

Schengen: Achievements and Challenges in Managing an Area Encompassing 3.6 million km²

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Abstract

This paper assesses the achievements of the European Commission and the member states over the last six years in the management of Europe's internal and external borders. The key stages in the development of the Schengen *acquis* are identified, including the creation of FRONTEX (the EU agency responsible for coordinating the operational cooperation between member states in the field of border security) and the recent Schengen enlargement. The author attempts to explain the main reasons why the member states of the European Union have relinquished some of their much-treasured sovereignty and pooled their financial and human resources in a bid to manage and police Europe's external borders more effectively. Finally, this paper considers the fundamental question of how to make Europe's controls more effective, more technologically advanced and more responsive to the new challenges posed by globalisation, without impinging on the principle of the free movement of people.

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SCHENGEN:

ACHIEVEMENTS AND CHALLENGES IN MANAGING AN AREA ENCOMPASSING 3.6 MILLION KM²

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1. Introduction

Migration is often associated with globalisation in the world economy, and this has given rise to numerous uncertainties and policy issues for Europe as a whole. Management of the EU's external borders, which is an integral part of Europe's Global Approach to Migration,¹ is certainly one of the major policy challenges to be faced in the years ahead. Increased movements of migrants have gradually eroded member states' ability to control their national borders and this "diminishing power" has become a permanent feature of today's Europe. Migratory pressure, however, is not the only policy issue commanding Europe's attention. There are also pressing external security threats, such as terrorism² and drug and weapons smuggling. In the face of these cross-border challenges, Europe's citizens demand more action and more security both nationally and Europe-wide. It is therefore important that Europe should continue to deliver and develop the area of justice, freedom and security, both for its own benefit and in response to the formidable challenges it will face in the coming years.

Borders also embody a geopolitical concept, as they incorporate both geographical and political aspects. In the last half of the 20th century, however, these two dimensions were joined by a third dimension, namely a human dimension, which has gradually become more politically relevant than the other two border components. The social and economic dimensions of borders must also be given equal weight. Obtaining a visa and crossing the external border must be simple and quick for *bona fide* travellers. People-to-people contacts in border regions and between family members must be facilitated. Border management must support, not stifle, economic growth in border regions of neighbouring countries. We have also to look after our

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¹ Communication on "*Priority actions for responding to the challenges of migration: First follow-up to Hampton Court*", COM(2005) 621 final, Brussels, 30.11.2005. This Communication was adopted on 30 November 2005 and heralded a new era of migration management. In this document, "[T]he Commission recognises the need for a coherent, overall and balanced approach on migration issues, and the fact that setting up a clear and consolidated EU immigration policy adds to the credibility of the EU on the international stage and in its relations with third countries..... More specifically, it identifies a framework responding to a series of short term, medium term and long term actions to respond to the challenges of migration".

² For more details on the European policy to combat terrorism, see Presidency Conclusions, Brussels Extraordinary European Council, 21 September 2001, chapter 2; Council Framework Decision (2002/475/JHA) of 13 June 2002 on combating terrorism, OJEC L 164/3, Brussels, 22.6.2002; and proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism COM(2007) 650 final, Brussels, 6.11.2007. Equally important are the Council of Europe Convention on the suppression of terrorism, Strasbourg, 27.1.1977 and the Council of Europe Convention on the prevention of terrorism, Strasbourg, Warsaw, 16.5.2005.

citizens and guarantee them quick checks at our border crossing points and quick procedures when entering third countries, while stressing the need for a non-discriminatory approach to non-EU nationals. The ultimate challenge is to maintain the credibility of the abolition of internal borders – we cannot allow such a tangible benefit to EU citizens to be rolled back - and therefore also to extend the Schengen area still further.

Global migration flows have undoubtedly been the main reason for this change in the nature of borders. Political, social and economic reasons encourage people across borders. This movement is at the heart of the EU project in the form of free movement of persons within the territory. It is also an essential element of the objectives of the EU's Neighbourhood Policy. Finding the correct tools to achieve the objectives of the EU and its external policy while ensuring good border management lie at the heart of the challenge. Although states are still the supreme authority of power, they have had to come to terms with a growing international phenomenon, which has a direct impact on the way countries were used to managing their own borders.

This article seeks to identify the key stages in development of the Schengen *acquis*, including the creation of Frontex and the recent Schengen enlargement. It also attempts to explain the main reasons why the member states of the European Union have relinquished some of their much treasured sovereignty and pooled their financial and human resources in a bid to manage and police Europe's external borders more effectively.³ In the words of Martin O. Heisler, "migration has reinforced and accelerated the construction of communitarian space".⁴

In short, this article endeavours to give readers a better understanding of what the Commission and the member states have achieved in the last six years in the management of Europe's internal and external borders. With the assistance of new technologies, Europe's aim is to bring up to date member states' approach to border management, which is still mainly territorial. Given the challenges posed by globalisation, this obsolete approach is neither adequate nor effective. Innovative and effective border controls have to ensure the free movement of a growing number of people across borders while guaranteeing greater security for Europe's citizens. Border controls therefore have to be more focused on potential challenges, flexible enough to be adapted to unexpected circumstances and easy to operate by border guards. These controls should not be carried out at external borders, but all along the new "border path", which includes checks at consulates, extensive use of new technologies and, in future, setting up an automated entry/exit system at Europe's external borders.⁵ The question is not whether Europe should place a greater number of controls at its external borders with a view to turning it into an impenetrable fortress. The fundamental question is how to make Europe's controls more effective, more technologically advanced and more responsive to the new challenges posed by globalisation with a certain degree of success, without impinging on the principle of free movement of people or the important principle of data protection.

³ Europe's visa policy is not covered in this article.

⁴ M.O. Heisler, "Now and then, here and there: Migration and the transformation of identities, borders and orders" in M. Albert, D. Jacobson, and Y. Lapid, (eds) *Identities, Borders, Orders: Rethinking International Relations Theory*, Minneapolis: University of Minnesota Press, 2001.

⁵ This proposal has already been tabled by the Commission in its Communication on enhanced interoperability and synergies among European databases in the area of justice and home affairs - COM(2005)597 final, Brussels, 24.11.2005 - and in its Communication on policy priorities in the fight against illegal immigration of third-country nationals - COM(2006)402 final, Brussels, 19.7.2006.

2. Development of the Schengen *acquis*: A brief overview⁶

Possibly triggered by the success of the Nordic Passport Union⁷ but more probably by the intricate negotiations that led to the adoption of the Single European Act (SEA),⁸ the 1980s bore witness to a heated debate on the importance of ensuring the free movement of people within the European Union. One of the main bones of contention was the transformation of the Common Market into a Single Market by 31 December 1992. To achieve this goal, Title II of the SEA - Provisions amending the Treaty establishing the European Economic Community - provided in Subsection I (internal market) of Section II that Article 13 of the Treaty of Rome should be supplemented by Article 8a, which reads as follows:

The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 8b, 8c, 28, 57(2), 59, 70(1), 84, 99, 100a, and 100b and without prejudice to the other provisions of this Treaty. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.

Since no consensus could be reached within the Council on the concept of the free movement of persons, which remained subject to unanimous voting, Belgium, France, Germany,⁹ Luxembourg and the Netherlands decided to establish an area with no internal border controls, outside the EU framework. Their original plan considered the dismantling of internal border controls not only as a step further towards closer practical cooperation at European level, but also as a prerequisite to facilitate the free movements of goods. They rightly considered it essential for Europe's single market to ensure the free movement of goods and people at the same time. Consequently, they decided to make use of the possibility offered by intergovernmental cooperation. Economic reasons also helped these countries to take this decision, as border controls are barriers to trade, which is a major factor in economic growth.¹⁰ The intergovernmental agreement was signed on 14 June 1985¹¹ in Schengen, a small town in

⁶ Implemented in 1958, this Union enabled the citizens of Denmark, Finland, Iceland, Norway and Sweden to cross borders without carrying their identity documents. Since March 2001, the Schengen *acquis* has applied in full to these five countries. For more information, see OJ L 309, 9.12.2000. It is also important to underline that the European Community also entered into an agreement with Norway and Iceland concerning the criteria and mechanisms for establishing which State is responsible for examining a request for asylum linked to the Schengen *acquis*.

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⁸ The SEA was signed in Luxembourg and in the Hague in February 1986 and came into effect on 1 July 1987, OJ L 169, 29.6.1987. The main purpose of the SEA was to revise substantially the Treaty of Paris of 1951 and the Treaty of Rome of 1957 in order to speed up the pace of European construction. The idea was to move up a gear on the slow decision-making process of the European Union, which was bogged down by the unanimous voting procedure.

⁹ West Germany, as West and East Germany were not reunified until 3 October 1990.

¹⁰ By way of example, the long queues of lorries at borders, which disappeared with the advent of Schengen.

¹¹ On the same date, the Commission submitted to the Council the famous White Paper presented by President Delors on completion of the internal market, which included a clear timetable and definition of the measures required to achieve this major objective by 31 December 1992 at the latest. White Paper of

Luxembourg, known until then more for Victor Hugo's drawings of its castle. In the years which followed, the politically courageous philosophy underlying this intergovernmental cooperation soon gained more political support among other European member states, as they started to see the benefits of greater practical cooperation in the area of border management. Sharing data and information was the main component of this new approach towards more efficient border management.

This momentum was first translated into the Schengen Convention,¹² which was signed in June 1990 and came into effect in March 1995, by which time Greece, Italy, Portugal and Spain had also joined the Schengen area. The main purpose of this Convention was to abolish internal checks between signatory states while establishing a common external border where checks were to be carried out in compliance with a jointly agreed set of rules,¹³ including common requirements for granting visas and closer cooperation between the authorities responsible for performing border controls. These rules were accompanied by a further set of operational instructions and procedures to help rise to the common challenges of border controls.¹⁴ Border surveillance and controls were also enhanced by the introduction of an information system,

the Commission of the European Communities "*Completing the internal market*", COM(85)310 final, Brussels, 14.6.1985.

¹² *The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*, OJ L 239, 22.9.2000, pp. 19-62.

¹³ Article 6 of the Schengen Convention, which harmonises external border controls, states: "1. Cross-border movement at external borders shall be subject to checks by the competent authorities. Checks shall be carried out for the Contracting Parties' territories, in accordance with uniform principles, within the scope of national powers and national law and taking account of the interests of all Contracting Parties.

2. The uniform principles referred to in paragraph 1 shall be as follows: (a) Checks on persons shall include not only the verification of travel documents and the other conditions governing entry, residence, work and exit but also checks to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall also be carried out on vehicles and objects in the possession of persons crossing the border. They shall be carried out by each Contracting Party in accordance with its national law, in particular where searches are involved. (b) All persons shall undergo at least one such check in order to establish their identities on the basis of the production or presentation of their travel documents. (c) On entry, aliens shall be subject to a thorough check, as defined in (a). (d) On exit, the checks shall be carried out as required in the interest of all Contracting Parties under the law on aliens in order to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall always be carried out on aliens. (e) If in certain circumstances such checks cannot be carried out, priorities must be set. In that case, entry checks shall as a rule take priority over exit checks.

3. The competent authorities shall use mobile units to carry out external border surveillance between crossing points; the same shall apply to border crossing points outside normal opening hours. This surveillance shall be carried out in such a way as to discourage people from circumventing the checks at crossing points. The surveillance procedures shall, where appropriate, be established by the Executive Committee.

4. The Contracting Parties undertake to deploy enough suitably qualified officers to carry out checks and surveillance along external borders.

5. An equal degree of control shall be exercised at external borders.

¹⁴ For more information, see Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Border Code), OJ L 105/1, 13.4.2006.

called the Schengen information system (SIS), which was specifically designed to exchange data on certain categories of people, and on lost or stolen goods.¹⁵

In its proposal for a Council Decision,¹⁶ the Commission clearly defined the purpose of SIS:

The SIS is a common information system allowing the competent authorities in the member states to cooperate, by exchanging information for the implementation of the various policies required in order to establish an area without internal border controls. It allows these authorities, through an automatic query procedure, to obtain information related to alerts on persons and objects. The information obtained is used, in particular, for police and judicial cooperation in criminal matters as well as for controls of persons at the external borders or on national territory and for the issuance of visas and residence permits. The SIS, therefore, is an indispensable component of the Schengen area for applying the Schengen provisions on the movement of persons and in ensuring a high level of security in this area. Consistency with a wide range of policies linked to control of external borders, visa, immigration and also police and judicial cooperation in criminal matters is, therefore, essential.

In a nutshell, the most successful, visible outcome of this intergovernmental cooperation was a new 'cross-border community' governed by a set of common rules for carrying out checks at its external borders only. On the operational side, this new community was able to secure further cooperation on external borders and thus to increase the efficiency of common measures.¹⁷ The underlying principle was to facilitate the free movement of people, while at the same time ensuring a higher degree of security. Enhanced security was provided, in turn, by closer cooperation between police, customs and consular staff and by any other measures that might be useful in combating external security threats such as terrorism and cross-border organised crime.¹⁸

The Schengen intergovernmental agreement was brought within the legal and institutional framework of the European Union via a Protocol attached to the Treaty establishing the European Community.¹⁹ By May 1999, 15 countries²⁰ were party to the Schengen acquis,

¹⁵ Schengen member states feed this sophisticated network with all the relevant data on persons who might pose a threat to public order and security and on stolen or lost goods through national networks (N-SIS) connected to a central system (C-SIS). This is supplemented by a network known as SIRENE (Supplementary Information Request at the National Entry).

¹⁶ Proposal for a Council Decision on the establishment, operation and use of the second generation Schengen information system (SIS II), COM(2005) 230 final, Brussels, 31.5.2005.

¹⁷ The main measures adopted by the Schengen member states include the following: the removal of checks at common borders, replacing them with external border checks; a common definition of the rules for crossing external borders and uniform rules and procedures for controls at the external borders; separation in air terminals and ports of people travelling within the Schengen area from those arriving from countries outside the area; harmonisation of the rules regarding conditions of entry and visas for short stays; coordination between administrations on surveillance of borders (liaison officers and harmonisation of instructions and staff training); the definition of the role of carriers in measures to combat illegal immigration; requirement for all non-EU nationals moving from one country to another to lodge a declaration; rules for asylum seekers; and the introduction of cross-border rights of surveillance and hot pursuit for police forces in the Schengen States.

¹⁸ This set of security procedures is called "compensatory measures", which make for the lifting of internal border controls.

¹⁹ The Treaty of Amsterdam was signed on 2 October 1997 by the Foreign Ministers of the 15 member states of the European Union. It came into force on 1 May 1999.

thereby giving substance to the objective of free movement of persons enshrined in the Single European Act of 1986.

Turning to the participation of Denmark in the Schengen acquis, it is vital to underline that Copenhagen has signed the Schengen Agreement but has no part in policies under Title IV of the EC Treaty, even with regard to decisions establishing the Schengen acquis.²¹ The United Kingdom²² and Ireland only take part in police and judicial cooperation in criminal matters, the fight against drugs and the Schengen Information System (SIS), not in the common border controls and visa arrangements. In 2002, Switzerland started negotiations with the Commission, which has led to an Agreement between the European Union, the European Community and the Swiss Confederation on the association of the Swiss Confederation in the implementation, application and development of the Schengen acquis.²³

3. From Tampere to Nice

Since the Tampere European Council,²⁴ protection of the EU's borders has become a major political priority for policy-makers and other stakeholders.²⁵ More specifically, the Tampere European Council

....requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes. These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union.

This call for more cooperation in Europe on border management²⁶ was geared towards the development of a more effective migration policy. This strategy on border management had to

²⁰ Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain and Sweden. Although Iceland and Norway do not enjoy voting rights on the Schengen Executive Committee, they can voice opinions and put forward proposals.

²¹ Denmark is, however, legally bound by certain measures stemming from the common visa policy.

²² The United Kingdom asked to participate in some aspects of the Schengen acquis in March 1999, Ireland in June 2000.

²³ OJ L 93, 3.4.2001. At the time of writing, Belgium has not yet ratified the Agreement, as it still has to comply with national constitutional requirements before being able to proceed further. Ratification of the Agreement by Belgium is strictly linked to the formation of a new government. It is worth stressing that the Commission does not have any powers over the ratification procedure, as ratification of the third pillar part of the Schengen Agreement requires the direct involvement of national parliaments.

²⁴ The Tampere European Council on 15 and 16 October 1999 decided to establish a common area of freedom, security and justice in the European Union.

²⁵ Article 62(2)(a) of the EC Treaty covers "measures on the crossing of the external borders of the member states which shall establish standards and procedures to be followed by member states in carrying out checks on persons at such borders". The Treaty of Amsterdam (or the Treaty establishing the European Community) was signed on 2 October 1997 and came into force on 1 May 1999.

²⁶ Coordination between member states on border management is provided for by Article 66 of the EC Treaty, which states that the Council "*shall take measures to ensure cooperation between the relevant departments of the administrations of the member states in the areas covered by this title, as well as between those departments and the Commission*".

be accompanied by other important measures, such as on asylum, legal migration and integration, closer cooperation with third countries²⁷ and combating illegal immigration.

The management of the EU's external borders is also connected to Europe's fight against illegal immigration.²⁸ Building on the Commission Communication of November 2001,²⁹ the proposed plan had seven main components: 1) increasing the security of visas and other travel documents; 2) fostering exchanges of information on illegal immigration; 3) cultivating cooperation with third countries; 4) enhancing the effectiveness and quality of border controls; 5) establishing common procedural standards for return operations; 6) stepping up the role of Europol;³⁰ and 7) providing victims of human trafficking with assistance and protection. It also introduced repressive measures such as the confiscation of smugglers' means of transport and the fight against illegal employment. As stated in the Seville Presidency Conclusions:³¹

Practical cooperation and mutual technical assistance between member states on border management were also highlighted in the Presidency Conclusions of the Nice European Council.³² On that occasion, the European Council stressed "the need to promote operational cooperation between the competent authorities of the member states in controlling the Union's external borders, and in particular its sea borders, with a view in particular to curbing illegal immigration". This political commitment underlined the urgency to devise a common migration policy, to help tighten checks at the EU's external borders and to reduce the number of illegal immigrants. At the base of this political initiative, therefore, was the assumption that tougher border enforcement measures at the EU's external borders would be the solution to the thorny and often complex issue of illegal immigration. One of the biggest problems is measuring this phenomenon. In June 2004,³³ the Commission stated that "...estimates of annual inflows of illegal migration into the EU are thought to reach over six figures. More precise figures cannot be considered reliable". More recently, a Commission Staff Working Paper of May 2007 tried to put some sort of figure on illegal immigration: "...estimates of the total number of illegal migrants in the EU include: two to three million (Global Migration Perspectives 2005); four and a half million (IOM 2000); and seven to eight million (United Nations' Trends in Total Migrant Stock: The 2003 Revision)".³⁴ One of the core difficulties in assessing the amount of illegal immigration which there is in the EU is that it depends on national laws which make certain types of immigration illegal. But those laws change with dizzying speed which has the result of increasing or decreasing the numbers substantially. The enlargement of the EU also has an impact on illegal immigration as nationals of states which become member states of the EU cease to be illegal immigrants when they become citizens of the Union.

²⁷ These important policy areas are not covered in this article.

²⁸ 2411th Council meeting, Justice, (Home Affairs and Civil Protection), Brussels, 28.2.2002.

²⁹ Communication on a "Common policy on illegal immigration", COM(2001) 672 final, Brussels, 15.11.2001.

³⁰ Established in 1992, the European Police Office promotes closer cooperation between member states with a view to preventing international organised crime such as terrorism, drug and human trafficking, illegal immigration networks and money forgery.

³¹ See Presidency Conclusions of the Seville European Council on 21 and 22 June 2002, paragraph 30.

³² See Presidency Conclusions of the Nice European Council on 7-9 December 2000, paragraph 51.

³³ Communication on the "Study on the links between legal and illegal immigration", COM(2004)412 final, p.11, Brussels, 4.6.2004.

³⁴ Impact assessment accompanying the proposal for a directive on "Providing for sanctions against employers of illegally staying third-country nationals", Commission Staff Working Paper, SEC(2007) 603, p. 6, Brussels, 16.5.2007.

4. The Laeken European Council:³⁵ A leap forward

"More effective control of external borders" was one of the main Presidency Conclusions of the Laeken European Council. In the aftermath of the dramatic terrorist attacks of 11 September, Europe's leaders believed that better management of the EU's external borders could have helped "in the fight against terrorism, illegal immigration networks and the traffic in human beings". To this end, "[T]he European Council asks the Council and the Commission to work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created".

This sentence encapsulates two important turning points in Europe's history. Firstly, a political leap forward in the development of the area of justice, freedom and security. For the first time, member states recognised that their makeshift attempts to tighten controls at their national borders were unable to cope with the need for a common management of the external border. While continuing to retain full jurisdiction over the control and surveillance of their national borders, member states asked Europe to provide added value and to propose specific measures designed to improve the management of the EU's external borders. Absolute sovereignty over national borders, which up to that point had been regarded as one of the most hallowed remnants bequeathed by the Peace of Westphalia in 1648,³⁶ has been eroded by the continuous progress made in European construction. In a nutshell, the "monopoly of borders", which had until then been treasured as the most precious of national jewels, has been broken up by the unpredictable, crushing forces of today's globalised world.

Secondly, in taking this decision, member states clearly signalled that they were ready and willing to abandon the old idea of borders as a mere demarcation of their sovereign territory in exchange for enhanced capacity to prevent terrorism and stop the smuggling of people, or drugs and weapons from slipping across borders. Shared responsibility and solidarity in managing the EU's external borders was the new approach chosen by member states to provide more security to their citizens. Within this framework, the idea of a European corps of border guards made some headway, as common problems at the borders require shared understanding, timely exchange of information and joint programmes. Moreover, shared responsibility and solidarity between member states are indispensable components for maintaining freedom of movement and security within the enlarged Schengen area in which internal controls are abolished. The EU's external borders are common to us all and joint measures are needed if Europe's citizens are to be protected. Just as the member states have chosen to jointly manage their internal borders so too they must reach agreement with the neighbouring countries on how to manage their external borders, which are also the external borders of the neighbouring states.

5. The first seed: The Seville European Council³⁷

In the slipstream of the Laeken Presidency Conclusions, the Commission lost no time in putting forward its own proposal on how to enhance the EU's border management. Building on the

³⁵ See Presidency Conclusions of the Laeken European Council on 14 and 15 December 2001, paragraph 42.

³⁶ The Peace of Westphalia brought to an end the wars of religion that tore Europe apart in the Middle Ages. The main result of Westphalia was the development and establishment of a system of sovereign states.

³⁷ See Presidency Conclusions of the Seville European Council on 21 and 22 June 2002, paragraphs 31 and 32.

Laeken Conclusions, the Commission's 2002 Communication on "Towards integrated management of the external borders of the member states of the European Union"³⁸ highlighted the fact that the security of the European Union's external borders was being hindered by the minimal coordination between member states. To correct this weakness, the Commission proposed closer practical cooperation and the development of a common policy on the management of the EU's external borders, the main focus being movements of people across the borders. This common policy should include five mutually interdependent components: a common body of legislation, coordinated operational mechanisms, common integrated risk analyses, staff trained in European matters and financial and other burden-sharing between member states, which all add up to a truly European corps of border guards. With the clear aim of enhancing coordination nationally and across the EU, while retaining control over the development of this political process, the Commission suggested that a common unit for external borders practitioners be set up to take the lead on the EU's common policy on the management of its external borders, within the Strategic Committee on Immigration, Frontiers and Asylum working group (SCIFA).³⁹ Obviously, this new coordination mechanism cannot go beyond the legal boundaries of Articles 62 and 66 of the EC Treaty. This Communication also pointed out that the future of the EU could throw up additional challenges, as the new member states would become responsible for the internal security of the Union while still undergoing a process of economic and social transition. The Commission therefore presented a plan designed to complement the work carried out at national level, while advancing innovative ideas aimed at enhancing Europe's capacity in border management.

The Ministerial Conference of Justice and Home Affairs Ministers in Rome on 30 May 2002 mainly focused on the integrated management of the EU's external borders, with particular emphasis on the importance of establishing a European corps of border guards. The main purpose of these joint multinational teams was to support, not replace, national border guards in the performance of their duties, especially in risky areas where enhanced surveillance capacity could be useful. To build trust between member states, the European Commission made use of its ARGO programme⁴⁰ in 2002 to fund projects on a core curriculum for border guards, on common integrated risk analyses and on joint operations at the external land borders of the European Union.⁴¹ The role of the Commission proved to be indispensable in breaking down some initial resistance and seeking to convince reticent member states that closer practical cooperation was added value both for the member states themselves and for Europe as a whole. This was particularly true at a time when the European Union needed to prepare for enlargement of its territory and to manage growing migration flows more effectively.

³⁸ See European Commission Communication "Towards integrated management of the external borders of the member states of the European Union", COM(2002) 233 final, Brussels, 7.5.2002.

³⁹ The Strategic Committee on Immigration, Frontiers and Asylum is a first-pillar group, which is composed of officials from the member states and is responsible for supervising and coordinating different working groups engaged in migration, border and asylum matters.

⁴⁰ The ARGO programme was specifically designed to promote closer cooperation between member states in the areas of external borders, visa, asylum and migration management. This programme, which made available €26 700 million to member states, covered the period from 1 January 2002 to 31 December 2006. For more information, consult the Internet site of Directorate-General for Justice, Freedom and Security:

http://ec.europa.eu/justice_home/funding/2004_2007/argo/funding_argo_en.htm.

⁴¹ Between 2003 and 2006, more projects on the management of the EU's external borders were funded by ARGO. This valuable practical cooperation between member states included a centre for border guard training, a risk analysis centre and a centre for land borders, along with further joint patrols on Europe's maritime and land borders.

The Communication of May 2002 set the scene for the Presidency Conclusions of the Seville European Council, which also laid the political foundations for the future European Agency for the Management of Operational Co-operation at the External Borders (Frontex)⁴² and gave credence to the idea of integrated management of external borders.

For the first time, the European Council endorsed a detailed plan on border management, to be implemented to strict deadlines and targeting numerous, innovative initiatives such as joint operations at external borders, the creation of a network of member states' immigration liaison officers,⁴³ the development of a common risk analysis model, burden-sharing between member states and the European Union and the establishment of a common core curriculum for border guard training.⁴⁴ The Commission and the member states were therefore asked to deliver on practical measures to pave the way for a new common European policy on border management. The first seeds of this new European border control model were finally sown.

Apart from the Commission's efforts, the Presidency Conclusions were also the result of the 11 September terrorist attacks, the unsettling political results of anti-immigration parties in certain European countries⁴⁵ and rising public debate in some member states about poorly managed immigration flows. Romano Prodi, the then President of the European Commission, to the European Parliament in Strasbourg on 12 June.⁴⁶ President Prodi made an important contribution to this debate when he said that

...the most burning issue to be dealt with by the European Council is immigration.....in the eyes of most of our citizens, immigration is becoming increasingly linked with the issue of their protection in the area of freedom, security and justice we are trying to build. There are a variety of reasons for this, but they have been triggered to some extent by the events of September 11.

⁴² Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the member states of the European Union (Frontex). This Agency was created to improve the management of the EU's external borders and its six main tasks are as follows: 1) coordinating operational cooperation between member states in the management of external borders; 2) developing a common integrated risk assessment model and preparing general and specific risk assessments; 3) helping member states train their national border guards by developing common training standards, providing training at European level for instructors of national border guards, holding seminars and giving additional training to officials from the relevant authorities; 4) following up on research into the control and surveillance of external borders; 5) assisting member states in circumstances requiring increased technical and operational assistance at external borders; and 6) providing member states with the support needed to organise joint return operations. The Agency can use the Community resources available for this purpose and must draw up an inventory of best practices for the removal of third-country nationals residing illegally in the member states.

⁴³ For more information, see Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network, Brussels, OJ L 64/1, 2.3.2004.

⁴⁴ For a more in-depth analysis of the Plan for managing the external borders of the member states of the European Union, see Document 9834/1/02, Front 55, Comix 392, Council of the European Union, Brussels, 12.6.2002.

⁴⁵ By way of example, the unexpected results of Jean-Marie Le Pen in the French Presidential elections of June 2002 and the success of the Pim Fortuyn List (LPF), which obtained 17% of the votes in the Dutch parliamentary elections of May 2002 and 26 seats in the Dutch parliament. In the Austrian parliamentary elections of November 2002, the Freedom Party of Austria (FPO) obtained 10% of the vote and 18 seats in parliament.

⁴⁶ Speech by Romano Prodi, President of the European Commission, to the European Parliament on priorities for Seville: better regulation and immigration, Strasbourg, 12.6.2002.

He then went on to say that "...we must tighten controls on the EU's external borders in accordance with the recent proposals put forward by the Commission and the Italian Government". Since Europe was not yet ready to embrace a common migration policy, EU Heads of State and Government believed the time was politically ripe to support the new approach on border management, which included joint control of the EU's external borders with the assistance of a European corps of border guards. The ultimate goal was to achieve a common orderly and effective EU external border control which would ensure the EU's integrity.

While the objective of ensuring coherent border controls and thus increasing security was commonly shared among member states, Greece, Italy, Spain and the United Kingdom did not enlist much support for their proposal of joint border police forces, which other member states consider to be one of the most visible symbols of national sovereignty. In the eyes of several European leaders, cross-border crimes such as smuggling human beings and illicit traffic in drugs and weapons could be effectively combated by stepping up both national efforts and cooperation between member states, whenever necessary.

6. The Thessaloniki European Council⁴⁷

Europe's work towards a European migration policy was further consolidated by the Commission Communication on "The development of a common policy on illegal immigration, smuggling and trafficking in human beings, external borders and the return of illegal residents", which was adopted in June 2003.⁴⁸ This Communication greatly contributed to the preparation of the European Council in Thessaloniki and provided a preliminary assessment of work to combat illegal immigration following the Action Plans adopted by the Council in 2002. Referring to the setting-up of a common Visa Information System (VIS), the Commission document states that the Community visa policy can also significantly help member states to prevent the risks of illegal immigration. To add credibility and integrity to Europe's legal immigration policy, the Communication made it clear that it was important to devise and implement a Community return policy for those whose presence in the EU is no longer authorised.

Key obstacles were proper return travel documents for undocumented persons and the difficulty in concluding EC readmission agreements with third countries. To this end, the Communication discussed the importance of promoting partnerships with third countries, which would be crucial to facilitating returns. On border management, the Communication refers to the common unit for external border practitioners, and suggests that the current set-up is not entirely effective and that alternative options for coordinating and managing joint operations and pilot projects should be investigated. The Commission has actively participated in member states' pilot projects and joint operations on external borders, in an effort to ensure that more efficient security standards are applied to checks and surveillance tasks. Mutual trust and knowledge in this area has developed, along with a common awareness of the need to ensure equivalent levels of external border security based on a common model for risk analysis and a standard training curriculum. The concluding remarks of this Communication stressed the importance of European involvement in border management, since only by convincing all of the member states to work

⁴⁷ See Presidency Conclusions of the Thessaloniki European Council on 19 and 20 June 2003, paragraphs 12-15.

⁴⁸ Commission Communication on "*The development of a common policy on illegal immigration, smuggling and trafficking in human beings, external borders and the return of illegal residents*", COM(2003)323 final, Brussels, 3.6.2003.

together through a binding regime of mutual recognition and common standards will Europe be able to combat illegal immigration more effectively. Weaknesses in just one border could create problems for the whole of Europe, particularly since enlargement.

It came as no surprise that the conclusions of the European Council in Thessaloniki reflected the main thrust of this Commission Communication, which closely linked different areas of a common migration policy, notably border management, return, visa and cooperation with third countries. Another important point to emerge from the conclusions was the need for action. Clear instructions were given on how to take the work forward, e.g. establishing "the Immigration Liaison Officers (ILOs) network in third countries, at the earliest possible date and before the end of 2003" and calling on "the Commission to examine in due course, drawing on experience of the Common Unit activities, 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". Joint patrols, common risk analyses and regular exchange of information have helped member states to understand that enhanced practical cooperation across Europe was not only needed but also urgent if illegal immigration and human trafficking were to be curbed and fought with resolve. Europe's leaders were, finally, ready to provide Europe with more operational tools, to add to their national measures. Europe's added value was acknowledged and welcomed by its political leadership.

7. The Italian Presidency: The creation of Frontex

The EU's plan to manage external borders with the assistance of an external border practitioners unit did not yield the desired results. The unit had neither the means nor the authority needed to foster closer cooperation between member states. As a consequence, the "*possible creation of a Community operational structure*" became the only sensible option if the EU's external borders were to be managed more efficiently across Europe. The Council Regulation of 2004 establishing Frontex⁴⁹ was also in response to the request made by the Brussels European Council on 16 and 17 October 2003, which agreed on the following:

Recalling the conclusions of its Thessaloniki meeting, the European Council welcomes the Commission's intention to pursue rapidly the examination of the allocation of EUR 140 million envisaged for the period 2004-2006, in order to cover the most pressing needs in this area, especially in supporting the management of external borders, the implementation of the return action programme and the development of the Visa Information System (VIS). The European Council underlines the importance of full implementation of the Plan for the management of external borders and the setting up of the pending air border centre and the two maritime border centres. All Border Management Centres should work closely together under the coordination of the Common Unit of External Borders Practitioners. The European Council welcomes the Commission's intention to submit a proposal for the creation of a Border Management Agency, in order to enhance operational cooperation for the management of external borders, in time for the Council to reach a political agreement on the main elements by the end of the year. This proposal will draw on the experience of the Common Unit of External Border Practitioners.⁵⁰

⁴⁹ See footnote 46.

⁵⁰ See Presidency Conclusions of the Brussels European Council on 16 and 17 October 2007, section III. In paragraph 18 of the Presidency Conclusions of the Brussels European Council on 12 and 13 December 2007, the Council "invites the JHA Council to finish examining this important proposal as soon as possible so that it can be adopted in time to allow the Agency to become operational by 1 January 2005".

In taking this decision, EU member states were convinced that this new Border Management Agency would be the best cure to their splitting “immigration headache”. Europe was now given a new operational arm to foster closer cooperation between member states in the area of border management.⁵¹ An operational dimension that gave substance to the principles of solidarity and burden-sharing.

It is also important to examine the political environment in which Frontex (the European Agency for the Management of Operational Cooperation at the External Borders) was set up. Although this Agency should have started its activities either on 1 January 2005 or on 1 May 2005,⁵² the actual starting date was 1 October 2005, meaning that Frontex came into being after the negative outcome of the French and Dutch referendums, which have significantly changed the way Europe is perceived by policy-makers and officials in the national capitals, not to mention Europe's citizens. They have become less interested in Europe's construction, as exemplified in the declining rates of participation in the European Parliamentary elections. In 1979 the turnout was 63%, while in 2004 it was 45.7%.⁵³

This has heralded a new “European era” where Europe is regularly called upon to demonstrate its added value in whatever initiative it devises and undertakes. In other words, the “golden age” is over, although we are not yet back in the “dark ages”.⁵⁴ Launching great ideas or forward-looking proposals will no longer garner the ‘automatic support’ of governments and members of the European Parliament. Thus, demands for deeper European integration will only come from Europe's ability to show that its initiatives and measures have clear added value vis-à-vis national initiatives and measures. In a nutshell, the benefits Europe has to offer will create the demand for more Europe. Despite this adverse political environment, where national practices are back in fashion, in the area of migration and asylum policy-making has been particularly productive between 2004 and 2007 and a large pool of ideas and proposals have been submitted to EU governments for them to consider. While some of these proposals have been swiftly adopted, others have fallen short of consensus within the Council, in particular in the field of justice and police cooperation.

This new Community body did not start from scratch as it benefited from the practical cooperation that the Commission continued to cultivate between member states by making available ARGO funds.

⁵¹ Commission Communication on “The operating framework for the European Regulatory Agencies”, COM(2002) 718 final, Brussels, 11.12.2002. In this Communication, the Commission outlines the concept of a “regulatory agency”. The idea behind this was that regulatory agencies are usually created to provide independent technical and scientific assessments. In providing this expertise it is important that they should have genuine autonomy in how they are organised and operate, and yet be accountable to the institutions and to the public. For this delicate balance to be maintained, each agency must be established within a clear framework, which should include the method of creation, operation and control of the agencies. The Communication concludes by stating that, for European Community action to be more effective, coherent, legitimate and transparent, the roles of the institutions need to be clearly determined to enable them to assume their responsibilities in full.

⁵² “The European Council welcomes the establishment of the European Agency for the Management of Operational Cooperation at the External Borders, on 1 May 2005”. “The Hague Programme: Strengthening freedom, security and justice in the European Union”, OJ C 53/1, 3.3.2005.

⁵³ For a more detailed analysis, please consult “*Post European elections 2004 survey*”, Flash Eurobarometer. It is available on line: http://ec.europa.eu/public_opinion/flash/FL162en.pdf.

⁵⁴ The Treaty of Lisbon bears witness to the fact that Europe's leaders continue to believe in the European construction. The Treaty was signed by the Heads of State and Government of the 27 member states in Lisbon on 13 December 2007. It was drafted to provide Europe with modern and more efficient institutions and working methods to respond more swiftly to future challenges. OJ C 306, 17.12.2007.

For these reasons, Frontex is a case in point.⁵⁵ To begin with, this new Agency was seen by many national capitals as another ineffective and superfluous tool incapable of delivering the "services" really needed by governments. Few governments in Europe dispute the "beneficial" added value of Frontex, which has proved that it can help requesting member states to deal with difficult situations. Timely delivery and high-calibre staff and experts have been the key to Frontex's undeniable success.⁵⁶ Statistical data bear out that Frontex operations have been successful in curbing the flows of undocumented migrants.⁵⁷ Since it came into operation, Frontex has conducted a series of operations at the land, air and sea borders of the European Union.⁵⁸ By way of example, the Nautilus sea patrols have intercepted more than 2 300 persons and have arrested 51 human smugglers. The Hera sea patrols have detected over 9 000 persons seeking to enter the EU without authority.⁵⁹ Frontex operations have saved many lives from being lost at sea. It is also important to stress that, on some occasions, the lives of the Frontex rescue teams themselves were put at risk by sea and weather conditions. The success of the Frontex sea patrols has created a need to establish a coordinating structure to set up the European Patrols Network, which will help improve Europe's surveillance of its southern sea borders on a permanent basis. In particular, the European Council stated that

priority will also be given to examining the creation of a European Surveillance System for the southern maritime borders; Frontex is invited to establish as soon as possible, together with the member states of the region, a permanent Coastal Patrol Network at the southern maritime borders.⁶⁰

The job assigned to Frontex is not easy, as ensuring effective border management is like trying to regulate a moving target. If it is to continue to carry out joint operations effectively, Frontex needs a stable pool of technical equipment, resources and staff in order to provide effective and coherent border management. If delivery is crucial to the success of Frontex operations, it is equally so for member states whose borders are under growing pressure from immigration. To this end, in September 2007, twenty-three member states set up the Centralised Records of Available Technical Equipment managed by Frontex (CRATE).⁶¹ This technical equipment will

⁵⁵ To these 'external' political difficulties must be added the unhelpful attitude of the Polish Government, which did very little to help kick-start the Agency in Warsaw. The Polish Government obtained the headquarters of Frontex with little effort thanks to the good offices of Germany and Luxembourg, which, at that time, held the rotating EU Presidency, and thus it did not have to make any "special" financial commitment to the Agency.

⁵⁶ In today's Europe, member states continue to be less than lukewarm towards Frontex activities, despite the fact that these activities show Europe's added value. The Agency faces mounting expectations from EU citizens, member states and the European Parliament to manage its operations successfully. Member States, in particular, expect the Agency to be able to handle the critical situations caused at the external borders by the mass influx of illegal immigrants.

⁵⁷ All Frontex operations are intelligence-driven and based on careful risk analysis, which takes into account special situations and possible future developments.

⁵⁸ Frontex carried out 11 joint operations in 2006 and 24 in 2007 with a total budget of €30 million.

⁵⁹ In the beginning, particular emphasis was put on launching operations at the southern maritime borders in response to the request made by the European Council to stem the flows of illegal immigrants from Africa. The data have been made available by Frontex.

⁶⁰ See Presidency Conclusions of the Brussels European Council on 14 and 15 December 2006, Title II. For further information, see the Commission Communication "*Reinforcing the management of the European Union's southern maritime borders*", COM(2006) 733 final, Brussels, 30.11.2006.

⁶¹ At the time of writing, the available technical equipment consisted of 21 fixed-wing aircrafts, 27 helicopters, 115 patrol vessels, three mobile radar units, 238 other pieces of border surveillance

be made available, on request, to any member state lacking the tools necessary to deal with a particular situation at its border and also for joint operations. Another success story is the creation of Rapid Border Intervention Teams, which will provide "support for a limited period of time" and "in exceptional and urgent situations".⁶² Deployment of a Rapid Border Intervention Team will embody Europe's 'effective response' to help any member state confronted with a mass influx of persons. For the first time Europe will be able to deploy, under the command of the requesting member state, some 600 experienced border guards to cope with emergencies at its external borders. These results show the genuine political commitment to Frontex⁶³ and that it is possible to 'bridge the gap' between policy-making and its delivery in the area of justice, freedom and security. These resources will enable Frontex to continue to offer a 'useful service' to member states which so request in future.

Frontex has also sought to secure practical cooperation with Europe's neighbours and certain countries of origin and transit. So far, working arrangements have been agreed with the Russian Federation, Ukraine and the Swiss Confederation. The Management Board of the Agency has also given it a mandate to negotiate similar arrangements with Cape Verde, Croatia, Egypt, the Former Yugoslav Republic of Macedonia, Libya, Mauritania, Morocco and Senegal.

In the first half of 2008, the tasks and terms of reference of the Agency will be carefully reviewed in line with the Hague Programme.⁶⁴ More specifically, in February 2008, the Commission will submit a Communication assessing the main results achieved so far by Frontex. The same report will also identify priority areas which should be addressed in the short- and long term. The Hague Programme also stated that "The review of the tasks of the Agency envisaged above and in particular the evaluation of the functioning of the teams of national experts should include the feasibility of the creation of a European system of border guards". Although Frontex has developed a common core curriculum for training border guards and a special programme for instructors of national border guards and "members of the [Rapid Border Intervention] team shall wear their own uniform while performing their tasks and exercising their powers. They shall wear a blue armband with the insignia of the European Union and the Agency on their uniforms, identifying them as participating in a deployment of the teams",⁶⁵ it is unlikely that member states will consider establishment of a European border guard corps in the near future. The political environment is not yet ripe for such sweeping change, which would be needed to make Europe even more effective at managing its common external borders. Other developments are possible instead, such as extending the scope of Frontex operations to third countries. This would allow the Agency to carry out activities and programmes on the territory of a non-EU country, which is not possible under its current terms of reference.

equipment and 193 pieces of equipment for border checks, including heart-beat detectors and forgery detection kits.

⁶² For further information, see Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers, OJ L 199, 31.7.2007, p. 30.

⁶³ Further proof of this political commitment is the recent €30 million increase, bringing Frontex's total 2008 budget to €70 million.

⁶⁴ "The evaluation should contain a review of the tasks of the Agency and an assessment of whether the Agency should concern itself with other aspects of border management, including enhanced cooperation with customs services and other competent authorities for goods-related security matters". "The Hague Programme: Strengthening freedom, security and justice in the European Union", OJ C 53/1, 3.3.2005.

⁶⁵ Article 6(4) of Regulation (EC) No 863/2007.

8. Schengen enlargement and the SISone4ALL solution

Nine of the ten member states that joined the European Union on 1 May 2004⁶⁶ are now legally bound by the entire Schengen *acquis*, as controls at land and maritime borders were abolished on 21 December 2007.⁶⁷ After two intensive years of evaluation,⁶⁸ nine member states have met all the conditions required for the application of compensatory measures and the dismantling of internal border controls.⁶⁹ The Schengen area is now composed of twenty-four countries.⁷⁰ To help them meet all the requirements contained in the Schengen *acquis*, new member states were provided with a new tool, known as the "Schengen Facility",⁷¹ which was part of the enlargement expenditure adopted by the European Council in Copenhagen.⁷²

⁶⁶ The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Cyprus is not yet ready to be evaluated. For Bulgaria, there is a declaration setting the target date as 2011, while Romania has not yet proposed any target date for joining the Schengen area.

⁶⁷ Air border controls will be lifted on 30 March 2008.

⁶⁸ In 2006, the total number of inspections was 58. These covered data protection, police co-operation and external border controls at land, sea and air borders. In 2007, the total number of new inspections was 15 for checking the quality of sea and air border controls, and 9 for controlling the functioning of the Schengen Information System. In this context, it is important to stress that the Schengen evaluations of member states that were candidates for lifting internal border controls were only initiated upon formal request by each member state concerned, once it considered that all the required preconditions were met. It is a "peer-to-peer" evaluation and therefore it was the Council, acting unanimously, which decided whether all the required preconditions were met.

⁶⁹ The Justice and Home Affairs Council on 8 and 9 November 2007 concluded that all the preconditions for lifting the EU's internal border controls had been fulfilled.

⁷⁰ Austria, Belgium, the Czech Republic, Estonia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. Pending parliamentary ratification, Switzerland is set to become the 25th country to join the Schengen area.

⁷¹ Article 35(1) of the 2003 Treaty of Accession reads as follows: "A Schengen Facility is hereby created as a temporary instrument to help beneficiary member states between the date of accession and the end of 2006 to finance actions at the new external borders of the Union for the implementation of the Schengen *acquis* and external border control. In order to address the shortcomings identified in the preparation for participation in Schengen, the following types of action shall be eligible for financing under the Schengen Facility:

- investment in construction, renovation or upgrading of border crossing infrastructure and related buildings,
- investments in any kind of operating equipment (e.g. laboratory equipment, detection tools, Schengen Information System-SIS 2 hardware and software, means of transport),
- training of border guards,
- support to costs for logistics and operations".

⁷² See Presidency Conclusions of the Copenhagen European Council on 12 and 13 December 2002, Annex I. Note also that the new member states, led by Poland, did not ask for these "*transitional Schengen measures*". They were pressing for additional funds for agriculture. The compromise reached just before the formal dinner hosted by Her Majesty Margrethe II, the Danish Queen Regnant, was to create the Schengen Facility.

Table 1. Breakdown of 2004-2006 Schengen Facility funding (€ million)

	Estonia	Latvia	Lithuania	Hungary	Poland	Slovenia	Slovakia	Total/yr
2004	25.35	26.24	49.58	54.58	103.35	39.46	17.64	316.23
2005	25.48	26.37	67.95	54.86	103.85	39.64	17.72	335.91
2006	26.17	27.08	34.11	56.34	106.66	40.72	18.2	309.3
Total SF/ country	77.01	79.7	151.6	165.7	313.87	119.8	53.58	961.45
National co- financing	4.93	12.67	26.66	39.53 ^a	8.98	51.54	10.24	154.55
Total costs	81.95	92.37	178.32	205.33	288.34 ^b	171.3	64.5 ^c	1082.11

Note: The Schengen Facility has been used mainly for investments in operating equipment and border infrastructure at the EU's external borders, upgrading of diplomatic and consular representations, preparations for the Schengen Information System (SIS II) and the Visa Information System (VIS) and operational and language training. In compliance with the legal basis for the Schengen Facility, the rate of Community financing may be up to 100% (national co-financing is not obligatory for this programme).

^a This figure includes the incurred and estimated interest on the Schengen Facility payments by the Commission.

^b Poland has programmed and contracted €280.26 million (about 90%) of the allocated Schengen Facility funds. Given the large amount of funds provided to Poland and the relatively short time for implementation, this result can be considered a good achievement for the implementation of the Schengen Facility.

^c Slovakia has budgeted a slightly higher amount than that to which it is entitled under the Schengen Facility, taking into account the potential savings after the procurement phase. Furthermore, Slovakia may use the interest gained during implementation of the Schengen Facility for funding the projects. In line with Article 35(3) of the Act of Accession, the beneficiary member states will only have to submit to the Commission a Comprehensive report on the financial execution of the Schengen Facility by 30 June 2008.

Source: Based on Articles 35-34 of the 2003 Act of Accession and on statistical data collected and analysed by the European Commission's Directorate-General for Justice, Freedom and Security.

One of the major obstacles to Schengen enlargement was the development of the new Schengen information system, called SIS II. It was crucial to have a formal Council decision⁷³ enabling the Commission to have the funds it needs to develop this highly complex technical system. SIS II is part and parcel of the Schengen compensatory measures, which are essential for ensuring high security standards once internal border controls have been abolished. This decision, together with the proposed Regulation,⁷⁴ permitted the Commission to start the daunting task of developing SIS II. Why did the Commission decide to embark on this hazardous 'adventure'? Two main reasons stand out. The first risk is posed by the ambivalent attitude of EU member states. On the one hand, member states were not entirely convinced that the right solution to their 'SIS II doubts' was to hand over this intergovernmental instrument to the Commission. On

⁷³ Council Decision of 6 December 2001 on the development of the second generation of the Schengen Information System (SIS), OJ L 328/1, 13.12.2001.

⁷⁴ Proposal for a Regulation of the European Parliament and of the Council on the development, operation and use of the second generation Schengen information system (SIS II), COM(2005) 236 final/2, Brussels, 23.8.2005.

the other, they were not ready to shoulder the enormous responsibility of developing SIS II alone. Second, as SIS II was an essential component of the Schengen *acquis*,⁷⁵ the Commission insisted on having full control of its development and use, since the entry into force of the Treaty of Amsterdam on 1 May 1999 had strengthened the Commission's hand. Furthermore, technically this new generation of the Schengen information system was more powerful than SIS, with more functions added, such as processing of the data needed to implement the European arrest warrant, entering and sharing of the information needed to identify people with the help of biometric identifiers and improved data protection.⁷⁶ In other words, the 15-year old 'dividing line' between intergovernmental policy and Community competence was finally erased.

Schengen enlargement is the final outcome of a highly technical discussion within the Council, which started when it became apparent⁷⁷ that the new Schengen Information System⁷⁸ (SIS II) was not going to come on stream on time. In political terms, this delay, mainly due to technical difficulties, would have kept eight new member states outside the Schengen area. This prospect was not only politically unacceptable for the new member states but was, above all, in strident contrast with the Presidency Conclusions of the European Council held on 15 and 16 June 2006 in Brussels, which stated that:

Following the progress made on the Schengen Information System (SIS II) and implementation of the Schengen *acquis* in the new member states, rapid finalisation of the legislative measures on border control and police cooperation and completion of the technical preparations at EU and national levels, making operational the Schengen Information System by April 2007 and the Visa Information System in 2007, thus paving the way for the enlargement of the Schengen area in 2007 provided all requirements to apply the Schengen *acquis* have been fulfilled, in accordance with the Hague Programme.⁷⁹

In other words, the European Council undertook to have the SIS II operational by April 2007 and to lift internal border controls in 2007. It is quite easy to imagine which member states exerted great pressure on the Austrian Presidency in order to have this sentence included, which not only reassured their citizens that they would enjoy freedom of movement within the

⁷⁵ SIS was conceived and managed by the Council and the member states directly.

⁷⁶ The European Data Protection Supervisor is now responsible for monitoring the personal data processed with SIS II.

⁷⁷ The Commission, through the reporting mechanism, was able to analyse the status of national projects which, in some cases, were well advanced in the development of SIS II, whereas other member states are lagging far behind the agreed working schedule.

⁷⁸ For further information, see Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II). OJ L 381/4, 28.12.2006; Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the member states responsible for issuing vehicle registration certificates. OJ L 381/1, 28.12.2006; and Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II). OJ L 205/63, 7.8.2007.

⁷⁹ "The European Council urges the Council, the Commission and member states to take all necessary measures to allow the abolition of controls at internal borders as soon as possible, provided all requirements to apply the Schengen *acquis* have been fulfilled and after the Schengen Information System (SIS II) has become operational in 2007. In order to reach this goal, the evaluation of the implementation of the non SIS II related *acquis* should start in the first half of 2006". OJ C 53/1, 3.3.2005.

Schengen area by the end of 2007,⁸⁰ but also made the political commitment ironclad. At this stage, however, it was already evident both for the Commission, which was responsible for developing the central part of the SIS II, and for the member states, which were in charge of the development of their respective national systems, that SIS II should come on stream in April 2007.

Mindful of what Oscar Wilde once said “A little sincerity is a dangerous thing, and a great deal of it is absolutely fatal”, the ‘old’ Schengen member states decided to buy time by deliberately seeking to underestimate the risks of postponing SIS II in the hope that “a miracle” would occur before the end of 2006. These member states were aware of the fact that they could not renege on the high-stakes commitment made by the European Council in June. This would not only have infuriated the vociferous group of new member states that had already had their dignity wounded by the unhelpful attitude of the “old” members, but would have put any future European institutional and political progress on the back burner. The Commission's position was, if anything, more delicate than the Council's. On the one hand, the Commission could not take a firm stand, as it could not gauge, with any degree of accuracy, the impact which delaying SIS II would have on the date for lifting internal border controls.⁸¹ On the other hand, some of the “old” member states started to insinuate that the delay in the development of the central unit of SIS II was entirely down to the Commission's inability to deliver results on time. As has often been the case throughout Europe's history, both the Council and the Commission shared the burden of guilt. Some “old” member states were solidly against Schengen enlargement and were particularly pleased that the Commission did not deliver on SIS II to the original timetable. Some of the “new” member states were well behind the jointly agreed timeframe, as they lacked the experience and did not have the trained manpower to develop such a highly complex system as SIS II.

The Commission had serious problems with the initial underperformance of the external company responsible for developing the central unit of SIS II,⁸² and thus found itself in an uncomfortable position vis-à-vis the Council. In addition, the final development of SIS II played hostage to the ongoing negotiations between the European Parliament and the Council. In May 2006, the Commission proposed a ‘legal package’ for SIS II composed of two main instruments, a Regulation⁸³ and a Decision, dealing with the establishment, operation and use of the system,

⁸⁰ It is crucial to recall that the initial target date for implementation of SIS II was March 2007 and October 2007 for lifting internal border controls. Hence, it came as no surprise that all the new member states were particularly disappointed with how the development of SIS II was handled. Equally important are the Presidency Conclusions of the Thessaloniki European Council on 16 and 17 October 2003, which stated the following: “*The European Council invites the Commission to prepare the appropriate proposals, starting with visas, while fully respecting the envisaged timetable for the introduction of the Schengen Information System II*”.

⁸¹ It was imperative first to review the working schedule for developing SIS II before suggesting another feasible date for lifting the EU's internal border controls. This proved to be very difficult for the Commission to accomplish within a very tight deadline.

⁸² For reasons related to work ethics I cannot enter into details, but suffice it to say that proclaiming the winner of the public tender for developing SIS II proved to be more difficult and time-consuming than was initially envisaged by the Directorate-General for Justice, Freedom and Security.

⁸³ The Regulation aiming to improve the policy on visas, immigration and the free movement of persons was based on Article 66 of the Treaty establishing the European Community, while the Decision designed to step up police and judicial cooperation in criminal matters was based on Articles 30(1), 31 and 34 of the Treaty on European Union.

and a third instrument giving vehicle registration authorities access to SIS II.⁸⁴ The negotiations between the European Parliament and the Council proved to be no easy task. Agreement on the “legal package” was crucial to the development of SIS II, as the new configuration of the system, including the additional functions, was to be voted on by the European Parliament and the Council.⁸⁵ Without this political agreement, the Commission could take no further steps to complete the central unit of SIS II, as its final configuration was not definitive. The highly political goal of lifting the EU’s internal border controls was hindered by the serious technical difficulties with completing the project and by the “usual power struggle” between the Council and the European Parliament, which is always ready to seize the opportunity to assert its increased legislative prerogatives.⁸⁶ The political mischievousness of some stakeholders proved to be the most poisonous piece of this nerve-jangling Schengen endgame. “SIS II stakeholders” started to see themselves as scapegoats should the project fail to come into being on time. At that time, the roughshod handling of the SIS II undertaking, combined with deep-seated distrust and a growing sense of frustration raised the spectre of a political crisis, which would have had a far-reaching, adverse impact on Europe’s future course.

The incoming Finnish Presidency reiterated the importance of the political commitment the European Council had made in June 2006 by stressing that the development of and timetable for SIS II was one of its main priorities. This political declaration, albeit relevant, did little to pour oil on Europe’s troubled waters. To put it in the words of Sir Winston Churchill, “However beautiful the strategy, you should occasionally look at the results”. In September 2007, the Portuguese delegation started of its own accord to “look at the results” and ventured, intrepidly, to suggest a new project, called “SISone4all”, which would minimise the delay in lifting the EU’s internal border controls while making the fullest use of the existing Schengen Information System.⁸⁷ Since completion of SIS II by March 2007 was clearly out of reach both for the Commission and for the member states, the only alternative left was to be both creative and brave. As is often the case, certain delegations began to examine the first preliminary proposal on SISone4all with suspicion and distrust. Some distrust could have been justified - adding another difficult task such as the development of a parallel system to the workload of the member states and the Commission hardly makes things easier - but the Portuguese idea immediately gained strong currency with the new member states, who decided to throw themselves behind what they considered to be a timely and sensible solution. To put it simply, the Portuguese proposal consisted of integrating the new member states into SIS, as a patchwork solution, while giving member states and the Commission more time to complete the development of SIS II, including the testing phases and “switch scenarios”.⁸⁸

⁸⁴ These SIS II proposals were in response to the request contained in the Presidency Conclusions of the Thessaloniki European Council on 16 and 17 October 2003, which stated the following: *"The European Council invites the Commission to prepare the appropriate proposals, starting with visas, while fully respecting the envisaged timetable for the introduction of the Schengen Information System II"*.

⁸⁵ In theory, the qualified majority rule applied to the two Regulations, while unanimity in the Council was required for the Decision. In practice, the European Parliament applied its co-decision power to all three legislative proposals, as its members considered SIS II to be a comprehensive “legal package”.

⁸⁶ During the legislative process, the European Parliament turned out to be a reliable partner of the Commission, as Parliament’s amendments tended to reflect the thrust of the Commission’s original proposals.

⁸⁷ Connection to this system is an essential condition for a state joining the Schengen area.

⁸⁸ At the time of writing, member states still have to decide whether to accept a ‘big bang’ solution, which will move all Schengen member states from SIS to SIS II at the same time, or whether to go for a ‘phasing-in’ solution, where each member state joins SIS II on the basis of its technical ability. By plumping for the ‘phasing-in’ solution, member states would accept the coexistence, for a certain period

The Council's response to the postponement of SIS II was an alternative plan calling for greater effort and commitment by all stakeholders: no more room for mistakes. The new timetable envisaged the completion of SISone4all project in the second half of 2007, thereby enabling the Council to complete the inspection visits and to set a new target date for lifting the EU's internal border controls. The perseverance of the Portuguese delegation, accompanied by mounting political pressure,⁸⁹ made the SISone4all solution acceptable to all Schengen member states, who eventually saw it as the only way out of the SIS II impasse. To help complete SISone4all and to help member states bear the additional costs of this new task, the Commission proposed increasing to 75 per cent the co-financing of the External Borders Fund⁹⁰ that would have been made available for the development of SISone4all. Thanks to the Portuguese idea, mutual distrust and anger did not degenerate into outspoken hostility to Schengen enlargement, which would have created an irreparable rift between the old Schengen member states and the "Schengen candidates".⁹¹

The European Council on 14 and 15 December 2006 endorsed the conclusions of the Justice and Home Affairs Council of 4 and 5 December 2006 to schedule the lifting of internal border controls at the land and sea borders as from December 2007 and at air borders in March 2008 at the latest, provided all the requirements for applying the Schengen *acquis* have been met. In other words, the Commission and the member states have done their utmost to achieve this goal.⁹² Following these conclusions, the recommended inspection visits took place in the course of 2007 and were completed in October 2007. No weaknesses were detected by the Schengen inspection missions, which were conducted by national experts. Consequently, following a peer-to-peer evaluation, the Council alone decided that all the new Schengen member states could join the area without internal borders by the target dates set in the conclusions of the December 2006 European Council.⁹³ The final seal was set by the European Council on 14 December 2007 which "welcomes the enlargement of the Schengen area and the abolition of controls at the internal borders of the member states participating in the SISone4ALL project, as from 21

of time, of two Schengen Information Systems that need a central "swap shop" to exchange data between one country, working with SIS and another using the more complete and powerful SIS II.

⁸⁹ The nature of the threatened course of action by the new member states is enshrined in the Bdro and Vilnius Declaration of 30 November 2006, in which the new member states reiterated their call for lifting "controls at internal land and sea borders no later than January 2008 and at air borders not later than March 2008". In that same declaration, the new member states confirmed their readiness to support the completion of the SISone4all proposal and thus minimise the delay in dismantling the EU's internal border controls.

⁹⁰ Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the general programme "Solidarity and management of migration flows", OJ L 144/22, 6.6.2007.

⁹¹ As defined in Article 3(2) of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (2003), OJ L 236, 23.9.2003.

⁹² Point 26 of the Presidency Conclusions of the Brussels European Council on 14 and 15 December 2006 reads: "The European Council endorses the conclusions reached by the Council (Justice and Home Affairs) on 4 and 5 December 2006 and looks forward to the lifting of controls at internal borders as of December 2007 and by March 2008 at the latest provided all requirements for applying the Schengen *acquis* have been fulfilled."

⁹³ It is important to stress that the European Commission has no formal role in the Schengen evaluation process, which is carried out under the direct responsibility of the Council.

December 2007 for land and sea borders, and by 30 March 2008 for air borders, thus extending the effective free movement of persons".⁹⁴

According to Eurostat, today 404 921 039 people live in the Schengen area. The total length of Europe's external land borders is 4 278 km, while its maritime borders are 2 120 km long.

Achievement of this historic goal has been a daunting task. Although political relationships between member states were severely strained and the technical difficulties of developing a highly sophisticated information system placed high hurdles in the way to the Schengen enlargement, Europe has demonstrated that it can play a significant role in creating a productive environment conducive to results and greater solidarity. European added value, accompanied by a genuine political commitment, was the main, constant feature of this major undertaking. The success of the Schengen enlargement, based on the well-conceived SISone4all strategy, bears out the words of Sir Winston Churchill: "Success is the ability to go from one failure to another with no loss of enthusiasm".

9. Bulgaria and Romania: The next Schengen candidates

The Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union⁹⁵ draws a distinction between two categories of the Schengen *acquis*: (i) the provisions binding and applicable upon accession and (ii) those that, while binding upon accession, may not be applicable until after verification, in accordance with the relevant Schengen evaluation procedures, that the conditions necessary for application of every part of the *acquis* concerned have been met. As we have seen for the other Schengen member states, the formal decision on lifting internal borders must be preceded by the evaluation process, which does not start until after the member state concerned has set a target date for lifting internal border controls and has declared that it is ready to be evaluated by the Schengen inspection teams.⁹⁶

The Act of Accession of Bulgaria and Romania to the European Union provides, *inter alia*, for a Cash Flow and Schengen Facility.⁹⁷ This is a temporary financial instrument for the period 2007 to 2009 designed to assist the new member states with funding specific action at the new

⁹⁴ It is important to recall that, in the conclusions of its 2827th meeting held on 8 and 9 November in Brussels, the Justice and Home Affairs Council stated the following: " *The Council therefore agreed to the conclusions on the Schengen evaluation, according to which the necessary conditions for the application of the Schengen acquis have been met in all areas (air, land and sea borders, police cooperation, the Schengen information system, data protection and visa issuance) in the member states concerned*".

⁹⁵ OJ L 157, 21.6.2005.

⁹⁶ It is important to underline that the timeframe between the start of the evaluation procedure and the target date for lifting internal border controls should not extend beyond two years (the same two-year period was informally agreed between member states when the evaluation procedure was prepared for the newly acceding Schengen States). On 8 June 2007, Romania confirmed that it would be ready for the evaluation process in the fields of data protection, police co-operation and visas as of the second half of 2008. Romania has not yet indicated when it will be ready for evaluation of its external borders nor has it declared its target date for lifting internal border controls. On 17 September 2007, Bulgaria presented a document declaring that it would be ready for evaluation in all areas as of 1 January 2008. Bulgaria has also set a target date for lifting border controls as of the beginning of 2011. Since the period between the start of evaluation and the target date for lifting border controls should not exceed two years, the evaluation procedure for Bulgaria should not begin until 2009. If Bulgaria and Romania have different target dates, clearly a thorough evaluation of the border controls between these two member states will be needed.

⁹⁷ Article 32 of the Act of Accession.

external borders of the Union and improving cash-flow in their national budgets. For the period 2007 to 2009, the financial allocations for the Cash-Flow and Schengen Facility total €239.5 million for Bulgaria and €59.8 million for Romania. The text of the Act stipulates that each country must allocate at least 50% of the total amount to action directly related to management and control of its external borders and to implementation of the Schengen *acquis*.⁹⁸ From 2010 until 2013, Bulgaria and Romania will benefit from the national allocations from the External Border Fund, totalling € 820 million for the period 2007-13.

10. Concluding remarks

Apart from being a good example of Europe's added value, the historic achievement of the Schengen enlargement is the result of a genuine political commitment combined with the hard work and long hours put into this major undertaking by dedicated Commission staff and national experts. In other words, the success of the SISone4all project was due to close monitoring of this initiative at both political and expert levels.

Now that the celebrations have ended,⁹⁹ each Schengen member state has to bear in mind that Schengen membership must be respected every year, Expert groups draw up reports on the visits undertaken in which they make recommendations and draw conclusions. Expert groups will ask for additional inspections to be carried out before awarding the Schengen medal if the result of the inspection is unsatisfactory. Under the current evaluation mechanism, only pre-announced inspection visits may be conducted, to give countries time to prepare and declare themselves ready to be appraised. However, in response to the request contained in the Hague Programme, in the second half of 2008 the Commission intends to put forward a proposal to "supplement the existing Schengen evaluation mechanism with a supervisory mechanism, ensuring full involvement of member states experts, and including unannounced inspections".¹⁰⁰ If approved, this change will introduce a new Schengen mechanism, which will make for more frequent, unannounced checks at the EU's external borders. Unexpected inspections will force each Schengen member state to apply the Schengen *acquis* and related compensatory measures even more seriously and strictly. The security of EU citizens is a very precious right requiring the highest level of commitment and attention by all stakeholders. In other words, this change in the evaluation mechanism will translate into more security because of the strict rules and procedures applied at the external borders, backed up by a sophisticated system of data-sharing between national and EU authorities. This process will be checked rigorously and be subject to a constant process of review and enhancement.

⁹⁸ A *prima facie* analysis of the revised Schengen programmes drafted by the Bulgarian and Romanian authorities indicates that both countries have allocated around 70% of the available funds to Schengen-related activities.

⁹⁹ The atmosphere surrounding the Schengen celebrations was imbued with a mixture of joy and bewilderment. The citizens of the new Schengen member states could not believe that they could finally cross borders without showing their identity documents usually covered with visas. The predominant feeling was that a wonderful dream had come true. The most moving and heartfelt speech was the one delivered by the Mayor of Skofije during the ceremony opening the borders between Italy and Slovenia. He said that his father had been shot while trying to cross that same border, which for too long had been considered a symbol of division, fear and sorrow. Thanks to the enlargement, the 400 million "Schengen people" will be able to move freely, without internal checks, within an area expanded to 3.6 million km².

¹⁰⁰ Hague Programme, section on border checks and the fight against illegal immigration, OJ C 53, 3.3.2005.

Although the effect of the ‘Schengen adrenaline’ has worn off, member states must continue to give their unremitting support to completing the SIS II project, which is the ultimate goal of the Schengen enlargement. At their November 2007 meeting, the Justice and Home Affairs Ministers "took note of the state of play concerning the SIS II (Schengen Information System) project"¹⁰¹ and agreed to give more steam to completion of this undertaking. They realised that the testing phases of SIS II would take more time and energy than initially envisaged by the national experts. Although progress has been made on implementation of SIS II,¹⁰² the original plan to migrate from SIS I+ to SIS II in mid-December 2008 has become more and more unrealistic.¹⁰³ Two main reasons stand out. First, the original plan envisaged migration from SIS I+ to SIS II for the nine new member states only. Following successful completion of SISone4all, the migration scenario will now involve all twenty-four Schengen member states, thereby substantially increasing the risks posed by the "switch scenario".¹⁰⁴ Second, member states' experts, who will be responsible for smooth running of the migration, have clearly said that they will need more time to minimise the migration risks. This is justified all the more by the fact that the next testing phase of the SIS II project will require the direct involvement of the Schengen member states. As discussed earlier in this article, member states' experts have also asked for a back-up solution allowing each Schengen member state to join SIS II on the basis of its technical ability. Against this background, the Slovenian Presidency has prepared a paper which provides for an update of the SIS II project and suggests that all the SIS II testing phases should be completed by the end of 2008. Under this proposal, the migration from SIS I+ to SIS II can take place, at the latest, by September 2009. This should not be considered a delay, as the complexity of the "switch scenario" requires all stakeholders to take all the measures necessary to minimise the risk of failure. In this hazardous situation, member states and the Commission have a duty to proceed with extreme caution if the maximum level of security is to be ensured at the EU's external borders.

I would like to conclude my article by trying to answer the following question: What are the main lessons that can be learned from the Schengen enlargement?

The first is that lack of political coherence in implementation of a given project can hinder Europe's ability to take its work forward. Without giving Europe the executive powers to perform a task, the project is likely to grind to a halt. I believe that this is not the ultimate goal of governments, even though some member states have from time to time taken a negative, jaundiced stance towards Europe. Although national strategies are back in fashion, only a stronger, more united Europe can make a difference in today's internationally interdependent world.

The second lesson is that the Commission cannot change the nature of its work overnight, although EU governments are constantly calling for changes to the nature of the Commission and to the role assigned to it by the Treaties.¹⁰⁵ They argue that the Commission should become more "operational" and less "intellectual" in its day-to-day work. In this context, it is important

¹⁰¹ See the conclusions of the 2827th Council meeting (Justice and Home Affairs) held on 8 and 9 November 2007, p. 8.

¹⁰² The second phase of testing (without member state participation) of the SIS II central system, which is installed in Strasbourg, was completed in 2007.

¹⁰³ From a technical point of view, migration from SIS I+ to SIS II is feasible, but the likelihood of errors and problems will be significantly higher.

¹⁰⁴ To be more precise, the 15 'old' Schengen member states have to migrate from SIS I+ to SIS II, which also includes the high-risk operation of data transfer, whereas the 9 'new' Schengen member states just have to integrate into the new Schengen information system, which involves no data transfer.

¹⁰⁵ In particular, see Articles 211 to 219 of the EC Treaty.

to remember that the Commission was created, among other reasons, to devise future policies designed to deepen European integration between the member states. It cannot become an executive, operational agency capable of delivering the results member states seek. If member states need more coordination of European measures, they have to be consistent and create the proper structures, notably European agencies. This means additional financial and human resources, which, I believe, is the only way of adding the operational dimension that member states crave so dearly to the existing European policy-making. The key to the success of Frontex lies in the fact that member states have realised that the only way to cultivate practical cooperation between them is by means of a body specifically designed for this purpose. The Commission should not become a substitute for European agencies, which need to be established in the area of justice, freedom and security in the years ahead. There is no alternative if member states wish to make headway in this area. For these reasons, it would be crucial to entrust management of SIS II, the VIS and Eurodac¹⁰⁶ to a management authority yet to be established. This management authority should have wide powers, including over the SIS II network, and possibly regulatory powers. This proposal makes such sense that, in the joint statements attached to the SIS II and VIS legal instruments, the Council and the European Parliament invited the Commission to present, following a substantive impact assessment, the legislative proposals necessary to entrust an agency with long-term operational management of the central components of SIS II and parts of the communication infrastructure along with the VIS.

Once the transition period has expired, a new agency should take over operational management of these highly complex systems from the Commission. A further reason which makes the case for a new agency for managing large-scale IT systems even more compelling is given in the Commission Communication on improved effectiveness, enhanced interoperability and synergies among European databases in the area of justice and home affairs.¹⁰⁷ This Communication aims to devise a strategy for managing and protecting information contained in EURODAC, SIS II and the VIS. Sharing data and information is the key to tackling, with a certain degree of success, relevant security threats. Interoperability, connectivity and synergy between systems and databases would therefore be vital to providing law enforcement authorities with relevant information for discharging their institutional duties. The Communication identified potential shortcomings to be overcome in order to achieve this. One problem, probably the biggest, is the connectivity capability of the national authorities. In other words, the Commission has 'done its job' by helping member states to set up these large databases and fostering the first exchanges of information. What the Commission cannot do, because it is against its very nature and institutional duties, is to cultivate practical cooperation between member states by developing specific procedures and tools which will enable member states to make these large-scale information systems interoperable. Only a dedicated body can discharge these complex tasks, along with the duty to ensure a high level of data protection. The Communication rightly pointed out that it is not sufficient to set up powerful databases to tackle external security threats. What is more important is to interconnect these databases and to help member states to make fuller use of these new technological tools via closer practical cooperation. Member States need to set up a 'dedicated body' to accomplish this goal and the Commission is ready and willing to lend a helping hand. In future, this new agency should be

¹⁰⁶ The Eurodac system enables member states to identify asylum applicants and persons who have been apprehended while unlawfully crossing an external border of the EU. For further information, see Council Regulation No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

¹⁰⁷ COM(2005)597 final, Brussels, 24.11.2005.

called upon to review the effectiveness of these databases with a view to adapting their operating methods and structure to the new challenges.

Although there are quite a number of European agencies already,¹⁰⁸ it is important to provide Europe with a new body responsible for smooth operation of Eurodac, SIS II and the VIS. Member States should not turn a deaf ear to this legitimate and sensible request. The third and final lesson is that mutual trust, solidarity and burden-sharing have proved to be the essential ingredients of the Schengen enlargement. This successful *modus operandi*, which increases practical cooperation between member states, should be taken as an example for any future European undertaking.

In February 2008 the Commission will table two new proposals on border management, which will give more steam to the process of implementing Europe's forward-looking vision in this area. One proposal will deal with an automated entry/exit system, which could become an effective measure to prevent terrorism by monitoring the movements of potentially dangerous third-country nationals more efficiently.¹⁰⁹ The system should record electronically the dates of entry and exit of each third-country national admitted for a short stay, which means up to 90 days. The records should include use of biometrics, which are to be stored in the VIS database. The other Communication will draw up a roadmap for, in the short term, stepping up national capacity for border surveillance and promoting cooperation and exchanges of surveillance information and, in the medium term, developing new tools, such as satellites, and allowing joint application of such tools for the benefit of every member state. In the long term, the Commission intends to suggest new ways of setting up an integrated maritime surveillance system, by connecting all the existing surveillance and reporting systems covering Europe's maritime borders. In short, these two proposals, combined with the one on the evaluation of Frontex which I dealt with earlier, will give more impetus to building Europe's integrated border management system. A definition of this integrated border management approach can be found in a paper drafted by the Finnish Presidency for the informal meeting of the Justice and Home Affairs Council held from 20 to 22 September 2006 in Tampere. It states that this new border approach "should consist of the following dimensions:

- border control (checks and surveillance) as defined in the Regulation establishing a Community Code on the rules governing the movement of persons across borders, including the necessary risk analysis and criminal intelligence;
- investigation of cross-border crime;
- a four-tier access control model (measures in third countries, cooperation with neighbouring countries, border control and control measures within the area of free movement);
- cooperation between the authorities in the field of border management at the national and international level (border control, customs and police authorities, security services and other relevant authorities)
- coordination and coherence of action taken by member states and institutions.

¹⁰⁸ At present the total number of European agencies is 33.

¹⁰⁹ The Schengen Border Code (see footnote 16) places an obligation on member states systematically to stamp the travel documents of third-country nationals, both on entry and on exit. At present this is done manually by border guards each time a third-country national crosses a border. Provided they travel with the same passport, over-stayers can therefore only be identified at the border, when they leave or re-enter the territory of a member state, by comparing the entry and exit stamps.

The key principle is that **border management must cover all border-related threats.**¹¹⁰

This new approach encapsulates the future of Europe's border management, hinging on closer practical cooperation between member states, well-trained border guards and cutting-edge technologies. Europe cannot make any progress on developing this new integrated border approach unless member states realise that their current border checks have remained unchanged for far too long and are inadequate to cope with the insidious challenges posed by globalisation. Although securing its borders and, at the same time, managing its growing migration flows seamlessly appear, at first glance, conflicting goals, Europe is ready and willing to take up this formidable challenge. Europe has to make life easier for *bona fide* travellers, while enhancing the internal security of its own citizens. The last six years are a glowing testimony to what Europe can achieve, by a constructive step-by-step approach, in the area of border management. The success story of the Schengen enlargement will secure Europe the political support necessary to develop its medium- and long-term strategy to make its vast territory more hospitable to *bona fide* travellers and more hostile to international organised crime.

¹¹⁰ The paper tabled by the Finnish Presidency is entitled "*Development of the EU's integrated management system for external borders; border management strategy*", Tampere, 7.9.2007. For further background information, see Hobbing, P. "Integrated Border Management at the EU level", Working Document No 227, Centre for European Policy Studies, August 2005.

Appendix I

More accurate figures are available on illegal immigrants who have been detained and on the number of returns enforced by member states. The table below is based on the statistical data collected and analysed by the Centre for information, discussion and exchange on the crossing of frontiers and immigration (CIREFI),¹¹¹ which cover all EU countries except the United Kingdom.

	2000	2003	2006
Illegal migrants apprehended	620 384	429 170	516 195
Removals carried out	436 674	225 513	201 870

Illegal migrants apprehended by nationality, 2003 – 2006				
	2003	2004	2005	2006
Romania	38 894	43 839	63 172	84 009
Albania	41 846	37 025	52 461	58 738
Morocco	35 048	33 942	34 092	40 920
Ukraine	34 082	29 289	26 964	22 025
Iraq	13 518		14 351	22 527
Senegal				19 775
Russia	17 991	17 346	13 937	
Brazil			12 009	17 594
Algeria	14 182	14 634		14 019
Pakistan				13 654
Bulgaria	13 473	11 914	11 412	
Serbia & Montenegro			13 101	11 860
China	13 020	11 019		
Moldova		11 989	12 712	
Turkey		11 185		

¹¹¹ The objective of CIREFI is to help member states examine legal immigration, prevent illegal immigration and facilitator networks, detect forged documents and improve expulsion practice. CIREFI was set up by a decision of the Ministers for Immigration on 30 November 1992 and is composed of experts from the member states, who meet every month.

Migrants returned by nationality, 2003 – 2006				
	2003	2004	2005	2006
Albania	40 811	35 258	49 979	54 420
Romania	27 182	26 472	26 402	23 864
Morocco	23 323	21 049	21 324	20 116
Unknown	22 512			
Ukraine	10 874	13 156	11 314	12 859
Turkey	11 675	10 884	8 582	6 632
Bulgaria	10 195	9 343	7 933	7 040
Poland	9 497			
Serbia & Montenegro		6 532	7 560	5 844
Russia	6 563	6 972	5 203	3 875
Brazil			6 003	
Senegal				5 839
Algeria		5 619	5 219	5 637
Moldova		4 671		

Statistical data on refused entry at borders have not been included in this article, as the risk of giving the reader a misleading picture was too high. By way of example, in 2006 alone, there were 900 000 refusals, 600 000 of them in Spain, in particular at the borders between the Kingdom of Morocco and the two enclaves of Ceuta and Melilla.