



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels, 08 DEC. 2009
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Opinion

Title **Impact Assessment on: Proposal for a Regulation of the European Parliament and of the Council 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 (Frontex)**

(draft version of 4 November 2009)

Lead DG **DG JLS**

1) Impact Assessment Board Opinion

(A) Context

The Frontex Agency was established in October 2004 by Council Regulation 2007/2004 and became operational in 2005. The 2008 Commission Communication on the evaluation and future development of the Agency (COM(2008) 67 final), accompanied by an Impact Assessment, recommended that the Agency's legal mandate be revised. On 3 July 2009 Frontex's Management Board addressed a series of recommendations to the Commission concerning changes to the Agency's legal mandate, based on the results of an independent evaluation of the Agency carried out in 2008 in accordance with Article 33 of Regulation 2007/2004. Both the Council and European Council have called for a reinforcement of the Agency. This impact assessment accompanies a proposal to amend the Frontex Regulation.

(B) Positive aspects

The report is clearly written and structured.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments will be transmitted directly to the author DG.

General recommendation: The IA report needs significant further work on the analysis of the value-added, in terms of stemming flows of illegal border crossings or of enhancing the efficiency of border management, of the various options for changes in the Frontex regulation and the activities of the agency. The IA should

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clarify the extent to which the problems it identifies result from shortcomings in the current mandate of Frontex or from other factors, such as the lack of political will on the part of Member States to make greater use of it. Subsidiarity and proportionality issues need to be analysed more fully, in particular for those options which would lead to an increase in the role and responsibilities of the agency. Finally, the IA should provide a clearer indication of the costs and benefits of the different policy options, where possible with quantitative estimates.

DG JLS agreed to improve the IA report along these lines during the IAB meeting. Given the fundamental nature of the changes, the Board requests DG JLS to submit a revised IA report on which it will issue a new opinion.

(1) The IA should clarify the extent to which the problems it identifies result from the current mandate of Frontex or from other factors. In particular, the IA should assess to what extent the problems, for example in the case of joint operations, result from a lack of political will on the part of Member States to contribute to and cooperate with Frontex. It should provide concrete examples for the problems it identifies showing, for instance, the actual shortfall between the equipment needed by Frontex for joint operations and that provided by the Member States. On the specific issue of obstacles to Frontex buying/leasing technical equipment for joint operations, it should clarify the exact nature of the problem given that the legal basis for this already exists. The problem definition should also provide a clearer baseline scenario which demonstrates the negative effects of maintaining the status quo on the management of the EU's external borders, and against which the costs and benefits of the different options can be judged.

In the problem definition, the IA should also clarify from which sources the selection of specific problems has been made, and the rationale for these choices: the Commission's 2008 Communication, the external evaluation of the Agency, the Management Board's recommendations to the Commission, and the Council and European Council conclusions concerning Frontex.

(2) The subsidiarity and proportionality analysis should be strengthened, and for certain options the impact on fundamental rights should be clarified. Although the IA states that the proposal will not affect the division of competences between the EU and the Member States (p.17), certain options and sub-options seem to enhance the roles and responsibilities of Frontex compared to those of the Member States. This is the case, for example, for the sharing of tasks in joint operations and for joint returns. For each of these issues, subsidiarity and proportionality should be analysed in greater detail. The IA should also clarify those sub-options which may be problematic from the point of view fundamental rights, in particular sub-option 1, §5.5.

(3) The IA should provide a clearer indication of the expected costs and benefits of the different policy options both for Member States and for Frontex. Where feasible, the IA should provide quantitative estimates of these costs and benefits or at least give examples to illustrate the expected costs/savings of the different sub-options. In particular, it should demonstrate more clearly why it is more efficient to transfer resources to Frontex rather than for Member States to use them directly themselves. In terms of the Frontex budget, the report should explain in greater detail the statement (p.41) that while the budget impact of the preferred option is "potentially very high" it can be accommodated within the current budget.

(D) Procedure and presentation

The IA should clarify to what extent relevant stakeholders have been consulted and present the consultation findings more systematically in the report. Given the short time available for the Impact Assessment Steering Group to discuss the first version of the report, it is recommended that DG JLS consults the Group on the revised text before it is resubmitted to the Board.

2) IAB scrutiny process

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