



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

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Opinion

Title

DG JLS - 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) (RESUBMISSION)

(draft version of 17 December 2009)

(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.

(B) Overall assessment

While the IA report has been improved along the lines of the IAB's first opinion, a number of elements still need further work. As a basis for comparison of the policy options, the problem definition needs to explain more clearly what is expected to happen under the baseline scenario with the detection rate of illegal border crossings and the efficiency of border management. The report still needs to address more fully subsidiarity and proportionality as regards enhancing Frontex' capabilities at the expense of individual Member States' resources and responsibilities. It should adjust the presentation of the cost figures so that the expected budgetary impact of the different sub-options can be compared, including possible efficiency savings.

(C) Main recommendations for improvements

(1) Provide a more comprehensive baseline scenario. The baseline scenario should attempt to provide a more comprehensive description of the implications of maintaining

the status quo (i.e. maintaining the Agency's activities at 2010 levels (p.16)). For instance, all other things being equal, would the detection rate of illegal border crossings increase or decrease; would the efficiency of border management increase or decrease?. This would provide a better basis for identifying the proposal's specific objectives and demonstrating the value-added of the policy options.

(2) Explain more fully how the policy options respect the principles of subsidiarity and proportionality. The report states that the proposal does not seek to change Frontex's objectives, but rather enhance its ability to fulfil them (p.17). The report should attempt to explain more clearly the value added compared to action of the Member States of those options which involve compulsory contributions of equipment and human resources from the Member States, and "co-leadership" of joint operations. The report should be more precise about the basis on which the Management Board will decide on these compulsory contributions, and on the practicalities of sharing responsibilities between the host Member State and Frontex in the "co-leadership" of joint operations.

(3) Further strengthen the analysis of expected costs and benefits. Although the report provides more cost figures in sections 5.1 and 5.2 (technical equipment and human resources for joint operations), it should present them in such a way that the expected budgetary impact of the different sub-options can be compared. While section 6.2.2. on costs currently emphasises the difficulty of identifying ex ante the future activities of the Agency, the report also presents an estimate of future resource needs based on risk analysis and operational experiences (p.11). This estimate, and the analysis which underpins it, should be used as a basis for establishing the expected costs of the policy options. The report also still needs to provide a clearer indication of the expected efficiency savings of increasing the role of Frontex in joint returns and enhancing joint operations.

(D) Procedure and presentation

The IA report should include a dedicated section providing more information on the specific changes made in response to the IAB's recommendations.

(E) IAB scrutiny process

Reference number	2010/JLS/001
External expertise used	No
Date of Board Meeting	Written procedure The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 8/12/2009.