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COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Report on the evaluation and future development of the FRONTEX Agency

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I. INTRODUCTION

1. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) was established by Council Regulation (EC) No 2007/2004¹ (hereinafter the "FRONTEX Regulation"), adopted on 26 October 2004. The Agency became operational in October 2005.
2. The objective of FRONTEX is to improve the integrated management of the external borders of the Member States of the European Union by facilitating and rendering more effective the application of existing and future Community measures related to the management of external borders, i.e. the land and sea borders of the Member States and their airports and seaports, to which the provisions of Community law on the crossing of external borders by persons apply.
3. In the 2004 Hague Programme the European Council requested the Commission to submit a political evaluation of the FRONTEX Agency by the end of 2007. The evaluation should contain a review of the tasks of the Agency and an assessment of whether the Agency should concern itself with other aspects of border management, including enhanced cooperation with customs services and other competent authorities for goods-related security matters. According to the Action Plan implementing the Hague Programme² the evaluation should also cover the functioning of the teams of national experts and the feasibility of a European border guard system. This Communication is the reply from the Commission to this request.
4. It assesses the results so far, while taking into account the short period during which the Agency has been operational, in relation to each of the main tasks of FRONTEX i.e. Article 2(1)(a-g) of the FRONTEX Regulation³. It will make recommendations for measures that can be taken in the short term, within the limits of its current mandate, and outline a long-term vision for the future development of FRONTEX.

Detailed statistical data on the activities of FRONTEX 2006-2007 are presented in a separate annex, including information on objectives and results of each operation and further details on outputs in relation to the different activities of the Agency. An impact assessment is attached to this Communication.

¹ OJ L 349, 25.11.2004, p. 1.

² OJ C 198, 12.8.2005, p. 1.

³ As modified by Regulation (EC) No 863/2007 of the European Parliament and the Council establishing a mechanism for the creation of Rapid Border Intervention Teams ("RABITs Regulation") (OJ L 199, 31.7.2007, p. 30).

5. In 2008 the Management Board of FRONTEX will commission an independent external evaluation to be carried out pursuant to Article 33 of the FRONTEX Regulation. That independent technical and regulatory evaluation will examine how effectively the Agency fulfils its mission, assess its impact and working practices, and take into account the views of stakeholders at European and national level.

II. EVALUATION - ACHIEVEMENTS 2005-2007

A. Coordination of operational cooperation between the Member States in the field of management of external borders

Joint operations and pilot projects

6. The Agency has taken forward joint operations at all types of borders, with in 2006 and 2007 respectively 5 and 4 sea border operations, 2 and 10 land border operations, and 2 and 5 air border operations, and an additional 3 and 2 operations in 2006 and 2007 respectively covering several types of borders. A total of 10 pilot projects (2006-2007) have been implemented to complement the joint operations.
7. Participation by Member States in joint operations can range from the deployment of one expert to the deployment of equipment such as vessels and aircraft. On average, 7 Member States participated in sea borders, 9 in land border, and 11 in air border operations (2006-2007 together). For those sea border operations that have involved maritime patrols (7), between 1 and 4 have participated with equipment in the form of aircraft, vessels or helicopters in each of those operations, excluding the contributions of the host state, with between 0 and 2 vessels in each operation.
8. Due to the need for deployment of equipment in sea border operations the costs involved are substantially higher – on average 2,7 million euro – than for land and air borders respectively: 83 000 and 194 000 euro.
9. Results of joint operations cannot be summarised solely in quantifiable terms. There are other benefits such as exchanging best practices and information between Member States and stimulating day-to-day cooperation between national border guard authorities. Nevertheless the quantifiable results so far must be considered impressive: more than 53 000 persons, for 2006 and 2007 together, have been apprehended or denied entry at the border during these operations. More than 2 900 false or falsified travel documents have been detected and 58 facilitators of illegal migration arrested.

Other related initiatives

10. Following a request from the European Council in December 2006, the European Patrols Network (EPN) started in May 2007. FRONTEX and the Member States concerned (Portugal, Spain, France, Italy, Slovenia, Malta, Greece and Cyprus) are working on a regional basis with bilateral cooperation between neighbouring states. Patrols have been limited to areas close to the coasts of the Member States involved.
11. As requested by the Council in October 2006 the Agency has set up a Central Record of Available Technical Equipment (CRATE), as foreseen in Article 7 of the FRONTEX Regulation, for border control and surveillance. The CRATE database

contains for the moment over a hundred vessels, around 20 aircraft and 25 helicopters and several hundreds of border control equipment such as mobile radar units, vehicles, thermal cameras and mobile detectors. While primarily intended to be used on a bilateral basis between Member States, it provides an inventory of equipment that can be used in joint operations also. So far only a modest use of equipment has been made for the latter purpose (one instance of using border check equipment and one using an aircraft).

12. FRONTEX has faced high expectations from EU institutions, Member States and the public at large to take forward operational coordination to counter illegal immigration at the southern maritime borders. As demonstrated by the results so far, these operations are the most cost-intensive and resource demanding of all the operational activities carried out by FRONTEX. The participation of Member States remains however limited in operations involving maritime patrols compared to other types of operations.

Recommendations

13. Against this background and since the budgetary authority has raised the budget of FRONTEX significantly for 2008 (it now totals 70 million euro), the Commission considers the following factors essential as concerns the short-term developments of operational coordination:
 - The potential of CRATE, and the commitments made by Member States, must be exploited to the full to ensure the availability of the necessary equipment for sea border operations. FRONTEX is invited to report regularly to the European Institutions on the actual use made of the equipment (for operations coordinated by FRONTEX as well bilaterally between Member States) and to what extent this use is adequate in relation to the needs as well as to inform about a mechanism to ensure the availability of the equipment offered by Member States. FRONTEX could also increase the potential of CRATE by acquiring or leasing its own equipment.
 - The FRONTEX Regulation provides for the possibility to set up specialised branches of the Agency in the Member States, through which the Agency may operate for the practical organisation of joint operations and pilot projects. In view of the developments towards permanent operations and the evolution of the tasks for the Agency as a whole, serious consideration should now be given to the setting up of such branches in the appropriate regions and/or with regard to types of border control, with a priority given to a branch for the southern maritime borders.
 - FRONTEX should analyse how the joint operations can be merged with the European Patrols Network, as both measures are of a more structural character and overlaps between them must be avoided.
 - The Commission will review, as a consequence of the substantial increase for 2008, the multi-annual programming of the budget of FRONTEX for the remaining period of the current financial framework and submit proposals as appropriate to the budgetary authority.

B. Assistance to Member States on training of their national border guards, including the establishment of common training standards

14. The activities of FRONTEX in training follow from the previous Ad Hoc Centre for Border Guard Training, whose activities were fully taken over by FRONTEX in 2005. A total of 97 trainings, meetings and workshops including training of border guards and "training of trainers" have been organised with a total of 1 341 participants. The common core curriculum, aiming at standardising the training of border guards all over Europe, is currently subject to review. While the impact of training activities can only be assessed in the long-term, it is clear that the approach chosen with FRONTEX acting as the operational coordinator for training based on partnerships with national academies has proven successful and therefore merits to be expanded.

Recommendations

15. The competences of border guards to apply in a correct and consistent manner the Schengen acquis, in particular the Schengen Borders Code, must remain the key objective of the training activities of FRONTEX. However, the experiences gained from joint operations show that border guards are frequently confronted with situations involving persons seeking international protection or crisis situations at sea (see section II.A). The Commission considers that specialised training courses, including the exchange of personnel, should be organised by FRONTEX on relevant provisions of European and international rules on asylum, the law of the sea and fundamental rights, in order to contribute to the full respect of these norms and to a consistent approach to situations involving search and rescue coordination.

C. Carrying out risk analysis

16. FRONTEX presented its second annual risk assessment in February 2007. A total of 11 tailored assessments had been presented by the end of 2007, and a further 9 are under preparation for completion in early 2008. FRONTEX has been contributing to the Organised Crime Threat Assessment Report (OCTA) and has presented together with Europol a report on the high risk routes regarding illegal immigration in the Western Balkans. Beyond these assessments, which i.a. support Member States in reacting to new threats and in focussing resources to specific sections of the border, risk analysis plays a pivotal role in most activities of the Agency, including the planning of individual joint operations and training activities. In addition the role allocated to FRONTEX under the European Borders Fund is crucial for the allocation of financial resources to the Member States.
17. In 2007 FRONTEX has been connected to ICONet, for the purpose of exchanging information with Member States regarding risk analysis, preparation of joint operations and return. The ICONet was established by Council Decision 2005/267/EC⁴ and is operational since 2006. It is a secure web-based network for information exchange between the migration management services on irregular immigration, illegal entry and immigration and return of illegal residents.

⁴ OJ L 83, 1.4.2005, p. 48.

18. FRONTEX participates in the meetings of the CIREFI, the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration which meets regularly in the Council. CIREFI assists Member States in exchanging information on legal immigration, in preventing illegal immigration and unlawful residence, on combating smuggling of human beings, improving the detection of false or falsified travel documents and on ways of improving return practices. There are clear synergies and economies of scale to be found between the activities covered by CIREFI, the ICONet and the activities carried out by the Agency, with regard to gathering, analysing and disseminating information related to illegal immigration.

Recommendations

- Joint risk analysis with Europol, international organisations and relevant third countries (based on the respective working arrangements) should be given priority, including more frequent geographical and/or theme oriented joint risk analysis, with relevant partners.
- FRONTEX should be entrusted with the management of the ICONet, under the present or another technical platform such as the Frontex Information System; this should also aid in ensuring that better use is made of the immigration liaison officers network, which is also connected to the ICONet; and taking over the activities of CIREFI.

D. Follow up on the development of research relevant for the control and surveillance of external borders

19. FRONTEX has so far implemented 6 projects and 7 workshops/seminars on research and development. New technologies play a vital role for the proposals made in the two Communications presented by the Commission in parallel with this report, on an entry-exit system and measures to automate border control and on a European Border Surveillance System. For the former the BIOPASS project implemented by FRONTEX on the use of biometrics at airports and national registered traveller's schemes provided important input, and for the latter FRONTEX will play an important role in taking forward the relevant studies that will shape the precise actions to be taken.
20. The Agency will also take an active part in the work of the new European Security Research and Innovation Forum, under which a separate working group on border security has been set up.

Recommendations

21. A key priority for the future must be to ensure that the specific interests of border control authorities are duly reflected in research activities. FRONTEX has a unique role in ensuring that the practical needs of national border guard authorities can feed into the definition of future research priorities, as well as for keeping those authorities informed of the latest developments through the organisation of workshops. This role should also extend to the development of practical projects aiming at real life operational testing of new technologies, to assess their feasibility and impact on current procedures and to liaise with the European standardisation institutes.

E. Assisting Member States in circumstances requiring increased technical and operational assistance at external borders, and deploying Rapid Border Intervention Teams

22. The RABITs Regulation, which entered into force on 20 August 2007, has changed in a substantial manner the provisions of the founding Regulation of FRONTEX regarding the support to Member States in circumstances requiring increased technical and operational assistance at the external borders. It provides a "rapid reaction capacity" for a reinforcement of human resources to a Member State in need.
23. The preparatory works for implementing the Regulation were completed by FRONTEX shortly after the Regulation was adopted. 500-600 border guards make up the "RABIT pool". An exercise was conducted during the autumn of 2007. So far no Member State has made a request for the deployment of a RABIT team.

Recommendations

24. The deployment of a RABIT team can be combined with technical assistance in accordance with the provisions of Article 8 of the FRONTEX Regulation. The Commission recommends that this provision be made more operational by FRONTEX acquiring its own equipment for border control and surveillance, to be used by the RABIT teams, in order to ensure the availability of equipment at short notice. Alternatively, equipment listed in CRATE could be used for this purpose also, but the rules would need to be reviewed in order to ensure speedy and unconditional availability of the equipment for the RABIT teams.

F. Providing Member States with the necessary support in organising joint return operations

25. The Agency has provided assistance for the organisation of nine joint return operations. A further 6 projects have been taken forward on issues such as best practices for the acquisition of travel documents and in order to regularly identify common needs for joint return operations.
26. The strengthening of the role of FRONTEX in supporting joint return operations was the subject of an in-depth discussion during the German Presidency, resulting in the adoption by the Council of a set of conclusions in June 2007. The conclusions included a call for Member States to involve FRONTEX when planning and organising joint return flights and to identify needs for joint returns. This is a key task of FRONTEX, but results so far show that the frequency and intensity of that support is lagging behind the progress made with regard to operational coordination.

Recommendations

27. The Commission fully supports the implementation of the Council conclusions of June 2007, which provide an exhaustive set of priorities for the short to medium term. The recommendation put forward in this report (see section II.C) for FRONTEX to manage the ICONet will contribute to enhancing the capacity of FRONTEX for this purpose also. In addition, consideration should be given to reviewing the scope of Article 7 of the FRONTEX Regulation on CRATE, which for

the moment is limited to equipment for border control and surveillance but which could be extended to also cover equipment, including equipment leased by FRONTEX, for joint return operations, such as aircraft.

III. LONG-TERM VISION

28. FRONTEX will be central for the long-term development of the Union's integrated border management strategy. Its role should be expanded as necessary in response to concrete needs, based on a step-by-step approach and a gradual reinforcement of its administrative capacity, and on a continuous evaluation of how it fulfils its tasks. A long-term vision should consider how FRONTEX can provide added value to the integrated border management model as a whole as well as to its individual components, in particular with regard to measures in cooperation with third countries and to measures at the borders. Furthermore, in the context of the integrated EU Maritime Policy, FRONTEX is expected to contribute substantially to achieve more efficient cross-border and cross-sector cooperation between authorities and EU Agencies involved in offshore activities.
29. As concerns the integrated border management model as a whole, the potential of FRONTEX should be exploited for the benefit of the overall Schengen framework. While the scope of issues covered by the mechanism for Schengen evaluations goes beyond the mandate of FRONTEX – covering also visas, police cooperation and data protection - it is clear that FRONTEX could provide added value to these evaluations through its independent status, its expertise on external border control and surveillance and its activities on training and risk analysis. The Commission will present a proposal, as requested by the Hague Programme, in the second half of 2008 for a complementary mechanism for evaluating existing Schengen states, which will include concrete proposals with regard to the possible role of FRONTEX.

A. Measures in cooperation with third countries

30. In the cooperation with third countries, FRONTEX has to ensure coherence between its activities and the overall framework of the external relations policy. The mandate of FRONTEX as concerns cooperation with third countries is limited in the sense that projects aiming, for example, at technical assistance cannot be carried out by FRONTEX in third countries. Consideration should be given to whether FRONTEX should have the possibility of carrying out pilot projects with third countries as beneficiaries. Such projects could significantly strengthen the impact of cooperation launched under the working arrangements, where the latter can serve to identify concrete needs for capacity building with regard to border management in specific third countries, and be complementary to assistance funded through Community programmes. At a later stage, and against the background of the Lisbon Treaty, a reflection could be initiated on what role the Agency can have regarding the participation in European border control missions conducted in third countries.
31. FRONTEX has concluded working arrangements aiming at establishing cooperation at technical level with border guard authorities in Russia, Ukraine and Switzerland. Negotiations are well advanced with Croatia. Mandates have been given by the Management Board to negotiate further arrangements with FYROM, Turkey, Egypt, Libya, Morocco, Mauritania, Senegal, Cape Verde, Republic of Moldova and

Georgia. The Agency foresees requesting mandates in the short/mid-term for the other Western Balkan states, countries of West Africa, the US and Canada. In the short-term, priority should be awarded to strengthened cooperation between FRONTEX and countries which have been offered the perspective of EU membership, as well as those third countries that have been identified as problem areas through the joint operations and the risk analysis carried out by FRONTEX. Building upon the TACIS projects the possibility of developing a cooperation between FRONTEX and Belarus could be explored.

B. Measures at the border

Horizontal integration

32. An improved cooperation between the relevant customs and other border control authorities of the Member States is a key element of the integrated border management model, whereby persons and goods are controlled using similar working methods and risk management approaches. A further analysis of the content of a single window concept, where the activities of border and customs authorities will be fully integrated with each other, should be pursued taking into account the on-going evaluation of the future of customs.
33. The Commission will launch a study for the purpose of identifying best practices in Member States on inter-agency cooperation. To promote cooperation on the ground, pilot projects at European level could further explore the added value of deepened coordination of the activities between these authorities. The Commission recommends FRONTEX, the Commission and Member States to conduct FRONTEX/Commission-led joint operations in coordination with cooperation projects of national customs authorities, ie the implementation of two parallel projects on control of persons and on control of goods respectively at the same time and at the same border crossing points.

Border surveillance - EUROSUR

34. In parallel with this current evaluation report the Commission presents a Communication outlining a roadmap for the development and setting up of a European Border Surveillance System. The role of FRONTEX is crucial for the successful preparation of such a system, including creating a network integrating all maritime surveillance systems, as already noted in the section devoted to research and development in this report.
35. In more operational terms FRONTEX could take on the role as a "hub" for an improved system of exchange of real-time, operational information between Member States. In addition, giving FRONTEX access to surveillance information in a more systematic and structured manner could serve as the basis for the development of a 'FRONTEX intelligence led information system' targeting the external borders of the EU.

Operational coordination

36. Operational coordination has already proved itself the key instrument of the European Union in ensuring operational solidarity between Member States and channelling resources to the sections of the external border with the greatest needs. As stated in the impact assessment accompanying the RABIT proposal, the Commission intends to return to the question of a fully fledged European Border Guard system when experiences have been gathered on the functioning of those teams. It is nevertheless clear that two questions arise already at this stage concerning the organisation of operational coordination in the long term, as concerns maritime patrols.
37. Firstly, how the current system of allocating resources to those sections can be further improved. The Commission will keep under close review the extent to which sufficient equipment and human resources can be put at the disposal by Member States, using current mechanisms, and the degree of reinforcement that the European Borders Fund can provide in the longer term to individual Member States based on the risks at the external borders.
38. Secondly, the cost-effectiveness of the current mechanisms will need to be reviewed in the long-term also having regard to, for example, the administrative costs involved in ensuring the coordination of the deployment of assets and human resources on an ad hoc basis.
39. Further practical experiences will feed into a long-term strategy which will need to consider to what extent coordination of Member States' resources should be replaced with the assignment of border guards and equipment on a permanent basis. A deployment of that nature may call for reviewing the legal framework as concerns the executive powers of the members of RABITs teams and guest officers, and for assessing whether FRONTEX should employ border guards itself and/or whether it should acquire and/or lease equipment for the purpose of permanent operations.

IV. CONCLUSIONS

40. The Commission invites the Council to prioritise a discussion on the recommendations of a short-term nature put forward in this report, having regard to the need to maximise as soon as possible the contribution of FRONTEX for the management of in particular the southern maritime borders of the Union. The recommendations related to the role of FRONTEX in Eurosur should also be taken forward with priority based on the separate Communication presented by the Commission on the establishment of such a system.
41. On that basis an in-depth discussion should be launched on the longer term strategy to be pursued by the Union with regard to the role FRONTEX is expected to play in the development of the integrated border management model, including the reinforced cooperation mechanism with third countries, and in ensuring a sound management of migration flows.

42. Taking into account the outcome of these discussions and the results of the independent evaluation to be carried out pursuant to Article 33 of the FRONTEX Regulation, the Commission will consider presenting legislative proposals to amend the FRONTEX Regulation. In the longer term it will take into account future experiences gained in relation to the new rules on executive powers of members of RABIT teams and guest officers in order to review the need for revisiting the overall legal framework for operations coordinated by FRONTEX.