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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Report of the Conference "The Feasibility of a European System of Border Guards: A practitioner's perspective" organised by Frontex and ERA

Delegations will find enclosed the report of the Conference "The Feasibility of a European System of Border Guards: A practitioner's perspective" organised by Frontex and Academy of European Law (ERA) established by Dr Peter Hibbing (CEPS) and Emilio de Capitani (formerly Secretary of LIBE EP Committee).

9 January 2014

**The Feasibility of a European System of Border Guards:
A practitioner's perspective**

Academy of European Law (ERA) & Frontex
Warsaw, 28-29 October 2013

CONFERENCE REPORT

Established by

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and
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1. Introduction and background

The conference, jointly organised by ERA and Frontex and held in Warsaw from 28 to 29 October 2013, was attended by more than 100 participants, mainly from national border management authorities but also EU bodies/institutions as well as academic research institutes. The full conference programme and background note can be found in the annex.¹ The purpose of the event was to collect – employing a bottom-up approach - input from the practitioner’s point of view, as regards the feasibility of a European System of Border Guards (ESBG).

The ESBG debate has to be seen in the context of the long-term quest for an appropriate governance structure to ensure the management of EU external borders. The process began with the new competences granted to the EU by the Amsterdam Treaty of 1997, which were then re-indorsed by the Tampere Conclusions of 1999, pushed into the limelight of public attention by the events of 9/11, debated during the negotiations of the draft Constitutional Treaty², and thereafter mirrored and developed in the Treaty of Lisbon.

Since then, Article 77 (1)(c) TFEU codified at Treaty level the objective of “the gradual introduction of an integrated management system for external borders.” Article 80 of the same Treaty made clear that: “The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.”

It is worth noting that the notion of an “integrated management system for external borders” (IBM) has not yet been fully translated into EU legislation, despite the fact that the Council has, in its Conclusions of 2006, already highlighted some of its potential composite elements.³ Moreover, the recently adopted EUROSUR Regulation⁴ and the amendment to the Regulation establishing Frontex⁵ are based on the new treaty legal basis, namely Article 77 (2)(d) TFEU. However, and this despite the EU Institutions unanimously supporting the need for a “mechanism or common services to control external borders”, studies undertaken by the European Commission and Council were not able to conclusively resolve the question of whether there should be more of an “integrated force model” or rather a “network of national border forces.”⁶

¹ see Annex.

² Final Report of Working Group X, “Freedom, Security and Justice” to the European Convention (December 2002, p. 17): “Consideration should also be given to indicating, in this legal basis, the possible longer-term perspective of a common European border guard unit operating in conjunction with national border control services”.

³ According to these conclusions: “Integrated border management is a concept consisting of the following dimensions:

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

⁴ Regulation (EU) No 1052/2013 of the European Parliament and of the Council establishing the European Border Surveillance System, O.J. L295/11, 6.11.2013).

⁵ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349/01, 25.11.2004, as last amended.

⁶ cf. Jörg Monar, “The Project of a European Border Guard: Origins, Models and Prospects in the Context of the EU’s Integrated Border Management”, ch.10 in: Marina Caparini and Otwin Marenin (eds) “Borders and Security Governance”, Geneva, Centre for the Democratic Control of Armed Forces (DCAF) publications, 2006.

Although a majority of statements seemed to favour a less centralised format of cooperation, thereby respecting concerns of national sovereignty, the issue has remained formally on the agenda of items requiring clarification from the highest political JHA level. However, since then, new essential political and legislative elements have been adopted which will update and strengthen the relation between the EU institutions and the EU Member States in EU external borders policy.

In this regard, it is useful to recall:

- The strengthening in 2007⁷ and 2011⁸ of the Frontex mandate,
- The establishment of a new permanent framework of cooperation between the EU MS administrations and Frontex in the framework of EUROSUR,
- The 2013 revision of the Schengen Borders Code,⁹
- The revision of the Schengen evaluation mechanism which will strengthen the role of Frontex, the Commission, the Council and of the member states,¹⁰
- The creation of an emergency mechanism for the temporary and exceptional re-introduction of internal border controls following a recommendation from the Council,¹¹
- The creation of new EU agencies dealing with asylum cooperation (EASO) and with the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA).

In addition to these measures others have been proposed by the Commission and in some cases are close to adoption, such as:

- The definition of a new stronger financial framework for border financing for 2014-2020 (currently finalised),¹²

⁷ Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers, OJ L 199, 31.7.2007.

⁸ Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 304/1, 22.11.2011.

⁹ Council Decision No 2010/252 of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union 2010, OJ L111/20. This Council Decision has been cancelled by judgment of the Court of Justice of the European Union on 5 September 2012 (C-355/10) but remains in force until the legislator adopts a new instrument: please refer, next page, to the "draft proposal of the Regulation establishing rules for the surveillance of external sea borders".

¹⁰ Council Regulation (EU) No 1053/2013 Establishing an evaluation mechanism to verify application of the Schengen *acquis*, OJ L 295/27, 6.11.2013.

¹¹ Regulation (EU) No 1051/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, OJ L295/1, 6.11.2013.

¹² Objectives of the Multiannual Programme will notably be according to the Commission proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa COM(2011) 750 2011/0365 (COD).

- Support and reinforce the national capabilities in the area of border control and visa policy and thus expressing financial solidarity with the tasks entrusted to individual Member States at external borders and in consulates in the interest of the border-free area as a public service provided to the Union (national programmes, including "operating support");
- Finance the development of the smart border package, i.e. the setting up of an EU Entry Exit System (EES) and an EU Registered Traveller Programme (RTP);
- Finance the introduction and operation of the European Border Surveillance System, EUROSUR, notably through the purchase of equipment, infrastructure and systems in Member States;
- Reinforce the Schengen governance and the evaluation and monitoring mechanism to verify the application of the Schengen *acquis* by (a) funding the operation of that mechanism under direct management; (b) introducing conditionalities based on compliance with the Schengen *acquis* for the disbursement of operating support to

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- The draft Regulation establishing rules on Frontex sea border operations dealing with matters related to detection, interception, search and rescue and disembarkation also intended to complement the relevant provisions of international law and to provide more legal certainty,¹³
- The envisaged “smart border” package dealing with the establishment of an entry-exit system¹⁴ and a registered traveller programme.¹⁵

Thanks to the new Schengen phase it is now possible to contemporaneously and consistently manage freedom of movement (human mobility), security from external threats (human security with the avoidance of abusive interventions on individual freedoms) and human dignity through the preservation of fundamental rights of third country nationals.

It is worth recalling that **Schengen cooperation** has now become both **an ordinary EU policy** (even if some aspects will continue to be dealt under the former “third pillar” framework until 1 December 2014) and **a very specific one**.

Ordinary EU policy means that methods used in the internal market should also be employed in this domain, indicators should be defined and results should be publicly debated (even if this could create problems at national level). Moreover, the European Court of Justice and national judges will increase their essential roles - as has been achieved already in recent years for asylum and borders policies.

As a **very specific EU policy** it will continue to overlap with traditionally sovereignty-related policies by requiring time from Member States and, evidently, a strong and sincere cooperation. The intervention of the European Union enhances Member States’ responsibilities as borders are no longer only “national” but have become an essential element in ensuring freedom of movement as a European common value. In this perspective the new Schengen evaluation mechanism does not refer only to Member States territory but to a supranational area which requires a European approach. As opposed to the traditional internal market policies, Schengen and freedom, security and justice will enhance Member States’ obligations and will inevitably place national administrations and internal public orders under strain (not to mention potential financial aspects). The Schengen acquis has over the years

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- Member States and (c) requiring Member States to (re)allocate resources received for programmes under this instrument with priority to remedy weaknesses if these have been identified under the mechanism;
 - Boost the operational potential of the Frontex Agency by inviting Member States to earmark additional resources under their programmes for specialised equipment which can be put at the disposal of the Agency for its joint operations;
 - Support the development and implementation of the relevant Union policies in the EU, in and with third countries under “Union actions”, thus improving the overall management of migration flows to the Union (projects managed either directly, such as studies or pilot projects to reinforce co-operation with third countries, or indirectly, in accordance with the Financial Regulation);
 - Have readily available adequate resources to provide emergency assistance in case of situations of urgent or exceptional migratory pressure;
 - Continue support for the functioning of the Specific Transit Scheme for Lithuania,

The instrument will allow for a comprehensive support of the four-tiers access control model underlining the concept of integrated border management (measures in third countries, co-operation with neighbouring countries, border control and measures within the area of freedom of movement).

¹³ Proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, COM(2013)197 – 2013/0106 (COD). It will replace Council Decision No 2010/252 of 26 April 2010.

¹⁴ Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union, COM(2013) 95 – 2013/0057 (COD).

¹⁵ Proposal for a Regulation of the European Parliament and of the Council establishing a Registered Traveller Programme, COM(2013) 97–2013/0059 (COD).

strengthened its internal consistency and this has been strongly protected by the ECJ, notably when it declared that: "... the coherence of the Schengen acquis and of future developments thereof means that the States which take part in that acquis are not obliged, when they develop it and deepen the closer cooperation which they have been authorised to establish by Article 1 of the Schengen Protocol, to provide for special adaptation measures for the other Member States which have not taken part in the adoption of the measures relating to earlier stages of the acquis' evolution."¹⁶

In light of these post-Lisbon perspectives it is perhaps easier now to make a choice between an "integrated force model" and a "network of national border forces." By the end of 2013, a comprehensive review of the situation has been imposed from various sides, i.e. the Stockholm Programme of 2009¹⁷, as well as the Commission declaration¹⁸ lodged at the adoption of the last Frontex Regulation and, last but not least, Article 33(2)(a) of the Frontex Regulation itself which requires that an external evaluation of the agency be conducted which must take into consideration the feasibility of the creation of an ESBG.

The review is currently taking place on two levels, i.e. official ESBG feasibility study as launched by the Commission and conducted by Unisys as well as the present report focusing on the practitioners' point of view as expressed during the October conference in Warsaw. The aforementioned study is scheduled to be published by 15 February 2014 and will take note of the current report.

2. Summary of results

As a general theme one may retain from this conference that participants were largely opposed to any basic, structural change of the current situation: quite distinct from any possible merger concept which might imply a centralisation of functions at a higher level, it was felt that the European level should by no means "replace or take over national border management national systems" but, as sort of a "glue", provide for their structured interaction and efficiency.

If the "glue" consisted of the elements of (1) common acquis/legislation, (2) solidarity principle, (3) an EU operational/capacity building actor in the sense of Frontex and (4) an overall strategy in the sense of an integrated border management concept (IBM), the practitioners' attention would quite naturally be focused on items (3) and (4) with their more practical implications and perspectives.

And yet – despite the reduced focus of options at stake – the future evolution of Frontex and its role and competences still leaves enough room for considerations/variations as regards its design in terms of operations, capacities and cooperation with other bodies.

This equally concerns basic considerations as to the primacy of the national level in border matters: (1) To what extent is this principle still valid in times of enormous budgetary constraints and in view of the growing interdependency between Member States along the border and those off the border? (2) Can we afford the growing tensions between them in case

¹⁶ *United Kingdom of Great Britain and Northern Ireland v Council of the European Union*, Case C-482/08, (2010) point 49.

¹⁷ "invites the Commission to initiate a debate on the long-term development of Frontex. This debate should include, as was envisaged in the Hague programme, the feasibility of the creation of a European system of border guards," The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens (2010/C 115/01), OJ C115/1, p. 56.

¹⁸ The Commission undertakes to launch a feasibility study regarding the creation of a European system of border guards, as referred to in the Stockholm Programme, within one year from the adoption of this Regulation. The outcome of the study will feed into the evaluation foreseen by Article 33(2a) of this Regulation", COM Declaration on the creation of a European system of border guards, 2011.

some of them – due their specific national border approach/resources - are not in a position to effectively manage their section of the border? Everyone was aware of the problem of the “weakest link” and the role that Frontex can henceforth usefully play in the framework of the new evaluation mechanism.

Similar considerations surfaced at various occasions, notably in the framework of discussions on capacities, standardisation, resource management etc.

Another overarching subject raised in various instances concerned the recent Lampedusa tragedy and the wish commonly expressed that everything be done so that such an event may never occur again.

Although the identification of appropriate remedies clearly exceeded the scope of the current conference, it became clear that the existing dichotomy between EU and national legal orders also affects this issue and that Frontex alone cannot resolve the problem.

However, as Frontex is often blamed in the public/media as the “organiser” of the maritime operations in question and thus for any possible incidents related to this, it is recommended to adopt a more outspoken public relations policy clearly indicating the complicated legal/legislative contexts.

Particular attention was paid to recent EU legislation in border matters, notably the Schengen governance package (temporary reintroduction of internal border control, Schengen evaluation), which attributes an entirely new role to Frontex, namely by requiring it to render service via its expertise and information in order to support a more effective Schengen Evaluation mechanism for the external borders.

A similarly crucial role is conferred to Frontex in the framework of the new EUROSUR system which will allow the agency to significantly shape the future of border management in the Schengen area by transforming it into a true common integrated working space. All this underlines a development which does not confer to Frontex a truly executive role, but a function of similar importance.

More detailed findings will be reported in the following sections.

3. Legal considerations

The existence and role of Frontex has been extensively acknowledged by participants as a crucial factor in improving cooperation between border services in Europe and thus stabilising border security in the region. It was furthermore seen as the best option in tackling challenges of the future in view of “avoiding further Lampedusas”.

Nevertheless, a number of difficulties and problems need to be addressed to render EU-wide border management coordination as efficient as possible as this certainly appears necessary in view of the challenges ahead.

A major obstacle to the realisation of the potential of full cooperation lies in the absence of an up-to-date **concept of integrated border management (IBM)**.

As emphasised by a clear majority of participants, the currently IBM definition as established by the Council in December 2006¹⁹ is considered incomplete at least insofar as it does not foresee an appropriate involvement of customs as regards inter-agency cooperation at the European level. It was deemed regrettable that the recent revision of the EU Customs Code²⁰ and the Customs Programme for 2014-2020²¹ was seen as a missed opportunity to strengthen the cooperation at EU and national level of two complementary activities - person and goods-related border controls - as they approach the inter-agency issue from the customs side.

Further objections address the divergence between this definition and other concepts applied at the international level (UN, WCO, US) as well as the EU definition used in external and development cooperation.²²

Besides addressing concrete legal measures, the appropriate enhancement of IBM concepts also involved important considerations of a more strategic, operational and cooperation-related nature which are covered in more detail under section 6 below.

As regards the missing cooperation with customs, one must recognise, however, that the EU hierarchy in customs matters (institutions as well as Member States) has not been able to identify an existing body or establish a new one which could serve as genuine counterpart to Frontex to ensure a synchronised management of travel and trade flows across the external border. Another aspect of concern relates to **accountability**: if the Frontex Regulation, in its current state provides for various forms of accountability (towards the management board (Articles 20, 25(4)), to the European Parliament (Articles 20, 29, 30); in terms of criminal liability of guest officers towards the host Member State (Article 10c)), some further enhancements might also be necessary in respect of transparency. It would be important to keep not only the European but also National Parliaments informed, so as to take into account the essential national dimension of border control activities including Frontex coordinated activities.

The amended Frontex Regulation and the EUROSUR Regulation allow for the processing of personal data by the Agency. The supervision of the Agency's personal data processing shall be consistent with the outcome of the negotiations on the reform of EU data protection rules as well as on the supervision systems for other JHA operational partners such as Europol or Eurojust. The aim must be to strengthen mutual trust and promote the exchange of information whilst safeguarding the highest data protection standards.

Frontex is also reinforcing its mechanism to effectively monitor the respect of Fundamental Rights in its activities (as established by the Frontex amended Regulation). The Frontex Fundamental Rights Officer, in consultation with the Frontex Management Board and the Consultative Forum on Fundamental Rights, is reviewing this internal mechanism in which external information sources are taken into account.

In a future-oriented perspective, one should assess to what extent the most **recent legislative acts in border matters (Schengen governance, EUROSUR)** will provide the basis for

¹⁹ Council Conclusions on Integrated Border Management, 2768th JUSTICE and HOME AFFAIRS Council Meeting, Brussels, 4-5 December 2006, p. 26ff.

²⁰ Modernised Customs Code (Regulation (EC) No 450/2008) of the European Parliament and of the Council of 23 April 2008, entered into force on 1 November 2013, OJ L145, 4.6.2008, p.1.

²¹ Amended proposal for a Regulation of the European Parliament and of the Council establishing an action programme for customs in the European Union for the period 2014-2020 (Customs 2020) and repealing Decision N°624/2007/EC, COM(2012) 464, 2011/0341/a (COD).

²² European Commission, *Guidelines for Integrated Border Management in EC External Cooperation*, 2009.

Frontex to achieve greater coherence of Member States' management activities, including the possibility to promote at the appropriate level the adoption of harmonised rules to the necessary extent (be they on the basis of implementing, delegated or legislative measures²³). There are sufficient indications that the revised Schengen Evaluation mechanism, including Frontex's new obligations, will produce visible results in mitigating the structural differences between partners. It is also expected that the new functionalities created by the EUROSUR Regulation will provoke a considerable boost in the harmonisation of legislation and standards – likely more than what can be achieved through the **EU Policy Cycle mechanism** in the fight against organised crime.

The influence via the EU policy-cycle and COSI appears less stringent, as this process only involves Member States on voluntary basis and does not produce binding effects.

When discussing the roadmap for ESBG – whether it is in favour of a higher or lesser degree of integration (centralisation vs. network) – one will inevitably be confronted by the traditional assumption in EU border policy, i.e. that “**the responsibility for the control/surveillance of external borders lies with the Member States**” (Article 10 Frontex Regulation). This can be seen in the current negotiations on the Commission proposal concerning rules of surveillance at sea during Frontex Joint Operations.²⁴

According to the findings of the conference, a change to this situation of impasse is not foreseeable ((neither on the basis of Article 77, nor through Article 352 TFEU, as the scope of both provisions is too limited to support such measures). However, in the search for a pragmatic common-sense resolution for the benefit of all participants, one could hope that the actors involved will eventually be willing to diminish their reliance on individualistic strategies in favour of an aligned EU approach.

It is recalled that the lack of common standards renders the external border more vulnerable to security risks, it increases management and operational costs which in turn will ring alarm bells with the budgetary authorities and/or courts of auditors. In addition, one should be aware of the risks involved for mutual trust among Member States if due to differing approaches, border security is not duly ensured in all sites.

4. Operations

The complementarity of integrated border management both at national and European levels has been considered a crucial condition for a synergy between the two. Without prejudice to the national legal, operational and even cultural specificities, a more transparent relationship should be established between the EU and national political “actors” (Council, European Parliament and Commission with national ministers and national parliaments). This synergy will be an essential success factor of the EUROSUR Regulation which will oblige the Member States to establish National Coordination Centres (NCCs) and joining together all national public administrations involved in border surveillance. Moreover, a multilevel (national-European) public scoreboard should make it easier to focus in a timely manner on the actions still requiring actions and measures to be taken on each border section. By strengthening the complementarity and even the interoperability of the national and European

²³ For the time being in compliance with “Meroni” case law EU Agencies do not hold regulatory powers. However this evolution could not be excluded according to Advocate General Jääskinen in *United Kingdom of Great Britain and Northern Ireland v Council of the EU and European Parliament*, Case C-270/12.

²⁴ Proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union, COM(2013)197 – 2013/0106 (COD) 12.4.2013. It will replace Council Decision No 2010/252, 26.4.2010.

structures, borders could be better protected and Frontex could become, in a sense, the EU “fire brigade”.

An essential role of Frontex and of the National Coordination Centres will also be to define the possible risks at the borders which should be managed in the wider perspective of the EU internal Security Strategy and of its “policy cycle” under the coordination of the Standing Committee for Internal Security (COSI).²⁵ This Policy Cycle and its EMPACT component, the platform for implementation of its operational actions, has now become a permanent working framework for EU agencies and bodies (such as Europol, Frontex and Intcen) supporting the action of EU Member States (notably focused on irregular migration (Italy) and on trafficking of Human Beings (UK)). It is worth noting, however, that the participation of Member States in the EU Policy Cycle is not mandatory and that its success is also a result of Commission financing. In this respect, one has to welcome the recent adoption of the Multiannual Financing Programme 2014-2020 and the creation of the EU Internal Security Fund (notably covering borders). In this perspective, particular attention should focus on threats outside the EU territory (which will be covered by the Common Pre-Frontier Intelligence Picture foreseen by the new EUROSUR mechanism).

Under the extraterritorial dimension, lessons can be drawn from EULEX conducted by the EU under the authority of UNSC 1284 Council Resolution. The Kosovo has been recognised by 23 Member States, including Greece which has not as yet participated in the EULEX operation. The cost per year is around 110 million EURO mobilising 2250 international and local staff. The international nature of this operation is proven by the fact that it is financed by EU Member States and five other countries including the USA and Canada. EULEX is at the same time both a state building action as well as an operation to protect borders and fight terrorism organised crime. The positive side is that all these public missions are managed in a consistent way (with even customs controls being involved) and can, as such, be considered a clear case of “integrated border management”. The tricky issue is that the legal framework is incomparable to those currently existing in EU Member States and that an essential role is played by international law and UN standards.

Even more interesting is the experience had at national level (Italy for instance) in the relations with third countries such as Libya and Tunisia. These kind of relations can be very specific whilst simultaneously cover all the relevant aspects connected to an integrated border management system extended to the pre-border area for the purposes of preventing human trafficking and irregular migration whilst acquiring intelligence related formations in the third country territory. On the basis of the Italian experience the main weaknesses with this method is that in third countries border controls are typically weak and consequently can require a large amount of EU Member State support (sometimes even to fully establish land or maritime border infrastructures). The EUBAM operation has attempted to cover all these aspects even if it is done in the CSDP framework, as is also the case also for other Joint EU operations such as Atalanta off the Somali coast. Essentially the dilemma posed is that these operations can be as expensive as they are effective. Italy is currently employing military means and implementing an ambitious maritime operation (“Mare Nostrum”) associating the national police, Guardia di Finanza and Border guards and an evaluation will be done before the end of 2013. The results of this integrated full scale operation will be communicated to other Member States and the EU institutions as well as Frontex which can take these into

²⁵ Article 71 of the Consolidated version of the Treaty on the Functioning of the European Union (TFEU), OJ C 326/74, 26.10.2012.

account within the context of the Hermes and Aeneas Joint Operations. A lesson learnt is that success in tackling Trafficking of Human Beings can be a strong deterrent in other regions.

The new Frontex role in joint operations has also been highlighted. Joint operations are a unique tool for providing comprehensive situational awareness and timely reaction capabilities. Member States seem happy for Frontex to maintain its role as the Centre of excellence and promoter of best practices. In joint operations the solidarity between participants is strengthened, as is their mutual trust. It became clearly visible that on the operations-side the Frontex model for **joint operations (JOs)** has turned out to be a valuable tool for organising such exercises. On the basis of the “excellence” achieved, further extensions should take place, possibly to cover exercises which had, so far, been strictly national. Furthermore, initiatives with third countries (liaison officers, financing of local projects) should also be strengthened. The new EUROSUR Regulation will require even more detailed studies and impact assessments of EU border sections to retain a comprehensive situational picture and avoid any possible mass influxes of irregular migrants.

5. Capacities

This panel served to provide a very clear account of existing possibilities for enhancing capacity building (which have been continuously improved in recent years), but simultaneously, observed some tendencies of decreasing willingness for common action.

Existing opportunities in terms of **equipment, training and funding** should be used to an utmost extent, and the perspectives for the future development of research in border-related technologies should equally not be neglected (in particular as regards automated border control (ABC)). It was underlined that a better awareness among border authorities of existing funding research programmes (FP7, Horizon 2020) appeared indispensable. Wherever future-related developments were at stake, state authorities, and not industry, should be the driving forces of progress.

In the current budgetary climate, an enhanced synergy between Member States should be achieved, in particular by means of joint procurement programmes. **Interoperability and standardisation** should be the keywords. It is only natural that in such austere times, every euro is under close scrutiny and budgetary authorities, including the Court of Auditors, must be particularly attentive towards cases of waste, duplication and mismanagement.

As a primary measure in this context, it would be desirable that Member States regularly provide Frontex with information on available staff, equipment and infrastructure so as to establish a “**resource picture**” (in parallel to the existing threat picture).

As regards training, the aim should be the development of a **common European Border Guard culture/identity**, whereby interfaces with other related services (police, customs, immigration) should be kept in mind, including joint training schemes such as LETS.

In terms of IBM staff training, some divergences between various concepts were addressed in the case of the **EU accession countries** which first obtained training on the basis of the IBM Guidelines for the Western Balkans (today, the EC Guidelines for External Cooperation) before they became familiarised with the EU Schengen concept as laid down in the JHA Council definition of 2006.

6. Inter-agency cooperation

Within the field of inter-agency cooperation (IAC), the absence of a unique and comprehensive IBM concept was deemed regrettable: although IAC (including cooperation on customs) has worked correctly up to a point in certain Member States, such a scheme had not yet been accomplished at EU-level despite various efforts undertaken by the Commission services concerned (DGs HOME and TAXUD) and Frontex. Such an extension of the scheme appeared highly desirable as to allow cooperative measures at European scale and not only in the area of security (EWS, risk analysis, etc.) but also facilitation (e.g. one-stop procedures, green lines/corridors, etc.). The appropriate updating of the current IBM strategy, as well as the creation of appropriate IBM guidelines/handbook, were recommended as very helpful measures in this context.

Further suggestions concerned the following items:

- EU level cooperation should be streamlined between the relevant agencies (Frontex, Europol, EMSA, EASO) but also with the Commission services (DG TAXUD, HOME, EEAS) and Council bodies (such as Customs Cooperation Working Party).
- All relevant actors and authorities should be involved in the revision of the IBM strategy and Handbook (ensuring a common understanding and commitment).
- Cooperation with third-countries representing a vital issue, EU and Member States should improve the coordination of such actions. As a starting point, a comprehensive overview of finalised, ongoing and planned actions would be needed.
- Interoperability between different IT systems (regardless of the owner) should be established to improve information exchange between the authorities concerned and to conduct and enrich (risk) analysis.
- Fundamental rights and data protection issues should always be respected and involved (IBM, IAC).
- More joint actions (joint risk analysis, training...) and an increased information exchange should be conducted. Appropriate training is needed to improve mutual understanding and ensure officials are familiar with the cultures and processes of other authorities.

Similarly regional cooperation models (partially with non-EU, non-Schengen participation) such as the **Baltic Sea Cooperation (BSRBCC)** were presented as useful inter-agency examples covering wide ranges of competence such as law enforcement and maritime safety. Further well-functioning national border control and custom cooperation models such as the Polish system were presented.

The panel also looked at the **UK-system of merging immigration and customs into one single service (UK Border Agency)** in view of improving both security and fluidity at border crossings and demonstrated how this had also not involved any increase in budget. This implied flexibility in staff deployment (e.g. multifunction teams of immigration and customs specialists), the use of shared intelligence and other advantages. The system had satisfactorily passed a first large-scale efficiency test during the London Olympic Games in 2012.

7. Conclusions and recommendations

On the basis of discussions held and references made during the conference, the following conclusions and recommendations merit to be retained in view of the actions to be taken in the follow-up to the event.

7.1. The current EU concept of integrated border management (IBM) should be updated to include, in particular, inter-agency cooperation with customs, police, migration, asylum and maritime authorities at the European level. Frontex should be involved in the updating process in the light of its expertise and practical implication in the cooperation mechanisms at stake. The creation of a common handbook and or common guidelines should also represent a priority measure.

7.2. The overall objective of the ESBG reform project should be a European system ensuring secure and efficient borders which simultaneously complement other Human mobility related policies (such as migration and asylum as detailed by Articles 78 and 79 TFEU) whilst ensuring full compliance with the EU Fundamental Rights Charter. The external dimension of the border policy and the Frontex cooperation with EEAS, Third Countries and international organisations should always comply with the highest EU legal standards.

7.3. A possible future European System of Border Guards (ESBG) should not have as its intention the replacement of the national level of border management but rather the creation of a complementary stage providing for more effective cooperation, coordination and capacity-building.

7.4. Taking account of recent reforms to Schengen governance legislation (i.e. Schengen evaluation mechanism and the possibility of temporary reintroduction of internal border controls) and the important role attributed to Frontex, future reforms should by all means build upon the considerable expertise and management capacities already accumulated by this agency.

7.5. In view of Frontex's main objective to support the development of national border management capacities, including their preparedness to react appropriately to rapidly evolving risk scenarios, Frontex could be vested with some regulatory power in technical matters.

7.6. Further reform measures could include the extension of Frontex's coordination role to maritime exercises so far managed at national level.

7.7. A decisive role could be attributed to Frontex in the fields of interoperability and standardisation of equipment and training as well as the creation of a European Border Guard culture and identity. Information routinely transmitted by the Member States should allow Frontex to establish a "resource picture" (in addition to the existing "threat picture" mechanism).

7.8. In addition to existing accountability mechanisms, further forms of enhancing transparency of Frontex activities vis-à-vis the European and National Parliaments should be examined and which should be inspired by the arrangements being made for other major EU JHA Agencies based on the relevant Treaty provisions.

7.9. In issues of a high public impact and media attention such as the Lampedusa-type incidents, it is suggested that Frontex be in a position to explain the circumstances and point to the limits of its competence and responsibility.

7.10. In full recognition of the current primacy of the national level in border matters, one could nevertheless count on a certain shift of focus towards the establishment of a "consistency mechanism" between national EUROSUR coordination centres as well as a more

centralised European responsibility in view of budgetary constraints and trust-related pressure on individual Member States situated at the external border.