schedules stipulated by the Regulation are met. The coordination between the Chair and the ED is working well.

The Board spends a limited time on assessing the impact of the activities undertaken as this is seldom highlighted in e.g. evaluation reports from operations. The members seem satisfied with a more quantitative focus on attainment of specific outputs from JO in particular.

In terms of practical organisation of the MB meetings, some members suggest shorter agendas and more time for discussions, some prefer to have fewer meetings in order to see clear implementation results from one meeting to the other. Which language(s) to use at the meetings is also a divisive issue<sup>48</sup>. Other findings on working practices include:

- The amount of documentation and usually heavy agendas, leads to a quite dominant role of the ED at the meetings, and gives limited room and time for discussions and involvement of the members.
- Late arrival of documents and voluminous documents presented at the meetings means insufficient time for the members to prepare meetings<sup>49</sup>.

### **1.29.3 Assessment and conclusions on effectiveness**

When comparing the agreed objectives of the MB as specified in the Regulation with the actual achievements, it appears that overall the Board has achieved its targets and can be considered effective. Appendix 6 presents a more detailed comparative analysis of the MB's achievements of agreed objectives.

### **1.29.4 Assessment and conclusions on impact**

Frontex coordinates Member States actions and relies on the active participation of Member States Without their involvement the Agency was left without

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<sup>48</sup> There are a number of details in the interview data: Most members favour English as the working language, but several find it difficult to operate without translation into all languages. The present compromise of partial and rotating interpretation does not get any positive comments.

<sup>49</sup> Classified documents cannot be sent out before MB meetings due to lack of secure lines.

most of its activities. Active participation in the Board by Member States provides legitimacy and expertise to the Agency and ensures commitments to supply equipment and personnel.

Despite practical problems that should be overcome, it is the impression that the Frontex MB is having an impact on committing Member States to the Agency's activities, although there is still room for improvement both in terms of participation in the MB and in operations. This will have a direct impact on integrated border management in the future.

### **1.30 The Executive Director**

Pursuant to Art. 25 the Agency shall be managed by an Executive Director who should take all necessary steps to ensure the functioning of the Agency. See Chapter 3 for more details.

#### **1.30.1 Findings**

The assessment of the ED is based on qualitative interviews with the members of the Management Board including the Chairperson - and staff in the Agency and the Executive Director himself.

The members of the MB have a high regard for the ED and appreciate the results he and his team have achieved. The appreciation emphasises the speed with which Frontex has started producing visible outputs.

The Executive Director involves Member States not only at MB meetings but also through visits to Member States to undertake direct negotiations with the relevant national agencies when planning for JO and deployment of assets. This is seen as an effective supplement to the commitment and coordination provided by MB members. Also the ED's skills in developing and maintaining networks with the EC, the EP and Member States are highlighted as one of his many strong points.

#### **1.30.2 Assessment and conclusions on working practices**

Whereas the division of authority is clear between the MB and the ED, several staff and MB members point to the low attention that the ED has been able to give to the organisational aspects of the Agency. His emphasis has rightly been to get operations quickly up and running to make the Agency known and felt. Now perhaps more of his time should be directed towards enhancing the internal management and organisational structures and staff development. Several staff point, in this regard, to a lack of clarity in practice about the respective roles of the ED and the Deputy ED.

One area of focus would be on improving the ability of the Agency to spend the increasing funds that it receives every year. This will take smooth procedures for reimbursement of costs, recruitment of staff as well as fast planning of operations and will constitute a considerable challenge for the future.

### **1.30.3 Assessment and conclusions on effectiveness**

Appendix 7 presents a comparative analysis of the ED's achievements of agreed objectives as specified in the Regulation. It will appear that the ED generally achieved the intended objectives.

However, as described above, the ED has not quite met the achievements related to internal processes as the MB has prioritised actual border management activities over the internal processes of the Agency. Also the fast increase in the resources for Frontex has not been met by a similar increase in absorption capacity in the human resources department, IT and among management in general.

In conclusion the ED has been effective in setting operational activities in motion while the internal Agency procedures and the absorption capacity of the Agency still leaves room for improvement.

### **1.30.4 Assessment and conclusions on impact**

The effective and supportive remarks that the ED receives from both MB members and staff are indicative of the impact that the present ED is able to make on the Agency and hence on improving integrated border management.

## **1.31 Frontex' organisational structure**

The organisational structure is mentioned in Art. 21 which states that the Management Board establishes the Agency's organisational structure and adopts its staff policy (see also chapter 3).

### **1.31.1 Findings**

The assessment of the organisational structure is based on qualitative interviews with members of the Management Board, the Executive Director and staff in the Agency. Furthermore, the e-survey and a number of primarily internal documents provide data for the assessment. The Consultant has participated in one TCG meeting.

The external stakeholders, including Member States, have a number of observations:

- Several stakeholders express the view that Frontex should enter into a period of consolidation after a period of rapid growth in order to get at par with recruitment of staff and in getting its internal systems up and running completely.
- Stakeholders are concerned that there are too many short term positions, particularly seconded national experts (SNE) on short term secondments. This has been necessitated by the rapid growth of the organisation, which has made it impossible to recruit new permanent staff at a pace corresponding to the increase in budget and planned activities.

- Also, concern is expressed that the Agency has too many police officers among staff and too few policy and management specialists.
- Slow reimbursement of costs incurred by Member States as well as non-uniform levels of Daily Allowances among participants in operations from different countries creates unnecessary tensions and reduces incentives to participate in Joint Operations.

Internal stakeholders have the following observations:

- Recruitment of permanent staff or highly qualified specialists is made difficult because the salary levels and working conditions in Warsaw have not been considered attractive.
- The continuous practical and institutional problems in relation to getting settled in for new international staff: Residence permits are not readily available which makes it difficult to rent an apartment; temporary ID-papers are not recognised by all Polish authorities, including the police; tax-problems and problems in relation to employment opportunities for spouses in terms etc.
- The rules of the Staff Regulation have not been fully applied. Recruitment is lacking behind the need for staff, which puts an extra work-pressure on the existing staff
- A increasing number of financial exceptions are recorded in 2008, persistent delays in payments are observed and there is a expressed need for more financial support to the operational units.

### **1.31.2 Assessment and conclusions on working practices**

#### **Project organisation**

The consultant has noted that many activities in Frontex are organised as *projects* - i.e. with ad hoc organisational structures and procedures. Whereas this can be a flexible way of organising work processes that are truly projects - i.e. not likely to be repeated frequently, the project organisation has the disadvantage of being costly to establish compared to applying "normal" procedures and structures on new activities. This presents a special problem as project management apparently does not contain financial management of the projects. I.e. the project manager does not easily keep a track on the costs incurred as the project implementation progresses. The applied project management tool Prince 2 is only operational in the IT sector.

#### **Internal cooperation**

A related concern is a modest level of co-operation between various sectors in Frontex, notably between the Risk Analysis Unit and the Operations Unit, resulting in that the outcome of Risk Analyses is not always given due consideration when planning for Joint Operations. Likewise, understaffing and delays in procurement has frequently hampered effectiveness of other departments, i.e. when furniture or computers are not yet in place when new staff takes up position.

The Consultant has noted a rather low pace in implementing management decisions in the organisation due to slow information flows through the organisation. This also leads to an unsatisfactory level of dissemination of internal information, e.g. from management meetings. However, also here positive development can be noted in late 2008 through the decision to publish an administrative notice every three months although much information still seems to flow through informal channels.

### **Internal coordination and decision-making**

The weekly management TCG meetings seem not to have been functioning effectively, due to lack of focus and transparency. Hence, the consultant notes with approval that this forum has been abandoned as part of the administrative restructuring of Frontex and replaced by two new organisational bodies: a *strategic* management body comprising the senior management and a more *operational* body, also including the Heads of Units.

### **Financial management**

The financial management has to be developed further in order to reduce number of exceptions and delay in payments. There is a need for more financial assistance to the operational units in order for the units to apply sound financial management.

### **Staff management**

Regular staff assessment and staff satisfaction surveys are new features in Frontex, which still needs to be developed. Key elements are the need for training in financial management and project management as well as in the English language.

### **IT**

Frontex' IT-systems have been expanded considerably, based upon a reassessment of the needs. However, so far the systems do not include secure communication lines, which seriously jeopardise cooperation with e.g. Europol. Also, the extensions have predominantly been installed through the services of external contractors, as Frontex has difficulties in recruiting quality IT staff. This makes the agency uncomfortably dependent on external expertise which is not sustainable in the light of increasing need for improved and high security networks.

### **Communication**

Although Frontex is generally well endowed financially, the budget for information and communication is quite limited. This has the consequence that Frontex is unable to keep full track of the considerable and increasing media coverage of illegal immigration and border control in general and the activities that it is supporting itself in particular, let alone able to respond to it in a systematic manner.

An example is what is perceived as an increasing criticism of Frontex for committing human rights violations during joint operations, which presents a communication challenge that Frontex at present has difficulties in tackling.

### **1.31.3 Assessment and conclusions on effectiveness**

The subject areas mentioned under working practices above all have some degree on the effectiveness of Frontex. In addition, the following issues are of concern:

#### **Cooperation with the Polish government**

The Consultant is concerned that no headquarter agreement has as yet been entered into between Frontex and the Government of Poland. This is an issue that has been on the agenda since the PoW for 2006 and of vital importance to get practical problems related to staff recruitment and arrival sorted out expediently in order to facilitate staff recruitment and enhance staff satisfaction and performance.

#### **Staff matters**

Effectiveness is also impeded by the problems Frontex is encountering in recruiting professional staff. Not only due to practical hassles, but also due to relatively low salary levels in Poland, defined by the s.c. "Correction coefficient" applied by the EC to all EC funded salaries. Until 2008, the coefficient - and hence the salary levels - has been approx. 20% lower in Warsaw than in Brussels, although the cost of living is about the same. However, by 2009 the coefficient has allegedly been modified, thereby reducing the wage-gap.

The extensive use of Seconded National Experts represents a challenge as well as an opportunity for Frontex. On the one side, it makes it possible to fill vacancies at a relatively short notice, on the other, the SNE do not always have relevant qualifications and may carry their experiences and contacts away with them when they return to home countries. Hence, there is a need for a co-ordinated effort to establish a knowledge-sharing system, especially encompassing the SNE.

#### **Benchmarking performance**

It is difficult to gauge whether Frontex has reached its stated goals for agency services, IT, communication etc. This is due to the lack of objectives and indicators for these areas in the annual PoWs and the reporting in the corresponding annual general reports for 2006 and 2007. In the 2008 plan, however, quantifiable targets are set for the financial services.

### **1.31.4 Assessment and conclusions on impact**

The Agency has in its short lifespan focussed on its operational activities. This - and the rapid growth - has had consequences in terms of internal effectiveness of the Agency. In the light of Frontex' overall objectives, this priority has probably meant that the agency has made a greater impact on border management issues than if it had focussed building up internal procedures before going operational. However, in conclusion the consultant finds that it is too early to make a qualified assessment of Frontex' operational set-up's impact on its overall performance.



## Conclusions on implementation of the Regulation

The objective of Frontex is to improve the integrated management of the external borders of Member States according to the Regulation (EC) 2007/2004 Article 1 Paragraph 1 to 3.

The implementation of the Regulations is difficult to assess as the evaluation is conducted at an early stage in the development of Frontex' organisation and its activities. Consequently the indications on implementation are still not fully measurable.

However, on basis of the findings and assessments drawn up in the previous chapters the Consultants ventures the following conclusions as to the implementation of the Regulation:

*Facilitate and render more effective the application of existing and future Community measures relating to the management of the external borders more effectively:*

Frontex facilitates EU measures on integrated border management in its modus operandi to varying degrees. Most predominant are Frontex' achievements in training, in Joint Operations, Joint Return Operations and Risk Analysis. Least developed are cooperation with third countries and follow-up on research.

The Agency has developed networks with EC, EP and Member States which ensure that the Agency is heard and its expertise feeds into the EC decision making.

*Ensure the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders:*

The fact that Member States and Schengen Accession Countries at high level are brought together regularly to discuss and agree upon border management, immigration control and surveillance etc. has in itself created a much higher level of coordination between the Member States on these matters than before Frontex was established. At the operational level, Joint Operations, training and informal and formal networking all contribute to coordination in general, resulting in common and uniform understanding of control and surveillance and an increasing degree of harmonisation.

Two examples supports this finding; *Joint return operations* are in many cases more efficient and faster compared to pure national solutions and *risk analysis* improve the ability to predict the needs for control and surveillance in a holistic way by having the entire external border as a focus area.

*Provide the Commission and the Member States with the necessary technical support and expertise in the management of the external borders*

The dedicated staff at Frontex HQ delivers technical support and expertise to both the Commission and the Member States within all the areas listed in the regulation. Frontex HQ also coordinates technical support and expertise delivered as best practices between Member States.

Technical support is delivered directly to those Member States who make their personnel and equipment available for RABIT teams, FJST and CRATE. This is supplemented by tools such as handbooks (Return Best Practices), ICONet (Joint Return Operations), CIRAM (threat assessment and risk assessment) and networks (FRAN).

One clear indicator supporting this finding is a repeated statement from stakeholders that Frontex increasingly has become a reference point for European IBM.

*Promote solidarity between the Member States*

Before Frontex, Member States seldom would exchange equipment or staff when needed at the external borders. Through Frontex, Member States make their personnel and equipment available for RABIT teams, FJST and CRATE, thereby promoting solidarity between Member States.

Cost sharing for border management through adoption of PoWs and budgets e.g. supporting sea operations in Southern Europe where the risk of illegal immigration is high, underlines the solidarity in the Community approach to IBM.

### **1.32 Summary conclusion**

The Consultants assess that Frontex overall has implemented the Regulation EC 2007/2004 in a speedy manner through a fast start-up and quick results.

Having said this, the Consultants note that the implementation has not been fully implemented in regard to administrative issues such as staff rules, headquarters agreement, dealing with different financial conditions for Member State staff in JO and other internal HQ organisational issues.

Expectations to Frontex are high among stakeholders. This in itself has become an incentive for further development of Frontex. The present Regulation sets the limits for the Agency's mandate which should be respected by Member States and Frontex staff or they should work for an expansion of the mandate through the Council, Commission and Parliament. However, experience has

shown that if there is a common wish for amendments, this is possible as demonstrated by the RABIT regulation<sup>50</sup>.

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<sup>50</sup> The Regulation 863/2007 amends Frontex Regulation by adding a new article 2 (1) (g) on the deployment of Rapid Border Intervention Teams, and amends Article 8 (3) “*Support to Member States in circumstances requiring increased technical and operational assistance at external borders*” and Article 10 (exercise of executive power).

## Recommendations

### 1.33 Recommendations relating to activities

This section starts with general recommendations relating to several activities and is followed by eight sections with recommendations relating to individual activities as presented in chapter 5.

### 1.34 General recommendations

- Frontex annual General Reports should reflect and assess the performance of the agency based upon clear mile-stones and indicators in the corresponding Programme of Work
- Frontex should implement its Information System as a matter of priority and consider adding extra capacity to ensure secure, protected communication with other relevant systems in EU and other organisations
- Frontex should promote a uniform approach to asylum, migration and other Human Rights procedures to participating Member States at all JO, giving full consideration to international protection standards

### 1.35 Specific recommendations

#### 1.35.1 Recommendations related to planning and execution of Joint Operations

- Selection of Joint Operations should be based on priorities established through a risk analysis.
- Preparation time for complex JO should be extended in order to improve effectiveness and ensuring that equipment and staff matches the needs
- Member States should ensure the availability of relevant technical equipment for JO, especially for large scale sea operations.
- Frontex should ensure the availability of updated information on Member States legislation and procedures, on rights to carry weapons and ammunition and regulations on self-defence.
- Host countries should ensure proper planning and logistics of JO to enhance effectiveness of the operations and to promote interest in participating in JO. This includes proper reception, work description and plans, accommodation for foreign participants
- Frontex should insist on English as the working language, including in the SIS checking system for all future JO.
- Ex-ante and ex-post evaluation reports should be analytical rather than narrative and focus on impact, value-added and lessons learned from JO.

#### 1.35.2 Recommendations relating to assistance to Member States on training on national border guards

- Frontex should formulate a clear training strategy comprising training plans with clear objectives, measurable indicators and outputs for each specific training activity.

- Common Core Curriculum should be continuously developed based upon a comprehensive evaluation of present achievements with the CCC.
- Procedures for procurement of services from partnership academies, universities and other training institutions and individual external trainers should be reviewed and streamlined.

### **1.35.3 Recommendations relating to risk analysis**

- Frontex should recruit more staff with a risk analysis research background for the RAU.
- Frontex should consider launching a research project on the "dark number problem" of illegal entries
- A structural cooperation in the field of risk analysis and criminal analysis between Frontex and Europol should be formalised
- EC and EP should give consideration to enable Frontex to handle and disseminate personalised information in order to improve quality and effectiveness of its analyses and research.

### **1.35.4 Recommendations relating to follow-up on the development in research**

- Frontex should carefully consider the value for money it gets from each research project or network it participates in.
- The R&D should have increased focus on collecting and disseminate information on border management technologies to Member States.
- The R&D should disseminate information to a broader audience in a more visible way.

### **1.35.5 Recommendations on technical and operational assistance to Member States**

- Frontex should raise awareness on the RABIT Regulation and requirement among Member States, emphasising the added value and benefits of RABIT.
- Likewise Member States should take a more positive attitude towards part-taking in RABIT and improve their procedures, e.g. replying on time, sending border guards from the RABIT Pool, ensure and specify proper skills, etc.
- Civilian migration officers should be included in RABIT as a way to capitalise on their specific expertise in interviewing third country nationals and fast assessment of asylum claims.
- The core training needs of RABIT should be rolled out in a faster pace in order to increase the quality of skills of border guards participating to RABIT.
- Frontex should undertake a feasibility study on the aspects of contracting assets and equipment to private partners, leasing etc rather than purchase of own equipment as this might give access to more frequently updated technology

### **1.35.6 Recommendations to assistance to Member States in organising joint return**

- Frontex should improve its communication to Member States about upcoming Joint Return Operations
- Frontex should collect experiences and best practices on forced returns and ensure that it is shared with Member States
- Frontex should enhance its cooperation with IOM and UNHCR in order to ensure proper and increasingly uniform procedures are applied, respecting the rights to asylum and *non-refoulement*.
- Frontex should assist Member States in obtaining relevant travel documents for the persons to be returned - this will assist Member States in both joint and national return operations.
- Frontex and Member States should consider including joint returns on land borders to enhance the signal to traffickers and illegal immigrants that protection of the external border is not only a national but increasingly a community issue.

### **1.35.7 Recommendations on cooperation with Europol, other European and international organisations**

- Member States should provide Frontex, Europol and Interpol with relevant personal data and the two latter organisations should process the data and make their conclusions available for Member States and Frontex, thus solving the problem of Frontex not being able to process personal data.
- A comprehensive and holistic approach should be applied on external border management through cooperation with UNHCR and IOM to ensure the incorporation of the protection-sensitive approach to Frontex activities<sup>51</sup>.
- Frontex should continuously assess its need for working arrangement with international organisations and enter into working agreements with the relevant partners on a prioritised basis.
- Frontex should consider establishing a forum for a more formalised and regular contact with Civil Society Organisations, working with Asylum and Migration matters.

### **1.35.8 Recommendations to cooperation between Member States and third countries**

- Frontex should give high priority to establishing working agreements with transit or emigration countries on facilitating orderly return of illegal would-be immigrants intercepted. This will require active involvement of the EC to provide proper incentives to the third countries to participate.
- Frontex should undertake more training activities with border guards from neighbouring countries in order to establish networks and enhance skills and coordination.
- Other border cooperation should be enhanced with third countries through Member States, international organisations and civil society present in the country in question.

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<sup>51</sup> By training FRONTEX and Member States staff

## **1.36 Recommendations relating to structures**

### **1.36.1 Recommendations relating to Frontex' Management Board**

- Frontex' Management Board should develop a multi-annual strategy, based upon a shared vision and understanding of its own role.
- The Management Board should request ex-ante and ex-post evaluations on activities in particular the joint operation's impact and added-value.
- The Management Board should request the Executive Director and the Agency to deliver all documents in due time and draft documents in a text as short as appropriate.

### **1.36.2 Recommendations relating to the Executive Director**

- The Executive Director should give more focus and attention to the challenges in developing internal working practices and processes.
- However, he should also maintain direct links to key decision takers and hold regular bilateral talks with Member States to enhance their commitment and participation in Frontex.
- The Executive Director should ensure that recruitment procedures are speeded up and streamlined to the extent possible in order to i.a. ensure that Frontex' work-programme can be implemented.
- The division of labour between the ED and DED should be made clear in the organisation.

### **1.36.3 Recommendations relating to the Organisational Structure**

- Frontex should insist on concluding a Headquarters Agreement which the Polish government to conclude and solve the many practical problems facing Frontex in general and its staff in particular, possibly with Commission involvement.
- Management should ensure that internal coordination and cooperation within the agency is improved through not only a new organisational structure but supported by active management involvement to develop the proper culture
- Frontex should give priority to developing standard procedures, including financial reporting and management procedures that can be applied to most new activities
- Management must take step to improve internal information dissemination. The staff administrative notices should be supplemented by better dissemination of information for instance by use of Intranet.
- Frontex should devise IT- and HR-strategies in accordance with the needs defined in the overall strategy for Frontex.
- A Frontex Communication Strategy should be devised to enable Frontex to establish an overview of and contribute to the international debate on IBM. The importance of external communication should be reflected in the organisational structure and reflected in the strategic development of the Agency.

- Likewise, Frontex should develop a strategy for cooperating with Civil Society Organisations, notably in Human Rights, Asylum and Migration and hold regular meetings with relevant international networks and organisations.
- Procedures should be established that ensure that deadlines for submission of documents to, e.g. the MB and working groups are respected.
- Reimbursement of Member States expenses must be faster and easier through transparent procedures, better financial management and possibly more resources to the finance unit.
- Staff recruitment and management could be improved through i.a:
  - Developing a comprehensive set of Staff Regulation Implementing Rules for an early submission to the Commission
  - Ensuring better reception facilities, providing information and services for expatriate staff from abroad
  - Assessing training needs among staff thoroughly and adjusting training budget accordingly
  - Training of permanent staff as well as SNE in the competences required for their function (including English language skills).
  - Develop improved understanding of the role of Seconded National Experts - SNE - and their limitations – throughout the organisation.
- The options to achieve a better integration of SNE into the Frontex organisation and for retaining the SNE expertise when returning to the Member States should be examined.
- Frontex must ensure appropriate training for the relevant staff, issue practical guidelines and support the operational units with application of financial management
- Activities must be assessed with regard to what activities are best handled as operations and what activities should be handled as projects. The necessary training in project management (terminology, methodology and finance) should be provided. Frontex should assess the pro and cons on implementing Prince 2 as a common methodology
- External contractors should be used to the extent feasible when it is not possible to recruit highly qualified staff for permanent positions. Permanent staff should, however, supervise external contractors in order to ensure proper anchoring of experiences.
- Until the consolidation of the organisational structure and its processes are completed no major initiatives within organisational development should be taken.