

**MANAGEMENT BOARD DECISION No 40/2015**  
**of 28 October 2015**

**adopting recommendations of the Management Board following the  
evaluation of Frontex (Article 33)**

**THE MANAGEMENT BOARD**

Having regard to the Frontex Regulation<sup>1</sup>, in particular Article 33(3) thereof,

Whereas:

- (1) The findings, conclusions and recommendations in the final report of the external evaluation of Frontex were received on [date] and carefully considered by the Management Board.
- (2) The comments and suggestions to the findings of the evaluation were discussed during the 55<sup>th</sup> meeting of the Management Board and addressed by a number of Member States in writing.

**HAS DECIDED AS FOLLOWS:**

*Article 1*  
**Object**

The recommendations of the Management Board issued following the evaluation of Frontex (Article 33) annexed hereto are adopted.

*Article 2*  
**Entry into force**

This decision enters into force on the day of its adoption.

Done in written procedure, 28 October 2015

For the Management Board

[signed]

Ralf Göbel  
Chairperson

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<sup>1</sup> Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operation Cooperation at the External Borders of the Member States of the European Union OJ L 349, 25.11.2004, p.1, as last amended.

# Recommendations issued following the evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) approved by the Management Board on 28 October 2015

## Foreword

In line with Article 33 of Regulation (EC) 2007/2004, as amended by Regulations (EC) 863/2007 and 1168/2011 (hereinafter ‘the Regulation’), the Management Board of Frontex commissioned an independent external evaluation of the implementation of the Regulation. Following a competitive tender, the study was carried out by a consultant who worked according to terms of reference agreed by the Management Board and under the guidance of a Steering Committee composed of Board Members.

The report was forwarded to the members of the Management Board on 29 July 2015 and discussed during the 55th meeting in 10 September 2015.

The Agency and the Management Board found that the consultants had completed their work in line with the terms of reference. Notwithstanding some weaknesses in the analysis and evaluation of the information and views gathered from interested parties, the Management Board has found the consultant’s work to be a helpful exploration of the current state of affairs, and an acceptable basis on which to prepare the recommendations set out below.

Based on the experiences since the last amendment of the regulation and taking into account the results of the external evaluation and the Commission’s feasibility study, the Management Board is of the opinion that:

- Frontex’s coordination of **Joint Operations** was effective as having successfully carried out its tasks in terms of coordination and the development of operational plans;
- Frontex’s activities have been very effective in supporting the coordination and organisation of **Joint Return Operations** and that high quality and accurate **risk analyses** were carried out on time;
- Frontex’s operational activities have positively contributed to the **improvement of integrated management** of the external borders of the MSs;
- By providing high-quality and up-to-date information on the risks and situation at the external borders, Frontex has facilitated the application of **more effective measures of external border management**;
- Through its operational and risk analyses activities, Frontex has contributed to achieving an **efficient, high and uniform level of border control** at the EU external borders and has facilitated the movement of travellers whilst ensuring border security;
- The Agency has clearly provided **added value** to the border management activities of Member States;
- **Efficient working practices and procedures** are in place in the area of operational cooperation. The coordination and implementation of JROs and risk analyses activities were highlighted as particularly good examples;
- **Cooperation between the Agency and the Member States** with regard to operational activities is generally effective and the establishment of the NFPOCs is contributing to a more streamlined cooperation;
- The Agency has also been particularly effective in the provision of assistance to Member States’ **training** of national border guards and has also fulfilled its mandate in the area of **research and development**;
- Frontex’s activities have contributed to **improving the border protection capacity** of Member States, as well as **access to relevant technical and human resources** for operations at the external borders, and **knowledge and development of technical equipment** for border surveillance and control;
- Collaboration with EASO, Europol, EU-LISA and FRA was an important milestone in the work of the Agency;

- Frontex has contributed to an **improved integration of external border management** through the Agency's horizontal activities;
- Frontex has introduced a number of initiatives to ensure that working practices and procedures contribute to effective operations; and
- The appointment of the Fundamental Rights Officer and the establishment of the Consultative Forum have **contributed to ensuring and promoting the respect of fundamental rights** in the Agency's activities.

Independently of these findings, that Management Board are convinced that there is room for improvement in the areas set out below.

Frontex should strengthen its operational response capacities and its capacity to respond to the rapid developments of migration flows. To this end, the **Agency needs sufficient funding and staffing**.

Regarding the need for further coordination by Frontex, the Management Board believes that such need can be identified in the area of **Joint Return Operations**. The need for further increased coordination was also recognised for the **risk analysis** element to management of the external borders. In this context, the **cooperation with third countries** is another area where a need for increased coordination through Frontex can be seen.

The strengthening of the coordination role of Frontex should include **further considerations of a European System of Border Guards**, based on a feasibility study, and in line with the share of competences between the Union and the Member States.

On the basis of these findings and with the aim of finding a remedy for these shortcomings, the Management Board presents its recommendations below.

## **Recommendations related to changes of the Council Regulation 2007/2004, as amended by Regulations (EC) 863/2007 and 1168/2011**

### **Recommendation 1 - Enhanced role in the implementation of return operations.**

In the context of hot spots and in agreement with the responsible Member State, Frontex should be enabled to initiate, organise and/or finance return operations to the benefit of only one Member State. Furthermore, Frontex should be enabled to provide pre-return assistance. This may require the immediate identification, registration and where appropriate, limitations to free movement of people obliged to leave the territory of the Member State concerned. The competent Member State should have the necessary powers to do so. This is also basic prerequisite for a Frontex coordinated support.

#### *Further explanation:*

*The Management Board proposes that Frontex should have a stronger role in the field of return operations. Frontex should further develop its support to MSs and be able to organise return operations within a short period of time.*

*To contribute to a quick response and an efficient return policy, Frontex should contract appropriate assets. As a result the number of illegal migrants that can be returned should increase significantly. To this end, Frontex should develop its pool of return teams and a monitoring team with regard forced returns.*

*Frontex should be enabled to provide pre-return assistance (e.g. on the field of acquiring travel documents, strengthening return capacity of Member States) and initiate return operations in cooperation with the MS concerned; to this end, enhanced information sharing dedicated to swift return of returnable migrants should be carried out.*

*In the context of hot spots, Frontex should be enabled to organise and/or finance return operations to the benefit of only one Member State (in agreement with this MS). With the support of EEAS, Frontex should continue to conclude working arrangements with third countries to enhance the implementation of the EU return policy. In this regard, Frontex' Liaison Officers deployed in those countries should cooperate with the local, competent authorities contributing to the identification of illegal migrants and prepare and assist repatriation operations. Return capacities of third countries should be strengthened. Frontex should make use of existing capacities and expertise, for example available in the EURINT, ERIN and EURLO Networks.*

### **Recommendation 2 - Rapid Border Intervention Teams**

Frontex should be legally enabled to propose a deployment of the Rapid Border Intervention Teams (RABIT) for a limited period of time, if a Member State faces a situation of urgent and exceptional pressure. After consultation with the Management Board, the Council and the Parliament should be informed by the Agency about the outcome of such consultations.

#### *Further explanation:*

*The Agency shall base its proposal on risk analyses according to Article 4 of the Regulation. In order to use the rapid intervention mechanism in a more flexible way, Frontex should, based on risk assessment, procure relevant technical equipment and services. Frontex should explore possibilities to complement a RABIT mechanism by using the Seconded Guest Officer scheme.*

### **Recommendation 3 - Increased responsibilities to support the Hot Spot approach**

The tasks and powers of guest officers deployed by Frontex (identifier, debriefer, and screener) have to be assessed in light of the current Hot Spot approach in Italy and Greece in order to specify them in the Frontex regulation. The execution of coercive measures, as foreseen in the Eurodac Regulation has to be clarified and aligned.

Further explanation:

*The Hot Spots is an approach related to joint operations. A Hot Spot is understood as a holistic operational response applicable to areas of significant migratory pressure at external borders. Its main purpose is assisting a Member State to distinguish migrants in need of international protection and illegal migrants in a form of a coordinated support from the EU agencies. A swift return of migrants who are not eligible for asylum should be achieved. For such purpose a systematic identification (including the use of finger prints), screening and debriefing has to be done. A close cooperation between host Member States' border guards, Member States' experts deployed by Frontex, and Member States' experts deployed by other agencies (EASO, EUROPOL, Eurojust etc.) is needed.*

### **Recommendation 4 - Cooperation with Third Countries**

Frontex should initiate an approach to analyse the potential of illegal migration in the relevant countries of origin and the transit countries. This will create the basis for needs-based training and equipment assistance. It will also develop an effective border management scheme. This applies in particular to EU candidate countries.

Competent authorities of Third Countries could participate in joint border operations and return operations coordinated by Frontex, provided that certain requirements are met. The role of Frontex and the status of the Member States' experts deployed by Frontex in the context of third country related activities should be clarified.

Further explanation:

*The Management Board recommends that the mandate of the Agency related to cooperation with Third Countries should be further strengthened to better prevent and fight against illegal migration and border related crime.*

*Frontex should support the development of effective border management schemes in relevant Third Countries. In particular, this includes the future development of the coordination points approach and the deployment of Frontex' Liaison Officers. Frontex should also enhance capacity building measures, related to integrated border management.*

*Frontex should initiate an approach to analyse the potential of illegal migration in the relevant countries of origin and the transit countries so as to create the basis for needs-based training and equipment assistance. This will develop an effective border management scheme. Further down this line, Frontex might take part in training and equipment assistance projects (along the lines of bilateral training and equipment aid provided by Member States on a bilateral basis) or in the field of CSDP missions of the European Union.*

*Nevertheless, Frontex main activities and focus should remain on measures of external border control. Competent authorities of Third Countries could participate in joint border operations and return operations coordinated by Frontex, provided that certain requirements are met.*

*The role of Frontex and the status of the Member States' experts deployed by Frontex in the context of Third Country related activities should be clarified. Any deployment of Member State' officers for CSDP missions outside the EU should be accompanied by consent of a Member State in question.*

*A flexible approach to finance operational activities in relation to Member States and Third Countries is required.*

## **Recommendation 5 - Monitoring secondary movements**

The Management Board proposes that Frontex should be entitled to monitor the movements of illegal migration across the internal borders of the EU Member States.

### Further explanation:

The so called 'secondary and intra-Schengen movements' play an increasingly important role in the context of the management to external borders. A short-term exchange of relevant information is required in order to enable a holistic assessment and rapid compensatory measures. The common communication network EUROSUR can be used for this purpose. Furthermore, Frontex has an increasing role in preparation of joint operations launched by the Council presidency.

## **Recommendation 6 - Facilitation of financial management**

The Management Board recommends abandoning the limitation introduced by the Frontex Regulation by mentioning grants. Contractual relationships between the Agency and its beneficiaries could pave the way for a more efficient financial management.

### Further explanation:

*Taking note of the Agency's efforts to streamline processes as much as possible and practical consequences for border services of the Member States in case of late reimbursements, the Management Board recommends abandoning the limitation introduced by the Frontex Regulation by mentioning grants.*

*After 10 years of experience going along with a considerable growth in resources, both human and financial, the Agency should be prepared for a general overhaul of its financial management.*

*Whereas the Frontex Regulation requires the Agency to (co-)finance its operational activities with grants, this financial instrument proved not to be appropriate for the tasks of the Agency. Grant schemes lack flexibility, preparation and reimbursement procedures. They are also lengthy and cumbersome. This impacts negatively on the budget implementation of the Agency; the reimbursement of grants takes many months after the end of operational activities, as supporting documents proving the real costs borne need to be collected.*

*Contractual relationships between the Agency and its beneficiaries could pave the way for a more efficient financial management. These changes will also have a positive impact on the use of resources. Less staff will be needed to process claims and could be used for more operational purposes. Changes to the financial management procedures should also foresee increased, frequent and ad hoc reporting on the use of resources (e.g. before call for contributions) to the Member States.*

## **Recommendation 7 - Duration of secondment of guest officers (SGOs)**

In order to react more flexibly to operational needs and also to ensure continuity of the activities of each Agency, the Management Board recommends increasing the maximum time for the secondment of a guest officer to one year and also establishing a minimum duration of secondment to three months.

## **Recommendation 8 - Updating EU Integrated Border Management concept**

Based on the Council Conclusions from 4-5 December 2006 and the catalogues on external borders, the Management Board proposes that EU Integrated Border Management concept should be updated.

*Such an update should cover the following issues:*

- *Clear definition of the role of Frontex, EU agencies (EEAS, EASO, Europol, EMSA, eu-LISA, CEPOL, FRA, etc.) and other bodies cooperating in the framework of the EU-Integrated Border Management concept;*
- *Frontex coordinated cooperation between Member States (Solidarity);*
- *Activities inside the territory of the Schengen States and between Schengen States;*
- *EU inter-agency and national inter-service cooperation (border guards, customs, police, immigration services, security and other relevant authorities);*
- *Enhanced cooperation with Third Countries; and*
- *The use of new technologies for border control.*

## **Recommendation 9 - A European System of Border Guards (ESBG)**

The Management Board proposes that the operational cooperation at the external borders of the Member States should be further developed.

The future European System of Border Guards should be understood as a system of European Border Guards Teams and a Technical Equipment Pool.

As part of its coordinating function, the Agency has an important role in this regard. Utilising the principle of solidarity, this development should enable an improved and more flexible cooperation between the competent authorities.

*The ESBG should consist of the following elements:*

- *The European Border Guards Teams (Guest officers, GOs);*
- *The Upgraded use of Seconded Guest Officers (SGOs);*
- *Clearly defined tasks, powers and responsibilities for SGOs and GOs in the scope of debriefing screening and identification in hotspots;*
- *Deployment of Rapid Border Intervention Teams to enhance reaction capacity in emergency situations;*
- *The Technical Equipment Pool;*
- *The use of Frontex own/leased/rented technical equipment;*
- *The Hotspot concept (Frontex contribution);*
- *The Eurosur framework;*
- *Frontex-coordinated support in the field of return operations;*
- *Training Teams; and*
- *Common operational standards and code of conducts.*