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**FRONTEX:
the EU external
borders agency**

Report with Evidence

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FOREWORD—What this report is about

The twenty-seven Member States are an area of increasing prosperity, and with external land borders of 8,000 km and sea borders of 80,000 km, migration to these countries is a considerable attraction for those seeking the chance of a better life, or simply trying to escape from their own countries for whatever reason. The abolition of nearly all the internal borders makes it all the more important that the external borders should be efficiently policed, and that there should be close cooperation between the border guards of the different States. The management of that cooperation is the task of Frontex.

Frontex is a relatively new agency, set up less than three years ago, and operational for barely two. As the importance of its work is increasingly recognised, its budget has doubled every year, and much is expected of it by the institutions and the Member States—perhaps too much. We have looked at its constitution and working methods, and at what it has achieved in the course of its brief existence; and we have made suggestions as to the direction its future work should take, and how its accountability might be improved.

Immigration affects the Member States differently. Some have no external borders other than their airports; others, and Malta in particular, are by their position particularly vulnerable to illegal immigration on a scale they can barely cope with. We have made suggestions as to how such immigration is best managed, what part other Member States can play in sharing the burden, how Frontex is best placed to assist, and how the humanitarian problems might be handled.

The United Kingdom would like to participate fully in Frontex, but the Court of Justice has ruled that it cannot. We have considered how this country might nevertheless play a part in the operations organised by Frontex, and make use of its great experience in the efficient policing of borders to assist the other Member States.

FRONTEX: the EU external borders agency

CHAPTER 1: INTRODUCTION

The subject of our inquiry

1. Twenty-two Member States of the European Union are now full Schengen members.¹ They operate as a passport union without internal borders. The external land, sea and air borders of any one of them form the external borders of all of them; each of them relies on the security of the border controls of all the others.
2. In the circumstances the need for cooperation at the external borders of these States hardly needs emphasising. The first requirement is the need for a common source of information, and this was the subject of our report last year on SIS II.² But just as important is to have a mechanism for direct cooperation between border posts and those manning them on land, sea and air. The first Schengen Information System has been in force since 1995, and one might have expected a mechanism for direct cooperation to have been in place many years ago. In fact it is less than three years since the Regulation was adopted setting up a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union—Frontex, for short. It is this Agency which is the subject of our inquiry.³
3. Many of our witnesses have stressed that Frontex is a new arrival on the European scene. General Ilkka Laitinen, the Executive Director, told us: “We have only been in existence for two years ... which is a relatively short time for a European Agency” (Q 219). Javier Moreno Sanchez MEP described Frontex as “a baby which was born just two years ago and which needs the support of its parents”.⁴ But the baby is growing fast, and so is its budget. The importance of robust border control is, if anything, increasing. So is the potential for Frontex to assist in this. We accordingly thought this a suitable time to examine the current work of Frontex and to suggest how it might develop in the future.
4. Between 1999 and 2003 we examined different aspects of Schengen and the EU borders in four separate inquiries⁵ and, as we have mentioned, we

¹ The Schengen Implementing Convention took effect in 1995 for ten of the Member States. Germany, France and the Benelux countries were the five original Schengen States, joined by Spain, Portugal, Italy, Austria and Greece. In 2001 the Convention took effect for Denmark, Sweden and Finland (and also for Norway and Iceland, the other two members of the Nordic passport union). Since 21 December 2007 it has additionally been in force for all the ten Member States which acceded in 2004 except Cyprus, a total of 24 States. The airport controls for the nine new States will be lifted only on 30 March 2008.

² *Schengen Information II (SIS II)*, 9th report, Session 2006–07, HL Paper 49.

³ We explain in Chapter 2 the difference between the external borders of the Schengen States and the external borders of the Member States, and the effect of the accession of Romania and Bulgaria.

⁴ Q 87. See also Jonathan Faull Q 47.

⁵ *Schengen and the United Kingdom's Border Controls*, 7th Report, Session 1998–99, HL Paper 37. *Enlargement and EU External Frontier Controls*, 17th Report, Session 1999–2000, HL Paper 110. *A Common Policy on*

reported on SIS II last year. These reports form a useful background to our current inquiry, and show how matters have developed over the past decade. Where appropriate we have referred back to them.

Conduct of the inquiry

5. The inquiry was conducted by Sub-Committee F, whose members are listed in Appendix 1. We issued a call for written evidence in July 2007; this is reproduced in Appendix 2. In reply we received evidence from the 16 persons and bodies listed in Appendix 3. Between October and December 2007 we heard oral evidence from 30 witnesses. The Home Office arranged visits for us to the border controls at Heathrow and the juxtaposed border controls at Coquelles and Calais. We took evidence in Brussels from witnesses from the Commission and from Members of the European Parliament. At the end of October 2007 we spent three days in Poland. We took evidence from the Executive Director and officials of Frontex, which has its headquarters in Warsaw, and from a Minister at the Ministry of the Interior and Administration. We also took evidence from the Commander in Chief of the Polish Border Guard, and spent a day at Dorohusk on the Polish border with Ukraine. To all those who helped in the arrangement of these visits, and to all our witnesses, we are most grateful.
6. We were fortunate to be assisted during the course of our inquiry by Dr Valsamis Mitsilegas, Reader in Law, School of Law, Queen Mary College, University of London, and by Major-General Adrian Freer, formerly Coordinator of the Kosovo Protection Corps, who advised us on operational matters. We are most grateful to them for their help and advice.

Structure of this report

7. In the next chapter we examine the purpose of the borders of the EU and how they operate in practice. The following chapter looks at the setting up of Frontex, including the special position of the United Kingdom. Chapters 4 and 5 analyse the work of Frontex and joint operations, while Chapter 6 looks at the recent Regulation on Rapid Border Intervention Teams. Chapter 7 deals with a number of miscellaneous issues. We then make suggestions as to how Frontex should develop in the future. Finally we summarise our conclusions and recommendations.
8. **We recommend this report to the House for debate.**

CHAPTER 2: BORDERS

The significance of national borders

9. “National borders are hugely symbolic. They define the territory over which a state exercises sovereignty; they are an integral part of its identity; and they traditionally represent the point at which a person seeking to enter the country must demonstrate their admissibility.” These are the opening words of our report on the Proposals for a European Border Guard.⁶ To this we would add that national borders also define differences of jurisdiction, of legal systems and, usually, of language. These are important for the purposes of our inquiry, but the most important of all is that the borders between Member States and third countries also usually represent a sharp contrast in economic prosperity.
10. Mr Liam Byrne MP, the Minister of State at the Home Office with responsibility for immigration, explained this graphically: “The World Bank in *Global Economic Prospects*, which was published last year, forecast that something like a billion people will join the labour market in the developing world between now and 2025. The International Labour Organisation estimates that there is a five-fold difference in household income between low income and high income countries. My warning is that over the next 20 years the pressure on Europe’s borders will not diminish. It will grow and it will grow sharply. We are already seeing that pressure across the Mediterranean” (Q 475).
11. We accept this view. **The migratory pressure on Europe’s borders will grow because there are a growing number of failed states where a combination of economic incompetence, uncertainty of property rights, corruption, internal conflicts, political anarchy and repressive regimes has created intolerable conditions for the local population. Conditions may also be intolerable in states where poverty is endemic, or in those which, though once prosperous, are now ravaged by war. It is therefore inevitable and predictable that people will attempt to escape to countries which they see as offering a chance of a better life.**
12. The needs of Member States for economic migrants from outside the EU will vary, but most have benefited from migration both from within and from outside the Union.⁷ United Kingdom Prospects, a quarterly report from the Centre for Economics and Business Research, published on 27 December 2007, estimates that the growth of the United Kingdom GDP will be maintained at 1.8% in 2008 only because of an increase in the number of predominantly unskilled economic migrants entering the country, mainly from the Eastern European Member States.
13. Many of those seeking to escape from countries at or near the bottom of the United Nations Human Development Index are likely to be the more talented. Yet these are the people those countries particularly need to retain

⁶ 29th Report, Session 2002–03, HL Paper 133.

⁷ For the specific benefits to the United Kingdom, see our report *Economic Migration to the EU*, 14th Report, Session 2005–06, HL Paper 58. The House of Lords Select Committee on Economic Affairs is currently inquiring into the Economic Impact of Immigration. Evidence given to that inquiry can be found at www.publications.parliament.uk/pa/ld/ldeconaf.htm.

if they are not to stay anchored near the bottom of the Index, unable to rise because they increasingly lack the talent they need.

14. It is only natural for those in developing countries who wish to improve the economic prospects for themselves and their families, and who can see that crossing the border into the EU is likely to help them to do just that, to attempt to do so. Any detailed analysis of the root causes of migration, the merits of EU migration policies, the capacity to absorb the numbers involved, and what should be done to regulate migration flows, are all outside the scope of this inquiry. We have proceeded on the premise that the current EU and national rules to regulate immigration are there to be obeyed, and that borders and border guards are there for this purpose. We are however mindful that the developing cooperation of national border guards at the external EU borders takes place in the context of the rules of public international law designed to ensure the safety and dignity of human beings.
15. The larger the Schengen area, and the greater the freedom of movement within it, the greater the burden which falls on those borders which become the external borders of the EU, and the greater the responsibility of those who guard them. The duty to guard what were previously only national borders becomes a duty owed to all the Schengen States. The changes which took place at the end of 2007 are particularly significant for the States with the Eastern land borders. Twenty years ago it was the Western borders of those States which were designed to keep citizens of the former Soviet bloc from escaping to the economic nirvana of the EU;⁸ today it is the Eastern borders of the same States which have the duty of regulating the flow of immigration into the EU from other States which formerly were part of the Soviet bloc. This is the reason why the Polish border guard has had to be built from scratch.⁹
16. The external borders of the Member States are defined by Article 1(4) of the Regulation setting up Frontex as “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”. We consider these in turn.

The land borders

17. The land borders to which an important part of the work of Frontex relates—those of the Member States—are not the same as those of the Schengen States. They do not include the border between Russia and Norway, which is a Schengen Associated State but not a Member State; but they do include the external borders of Romania and Bulgaria, which are Member States but not yet Schengen States.¹⁰
18. Until May 2004 Finland, Germany, Austria and Italy guarded the main Eastern land border of the EU, which was 4,095 km long (2,545 miles).

⁸ At that time, the European Economic Community.

⁹ Mr Wieslaw Tarka, Under-Secretary of State, Polish Ministry for the Interior and Administration, Q 355.

¹⁰ We do not consider the border between Sweden and Norway, since it is a Schengen Associated State, nor the land borders with Switzerland, which from 1 November 2008 will become a Schengen Associated State.

TABLE 1**The Eastern external land border of the EU before 1 May 2004**

Border between		Length in km
Finland	Russia	1,340
Germany	Poland	454
Germany	Czech Republic	810
Austria	Czech Republic	466
Austria	Slovakia	107
Austria	Hungary	356
Austria	Slovenia	330
Italy	Slovenia	232
Total		4,095

19. After the accession of ten new Member States on 1 May 2004 the place of Germany, Austria and Italy in guarding the Eastern external land border was taken by Estonia, Latvia, Lithuania, Poland, Slovakia, Hungary and Slovenia. When Frontex started its work, before the accession of Romania and Bulgaria on 1 January 2007, the external land border was 6,220 km long (3,866 miles).

TABLE 2**The Eastern external land border of the EU from 1 May 2004**

Border between		Length in km
Finland	Russia	1,340
Estonia	Russia	455
Latvia	Russia	276
Latvia	Belarus	161
Lithuania	Belarus	651
Lithuania	Russia (Kaliningrad)	272
Poland	Russia (Kaliningrad)	232
Poland	Belarus	418
Poland	Ukraine	535
Slovakia	Ukraine	98
Hungary	Ukraine	136
Hungary	Romania	448
Hungary	Serbia	174
Hungary	Croatia	344
Slovenia	Croatia	680
Total		6,220

20. Neither of these two tables includes Greece. Although of course a Member State, it was not then geographically part of the main body of EU States, although its borders with Albania, the Former Yugoslav Republic of Macedonia (FYROM), Bulgaria and Turkey were external land borders of a Member State and hence part of the responsibility of Frontex. However the accession of Romania and Bulgaria has changed matters radically. Greece has now joined the main continental bloc, so that the Eastern external land border now runs from the Arctic to the Black Sea and the Aegean, and is 6,378 km long (3,964 miles). As a result the West Balkan States have become an enclave whose collective land frontiers form a lengthy and sensitive part of the external borders of the EU, adding a further 1,580 km (982 miles) to a land border now totalling 7,958 km (4,946 miles).

TABLE 3**The external land border of the EU from 1 January 2007**

Border between		Length in km
Finland	Russia	1,340
Estonia	Russia	455
Latvia	Russia	276
Latvia	Belarus	161
Lithuania	Belarus	651
Lithuania	Russia (Kaliningrad)	272
Poland	Russia (Kaliningrad)	232
Poland	Belarus	418
Poland	Ukraine	535
Slovakia	Ukraine	98
Hungary	Ukraine	136
Romania	Ukraine (East and West of Moldova)	649
Romania	Moldova	681
Bulgaria	Turkey	259
Greece	Turkey	215
Greece	Albania	282
Greece	Former Yugoslav Republic of Macedonia	246
Bulgaria	Former Yugoslav Republic of Macedonia	165
Bulgaria	Serbia	341
Romania	Serbia	546
Total		7,958

21. Frontex cannot lose sight of other land borders; the problems they raise are often wholly disproportionate to their length. A month after it began operations Frontex found itself in the front line when, in November 2005, hundreds of mainly sub-Saharan nationals breached the borders of the Spanish enclaves of Ceuta and Melilla in Morocco.
22. The Schengen Evaluation Working Party consists of experts from the Member States whose remit is to evaluate against key performance indicators, on behalf of all the states, the manner in which checks and surveillance are carried out at external borders, their practice when issuing visas, police and judicial co-operation at internal borders, and the use of the Schengen Information System. This evaluation mechanism serves to check that Member States implement the Schengen *acquis* properly. But its other—and recently its more important—purpose has been to evaluate whether the Member States which acceded in 2004 fulfilled the conditions laid down for applying the Schengen *acquis*.¹¹ Before the Schengen area was extended to the nine states which joined it on 21 December 2007,¹² an elaborate evaluation took place of the quality of the border protection. Teams of experts examined the border posts and the areas between them and reported back to the Council with recommendations for improvements. Most of these recommendations have been acted on, and the borders are more secure than they were.¹³
23. Anyone remembering the problem of policing the short common border between Northern Ireland and the Irish Republic during the Troubles, or the Sino-Hong Kong border, will readily understand the difficulty of guarding a border some 8,000 km long against large numbers of determined and sometimes desperate immigrants. However good the border posts may be which guard the main crossing points, in between them are long stretches of border, often sparsely populated, sometimes through country which is difficult to police. Even if they are fenced, this is of little use unless they are also guarded, which in the nature of things they cannot always be. A border is only as secure as its least well guarded area, and it is this area which will attract illegal immigrants.¹⁴
24. With frontiers of this length, and very large numbers of border guards, there may also be a problem of corruption. Border guards are not usually well paid compared to other workers, and those on the East of the frontier considerably less well than those on the West. We think it likely that even the best guarded border posts may not prove too much of an obstacle to immigrants who are well funded.
25. The enlargement of the Schengen area was an opportunity for the British press to comment on the security of the new borders. Much of the comment

¹¹ Plan for the management of the external borders of the Member States of the European Union agreed by the JHA Council on 13 June 2002 (Document 10019/02).

¹² Cyprus was the only one of the ten which did not join.

¹³ The reports of the Schengen Evaluation Working Party are classified, but on 7 September 2007, less than 4 months before the enlargement, the Working Party reported concerns about the continuing entry of Croatian residents into the territory of Hungary and Slovenia with an identity card only, something which had been identified during a land-border mission as far back as May 2006. The working party continues its evaluation of border security of the Schengen States.

¹⁴ We have referred in our reports on *Schengen and the United Kingdom's Border Controls* (7th Report, Session 1998–99, HL Paper 37) and *Illegal Migrants: proposals for a common EU returns policy* (32nd Report, Session 2005–06, HL Paper 166) to the pejorative use of the term “illegal immigrant” in this context, with its imputation of criminality. While this is the term used by most of our witnesses, a number prefer the term “irregular migrants”. However “illegal immigrant” is the most commonly used English expression, and “illegal” is the word used in Article 63(3)(b) of the EC Treaty and in Regulation 863/2007. We have therefore used this term, but emphasise that it will include persons whose intention is to settle legally in the EU.

we saw was adverse. By way of example, an article in the Sunday Telegraph of 16 December 2007, subtitled “*Eastern defences are undermanned and overwhelmed*”, tells of a visit to Beregsurany on the border between Hungary and Ukraine, where officials said they caught fewer than a third of those attempting to cross the border illegally.

The Polish-Ukrainian border

26. In the course of our visit to Poland, on 24 October 2007 we visited Dorohusk to see in operation a border post on the eastern external border of the EU. The border with Ukraine is at that point formed by the River Bug, and Dorohusk is one of the main road entry points from Ukraine. The border post was rebuilt in 2004 and is one of the most modern and best equipped on the Polish border. It is well equipped to monitor traffic on the arterial road, but like all land border posts it covers a large surrounding area which it is not so well placed to supervise.
27. Earnings in Poland are low by EU standards, but are still some four times higher than in Ukraine, and higher still compared to some of the other countries of the former Soviet Union to the East of Ukraine. The pressure from migrants seeking to enter the EU from and through Ukraine is therefore very great. Much of the migration is organised, and we were told of groups from Moldova, Georgia, Chechnya, Pakistan, Vietnam and as far afield as China (QQ 332, 340, 347). Other main concerns of the border guards are entry of criminal gangs from the East, and the smuggling of cigarettes, alcohol, drugs, and works of art.
28. Much of the traffic in the opposite direction consists of articulated trucks exporting goods from, principally, Germany to Ukraine and beyond. On the day of our visit there was a queue of lorries well over a mile long waiting to pass into Ukraine. In that direction the chief concern is the smuggling of stolen luxury cars.
29. In addition to the oral evidence which we took (QQ 314–350), we inspected the border crossing itself, we saw the equipment for detecting illegal immigrants in use, and we saw the practical liaison between the Polish and Ukrainian border guards.

Juxtaposed border controls at Coquelles and Calais

30. The nearest the United Kingdom comes to a land border with a Schengen state is the terminus of Eurotunnel in France, at Coquelles. The Home Office arranged for us to visit on 8 January 2008 the juxtaposed controls there and at the ferry port of Calais. The controls at Coquelles have existed since 1994, and the agreement now allows staff from the Border and Immigration Agency (BIA) and HM Revenue and Customs (HMRC) to apply United Kingdom immigration law within this very limited area of France, and so to control passengers and vehicles travelling to the UK before they leave France. The agreement covering Calais does not allow participation by HMRC. Replies to a number of detailed questions from the Committee are printed with the written evidence on page 161.
31. In 2006 BIA, as a result of its juxtaposed controls in France, stopped 16,898 people from crossing the Channel illegally in trucks and refused 6,801 people entry.¹⁵ Examination of both passengers and freight vehicles is by targeted

¹⁵ These figures are taken from Security in a Global Hub, paragraph 3.2, but have been updated by the Home Office. The great majority relate to Coquelles and Calais, but they also include some from other juxtaposed controls: Dunkerque, Boulogne, Paris, Fréthun and Lille. There are also juxtaposed controls in Brussels.

selection. At Calais over 80% of passengers identified as requiring detailed examination are subsequently refused entry. Forged documentation features in a third of those cases. Calais identifies more forgeries than any other BIA control.

32. We saw in action the targeted searching which screens freight vehicles to prevent clandestine entry to the United Kingdom. The use of gamma ray scanners is not permitted in France where the presence of humans is suspected, but we saw in use the following new detection technology:
- passive millimetre wave imager, which uses natural background radiation to generate an image of the interior of soft-sided freight vehicles;
 - CO₂ probes, which operate by detecting in a vehicle the elevated levels of CO₂ exhaled by humans;
 - body detection dogs; and
 - heartbeat detectors, sensors which when placed on the main chassis of a vehicle can within seconds detect the presence of a hidden person.
33. We were very impressed by this equipment: its sensitivity, and the way it was handled. One thing which surprised us was that, after lorries have successfully cleared the detectors at Calais, and can therefore be presumed not to be carrying clandestines, they have to wait near the ferry berths in an area which is accessible to determined immigrants. We were told that every year some 1,500 clandestines are found to have boarded lorries at this point, and that the area which is fenced is larger than it need be, and the fencing inadequate. This seems to us to be the one weak point in an otherwise excellent system which is greatly to the benefit of the United Kingdom. We are glad to hear that British officials are addressing this question with the French authorities, and **we recommend that more effective fencing should be put in place as a matter of urgency.**

Maritime borders

34. The maritime borders of the EU are nearly 80,000 km (50,000 miles) long, and getting on for half of this (34,109 km or 21,199 miles) is the vulnerable Southern maritime border.

TABLE 4

The Southern maritime border

Country	Length in km
Portugal (including the Azores and Madeira)	2,555
Spain (including the Canaries)	4,964
France	4,720
Slovenia	48
Italy	7,600
Greece (including over 3,000 islands)	13,676
Malta (including Gozo)	253
Cyprus ¹⁶	293
Total	34,109

¹⁶ This relates to the southern part of the island under the control of the Republic, and excludes the British sovereign base areas.

35. Greece with its 3,000 islands has the longest maritime border of any Member State, longer even than the United Kingdom. Most of the islands are very close to Turkey, a fact exploited by many criminal gangs which seek to infiltrate them. The Black Sea borders of Romania and Bulgaria, 572 km (358 miles) long, are now equally at risk from criminal gangs operating from Turkey.
36. Only a minority of illegal immigrants enter the EU through the sea borders. Nevertheless, when the media consider the work of Frontex, they tend to focus on the Southern maritime borders. It is operations on those borders which consume the majority of that part of the Frontex budget which is spent on operations. The journeys from West Africa to the Canaries (and hence onwards to mainland Spain), and from North Africa across the Mediterranean, can be very perilous when undertaken in small and inadequately equipped craft.
37. In 2006 media interest concentrated mainly on immigrants from West Africa aiming for the Canaries and Spain. In 2007, as immigration from West Africa decreased and a greater proportion of immigrants were leaving North Africa and aiming for Italy and Malta, it was there that media interest was directed.
38. Malta is in an especially sensitive geographical position. The LIBE Committee of the European Parliament,¹⁷ on a visit to Malta on 23–25 March 2006, were told by Mr Tonio Borg, the Deputy Prime Minister and Minister for the Interior, how difficult it was for a country such as Malta, with a surface area of 316 km² and a population of 400,000, to cope with the influx of migrants and asylum seekers arriving on the island: 1,388 in 2004 and 1,822 in 2005.¹⁸ The average annual number of arrivals was equivalent to 45% of Malta's annual birth-rate. One person arriving illegally in Malta is equivalent, in terms of population, to 140 in Italy, 150 in France or 205 in Germany. On the basis of the country's size, the numbers are even larger: one immigrant would be equivalent to 953 in Italy and 1,129 in Germany.
39. These are the migrants who reach Malta. An unquantifiable number perish in the attempt; a great many more would perish were it not for search and rescue operations mounted by the Member States on the Southern maritime border, and especially by Malta, whose search and rescue area goes all the way to Crete in the East.¹⁹ We believe that the media descriptions of these events are often partial and incomplete, condemning expressly or by implication the countries bordering on the Mediterranean which are mounting search and rescue operations. In the view of General Laitinen they tend to ignore the main *modus operandi* of the human smugglers and facilitators in the central Mediterranean, which he described as making the journey become a search and rescue operation which guarantees reception and a way to the closest haven (Q 246).
40. An event which received very wide international media coverage in May 2007 was the apparent disappearance of a boat with 53 Eritrean nationals on board. Major Andrew Mallia of the Maltese Armed Forces came to London and gave us evidence which we found impressive and compelling. Since he

¹⁷ The Committee on Civil Liberties, Justice and Home Affairs.

¹⁸ The figure for 2006 was 1,780; for 2007, up to mid-December, it is 1,698.

¹⁹ Faull Q 54.

was personally involved in this, we think it useful to summarise his account in some detail (Q 385).

BOX 1

The disappearance of 53 Eritrean nationals

When the call was initially received the boat was 200 km from Malta, closer both to Libya and to Lampedusa. The call as usual provided a satellite telephone number which was on board the boat. All the boats are equipped with a satellite telephone, given to them by the traffickers, which allows them to call for help, and because it has an embedded GPS, it also provides the navigation details. That is standard procedure. On receiving the call about six o'clock in the morning, because the position was still within the Libyan Search and Rescue Region, our first step was to inform the Libyan authorities. We did not receive a response from them so we continued to monitor the progress of this boat by regular contacts with these people. At one point, they stated that they were in a position within the Maltese Search and Rescue Region, their craft was adrift and they required assistance. We immediately deployed a vessel and also an aircraft because sometimes the positions are not exact. Two hours after the initial alert we had an aircraft on scene—which also took those pictures which were shown in the media. The craft did seem to be adrift.

It took seven hours for our boat to transit from Malta to the position—which gives you a feel of how far away it was. During that time the aircraft was withdrawn for refuelling and sent again to the position. On arriving it did not find a boat either in the position where it had been initially sighted nor within a substantial radius around it. We had also alerted merchant shipping but we received no reports of the sighting of this craft. Our vessel began a search during which it found a second craft with 25 people on board which had just capsized. It rescued those persons and proceeded directly to Malta because a number of them required medical assistance. The next day we flew a further sortie with an aircraft and also liaised with the Italian Rescue Co-ordination Centre to fly at least one sortie in the area and ask any other aircraft in the area to keep a sharp look out, and they found nothing. Given that a number of the people on board were wearing life-jackets it is highly unlikely that a boat like that would sink without leaving at least minimal trace. Some three days later we noted on a couple of Eritrean websites that this craft had been reported to have arrived again in Libya; they had lost their way and had landed again in Libya. That is the only further information that we have.

We reacted fully in accordance with our search and rescue plan. The only unknown was that when we got there we found another craft, so instead of searching for longer we had to return to base. We did search the area extremely well, both ourselves and the Italians. We can find a drifting object quite easily but a boat being driven in a particular direction is very difficult to find. We could not really have done much more and I have my doubts whether this craft disappeared as completely as was said by the press.

Air borders

41. The air borders of states are the most secure because it is very difficult for would-be immigrants to land otherwise than at an international airport where their status will always be checked. The airports of the new Schengen states will join the system only on 30 March 2008.

42. On Tuesday 4 December 2007 we visited the border control at Heathrow. We viewed the border controls for outbound and inbound flights, and had explained to us the reasons incoming passengers were selected for fuller checks, and the nature of those checks. We saw the Iris Recognition Immigration System (IRIS) enrolment station in the departure lounge, and had a demonstration of document forgery detection techniques. Finally we had a question and answer session, the results of which are printed with the written evidence on page 154.

The position on Schengen

43. Maritime borders are by and large more secure and easier to guard than land borders. It is often clearer exactly where a sea border lies, and crossing the border is frequently more difficult, so that it is usually easier to identify and to intercept persons attempting to cross it: “21 miles of sea is the most effective border control you can have”.²⁰ When the Schengen *acquis* was incorporated into the law of the EU by the Treaty of Amsterdam, one reason why the United Kingdom negotiated an opt-out was because this country’s frontier controls “match both the geography and traditions of the country and have ensured a high degree of personal freedom within the UK”; whereas in mainland Europe, “because of the difficulty of policing long land frontiers, there is much greater dependence on internal controls, such as identity checks.”²¹ The United Kingdom and Ireland participate only in those parts of the Schengen *acquis* concerning criminal law and policing.²²
44. In February 1999, in the course of our inquiry into Schengen and the United Kingdom’s border controls, Ms Kate Hoey MP, then a Parliamentary Under-Secretary of State at the Home Office, was asked whether the Government was maintaining its position on frontier controls with the rest of the EU only until it was satisfied that external border controls of other EU members were adequate, or whether this was seen as a permanent position. She replied that there was no chance that the Government would in the foreseeable future feel that there was no longer any need for these frontier controls.²³ In the current inquiry we put to Mr Liam Byrne the question whether it was not now time for this country to become a full Schengen member. He replied: “Possibly, but not yet. Speaking candidly, until we have greater confidence than we have today in the strength of the external border, I do not think that would be something that I could recommend yet” (Q 475).
45. **Given the views of successive Governments on the comparative strengths of the United Kingdom and Schengen borders, it seems to us that “Possibly, but not yet” will for many years to come be the reply to the question of the United Kingdom becoming a full Schengen State.**

²⁰ Dodd Q 467.

²¹ White Paper Fairer, Faster and Firmer—A Modern Approach to Immigration and Asylum, Cm 4018, July 1998.

²² Ireland opted out only because of its wish to maintain the Common Travel Area with the United Kingdom.

²³ *Schengen and the United Kingdom’s Border Controls*, 7th Report, Session 1998–99, HL Paper 37, Q 319.

Guarding the United Kingdom's borders

46. In the course of taking oral evidence we heard from Home Office Ministers and officials about current developments in the guarding of the United Kingdom's borders: the creation of the Border and Immigration Agency (BIA), the Prime Minister's announcement in July 2007 that it was to integrate its work with Customs and UK visas to establish a Unified Border Force, and the review of this by Sir Gus O'Donnell which culminated in the publication in November 2007 of the report "*Security in a Global Hub*".²⁴ These are matters of great importance, and this evidence, together with our visits to Calais, Coquelles and Heathrow, allowed us to form our own views about the management of this country's borders. This in turn made a useful background to our assessment of the work of Frontex.
47. The case for Britain remaining outside Schengen is that we can protect our borders better than the Schengen states control their own external borders. We therefore find it astonishing that although there is an elaborate system for allowing certain persons from outside the EU temporary or limited entry to the United Kingdom, there is no way in which the BIA can know whether these time limits and conditions are being complied with, because there is no routine recording of entries into or departures from the United Kingdom. As Mr Byrne accepted, "one of the most basic requirements of a border control is the ability to count people in and to count people out of the country"—and, he added, "you had better make sure that the person you are counting in is the same person as you are counting out" (Q 457).
48. We are glad to know that the Minister accepts the importance of remedying this defect. He told us that passenger screening systems would be put first on the high risk routes, and "the point at which we hit 100% high risk groups will be substantially in advance of 2010" (Q 457). However it will be 2014 before the gap is closed by the full implementation of e-Borders.²⁵ This undermines the Government's arguments against Schengen. The fact that the Irish e-Borders system will not be ready until even later is no justification for delaying ours. **We believe the work on e-Borders should be brought forward as a matter of urgency to protect Britain's territorial integrity.**

²⁴ Dodd Q 134.

²⁵ *Security in a Global Hub*, paragraph 3.12.

CHAPTER 3: THE ESTABLISHMENT OF FRONTEX

Background to the Frontex Regulation

49. The proposal for a European Border Guard which we considered in 2003 can be seen with hindsight to have been too ambitious, and never likely to succeed in that form at that time. But many of the documents proposing such a border guard, and many of the Councils at which they were considered, were also putting forward the less radical alternative of increased cooperation between national border guards.
50. On 7 May 2002 the Commission presented to the Council and the European Parliament a Communication entitled “*Towards integrated management of the external borders of the Member States of the European Union*”.²⁶ While the ultimate aim was the establishment of a “European Corps of Border Guards”, the Communication proposed as the preliminary steps the consolidation and codification of common rules and standards for external border controls, the creation of an “External Borders Practitioners Common Unit”, and other mechanisms for cooperation and the sharing of financial burdens.
51. There was something in this Communication for all the Member States, since those which were sceptical about the long-term aim of setting up a European Border Guard could still support the suggested preliminary steps. The European Council, meeting in Seville the following month, “applauded” the plan. The conclusions referred to “the intention expressed by the Commission of continuing to examine the advisability of such a [European] police force.” Thus it remained unclear whether the long-term aim was to establish an operational force or whether “integrated border management” would stop short of that. On the basis of a report by the LIBE Committee, in December 2002 the European Parliament also approved the plan. The European Council returned to the issue at Thessalonica in June 2003, inviting the Commission “to examine in due course ... the necessity of creating new institutional mechanisms, including the possible creation of a Community operational structure, in order to enhance operational cooperation for the management of external borders.”
52. On 20 November 2003 the Commission put forward the proposal for a Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders,²⁷ and the Council adopted the Regulation establishing Frontex on 26 October 2004.²⁸ On 26 April 2005 the Council decided that the seat of Frontex should be at Warsaw.²⁹ In accordance with Article 34 of the Regulation, Frontex took up its responsibilities on 1 May 2005. On 25 May General (then Colonel) Ilkka

²⁶ COM(2002) 233 final.

²⁷ COM (2003) 687 final.

²⁸ Council Regulation (EC) N0 2007/2004 establishing a European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union, OJ L349 of 25 November 2004, p.1. We refer to it as “the Frontex Regulation”.

²⁹ 2005/358/EC: Council Decision 2005/358/EC of 26 April 2005 designating the seat of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

Laitinen was appointed as Executive Director, and on 3 October 2005 Frontex became operational.

53. In the course of the last two and a half years Frontex has begun to chart a distinct course, but it is far from set in its ways. There are a number of different directions in which it could turn. The Minister thought the timing of our inquiry was “very auspicious”;³⁰ we hope this report comes at a time when we can influence the agency’s development.

The legal position of the United Kingdom

54. The Frontex Regulation itself states that “This Regulation constitutes a development of the provisions of the Schengen *Acquis* in which the United Kingdom does not take part ... The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.”³¹
55. The United Kingdom is indisputably not a full Schengen State, nor likely to become one in the foreseeable future. The Schengen States maintained that the Frontex Regulation was a Schengen-building measure, so that the United Kingdom could not be a Frontex State. This was not at all to the liking of the Government. Just as, in the case of Schengen, the Government would like to have the benefits of being a Schengen State without weakening the United Kingdom’s external borders, so they would like to participate fully in the organisation and running of Frontex.
56. United Kingdom Ministers have always shown support for Frontex. In the Conclusions of the meeting of the G6 interior ministers at Stratford-upon-Avon in October 2006, chaired by Dr John Reid MP when he was Home Secretary, “Ministers ... underlined their commitment to controlling migration and tackling illegal immigration ... and called on Frontex to be given the necessary support to coordinate meaningful EU level action in this area”. Dr Reid subsequently wrote to the same effect to the Minister of the Interior of the Finnish Presidency.³²
57. Within three months of the Commission submitting to the Council its proposal for the Frontex Regulation, the Government, on the basis of Article 5(1) of the Schengen Protocol to the Treaty of Amsterdam, notified the Council of their wish for the United Kingdom to participate in the adoption of the Regulation. Having been rebuffed, the Government applied to the Court of Justice for a ruling that the Council acted unlawfully in so doing.
58. On 10 July 2007 Advocate General Trstenjak proposed that the Court should dismiss the application, and in a judgment delivered on 18 December 2007 the Court—ruling in Grand Chamber—unequivocally ruled against the United Kingdom. On the principal argument, the Court ruled that the United Kingdom and Ireland cannot be allowed to take part in the adoption of a measure under Article 5(1) of the Schengen Protocol without first having been authorised by the Council to accept the area of the *acquis* on which that measure is based. It stressed that the United Kingdom interpretation would deprive Article 4 of the Protocol of all effectiveness.

³⁰ Byrne Q 450.

³¹ Recital (25).

³² See our report *After Heiligendamm: doors ajar at Stratford-upon-Avon*, 5th Report, Session 2006–07, HL Paper 32, Appendices 3 and 5.

59. The United Kingdom's secondary argument was that there is a distinction between measures which are integral to Schengen and measures which are merely related to Schengen. The Court said that this distinction "has no basis either in the EU and EC Treaties or in secondary Community law". The Court nevertheless examined the legal basis of the Frontex Regulation to establish whether it properly fell within the Schengen Protocol or whether it was a more general Title IV measure (with the Title IV Protocol applying, which gives the United Kingdom a unilateral option to opt in). The Court found that the Regulation is indeed a Schengen building measure.
60. In evidence to us in connection with our inquiry into the impact of the Treaty of Lisbon Kevin Norris, a Home Office lawyer, referred to the legal basis of the Court's ruling and said that there was nothing in the Protocols to the Treaty of Lisbon which would change this position.³³ It seems to us therefore that **for the present the United Kingdom has to accept that, not being a full Schengen State, it cannot play a full role in Frontex. Subject to that legal limitation, the Government should ensure that the United Kingdom participates effectively in the development and operation of Frontex.**

Gibraltar

61. The Frontex Regulation does not apply to the borders of Gibraltar because, as recital (28) delicately states, "A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar". While Article 12(1) provides for the cooperation of the United Kingdom in Frontex operations, Article 12(3) reads: "The application of this Regulation to the borders of Gibraltar shall be suspended until the date on which agreement is reached on the scope of the measures concerning the crossing by persons of the external borders of the Member States"—a date which shows no sign of approaching.
62. We received from the Government of Gibraltar evidence of its "extreme disappointment" at being excluded even from the ambit of the United Kingdom's limited participation under Article 12(1) (p 153). The evidence refers to lengthy exchanges of correspondence between the Government of Gibraltar and the Foreign and Commonwealth Office stretching from December 2003 to July 2007. We include with the evidence a press release issued by the Government of Gibraltar on 30 July 2004, once it became clear that Gibraltar would not be able to participate even to the extent that the United Kingdom was able to. Gibraltar's chief fear was that, if the United Kingdom were allowed to participate fully in Frontex, its own total exclusion from a measure on external frontiers would further harm its arguments over where that frontier is to be drawn. Perhaps the only favourable outcome of the judgment of the Court of Justice is that this situation has not arisen.

³³ Q E518.

CHAPTER 4: THE WORK OF FRONTEX

The statutory tasks

63. The legal basis of the Frontex Regulation is Article 62 of the TEC, within Title IV which governs visas, asylum, immigration and other policies related to free movement of persons. Article 2(1) of the Regulation sets out the six tasks of Frontex:
- (a) coordinate operational cooperation between Member States in the field of management of external borders;
 - (b) assist Member States on training of national border guards, including the establishment of common training standards;
 - (c) carry out risk analyses;
 - (d) follow up on the development of research relevant for the control and surveillance of external borders;
 - (e) assist Member States in circumstances requiring increased technical and operational assistance at external borders;
 - (f) provide Member States with the necessary support in organising joint return operations.

Joint return operations

64. The last of these tasks is one that we considered in the course of our inquiry into the proposals for a common EU returns policy.³⁴ For that purpose we took evidence from General Laitinen on 2 March 2006, when Frontex had been operational for less than six months. He told us then that assisting with joint return operations was “not at the top of the priorities”,³⁵ and that is still the case (Q 225). It may be that this will change with the renewed interest in the development of a common EU returns policy. However Mr Byrne is “a bit of a sceptic about Frontex getting involved in joint returns” because of the difficulty of arranging them (Q 484).
65. In our earlier report we emphasised how voluntary return was greatly preferable to enforced compulsory return. Not only was it more humane, it was a good deal more cost-effective, and it was greatly eased by assistance for reintegration, training, education and self-employment.³⁶ These are matters outside the scope of our current inquiry, but they are reasons why **for the present we would not encourage Frontex to put any more assets into organising compulsory return operations.**

Risk Analysis

66. General Laitinen told us on that occasion that risk analysis “is the inner core of the methodology of Frontex”.³⁷ In the course of this inquiry he said that “the starting point is with the risk analysis” (Q 261). Jonathan Faull, the Director General for Justice, Freedom and Security at the European

³⁴ *Illegal Migrants: proposals for a common EU returns policy*, 32nd Report, Session 2005–06, HL Paper 166.

³⁵ *Ibid*, Q 583.

³⁶ *Ibid*, paragraphs 46–48.

³⁷ *Ibid*, Q 581.

Commission, was of the same view: “risk analysis must be the basis for priority setting by Frontex” (Q 49). We can understand why the work of the Risk Analysis Unit is central to all the other work. The Unit’s mission is “to produce appropriate accurate and timely intelligence products which provide the foundation for Frontex operational activities, as well as to keep all principal customers informed of the current illegal immigration situation at the external borders”. The Unit regards its “principal customers” as the Council and Commission; we feel the European Parliament should be added to that list.

67. The Unit’s tasks are:

- to identify key threats and risks to border security;
- to identify the need for joint operations;
- to identify areas where capacities could be built by technical border control equipment;
- to identify the most effective focus for border guard training programmes; and
- to provide the Member States’ border guard services with systematic and immediate early warnings.

The Unit, having identified the need for a joint operation, assists in the preparations, appoints an intelligence officer for the duration of the operation, collects and analyses data during the operation, and passes information—and where appropriate alerts—to the Member States.

68. After the operation the Unit produces a report evaluating the operation. This normally includes:

- analysis of replies to the analytical questionnaire;
- number of migrants, including asylum-seekers;
- routes adopted;
- in the case of airports, entries refused;
- migration trends;
- other irregularities, such as implications for trafficking human beings and drugs;
- international criminal networks;
- comparisons with statistics for previous operations; and
- evaluations by the deployed experts.

69. The evaluation report may ascertain whether the operation induced traffickers to change their *modus operandi* by putting pressure on other illegal points of entry, or maybe by making major changes to the migratory routes. If so, the report may make recommendations for securing other weak or illegal access points, and suggest courses of action to target specific nationalities. It may recommend passing information to Europol or Interpol, which are better placed to investigate the involvement of smuggling organisations and other cross-border crime; we consider the involvement of Europol in Chapter 8.

70. Mr Tom Dowdall, Director of EU Operations at the Home Office and the United Kingdom observer on the Frontex Management Board, explained that the Risk Analysis Unit brings together information provided by the Member States, analyses it, weighs it and on that basis identifies what the course of action should be. In this work it is assisted by a Risk Analysis Network which brings together representatives of the Member States meeting on a quarterly basis. It was in his view a process which was evolving and which needed to improve (QQ 141–142). Major Mallia wanted to see the risk analysis role of Frontex strengthened (Q 399), and we note that development of the risk analysis function plays a major part in the Work Programme for 2008.

Training

71. General Laitinen stressed the importance which he attaches to the training function of Frontex. They have revised and published a Common Core Curriculum for border guard training, which is compiled with the cooperation of the Member States. They are not under any obligation to apply that Curriculum, but only a handful do not yet do so. He told us that Frontex are seeking to have a Common Core Curriculum for mid-level training and have launched periodical four-week courses for mid-level officers. The other part of the training function is arranging courses for the border control authorities, including “land border related training, aeronautical training, helicopter pilot training, travel document detection training, ... and linguistic skills.” For 2007 the commitment for training purposes was almost €2 million (Q 223). Mr Byrne told us that the United Kingdom made a significant contribution to training, offering expertise in document forgery detection and the use of detection technology.³⁸ Given the increasing complexity of some of the equipment used to monitor migration, we think training guards in the best use of the equipment they have is an important element of this task.
72. We believe that training courses for border guards should emphasise the humanitarian background to illegal migration and its causes. We are glad to note the Commission’s suggestion that training courses should be organised on asylum law, the law of the sea and fundamental rights.³⁹ Frontex will also need to ensure that appropriate investment is made in the personal development and capacity of its own staff to enable them to understand this aspect of their work, and the impact that the courses they devise will have on the individuals affected by their work.

What Frontex does not do

73. The list of tasks set out in the Regulation is not illustrative but exhaustive. Frontex could not carry out other tasks without amendment of the Regulation. So far the only amendment has been for the system of Rapid Border Intervention Teams (RABITs) which we consider in Chapter 6. We stress this point because in the course of our inquiry we have heard and read suggestions as to what Frontex might do which are plainly outside its remit, including undertaking (as opposed to coordinating) emergency border

³⁸ Supplementary evidence, p 148.

³⁹ Commission Communication of 13 February 2008: Report on the evaluation and future development of the FRONTEX Agency, doc. 6664/08, COM(2008)67 final, paragraph 15.

operations and search and rescue missions. This is something which has also troubled General Laitinen. In June 2007 he issued a news release entitled “Frontex—Facts and Myths”. He pointed out that the activities of Frontex were supplementary to those of the Member States; with its (then) 82 staff it was not intended to be a substitute for the thousands of border guards of the States. It had no operational personnel or equipment of its own, and its sole role was integration and coordination. As the Regulation says, “Responsibility for the control and surveillance of external borders lies with the Member States”.⁴⁰ Mr Javier Moreno Sanchez MEP told us: “Frontex is a tool, not a panacea” (Q 107).

Resources

74. Frontex started operations in October 2005 with 44 staff. By the end of 2006 this had increased to 72, and by October 2007 to 125. The intention is that in 2008 this should increase to 189. Even so, General Laitinen told us that “During the two years of the agency’s existence we have been at the edge all the time when it comes to human resources” (Q 238).
75. By far the larger part of the funds of Frontex comes from the European Community budget via the Commission, though a small part comes directly from the Member States. The rapid growth of Frontex in its first year of operation led to a large increase in the budget, but this came at a late stage—so late that nearly €3m of the €19m voted for 2006 remained unused. Since then Frontex has further increased in size and in the scope of its operations. The budget was double in 2007,⁴¹ and for 2008 has again doubled: a further increase of €35m has been voted, to over €70m. For operations, this represents an increase of 140%.
76. There is however no point in giving Frontex more money than it can spend, and it cannot sensibly cope with such an increase unless it has a corresponding increase, or at least an adequate increase, in the staff responsible for spending this money. This is a point which concerns General Laitinen: “... focussing only on the operational expenditure is not enough for a coordinator ... if the human resources and the administrative side are not in balance with the soaring resources and financial resources for the operational element the results can be counter-productive” (Q 235).
77. One of the few controls the European Parliament has over Frontex is in the budget. For 2008 the Parliament voted to give Frontex €30m more than either it or the Commission had requested: €53.5m for the operational budget and €15m for the administrative budget. But the Parliament voted to put in reserve—to freeze—30% of the administrative budget, and only to release it if satisfied that Frontex has improved its accountability and its effectiveness on the ground.⁴²
78. It is not uncommon for the Parliament to make the voting of funds to EU agencies subject to conditions. However in our view it makes no sense to release all the money for the operational budget but only part of the money for the administrative staff without whom the agency could not run. No

⁴⁰ Recital (4).

⁴¹ The total was €35.3m, of which €20.7m was for operations, €9.4m for staff, and €5.2m for administration (Home Office, p 31). However a subsequent amendment added a further €7m.

⁴² Simon Busuttill MEP, QQ 95–101.

organisation can plan how to spend €53.5m on operations without knowing whether it is going to have €10m or 15m to spend on staff to plan and administer those operations. As General Laitinen said, “it is not a good message for the staff, that a European agency is not able to guarantee the salary payments for the entire fiscal year” (Q 238).

79. **We believe that before the European Parliament considers withholding part of the budget of Frontex, it should bear in mind the importance of Frontex being seen as a secure and responsible employer. Nothing should be done to undermine its operational effectiveness or put at risk the accumulated expertise of its permanent staff.**
80. It is in any case debatable whether a large increase in the number and scope of operations is the best way for Frontex to proceed at this stage of its development. Mr Dowdall told us: “The United Kingdom view is that [the increased resources] should not fund simply a major increase in operations but should be focused on increasing the quality of the operations which are undertaken, also the quality of the intelligence-gathering machinery and the intelligence itself that is produced and shared with Member States. Those are key areas next year in relation to how that money is spent” (Q 147). He repeated this view when he gave evidence with the Minister; and Mr Byrne himself saw a need for more effective planning and evaluation. Mr Brodie Clark, the Strategic Director for Border Control, thought Frontex should concentrate on operations being relevant and effective, and “delivering something”; it was a matter of concern to him that Frontex should manage its ambitions, “so that it is not trying to do everything all the time” (Q 477).
81. We share these views. **We believe the increased resources may usefully lead to a modest increase in the number of operations in 2008, but should be concentrated on further increasing the quality of those operations, and of the intelligence-gathering and sharing leading up to them.**

Accountability

82. Strategic decisions on the work of Frontex are taken by the Management Board set up under Article 20 of the Regulation. The Board consists of one representative from each of the Schengen States. For the reasons we explained in paragraphs 54–60 the United Kingdom only has observer status. The Board adopts the work programme, decides on the organisational structure of the agency, and prepares the preliminary budget. It advises on issues directly related to the technical development of border control. General Laitinen explained that whenever the Board meets—on average five times a year—he gives it a full written and oral report of the state of play of Frontex activities and plans. He thought the sharing of responsibilities with the Management Board was very clear (Q 228).
83. The Management Board is required by Article 20(2)(b) of the Regulation to adopt an annual report by the end of March each year, to send it to the Council, the Commission and the European Parliament, and to publish it. It follows that the annual report for 2007 will be adopted at much the same time as this report is published, but so far the only annual report has been that for 2006.

84. Frontex has an internal auditor within the agency reporting to the Executive Director and his Deputy. The Internal Audit Service of the Commission has visited Frontex, and the European Court of Auditors has the formal responsibility of auditing its accounts.⁴³ In the course of our scrutiny of EU documents we have recently looked at the Report of the Court of Auditors on the 2006 accounts.⁴⁴ The accounts were approved, and the only comments were such as might be expected when an organisation is just beginning its initial recruitment and expenditure.
85. Apart from formal control of the budget, the Parliament also has less formal ways of supervising the work of the agency, in particular by summoning the Executive Director to report and answer questions. On 11 June 2007 the Deputy Director attended a meeting of the LIBE Committee where he gave a presentation of the Work Programme for 2007 and discussed the events which had then recently taken place in the Mediterranean (to which we referred in paragraph 40). The following month the LIBE Committee organised a public hearing on “Tragedies of Migrants at Sea”, and the Chairman of the Committee requested—indeed insisted on—the participation of a representative of Frontex. The inability of any of the three senior officials of Frontex to attend that hearing caused a degree of friction.
86. Mr Simon Busuttil’s view was that there was not sufficient accountability (Q 115). Dr Bernard Ryan, giving evidence on behalf of the Immigration Law Practitioners’ Association (ILPA), thought that the Management Board was “very close to Frontex in terms of personnel, and although there are reports, beyond that there are not specific structures in place through which Frontex is accountable to and can take guidance from democratic bodies ... it is accountability to the public at large or to the political system at large ... that is lacking” (QQ 428, 432). This is a view shared by the Standing Committee of experts on international immigration, refugee and criminal law (the Meijers Committee): “An institutional mechanism of prompt democratic oversight over operational activities of Frontex is non-existent” (p 168). Ms Muggeridge, on behalf of the Refugee Council, suggested the appointment of an ombudsman or observer to produce independent reports on operations (Q 430).
87. We heard criticism that some information about the activities of Frontex which was or should be in the public domain was not easily accessible, in particular on the Frontex website.⁴⁵ While information about risk analysis, operational planning and similar matters must remain confidential, we believe Frontex should take steps to ensure that all information which should be in the public domain is easily accessible.
88. Jonathan Faull thought that, broadly speaking, the current legal framework of the agency ensured adequate transparency and accountability. He added that issues of accountability and monitoring would form part of the review of the existing legal framework in the evaluation report which Article 33 of the Regulation required the Management Board to commission. (Q 75).
89. **We believe that the current arrangements for financial accountability are adequate.**

⁴³ Laitinen Q 229; EC Treaty Article 248.

⁴⁴ Document 15146/07.

⁴⁵ Ryan QQ 412, 428.

90. **Frontex should raise its public profile by ensuring that information which is or should be in the public domain is easily accessible to the public, in particular on its website.**
91. **Frontex should be more formally accountable to the European Parliament. The Chairman of the Management Board and the Executive Director should, if so requested, appear before the Parliament or its Committees to discuss the activities of Frontex.**

CHAPTER 5: JOINT OPERATIONS ORGANISED BY FRONTEX

Operational cooperation

92. Operational cooperation is the first of Frontex's listed tasks, and the one which appears in the title of the Regulation and the formal title of the agency. More than half of its budget is spent on operations, and 80% of that is on sea operations. When we took evidence from General Laitinen in October 2007 he told us that Frontex had arranged almost 40 operations so far (Q 219); the number is now greater. The United Kingdom took part in six operations in 2006 and sixteen in 2007.⁴⁶ We give in Appendix 4 a full list of the operations which have taken place in 2006 and 2007, and details of the United Kingdom's participation. Fuller details of all these operations, and of pilot projects, can be found in the Statistical Annex to the Commission report on the evaluation and future development of Frontex. The Commission states that during the operations in 2006 and 2007 more than 53,000 persons have been apprehended or denied entry at the borders, more than 2,900 false travel documents detected, and 58 facilitators of illegal migration arrested.⁴⁷
93. Each individual Frontex operation is managed by an International Coordination Centre (ICC). Within the ICC there will be a Frontex representative, and representatives from each of the countries which has human or operational resources involved in the operation. The operation is prepared by the host country which, together with Frontex, will draw up an operational plan detailing the areas where the operation will be conducted, the activities it is seeking to combat, and what the operation is seeking to achieve. When the plan is issued, other Member States are asked to pledge assets towards the operation. We assume that plans for an operation are not finalised until it is reasonably clear what assets are likely to be available.
94. The Home Office told us that there was a continuing need to refine the planning of operations to increase their effectiveness. Under "effects-based" planning, the Member States conducting a Frontex operation will agree the aim and purpose of the operation, and ensure that all operational, legal and logistical constraints are understood, and that the operation is achievable with the resources provided. A United Kingdom officer reported that Frontex managers are familiar with the concept; it is a best practice to which they aspire.⁴⁸
95. Once the operation starts, any action to be undertaken by a particular vessel has to be agreed by the national representative; thus if an Italian vessel is operating from Malta and the Maltese overall coordinator wishes to deploy it in a particular place for a particular role, that would have to be agreed by the Italian representative. This may seem cumbersome, but Major Mallia thought it worked remarkably well in practice, and would continue to do so as long as the national representatives on the spot retained the power of decision (QQ 391–393).

⁴⁶ Byrne supplementary evidence, p 149.

⁴⁷ Commission Communication of 13 February 2008: Report on the evaluation and future development of the FRONTEX Agency, doc. 6664/08, COM(2008)67 final, paragraph 9 and ADD 3.

⁴⁸ Home Office written evidence, p 34, and further information supplied subsequently.

96. The end of a joint operation does not of course mean the end of the activities that were being carried out; the state responsible for the work will continue it, but without the assistance of other states. Meanwhile the operation needs to be evaluated. The Home Office believe that, though both planning and evaluation are improving year on year, evaluation too needs refinement, mainly because of the unfamiliarity of Frontex with the capabilities of the Member States whose resources they coordinate.⁴⁹ We have explained in paragraph 67 how an intelligence officer from the Risk Analysis Unit will collect and analyse the data during the operation, and subsequently evaluate it. Full performance analysis of the operation is vital. **We believe that the host country, and other countries taking part if they wish, should also be involved in drawing up a report after each operation from which lessons can be learned. Frontex should be responsible for coordinating such reports.**
97. A report analysing an operation and evaluating the lessons to be learned from it will be of only limited use if there is no mechanism for ensuring that the lessons learned are put to good use in subsequent operations. We are not aware that this is the specific responsibility of any person or body. Given that the Risk Analysis Unit is closely concerned with the evaluation of operations and the preparation of subsequent operations, we believe that it will be well placed to ensure that the lessons learned are indeed put to good use.

Land operations

98. The operations are designed with specific limited objectives. An example of a land operation in April 2007 was Operation GORDIUS. In recent years Moldavian nationals have been one of the main nationalities of illegal immigrants at the Eastern borders of the EU. In 2006 they produced the largest increase of detected third country nationals targeting the border of the Slovak Republic via Ukraine. Frontex therefore launched a joint operation at the borders of Romania, Poland, Hungary and the Slovak Republic. The operation focused on the border checks of travel documents presented by Moldavian citizens at the border controls. Experts from other Member States were deployed at selected border crossing points and studied the routes used and false or falsified documents.
99. The budget for this one-month operation was €200,000. Romania, Hungary and Slovakia hosted the operation, and experts from twelve other Member States took part, including the United Kingdom. 109 illegal border crossings by Moldavian nationals were detected, and there were 855 refusals of entry.

Maritime operations

100. Maritime operations are on an altogether different scale. During 2006 the main operations, HERA I and II, focussed on the flow of illegal immigrants towards the Canary Islands, identified by a Frontex risk analysis as one of the main routes of entry to the EU.

⁴⁹ *Ibid.*

BOX 2**HERA I and II**

On 17 July 2006 9 experts from France, Portugal, Italy and Germany arrived in the Canary Islands to support the Spanish in identifying immigrants and establishing their countries of origin. In August and September they were joined by two further groups of experts, including some from the United Kingdom. Together with the Spanish authorities they identified all the illegal migrants, and 6,076 of them were returned to their countries of origin, mainly Morocco, Senegal, Mali, Gambia and Guinea. They detained several facilitators, mainly in Senegal, and prevented the departure of more than one thousand people.

The second module, HERA II, was a joint sea surveillance operation. It began on 11 August and brought together technical border surveillance equipment from several Member States to enhance the control of the area between West Africa and the Canaries, diverting vessels and so helping to reduce the number of lives lost at sea. For the first time such an operation was carried out in the territorial waters of Senegal and Mauritania and in close cooperation with them. In addition to Spanish vessels and helicopters, the operation included one Portuguese and one Italian vessel, and one Italian and one Finnish aircraft. Seven States participated in what was the longest operation coordinated by Frontex with a total budget of €3.5m. During the operational phase of HERA II 3,887 illegal immigrants on 57 cayucos (small fishing boats) were intercepted close to the African coast and diverted.

During the two operations close on 5,000 illegal immigrants were stopped from setting off on their voyages. Frontex, by coordinating the activities of the Member States, helped them to bring the situation under control.

101. Even at the close of HERA II Frontex had been operational for barely a year. General Laitinen told us that between 2006 and 2007 there was a decrease of almost 70% in illegal immigration to the Canaries (Q 219). Mr Javier Moreno Sanchez MEP referred to “the excellent results of Frontex’s operations”, adding that the Vice-President of Spain had said that Frontex’s four joint operations in the Canary Islands during the first eight months of 2007 had resulted in the number of illegal immigrants who had arrived in Spain being reduced by 75 % (Q 90). The Home Office figure was that illegal immigrants arriving in Spain in boats had decreased by 55% in the first six months of 2007 compared with the same period in 2006 (p 34). Over the whole year, illegal migration to the Canaries in 2007 was half what it was in 2006.⁵⁰
102. Some of this decrease will have been due simply to displacement: the use by migrants of different routes. But even making allowance for this, and for the discrepancies between the various estimates, there has clearly been a major absolute reduction in the number of illegal immigrants, and Frontex has plainly made a substantial contribution to it. Mr Byrne stressed that the participation of Mauritania and Senegal was essential to the success of the operation.⁵¹
103. An even more ambitious maritime operation was mounted in 2007. NAUTILUS 2007 had a budget of over €5m, and concentrated on illegal

⁵⁰ Home Office supplementary evidence, p 148.

⁵¹ *Ibid.*

migration to Malta. Risk analysis suggested that the Central Mediterranean route from Libya and Tunisia towards the Italian islands of Lampedusa, Pantelleria and Sicily, and also towards Malta, was an area under great pressure, as the islands were themselves a preferred destination for migrants but also to some extent transit points to other countries. The illegal transport of undocumented immigrants is organised by facilitators. For most part, organised criminal groups use old fishing vessels and fibreglass boats. Illegal transport takes place mainly during the night and at weekends; the migrants travel from their countries of origin to the big cities of Libya and its northern coastal region, where criminal syndicates arrange to have them embarked on boats bound for the coast of Italy and Malta.

104. The operation was in two phases, between July and October 2007. At its height nine Member States, including the United Kingdom, were involved, using four offshore patrol vessels, six coastal patrol vessels, three helicopters and four aircraft. A total of 3,173 illegal immigrants were detected, one third in the operational area and two thirds outside it.⁵²
105. It is of course the Member States which are responsible for committing their resources to such operations—patrol boats, helicopters, aircraft, and those manning them. A major problem has been the failure of some Member States actually to make available the resources they have promised. In July 2007 the Central Register of Available Technical Equipment (CRATE) was impressive—on paper—and included 21 fixed wing aircraft, 27 helicopters and 117 vessels. Of these, 32 were patrol vessels pledged by Italy, yet Simon Bussutil MEP told us that not one Italian vessel took part in Operation NAUTILUS (Q 88).
106. Major Mallia explained to us that “a pledge does not mean: ‘I am giving you this asset and it will be there at a drop of a hat.’ It is saying, ‘I am making these resources available. Sometimes I will be able to participate; sometimes I will not.’” (Q 395) Nevertheless it seems to us that it is very difficult for all concerned, not least Frontex, to attempt to plan operations without having a reasonably clear idea of the resources they will actually have available. As General Laitinen pointed out, a coordinator must have something to coordinate (Q 231). If Italy, instead of making a generous pledge of 32 vessels, had pledged, say, 10 vessels but made them all available, not only would life have been much easier for all concerned, but the number of vessels available would have been double the number that actually took part in the operation. We consider in Chapter 8 what could be done in the longer term to deal with this problem. For the present, **we recommend that Member States should be asked to pledge to make available for Frontex operations only as many vessels and other equipment as they are actually able to make available when requested.**

Disembarkation

107. We heard about the difficulties facing Member States in the policing of their maritime external borders, especially in relation to the practical management of rescue operations and the disembarkation of intercepted persons. Under the current UN Guidelines, the Government responsible for the Search and Rescue (SAR) region in which survivors are recovered is responsible for providing a place of safety or ensuring that a place of safety is provided. This

⁵² Frontex Press Kit, volume 2/11, issue 1.

is a place where the survivor's life or safety is no longer threatened, where basic human needs (food, shelter and medical) can be met, and where arrangements can be made for transport to the next or final destination.⁵³ These Guidelines are useful, but the issue is highly complex. "All Member States are subject to the same international legal framework but it is certainly true that differences in practical application and interpretation of that framework can be different from one country to another and those differences may have an impact on the effectiveness of operations, particularly when vessels from different Member States are acting within the framework of the same operation."⁵⁴

108. Assessments as to whether a migrant will be safe in a particular country (like Libya) may vary. The Guidelines leave unanswered the question of what is to be done when attempts are made to disembark in one state persons rescued outside the SAR region of that state. In the case of the Royal Navy, "if there was a scenario where a rescue was required the way that we would interpret the law of the sea would be to discharge the individuals who were rescued at the nearest port. That would typically be a port in the Mediterranean."⁵⁵
109. Immigrants who reach the Canaries or Lampedusa, or their SAR regions, become the responsibility of, respectively, Spain and Italy. Given the numbers involved this causes those countries considerable problems, but these are insignificant compared to the problems faced by Malta: we have already explained in paragraph 38 how, on the basis of the size of the country, one immigrant in Malta equates to nearly a thousand immigrants in Italy. For this reason Malta will generally not accept the disembarkation in Malta of persons recovered outside the Maltese SAR region unless there are overriding humanitarian considerations. It is this which has led to very unfavourable media coverage in a number of cases.⁵⁶
110. The first rule must plainly be that nothing should be done to endanger life at sea. But subject to this, the present situation cannot be allowed to continue. It seems to us that there are four questions to which the Member States must find an answer:
- guidelines on disembarkation for Frontex operations;
 - financial support to share the disproportionate burden falling on Malta;
 - a sharing of the burden posed by the immigrants themselves; and
 - consideration of possible changes to the rules on asylum.
111. Until now, as Major Mallia told us, the question of guidance regarding disembarkation has been handled on an ad hoc basis. For a particular joint Frontex operation the participating countries discuss the operational plan which, among other things, will address this issue of disembarkation, and a practical solution will be agreed. But it will be a working arrangement for that particular operation, and not based on principle (Q 397). Nor, as M .Gérard Deprez MEP said, should it be the responsibility of the Master of

⁵³ Extracted from the UN Guidelines on the Treatment of Persons Rescued at Sea, adopted by the Maritime Safety Committee by Resolution MSC.167(78) in May 2004.

⁵⁴ Faull Q 50.

⁵⁵ Byrne Q 480.

⁵⁶ Mallia Q 389.

the vessel which rescues persons to decide where they should be disembarked (Q 92).

112. **It should not be the responsibility of those planning individual Frontex operations to decide the rules on disembarkation for those operations. Rules must be formulated which will apply to all Frontex maritime operations. This question must be addressed by the working group developing general guidelines about the law of the sea as it relates to EU States and illegal migration.**
113. Malta is already receiving financial assistance from EU funds. Mr Byrne told us that financial burden sharing was important (Q 484). We agree, but **we believe that a fairer method must be found of calculating and granting financial assistance to those states which bear a disproportionate share of the burden of illegal immigration.**
114. More important than the financial burden is the burden of the immigrants themselves: their temporary presence if they are to be refused entry and returned to their country of origin, or their permanent presence if they are granted asylum.
115. Mr Byrne's view was: "The way we interpret burden sharing is that we do not think we should be moving people around. We think that would create an enormous pull factor that would compound the problem rather than solve it" (Q 484). Major Mallia, while welcoming offers for the resettlement of refugees by other countries, such as the Netherlands and the United States, also warned that there was a danger that this might start "to generate a pull factor" (Q 384).
116. Article 63(2)(b) of the TEC already requires the Council to adopt measures "promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons". This provision would be amended by the Treaty of Lisbon so that Article 80⁵⁷ of the Treaty on the Functioning of the European Union would read:

"The policies of the Union set out in this Chapter [i.e. the Chapter on Policies on Border Checks, Asylum and Immigration] and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between Member States. Whenever necessary, the acts of the Union adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle."

We do not think the Member States need wait until 1 January 2009, when it is planned that this provision will come into force, before giving effect to its principles.

117. The movement of immigrants cannot be divorced from the processing of asylum claims. The Regulation known as Dublin II⁵⁸ governs which state should be responsible for the processing of an asylum application lodged in one of the Member States by a third country national. Generally speaking, the state in which a person first arrives is the state with jurisdiction to decide

⁵⁷ This is Article 63b in the Treaty of Lisbon, but will be Article 80 in the numbering in the consolidated text.

⁵⁸ Council Regulation (EC) 343/2003 of 18 February 2003. Council Regulation (EC) 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50/1)

the asylum application. But this rule does throw the main burden on the border States, and again the burden on Malta is disproportionate; Major Mallia's view was that it should not necessarily be the State of disembarkation which would have exclusive jurisdiction to determine any subsequent asylum claim, particularly where interception of migrants occurred outside that State's SAR region (Q 384).

118. Ms Patricia Coelho, speaking on behalf of the European Council on Refugees and Exiles (ECRE), told us: "... the EU has a role to play in brokering some agreements between EU states in terms of responsibility sharing ... we would go along the lines of reforming the Dublin II regulation ..." (Q 420). Both the ECRE and the UNHCR are on record as wishing to see Dublin II reformed for other reasons as well.
119. It is possible that some flexibility in Dublin II would be beneficial. However any examination of this is a wide topic with profound political implications. It is a matter only peripheral to Frontex, and hence to our inquiry. But **we believe that the fairness and effectiveness of the Dublin II system is something which must be addressed in the second stage of the work on a Common European Asylum System.**

Operational cooperation by the United Kingdom

120. Article 12 of the Regulation, entitled "Cooperation with Ireland and the United Kingdom", provides:
- "The Agency shall facilitate operational cooperation of the Member States with Ireland and the United Kingdom in matters covered by its activities and to the extent required for the fulfilment of its tasks set out in Article 2(1)."
121. It is on the basis of this provision that the United Kingdom has participated very fully in a number of operations, as is clear from Appendix 4. The United Kingdom has no right to participate; in the case of each operation, participation has to be decided by the Management Board. This is done by written procedure, but is nevertheless cumbersome. General Laitinen's summary was that the United Kingdom was "very active in participating in joint operations" (Q 232).
122. These operations include two which (with others) the United Kingdom hosted. Operation Torino involved a number of experts stationed at airports around Europe advising on documents in connection with the Winter Olympics in Turin in February 2006; one of these was an Italian border guard stationed at Heathrow who advised on Italian documents and visas, specifically those in relation to the Olympics. Operation Agelaus, in February 2007, was prompted by a United Kingdom officer stationed full-time in Frontex. It dealt with unaccompanied minors illegally entering the Member States, and involved the collection of information at a number of airports including Heathrow, Gatwick and Manchester.⁵⁹ Nevertheless the legal position remains that Frontex operations cannot take place on United Kingdom territory; those operations that do take place here can be planned, organised and executed in parallel with the respective Frontex operations, but they have to be construed as separate United Kingdom operations.⁶⁰

⁵⁹ Dowdall Q 172.

⁶⁰ Supplementary written evidence from Frontex, p 68.

123. The United Kingdom has also participated in three Border Management Conferences aimed at promoting third country cooperation, and also in pilot projects, and has been “very, very active” on the return operations side, compiling best practices and training border guards handling returns (Q 232).
124. The United Kingdom has a seat on the Management Board, but only with observer status. However Mr Dowdall, the United Kingdom representative, explained that the only decisions which, up to October 2007, had been decided by vote were the appointment of the Executive Director and the Chairman of the Board itself. United Kingdom operations were well respected; the United Kingdom view was sought and listened to, and influenced the decisions taken by the Board (Q 144). The United Kingdom participates fully in the preparations for operations, and General Laitinen thought that “in terms of risk analysis and also the joint operations, we do not see any difference between our UK colleagues and the others” (Q 222). However the United Kingdom is involved in funding Frontex only in respect of its share of the cost of those operations in which it participates; in 2006 this amounted to €0.2m, equivalent to just 1.2 % of the budget of Frontex.
125. **The United Kingdom has great experience of controlling sea and air borders, and recent experience of controlling the land border with the Irish Republic. This country has much to offer Frontex and the Schengen States. We hope that the Government will share their experience with them, and that they will make full use of it.**
126. **Improved coordination of border management of the Schengen States will be of direct benefit to the United Kingdom. The Government should make clear to the other Member States that they wish to play as full a part as possible in operations, and should commit resources to them for this purpose. The Management Board should not just allow, but should encourage, United Kingdom participation.**

CHAPTER 6: RABITS

Rapid Border Intervention Teams

127. In May 2005, just as the final preparations were being made for making Frontex operational, the ministers of the interior of the G5⁶¹ met in Evian and discussed the possibility of creating a “European Police” in charge of external borders and able to provide rapid responses for crisis management. This border intervention force could then be the “precursor of a European Border Guard”. It is not clear whether this expression was intended to refer to a self-contained European border police force of the type referred to in the Commission Communication of 7 May 2002.⁶² If so, we have made clear that this proposal is for the present dormant, if not defunct. If however the G5 were envisaging the use of border guards of one Member State to help another Member State facing unexpected major pressure from illegal immigrants, this is the subject of a Regulation which was adopted on 11 July 2007.
128. Regulation 863/2007 establishes “a mechanism for the creation of Rapid Border Intervention Teams”, known by the acronym RABITs. RABITs are composed of national border guards of Member States and are deployed by Frontex at short notice to a requesting Member State which experiences an urgent and exceptional migratory pressure.
129. We asked our witnesses for examples of what might be “a situation of urgent and exceptional pressure”? General Laitinen found it difficult to present a scenario, but suggested as examples the situation in 2006 in Lebanon, or the 2005 assaults in Ceuta and Melilla. It would in any case be “an exceptional situation that we did not have any pre-warning of” (QQ 271–274). Major Mallia thought that RABITs would probably have their major applications on the land and air borders. “They are not equipped to operate in the maritime environment. They will be useful as a rapid reaction force in cases of real emergencies [such as] a sudden influx of South American citizens towards Spain, trying to pass through the airports” (Q 401).
130. Unlike other Frontex joint operations, RABITs would not be planned on the basis of risk analysis as they are intended to deal only with unexpected migratory pressure. There is another important difference. RABITs operations are based on a novel concept sometimes called “compulsory solidarity”, which means that Member States are obliged to participate in a RABITs operation. The Regulation provides for the creation of a pool of officers which Member States must deploy “unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.”⁶³ M. Gérard Deprez MEP, who was the Rapporteur of the LIBE Committee for the draft RABITs Regulation and responsible for this key provision,

⁶¹ The G5 are the five largest Member States: Germany, France, the United Kingdom, Italy and Spain. When they met in Heiligendamm, in Germany, in March 2006 they were joined by Poland to become the G6. We reported on that meeting, and also on their meeting in Stratford-upon-Avon in October 2006: *Behind Closed Doors: the meeting of the G6 Interior Ministers at Heiligendamm* (40th Report, Session 2005–06, HL Paper 221), and *After Heiligendamm: doors ajar at Stratford-upon-Avon* (5th Report, Session 2006–07, HL Paper 32). The G6 Ministers met again in Venice in May 2007 and in Sopot, Poland, in October 2007.

⁶² See paragraphs 50 and 51 above.

⁶³ RABITs Regulation Article 4(3).

thought that new legislation was needed to extend this concept to all Frontex operations, so that in appropriate cases it would be compulsory to give assistance to other Member States (Q 93). We consider this further in Chapter 8.

Amendments to the Frontex Regulation: the right to carry arms

131. The RABITs Regulation contains a second chapter which amends the Frontex Regulation. Provisions in Chapter II clarify the powers which officers participating in all Frontex operations (not just RABITs) can exercise, and the tasks they can be asked to undertake. These include active border guard activities as set out in the Schengen Borders Code, such as investigating nationality, stamping passports and preventing illegal border crossing. As Mr Vuorensola, the Frontex Legal Adviser, explained to us: “Until the RABITs Regulation came into force all the powers that our guest officers in joint operations had were based on the national law of the host Member State, and the possibility of that national law to delegate executive powers to foreigners doing the job, which is usually reserved only to their own national border guards: checking persons, asking for identification and doing other border controlling tasks”. In his view these powers could now be exercised as a matter of Community law, and they included the right to carry a service weapon and to use it in self-defence, and in certain other limited cases (Q 275).
132. The right of guest officers to carry and use weapons in a Frontex joint operation was one of the contentious issues when the RABITs Regulation was negotiated. We heard from Major Mallia that “weapons do have a role in border control, unfortunately.” He identified two roles in particular: weapons act as a deterrent, and are used for self-protection or protection of third parties. However, not all Member States’ border guards are part of the police or army and carry guns or other weapons regularly.⁶⁴ For this reason, Article 6(5) of the Regulation places a number of restrictions on the carrying and use of weapons: Member States hosting RABITs operations are allowed to restrict weapons from being carried and used if this is prohibited by the host state’s domestic legislation, and to determine which weapons are permissible, and the conditions under which they can be used. An amendment to the Frontex Regulation places similar restrictions on the carrying of weapons in the generality of Frontex operations. Both Regulations include provisions on the criminal liability of guest officers.
133. While the Regulation contains clear restrictions on the use of weapons, Major Mallia thought that more clarity was needed on the status of the individuals deployed, and the legal chain and jurisdiction to which these deployed forces are subject, “because, if something happens, as it inevitably one day will, we will have to see the liability of that deployed border guard. Is he liable to the host state? Is he liable in his Member State? He definitely cannot be liable in both” (Q 401).
134. Frontex have told us in their supplementary written evidence that the amendments to the Frontex Regulation have important consequences for United Kingdom participation in Frontex activities. Both RABITs team members and guest officers in Frontex activities have now been endowed with certain tasks and executive powers which would not be available to

⁶⁴ “The United Kingdom does not arm its border guards, and is not planning to do so.” Byrne, Q 476.

participating United Kingdom border guards. The possible liability of United Kingdom border guards participating in Frontex operations (both joint operations and RABIT teams) is unclear.⁶⁵

135. **The liabilities of guest border guards, particularly those which arise from the use of weapons, need to be clarified in amending legislation. The particular position of participating United Kingdom border guards should also be addressed.**

RABITs training exercises

136. The first trial RABITs exercise took place between 5 and 9 November 2007 at Sa Carneiro airport, Porto, Portugal comprising a total of 16 border guards from 16 Member States, divided into three teams. Eight of them concentrated on front line interviews with arriving passengers, five on examination of suspect documents, and the remainder on secondary interviews of those whose eligibility for admission to the EU was in doubt. The main objectives were:

- to test the new mechanism in real circumstances;
- to test the administrative procedures necessary for deployment within the time limits set out in the RABITs Regulation;
- to deal with operational challenges (national expert pools, list of permissible weapons, databases, etc.) and open questions in advance of real missions; and
- to develop further the management of RABITs within Frontex.⁶⁶

137. The exercise was made as realistic as possible, and the guest officers were therefore asked to bring their service weapons with them. This raised the issue as to whether guest officers were required, as a matter of Portuguese law, to obtain a Portuguese firearms permit before the weapons could be carried in public (Portuguese border guards are required to hold such a permit). Frontex argued that the RABITs Regulation took precedence over national legislation and that guest officers could not be required to obtain these permits. After some debate this was accepted by the Portuguese authorities, but only after they had issued the national permits.

138. This is an important issue. Under Article 10(5) of the Frontex Regulation⁶⁷ guest officers are only allowed to carry service weapons in accordance with the law of the host Member State. However, the host Member State may prohibit the carrying of service weapons provided that its own legislation applies the same prohibition to its own border guards. If Portuguese law does not allow Portuguese guards to carry arms without a permit, it is legitimate to apply the same law to guest border guards, and to require them to have a permit; but it may also be very inconvenient to have to wait for a permit to be issued in what is by definition an urgent situation. This issue must be addressed.

139. Following from this exercise, Frontex was able to prepare a series of recommendations for the next exercise due in Slovenia in April 2008. The

⁶⁵ Frontex supplementary evidence, p 68.

⁶⁶ *Ibid.*

⁶⁷ As substituted by Article 12(6) of the RABITs Regulation 863/2007.

evaluation of each exercise with a view to improving the process the next time is a constant process. The training programme for officers who will be deployed in RABITs began in January 2008, and 22 courses are planned under the RABITs programme before the end of 2008. United Kingdom officers will be involved in the delivery of RABITs training, but will not have a leading role.

CHAPTER 7: OTHER ISSUES

The applicable law

140. Operations at sea generally tend to be governed by international legal instruments rather than purely national ones.⁶⁸ The principal instruments are the United Nations Convention on the Law of the Sea (UNCLOS) and the International Convention on Maritime Search and Rescue (SAR). Both are agreements between States, and Frontex could not therefore be a party to them even if search and rescue was a part of its functions, which it is not, as a number of witnesses made clear.⁶⁹ But General Laitinen also emphasised that search and rescue was an international obligation incumbent on Frontex as much as on anyone else—even in the case of those whose distress is deliberately of their own making. It is beyond the remit of Frontex to label an operation as a maritime search and rescue operation; but, as an agency established by States which are subject to international law, it too is bound by that law (Q 246).
141. The Standing Committee of experts on international immigration, refugee and criminal law (the Meijers Committee) sent us, with the evidence which they prepared specifically for our inquiry, comments which they had prepared for the European Parliament in October 2006 on the (then draft) RABITs Regulation. We have printed those comments with the evidence, since they consider in critical detail the operations to which we have referred, and in particular the law applicable to them. The Committee point out that “Member States taking part in pre-border control operations apparently operate under the premise that migrants still within the territorial waters of third countries fall under the exclusive responsibility of third countries”. This in the Meijers Committee’s view is mistaken; they believe that “Member States participating in such operations may be equally accountable under international law for possible human rights violations ensuing from these operations” (p 167).
142. ILPA too had concerns about activities that are coordinated by Frontex but take place outside the territory of the EU. Dr Bernard Ryan explained that it was very difficult to see that Frontex had, as a matter of European Union law, a mandate to operate beyond the external borders of the EU. He thought that Frontex had stretched its mandate beyond what is set out in the Regulation. He felt that if Frontex was to act extra-territorially its role should be expressly set out, and that this should include explicit guarantees that it was governed by international law (QQ 402, 416, 417).
143. The Schengen Borders Code is insufficient for this purpose. It applies within the territorial waters of Member States but not extra-territorially, and hence not on the high seas—still less in the territorial waters of third states. Dr Ryan pointed out, by way of example, that “the code gives a right of appeal against a refusal of entry; it is a bit hard to see how that is operating in the territorial waters of Senegal, to the extent that Frontex is coordinating refusals of entry to the European Union in some sense there. The code is not designed to address extraterritorial activity” (Q 423). Jonathan Faull confirmed that, while border surveillance can be carried out on the high seas,

⁶⁸ Mallia Q 371.

⁶⁹ E.g. Faull Q 47; Deprez Q 92; Laitinen Q 246.

measures of interception and disembarkation are not covered by the surveillance rules of the Schengen Borders Code but are governed by the law of the sea, and so based on the jurisdiction and national legislation of the flag state of each vessel (Q 78).

144. In May 2007 the Commission, in response to a request from the European Council, published a study on international law in relation to illegal immigration by sea.⁷⁰ The study examines Member States' control powers in the different sea areas (internal waters, territorial waters and high seas) and identifies the gaps in the international legal framework applicable to operations at sea which need to be addressed. On the basis of that study an expert group was set up which included experts from the Member States, Frontex, the International Maritime Organisation (IMO), UNHCR and the International Organization for Migration (IOM).⁷¹ When that group met in June 2007 it agreed to set up a drafting sub-group: the Law of the Sea/Frontex Guidelines Drafting Group. The United Kingdom is part of both groups. The drafting sub-group met three times in 2007 and again in February 2008; Mr Byrne told us it was hoped that these guidelines would be formulated early in 2008.⁷²
145. If Frontex were itself operating extra-territorially, and carrying out search and rescue and other operations on the high seas, we can see that its power to do so, and the principles guiding it when doing so, should be set out in the legislation establishing it. But so long as such operations, though coordinated by Frontex, continue actually to be carried out by the Member States, we see no need to amend the Frontex Regulation in this respect. However, **given the complexity of the law governing operations on the high seas involving illegal immigration, we think it essential that the Member States taking part in operations coordinated by Frontex should follow clear guidelines clarifying their powers and obligations in the different sea areas.**

Agreements with third countries

146. Operating in the territory of a third state, including its territorial waters, is quite another matter. Here activities coordinated by Frontex cannot be carried out without the agreement of that state; and even with that agreement, there is some doubt as to whether the mandate of Frontex stretches so far.⁷³
147. Until now such cooperation has been based on agreements between a Member State and third countries; the legal basis for operations coordinated by Frontex in the territorial waters of Senegal and Mauritania is the bilateral agreements between Spain and those countries.⁷⁴ However Article 14 of the Regulation requires Frontex to “facilitate the operational cooperation between Member States and third countries”, and allows it to conclude working arrangements with the authorities of those countries.

⁷⁰ SEC(2007)691.

⁷¹ This is the Expert Meeting on the Study of International Law Instruments in Relation to Illegal Immigration by Sea.

⁷² Faull Q 54; Byrne Q 465; Home Office supplementary written evidence, p 152.

⁷³ See the evidence of Dr Ryan quoted in paragraph 142.

⁷⁴ Laitinen, Q 267.

148. Arrangements have already been concluded with the border guard authorities of Russia, Ukraine and Switzerland, and negotiations with Croatia are well advanced. The Management Board has given Frontex mandates to negotiate arrangements with ten other countries.⁷⁵ Of these, Libya is the country with which cooperation is most urgently needed, as was demonstrated by an incident in May 2007 when 27 Africans were alleged to have been left clinging to tuna nets for three days and nights while Malta and Libya argued over whose responsibility it was to save them.⁷⁶ At precisely that time a Frontex technical mission was in Libya discussing questions of illegal immigration. Given its finding that Libya is “fundamentally a transit country from North Africa to Italy and Malta and thereon to the rest of the EU”,⁷⁷ the mission concentrated as much on the highly porous Libyan southern border, but it recommended that a structured Mediterranean Sea Border Control Cooperation Framework should be developed to extend maritime cooperation in the Mediterranean to third countries, and that Libya should be invited to play a leading role.
149. However this has not yet led to a working arrangement with the Libyan authorities. Major Mallia told us that he would like Frontex to move ahead at greater speed in negotiating with third states in addressing the problems on the Northern African rim, most specifically with Libya. He thought Frontex could and should take a much more substantial role because it brought with it the weight of the whole Union rather than a single Member State (Q 399). Such an arrangement, once negotiated, could be expected to require Libya to play a greater part in preventing would-be immigrants to the EU from leaving its shores, and taking back those who do leave while they are still in its territorial waters, in its search and rescue area, or on the high seas.
150. Any arrangement would not be with Libya or its Government but with its border control authority; as General Laitinen pointed out, “we do not establish a partnership with a country or a government but [between] the border control authority of that third country and Frontex” (Q 268). However Ms Coelho thought that although Frontex working arrangements with third countries might be regarded as technical low-level operational agreements, an arrangement with Libya was part of a political relationship between the EU and Libya, and “could be seen as the EU agreeing that the way Libya treats people as it does on its borders and within its detention centres is acceptable” (Q 413).
151. Dr Ryan pointed out that “Libya is not a party to the Refugee Convention; we just do not have guarantees about what is going to happen if they are returned” (Q 409). In particular, there are no guarantees that Libya will observe the obligation of *non-refoulement*. Other witnesses also made allegations of abuses and human rights violations to which persons were subjected when returned to Libya and other countries in North Africa.⁷⁸ It is precisely because a working arrangement with Libya would be seen as

⁷⁵ FYROM, Turkey, Egypt, Libya, Morocco, Mauritania, Senegal, Cape Verde, Moldova and Georgia.

⁷⁶ Immigration Advisory Service p 164. The time “three days and nights” is also given by the International Herald Tribune (3 June 2007), but The Times says that the men were transferred to an Italian vessel after 24 hours.

⁷⁷ Report of the mission, paragraph 9.5. The report identifies five main migration flows: from Sub-Saharan western Africa, from the Horn of Africa, from Morocco and Egypt, from the Middle East, and from the Indian sub-continent.

⁷⁸ Muggeridge Q 413; Immigration Advisory Service p 163.

carrying the approval of the whole Union that the Member States should be concerned to influence the terms of any agreement or arrangement that is negotiated.

152. **We believe that working arrangements between Frontex and the authorities of third countries in the Mediterranean could play a valuable part in controlling illegal immigration to the EU. We hope that Frontex will carry forward the negotiation of such arrangements.**
153. **Member States, including the United Kingdom, should however be concerned to ensure that any such arrangements with a third country include meaningful guarantees for the treatment of would-be immigrants repatriated to that country.**

Links with UNHCR and other bodies

154. We welcome the close links which Frontex is developing with UNHCR. In July 2007 Mr Soufiane Adjali was posted as Senior Liaison Officer to Frontex, and we took evidence from him on 23 October 2007 during our visit to Warsaw. He told us that a draft of an agreement between UNHCR and Frontex was then in the course of negotiation, and that Frontex had invited UNHCR to participate in the groups formulating a Core Curriculum for border guards (QQ 280, 299). The view of Ms Coelho was that “development of working arrangements with the UNHCR and IOM may lead to some mechanisms and relationships that can improve the ability of Frontex to respond to humanitarian needs and to see how people, once they arrive at the place where they are diverted or taken to, can be dealt with on reception. We think that the presence of a UNHCR position in the Frontex headquarters in Warsaw is a positive step ...” (Q 441).
155. **We welcome the cooperation between Frontex and UNHCR, and would like to see this extended to other bodies with responsibilities for immigration, asylum and refugees.**

CHAPTER 8: LOOKING TO THE FUTURE

Assessment of Frontex to date

156. Jonathan Faull told us that Frontex was “a small, modestly resourced agency which is really no more than a clearing organisation for assets, ideas and risk assessment made at each Member State’s level and then trying to organise a coordinated response to that.” On that basis it was meeting the expectations the Commission had for it when it was created, and it was continuing to meet expectations even though these had grown considerably and were continuing to grow (QQ 68, 47). But most of our other witnesses thought it had considerable and growing influence. Dr Ryan’s assessment was that Frontex was “more than some passive coordinator of Member States’ activity ... [it] has led to a step change in the situation because it is initiating the coordination that it engages in” (Q 436). Major Mallia, giving us Malta’s perspective, told us that Frontex was doing things to which previously Malta could not have dedicated all the resources it would have liked, in particular risk assessment and multinational joint operations (Q 400). Tom Dodd, the Director, Border and Visa Policy, gave us the Home Office view that Frontex had done valuable work in improving the capacity of European border guards, but could do more to improve its performance in areas like the planning of operations and work with third countries (Q 140).
157. Any assessment of the results of Frontex operations must be based on a better knowledge of the facts. We have explained in paragraph 102 how it is at present impossible even to guess at the extent to which the reduction in the number of immigrants using a particular route is absolute, and what proportion is simply due to displacement. Mr Byrne wanted to see the United Kingdom participating with Frontex over the next three to five years in more effective evaluation of operations, so that we could better understand the effect of displacement (Q 476). This is a view we share.
158. We also agree with Ms Muggeridge that data should ideally include more than just headcount figures. Referring to the current Frontex statistics on the numbers of people it has stopped from coming or has turned back, she said: “... there is no reference really to the differences within that large group, the different needs of people and what kind of ages or gender or whether any of them were vulnerable people, or whether any of them indeed wanted to seek protection or did seek protection” (Q 433). We agree that such information would be useful; it should be possible to collect it without compromising operations and without disproportionate expense.
159. **Frontex should formulate rules for data collection which will allow a better evaluation of the results and impact of operations. This evaluation should show in particular the kinds of people intercepted or turned back, and the extent to which the operations are effective in reducing, and not just displacing, illegal immigration. The United Kingdom should participate fully in any such evaluation.**

Commitment of operational assets

160. We considered in Chapter 5 the problem of states not making available for operations the assets and resources which they had undertaken to make available, and for the short term we recommended that Member States

should be asked to pledge to make available only as many vessels and other equipment as they are actually able to make available when requested. We now look at what might be done in the longer term.

161. Major Mallia thought it unlikely that Member States would be coerced into committing resources in the near or medium term (Q 395). However we believe that something stronger is needed sooner rather than later. We referred in paragraph 130 to Article 4(3) of the RABITs Regulation which provides that “Member States shall make the border guards available for deployment at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.” Regulations are of course directly applicable law. A request from Frontex addressed to a Member State to make border guards available to another Member State thus imposes on the first State a legal obligation to which there is only a very limited exception.
162. This provision could not be transposed directly into the Frontex Regulation; border guards by definition are always at land or air borders, whereas in a case of urgency assets such as ships and helicopters would only coincidentally happen to be where they were wanted. But in the case of operations planned some time ahead it should be possible for Frontex to stipulate in advance which of the assets pledged should be available where and when. The only excuse for a Member State not complying should similarly be “an exceptional situation substantially affecting the discharge of national tasks.” If the consequence was that insufficient assets were pledged, that could be resolved only at the political level.
163. For Frontex to operate successfully, Member States must meet their obligations. **Consideration should be given to introducing into the Frontex Regulation a provision requiring, subject to strictly limited exceptions, compulsory deployment of vessels and equipment in joint operations and other Frontex activities.**

Widening the mandate of Frontex

164. We have stressed that Frontex is an organisation set up to promote cooperation at national borders, primarily against illegal immigration. Inevitably this involves consideration of the organised crime which promotes and facilitates much of this immigration. We received evidence from Major Mallia about the involvement of traffickers in illegal maritime immigration (Q 385), and during our visit to Dorohusk we heard about the part played by organised crime in immigration by land.⁷⁹
165. Some of our witnesses seem to assume that it is only a matter of time before the mandate of Frontex is enlarged specifically to include fighting serious organised crime, or even counter-terrorism. This was the view of the National Coordinator Ports Policing in both his written (p 2) and his oral evidence: “It is quite clear that there is a unique potential within Frontex in our collective fight against terrorism and for purposes of national security ... I think the addition of counter-terrorism as an element of Frontex would be beneficial, and specifically beneficial to us” (QQ 27, 30).
166. However most of our witnesses disagreed. Mr Dodd’s view was that an explicit counter-terrorism role would be “a considerable extension of its

⁷⁹ Paragraphs 26–29 above.

current capacity and ability”. Such a remit might be considered in the future, but would take Frontex much further than its current capacity to deliver. He thought that the issue would certainly be raised during the Commission review to which we referred in Chapter 4 (Q 192). When he gave evidence to us in October 2007 Jonathan Faull told us that he thought that for the time being the mandate was the right one (Q 49). He was understandably unwilling to pre-empt the results of the Commission review, but he pointed out that there were many other systems in place for cooperation between police and counter-terrorism agencies, and duplication was the last thing that was needed (Q 66).

167. Organised immigration crime⁸⁰ is quite another matter. Mr Byrne told us that he would be interested in the Committee’s view on whether Frontex should concern itself with dismantling the syndicates of organised crime which are responsible for much of the pressure on illegal immigration; this was a question he had not answered in his own mind.
168. The reason this work does not feature in the list of tasks in Article 2(1) of the Regulation is that Frontex is created by a Regulation under the first pillar, while cooperation in criminal matters falls under the third pillar.⁸¹ Even so, the two cannot be divorced. General Laitinen put the matter in this way: “... border control is a cross-pillar phenomenon which serves all three pillars ... this is quite a persistent question and dilemma for us to find an appropriate way between these more or less artificial pillars within the Community. Fighting organised crime is one thing we come across with these issues and it can be stated it is not a function or task of Frontex, but in practice in the Member States and also at the European level we have to work towards that objective. It is not a task but it is an objective” (Q 246).⁸²
169. It is clear to us that combating illegal immigration must mean combating it by all available means. If, as appears, one of the main causes of illegal immigration, and one of the main reasons why it is often successful, is the involvement of organised crime, this is something in which Frontex should be closely involved. It cannot be right to attempt to divorce the cause from the effect. Our reply to Mr Byrne’s question is therefore that Frontex should indeed be closely concerned with fighting the syndicates of organised crime which, as he says, are responsible for much of the pressure on illegal immigration.
170. **We agree with the majority of our witnesses that, for the present at least, it would be an unacceptable enlargement of the mandate of Frontex for it to concern itself specifically with counter-terrorism or serious cross-border crime which is not directly linked to illegal immigration.**
171. **Nevertheless Frontex must be involved in combating any organised crime whose aim is to facilitate and profit from illegal immigration. It**

⁸⁰ The Serious Organised Crime Agency (SOCA) uses this expression to mean both the organised facilitation of immigrants to the United Kingdom (“people smuggling”) and the trafficking of people for criminal exploitation, for example as prostitutes or forced labour (“human trafficking”).

⁸¹ Immigration falls within Title IV of the TEC, while Police and Judicial Cooperation in Criminal Matters falls within Title VI of the TEU.

⁸² General Laitinen was giving evidence before the signature of the Treaty of Lisbon, which would merge the first and third pillars.

is right that this should already be an objective of Frontex. Technicalities should not be allowed to stand in the way of this.

Cooperation with other agencies in combating organised crime

172. Frontex does not currently produce a collective intelligence product for dissemination to Member States. Each state is responsible for recording intelligence for its own use. The National Coordinator Ports Policing saw “significant scope for more action to be taken to effectively capture and disseminate intelligence that would be of use in combating crime and terrorism impacting on the United Kingdom.” He would “potentially have some serious use of Frontex for intelligence-gathering purposes”. (p 2, Q32).
173. While we do not think the mandate of Frontex should be extended to intelligence gathering specifically for purposes other than combating illegal immigration, inevitably, during its work on risk analysis and in the course of the operations it coordinates, Frontex will acquire intelligence and information which is not directly concerned with its own work, but which might be of great value to the agencies of the Member States and the international agencies whose aim is to combat terrorism and serious organised crime generally. **It is essential that there should be a mechanism enabling Frontex to transfer key intelligence to those who can best make use of it.**
174. This is precisely the task of Europol. It is currently a body established by a Convention between the Member States, but the Council is considering a Commission proposal to set Europol up as an EU agency with a rather wider objective. From the planned date of entry into force of the Treaty of Lisbon (1 January 2009) the “mission” of Europol, set out in Article 88 of the Treaty on the Functioning of the European Union, would be wider still: “to support and strengthen action by the Member States’ police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy”.⁸³
175. Article 13 of the Frontex Regulation allows Frontex to cooperate with Europol and other international organisations. Mr Dowdall told us that “There is not currently a formal memorandum of understanding with Europol but Frontex and Europol do work closely together; they share their agenda and there is interchange of staff ... That has manifested itself in, for example, Operation Hera which took place at European airports focusing attention on illegal Chinese migration, and Europol contributed to that work with the provision of information and intelligence.” He and Mr Dodd both advocated strengthening links with Europol (QQ 192, 200). Article 22(2) of the latest draft of the Council Decision provides that Europol “shall”—not “may”—conclude an agreement or working arrangement with Frontex.⁸⁴ This is a welcome development.

⁸³ Under Article 3 of the draft Proposal for a Council Decision establishing the European Police Office (Document 10327/07 of 4 June 2007) the objectives are “to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States”. However there must be some doubt as to whether this draft will be adopted and come into force before 1 January 2009.

⁸⁴ Document 16452/07 of 21 December 2007.

- how Frontex pools information from the Member States to carry out risk analyses;
- the extent of Frontex involvement in surveillance operations;
- how Frontex joint operations are planned and mounted;
- how Frontex joint operations are monitored and the outcomes evaluated;
- whether there is, or should be, any involvement of, or assistance from, the military in Frontex operations;
- the disadvantages, if any, to the UK in not participating in Frontex, and how the Advocate-General's Opinion in the case challenging its exclusion from Frontex affects its current position;
- how the Agency's role should develop in the future.

Herakles (August and October 2007): a two-stage land operation on the Hungary/Serbia border.	AT, BG, DE, HU, IT, LV, PO, PT, RO, UK
Hermes (September 2007): an operation targeting illegal migration across the Mediterranean from North Africa to Italy and Spain.	DE, ES, FR, EL, IT, PT, RO, UK
Hydra (April-May 2007): an operation aimed at the detection of illegal Chinese migrants arriving at EU airports.	AT, BG, CZ, DE, ES, FI, FR, HU, IT, NL, PL, SL, RO, UK
Indalo 2007 (November 2007): a maritime operation targeting illegal migration through the Western Mediterranean, from the North African coast to Southern Spain.	DE, ES, FR, IT, MT, PT, RO
Kras (September 2007): a land operation targeting illegal migration from Croatia to Slovenia.	AT, BG, DE, IT, RO, SL, UK
Long Stop (November-December 2007): an operation to detect Pakistani, Bangladeshi and Sri Lankan citizens arriving at EU airports in breach of immigration controls.	AT, CZ, DE, EE, EL, FI, FR, IT, NE, PL, PT, SL, UK
Minerva (August-September 2007): a maritime operation targeting illegal migration through the Western Mediterranean, from the North African coast to Southern Spain.	AT, BE, ES, DE, FR, IT, NL, PL, PT, RO, UK
Nautilus 2006 : a maritime operation in October 2006 in the Southern Mediterranean aimed at combating illegal immigration to Malta and Lampedusa.	DE, EL, FR, IT, MT
Nautilus 2007 : a further major two-stage maritime operation (June-July 2007 and September-October 2007) with a budget of €5.1m, targeting illegal migration from Libya across the central Mediterranean to Malta and Lampedusa.	DE, EL, FR, IT, MT and (for Stage II) PT, RO, UK
Niris : an operation to combat illegal migration flows through Baltic sea ports, especially flows organised by criminal networks from India and China.	States with borders on the Baltic Sea, including Norway
Poseidon 2006 : a joint land and sea operation in June-July 2006 in the Greek islands and on the Greek land border with Albania and Turkey.	AT, DE, EL, FR, IT, MT, PL, UK
Poseidon 2007 : a major three-stage joint land and sea operation with a budget of €2.25m, targeting illegal immigration to Greece and SE Europe from Albania, FYROM and Turkey. The three stages ran from May to October 2007.	AT, BG, CY, DE, FR, EL, IT, MT, NL, PT, RO, UK , Europol
Torino 2006 : border checks at 24 airports of persons travelling to the Winter Olympic Games in Turin in February 2006.	15 Member States including UK
Ursus I and II : two operations at the Eastern EU external land borders, the first focusing on the Slovakian border with Ukraine, the second on the Polish border with Ukraine.	AT, BG, DE, EE, FI, HU, LT, LV, PL, RO, SK and Ukraine
Zeus (October 2007): joint air and sea operations to identify irregular migrants posing as seamen.	BE, CY, DE, ES, FI, FR, IT, LV, MT, NL, PL, PT, RO, SE, UK

IRIS	Iris Recognition Immigration System
JHA	Justice and Home Affairs
LIBE Committee	Committee on Civil Liberties, Justice and Home Affairs of the European Parliament
Meijers Committee	Standing Committee of Experts on International Immigration, Refugee and Criminal Law
NCPO	National Coordinator Ports Policing
PNR	Passenger Name Record
QMV	Qualified Majority Voting
RABIT	Rapid Border Intervention Team
RABITs Regulation	Regulation (EC) 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 [the Frontex Regulation] (OJ L199 of 31 July 2007, p.30)
RAU	Risk Analysis Unit of Frontex
SAR	Search and Rescue
Schengen <i>acquis</i>	The Schengen Agreement, the Schengen Convention, and all the instruments adopted under them (published in OJ L 239 of 22 September 2000)
Schengen Agreement	The 1985 Agreement between Belgium, Germany, France, Luxembourg and the Netherlands on the gradual abolition of checks at their common borders
Schengen Convention	the 1990 Convention implementing the Schengen Agreement
SIS II	Second generation Schengen Information System
SOCA	Serious Organised Crime Agency
TEC	Treaty establishing the European Community
TEU	Treaty establishing the European Union
Treaty of Lisbon	The Treaty between the Member States, signed in Lisbon on 13 December 2007, amending the TEU and amending and re-naming the TEC
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commissioner for Refugees

