

FEASIBILITY STUDY FOR THE SETTING UP OF A

“EUROPEAN BORDER POLICE”

Final Report

**Rome
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FEASIBILITY STUDY FOR THE SETTING UP OF A EUROPEAN BORDER POLICE

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Foreword

On the basis of the normative framework of the Treaty of Amsterdam, the European area of “freedom, security and justice”, whose realisation is a primary objective of the Union, is the ambit of reference for a political-normative elaboration of interdisciplinary character (to which belongs the Police cooperation activity) that is an essential instrument for the attainment of the purposes indicated by the treaty.

The feasibility study for the setting up of a European Border Police, promoted by Italy and Belgium, France, Germany, Spain as partner Countries financed by the Odysseus Programme, belongs to the context of the aforesaid elaboration.

The project represents, for its characteristics, from the point of view of its merit and method, an example of the awareness matured in the Member States and in the Community institutions, of the necessary and effective realisation, within the borders of the Union, of a common area. This is particularly true in the perspective of the Union, that is getting prepared to an enlargement to other European Countries, especially those of the eastern area.

It's a common area of respect for the values of the human person, of protection of liberties, of promotion of well-being, of tutelage of security conditions, of forms of reception, of the fight against crime. It's important to remember that, according to the decisions of the European Council of Nice (December 2000) in this delicate phase of its growth, the Union is summoned to deepen and consolidate its own institutions towards a closer integration. Beginning, particularly with the institutions that play a strategic role in the field of security and guarantee of rights.

From this point of view, one of the major merits of the study project consists in emphasising the central role of police services. They have always been expression of a sovereign instance, which in a United Europe must seek to innovate, modulate, strengthen and harmonise themselves, in function of a common interest in the internal security of the Union and security at its borders.

The project is part of the great debate on the future of the Union and destined, after the decisions of the European Council of Laeken, to create subsequent effects in the preparation of the approaching deadlines and that should give to the European Union a more consolidated constitutional and institutional structure.

Against the background of this imminent future scenario, the initiative of the feasibility study project for the setting up of a “European Border Police” is both opportune and propitious, responding to evident requirements, and in accordance with substantial interests. The Study is also in accordance with the conclusions of the Presidency of the European Council of Tampere, (October 15-16, 1999): at point 24 the conclusions require a closer cooperation and technical assistance for the services of the Member States in charge of border control. The project, with the aforementioned characteristics, has also a high symbolic value, derived from the very idea of “border”: as a challenging idea that the European peoples and the European States are confronted with, i.e. preserving and reinforcing the conditions of well-being and internal peace within the Union.

In order to face this challenge with reasonable and serious chances of success, the mobilisation of all the energies and resources, at the level of civil and political society, in the individual Member States and by the Institutions of the European Community is necessary.

Italy, Belgium, France, Germany and Spain are aware of the importance of this challenge. Italy, considering its geographical position of advanced territory of the Union (East and South), and the fact that it has all the three types of external border (one of them is particularly extended), has taken the initiative, together with the others partner Countries, to present the project. The management Committee of the *Odysseus Programme* has approved the initiative and has decided an 80% Community financing.

I

THE DEVELOPMENT OF THE PROJECT IN THE FIRST THREE PHASES

1. The timetable and the procedures

October 23, 2001-May 30, 2002. The first element of evaluation, can be drawn from the short period of time in which the study was carried out¹. The remarkable amount of data and sector elaborations that accompanies this document.

The Study was carried out with an empirical methodological approach, neither finalised to the research of theoretical formulation detached from reality, nor oriented to the discovery of justifications of the correctness of "ideal" solutions. Avoiding the ties of postulations and/or preconceived orientations, the option was an itinerary that, moving from the existing, could study it and submitted it to analysis. On this basis, in fact, it would have been possible to reach the formulation of concrete solutions.

The original project contemplated the subdivision of the study in four phases: pre-study, study, analysis and assessment.

The carrying out of the Study was entrusted to a Study Group composed by officers of the Border Police of the five partner Countries, by advisors of the University "Bocconi" of Milano, of the

¹ October 23, 2001 is the date of the formal ceremony of the constitution of the Study Group.

University of Catania, of the University “Roma Tre” of Rome, by an expert of the European Commission and by an officer of Europol².

This diversified composition of the group was aimed at the carrying out the activity of research by a group that would be of multidisciplinary character and strictly competent to the object of study.

The pre-study phase of the work was carried out between October 23 and October 27³. The Study Group elaborated the final objective so that it could serve as an orientation, even if general and provisional.

² The final composition of the Study Group:

Responsible: Gerardo Cautilli, Dirigente Superiore della Polizia di Stato;

Officers of Border Police:

- *Belgium:* Marc Van den Broeck, Commissioner, Federal Police;
- *France:* Joël Dhorne, Commissaire Divisionnaire, Police aux Frontieres; Alain Bibaud, Commandant de Police, Police aux Frontieres; Gilles Viguiet, Capitaine de Police, Police aux Frontieres;
- *Germany:* Alfons Aigner, Polizeidirektor, im Bundesgrenzschutz; Joachim Moritz, Polizeidirektor, im Bundesgrenzschutz; Mathias Schaef, Polizei uberrat, im Bundesgrenzschutz;
- *Italy:* Giulio Maria Brugnoli Staffetti, Primo Dirigente della Polizia di Stato; Giuseppe Macri, Vice Questore Aggiunto della Polizia di Stato; Antonella Rossini, Vice Questore Aggiunto della Polizia di Stato;
- *Spain:* José Luis Martinez Vazquez, Inspector Jefe, Cuerpo Nacional de Policia; Jesús Alberto Marquez Navarro, Inspector, Cuerpo Nacional de Policia; Alfonso Escuer Mur, Teniente Coronel, Guardia Civil;

European Community Law Experts: Prof. Luigi Moccia, Preside della Facoltà di Scienze Politiche of the University of Roma “Tre”; Prof. Alessandro Truini, Ordinario di Istituzioni Diritto Pubblico e di Diritto Regionale Europeo of the University of Roma “Tre”; Prof. Alessandro Taradel, Ordinario di Teoria delle Organizzazioni Complesse of the University of Roma “Tre”;

National Experts: Prof. Severino Salvemini, Ordinario di Organizzazione aziendale, Prorettore of the University Bocconi of Milano; Prof. Franco Amigoni, Ordinario di Programmazione e controllo at the University Bocconi of Milano; Prof. Mauro Miccio, professor in Comunicazione of the University of Catania;

European Commission: Fabrice Leggeri;

Europol: Liisa Lintuluoto, First Officer, SC3a Illegal Immigration Group.

³ On October 3, 2001 the Police Department of the Italian Ministry of the Interior informed the partner Countries (Belgium, France, Germany and Spain) of the imminent start of the “Feasibility study for the setting up of a European Border Police “ in the framework of the Odysseus program 2001. The partner Countries were also informed of the creation of a permanent secretariat at the Istituto Superiore di Polizia in Rome, and were requested to designate their representatives (border police officers) for the Study Group. On October 15 the Department informed the other 10 EU Countries about the start of the project, the imminent constitution of the Study

The final objective was formulated as follows:

“the formulation of hypothesis for a control of the external borders that could be more effective, optimising the collaboration through the use of common resources, the identification of compatible common procedures, the realisation of joint services, and, last but not least, a body of European Border Police”.

The Study Group prepared a questionnaire, as a necessary instrument to collect the data concerning the existing situation, taking into account the contributions of the academic component, in order to point out the most relevant aspects. The questionnaire elaborated by the Study Group was composed of a series of categories, or key-areas, aimed at collecting the necessary data respecting the double criterion of completeness and coherence⁴.

2. The Questionnaire

On October 27 the questionnaire, in its definitive form, was approved in plenary session, respecting the timetable indicated by the project. Even if still perfectible, it was unanimously considered a satisfactory and adequate instrument of research, since it conjugated and balanced the amplitude of the themes and the focusing on the questions on the mostly remarkable points.

The questionnaire turned out to be a valid instrument of investigation for all the different national realities and a suitable resource for data analysis, their comparison and the construction of an overall picture of the problem of the 15 EU Countries.

The questionnaire was divided into the followings nine key-areas: (1) authority profiles: division of competences; (2)

Group and the visits of some of its members in the mentioned Countries in order to gather information for the carrying out of the work. Finally, in order to facilitate the task of the visitors, the Countries were asked to point out a referent, to whom the visitors would have been able to address.

⁴ This work was characterised by the joint effort to overcome the difficulty involved in the complexity and the diversity of the various themes; this effort was made possible by the professionalism and the experience on the field of the officers of the five delegations. The group didn't find any valid precedent to rely upon, and it was necessary a veritable work of “invention”, conditioned by the scarce available time.

Profile of the organisations; (3) Human resources; (4) Performance indicators; (5) Procedures and measures; (6) Bilateral or multilateral cooperation; (7) The phenomenon of immigration: statistics and problematic; (8) Voluntary service organisations for immigrants assistance; (9) Financial and economic profiles.

Respecting the aforementioned methodology, all the questions were aimed at obtaining answers of objective character and not value judgements or opinions about the situations.

The Study Group was then divided into three subgroups, in order to carry out the visits in the 15 EU Countries⁵.

3. The study phase

The purpose of the visits (preceded by the sending of the questionnaire to the referents indicated by the EU Countries) was to collect data and information concerning the organisation, the human resources, the procedures, etc. concerning the activity of the border police⁶.

All the visits took place between November 11, 2001 and January 16, 2002⁷.

The answers provided the Study Group with a new and articulated picture of the structures, of the organisations and of the procedures and

⁵ Subgroup I: Italy/Germany/Belgium/France/Luxemburg/Spain; Subgroup II: Netherlands/Greece/Austria/Portugal; Subgroup III: Sweden/Finland/Denmark/Ireland/United Kingdom. The composition of three subgroups was the following: Subgroup I: Giulio Maria Brugnoli Staffetti (I), Joël Dhorne (F), Jesús Alberto Marquez Navarro (ES), Mathias Schaef (D), Marc Van den Broeck (B); Subgroup II: Alfons Aigner (D), Alain Bibaud (F), Alfonso Escuer Mur (ES), Giuseppe Macri (I); Subgroup III: Joachim Moritz (D), Antonella Rossini (I), José Luis Martínez Vazquez (ES), Gilles Viguier (F).

⁶ A document for the best utilisation of the questionnaire was prepared by the Community Law experts of the University of Rome "Roma Tre".

⁷ Unfortunately, during the visit to Denmark, Mr. Martínez Vasquez, of the Spanish delegation (member of the 3rd Study Subgroup), passed suddenly away. Since then, due to this sad event, the Spanish delegation has participated to the visits of the 1st and 2nd Subgroups only.

of the other relevant aspects of the border police in the 15 EU Countries⁸.

4. *The Analysis Phase*

During the first meeting, (22 - 27 January, 2002), a dossier collecting all the answers was delivered to all the participants of the Study Group.

The subgroups were entrusted with the task of studying the answers from all the Countries to the pertinent questions to some specific areas: Subgroup I: areas 1 and 2; Subgroup II: areas 5, 6 and 8; Subgroup III: areas 3, 4 and 7⁹.

After a short pause there was the second meeting of the analysis phase (12-22 February). The meeting had two sessions: February 12-17; February 18-22. During the first session the subgroups studied and analysed the informative material¹⁰ enucleating (concerning the diverse areas, their common characteristics and their differences) the most meaningful typologies¹¹.

To allow a faster and easier research and comparison of the answers, the staff of the permanent secretariat, elaborated a software program of advanced search. Thanks to its characteristics of extreme versatility, the program allowed a multi-track search for the textual comparison of the documental materials, through a comparison of the different national systems.

⁸ Considering the official character of the answers, and the complexity of their content, any synthesis in this document would be limited and incomplete, if not misleading.

⁹ The objectives to achieve in this first moment of the analysis phase were: a) verifying the completeness (from the point of view of content and formal profile) of the answers; b) appraising, if necessary, the integrations to the answers that had to be requested. The requests for the integrations were sent by the permanent secretariat starting from January 27. The content of the answers was acquired, integrated and recorded on the CD-ROM support *Odysseus Programme Draft 1-12 February 2002*, that was given to the participants at the beginning of the second meeting of the analysis phase.

¹⁰ The analysis work could not include the answers of Denmark since they were received only on February 22, 2002.

¹¹ The objectives of the subgroups were the following: comparing the answers of all the Countries to each question of the questionnaire; identifying the points of convergence; pointing out the most meaningful national typologies.

The three subgroups worked on the analysis of the information from the Countries with regard to the specific areas to which they were previously assigned.

The subgroup I, examined all the answers to the various questions of the areas 1 and 2, concentrating its attention on some elements of prominent interest. The subgroup I reached the formulation of an overall picture, not destitute of unity elements, about the structural orders and the distribution of the relative competences to the working organisms in the field of border security¹².

The subgroup II analysed the general picture of the procedures and measures. For each of them the subgroup provided a complete synoptic chart in which expounded the different operational modalities practise in the various Countries.

On the basis of said charts, the subgroup proceeded to form a nearly exhaustive comparison picture, in which the most meaningful elements summarised were synthetically expounded¹³.

The subgroup III provided an analysis, relating to the three areas. The analysis are quite differentiated, in their nature and operational implications. It was clear that there was an ample differentiation concerning the management of human resources in its various aspects (recruitment, training, career development, specialised units) and the relative exceptionality of the employment of performance indicators¹⁴.

The Group continued the work in plenary session, drafting a synthesis document, that was completed on February 22. The document presented synthetically the results of the analysis elaborated by the subgroups on the answers to the questionnaire, delineating the common characteristics and the differences between the Countries,

¹² The Subgroup pointed out that, in spite of the notable differences of the existing structural character between the Countries, there is a meaningful affinity between the competences attributed to the single organs, with evident repercussions even on their operation formality.

¹³ The Subgroup presented its working method, with some proposals of operational character, aimed at improving the border security system.

¹⁴ The Subgroup has identified four themes related to the human resources: selection, training, special units and career. The list was prepared in order to be exhaustive and homogenous.

providing a general picture of the more remarkable elements pointed out by the research¹⁵.

At the end of the second meeting the results of the analysis were sent to the experts of the University “Bocconi” (Milan) and of the University “Roma Tre” (Rome).

On March 11 the participants received a note “*First Orientations For The Assessment Phase*” that, considering the state of the research, and the ample cognitive and analysis accumulated, proposed to begin immediately the evaluation phase of the study, i.e. the formulation of proposals aimed at the amelioration and development of the border security system. The note also underlined the necessity to identify a working methodology that could conjugate scientific rigour and pragmatic approach. Some risks were also pointed out. In order to avoid such risks the attention of the group of study had to be focussed on three essential elements:

establishing WHAT: i.e. the specific objective, that had to be carefully identified and represented; identifying HOW: i.e. defining the means for the attainment of “what”; identifying WHO: i.e. the subject (or the subjects) agent, accountable for the realisation of “how” and the attainment of “what”¹⁶.

In this way the aforesaid hypotheses could be evaluated from the point of view of their feasibility, and therefore subject capable of being transformed in concrete proposals.

This process would have led to a list of feasible hypothesis characterised by the indication of a realisation timetable (short-mid and long term) and of the possible concatenations.

This approach would have allowed the possibility to delineate with sufficient precision an articulated itinerary aimed at the final goal of the creation of a European Border Police.

At this stage, before proceeding towards the conclusive phase it was considered essential a recognition of the Community context in order

¹⁵ The CD-ROM support *Odysseus Programme, Draft II - February 22* with the information material and the results of the analysis of the border police officers of the three Subgroups, was distributed to the participants.

¹⁶ Concerning the first element (“what”) there was the maximum freedom of ideation, because all the suggestions had to be evaluated in the light of “how” and of “who”.

to evaluate its possible changes (from the date of the beginning of the feasibility study), its implications and the juridical frame.
It was ascertained that there had been important evolutions transfused in some official documents.

II

THE EUROPEAN UNION INDICATIONS

5. Communication from the Commission on a Common Policy on Illegal Immigration. Presidency Conclusions at the European Council meeting in Laeken: for a more Effective Control of the External Borders. The JHA Council (February 28, 2002).

The communication from the Commission on a common policy on illegal immigration (November 15, 2001) was issued shortly before the Council meeting in Laeken.

The document faithfully reflects the growing awareness of the necessity to further the realisation process of the common area, of freedom, security and justice, and the maturation degree reached, both in the Community ambit, and in the single Member States, on the themes and on the connected problems.

With the aforesaid communication the Council was invited to deliberate in connection with the plan of action “in order to ensure rapid development, indicating which of the potential actions it considers to be elaborated with priority”.

The content of the communication rotates around to the theme of “clandestine immigration”, and examines its complex phenomenology with a particular attention for the social aspects and for the tutelage of human rights. The Communication also focuses its analysis on the manifold aspects related to the phenomenon of migratory flows and on the proposal of orientation, measures, initiatives and, generally, of instruments aimed at facing the phenomenon, giving, in the meantime, concrete realisation of the treaty of Amsterdam and to conclusions of Tampere.

The communication constitutes the completion of the important contributions already provided by the Commission in the sectors of asylum and of legal immigration. The document is structured with six sectors of priority intervention. In these sectors measures can be adopted for the prevention and the fight of clandestine immigration.

These actions can be based both on already existing instruments and measures, at national level, and on their greater coordination and strengthening, through the integration of the European dimension.

It's a document with articulated contents. From the point of view of the feasibility study, the most relevant considerations are the proposals connected to the sectors concerning:

- infrastructures for information exchange, cooperation and coordination;
- border management;
- police cooperation.

At point 4.4. of the document, it's stated: "high standards of external border controls are an important contribution in order to prevent illegal immigration", and "it should be highlighted that border management is not focussing solely on the immigration aspect but also on other purposes customs purposes, traffic security, prevention of the entry of dangerous or illegal goods, identification of persons wanted for arrest or extradition (...)".

The communication continues:

"All these elements have to be integrated into a coherent strategy. The setting-up of a European Border Guard as a core element of such a strategy has already received strong political support, and exploratory work, financed by the Odysseus programme, is underway".

This is, from the Commission, a meaningful mention of the feasibility study. It's important to underline, besides the mention of such a project, the position that the feasibility study has in the context of the document and of the proposal of the Commission, as an initiative considered to be strategic in a "global approach" to the problem of the external border management of the Union; not only concerning clandestine immigration but, more generally, every aspect related to border security.

The European Council meeting in Laeken (14-15 December 2001), accepting this formulation, repeated in the final document the conclusions of the Presidency, i.e. that "better management of the Union's external border controls will help in fight against terrorism, illegal immigration networks (...)", and asked 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”¹⁷.

It must be remembered that, even more recently, the JHA Council (February 28, 2002) has formally approved the *Schengen Catalogue* that, destitute of legally binding value, has the main purpose to introduce a series of “recommendations” and “best practices”, providing the following definitions:

Recommendations: “non-exhaustive series of measures which should make it possible to establish a basis for the correct application of the Schengen acquis and for monitoring it”.

Best practices: “non-exhaustive series of methods or model measures which must be considered as the optimal application of the Schengen acquis, it being understood that several best practices are possible for each specific part of Schengen cooperation”.

The value of these recommendations and practices consists in the fact that they must be taken into account by the States and by the Commission for the formulation of proposals and for the start of official initiatives. In this sense, they have exemplary value, for the Schengen area States and for the States that will join the Schengen area. The recommendations are also a useful parameter of reference for the future evaluations of the candidate countries.

The Schengen Catalogue mainly deals with matters concerning border and removal, indicating framework notions of the subject.

¹⁷ The “complaint” of the Commission concerning the scarce impact of the common rules and procedures introduced in application of the Schengen Convention must be read and interpreted in this context of positions, univocally aimed at pointing out the need of a synergic approach at European level (in terms of coordination of the competent bodies in national ambit both on the technical-organisational and operational plan in order to rationalise and improve its action).

It’s a clear and realistic solicitation to promote, beyond the Community normative framework (sufficiently articulated), initiatives aiming at realising a better and more effective order of structural coordination, as a basis for this normative framework, in order to make it truly functional in response to the problems of free circulation and security within the Union.

A first framework notion (under the denomination of integrated border security model), concerns a set of remarkable aspects of the matter of migratory flows and of fight against clandestine immigration. It's articulated in four complementary levels (or filters), identified in connection with four types of activity , i.e.:

- the activity in the third Countries, Countries of origin or of transit;
- the bilateral and international cooperation;
- the external border measures;
- other activities within the territory of the Schengen States.

A second framework notion concerns, under the denomination *border management*, a series of aspects concerning *border checks*¹⁸ carried out at the authorised crossing-points, and *border surveillance* between the authorised crossing-points.

For the object of the feasibility study, the aspect of greatest interest and pertinence in the light of the recommendations contained in the quoted *Catalogue* is the aspect concerning the “external border measures”.

The *Catalogue* underlines the strategic demand of an integrated approach to border security, founded on the close correlation between control and surveillance, together with other aspects of a more general and preventive character, among which it has to be signalled the aspect concerning the risk of illegal migratory flows.

The *Catalogue*, besides, constantly recalls the distinction, (not only defining but also operational), between control activity and surveillance activity of the border. This difference presents remarkable peculiarities concerning the diverse types of border.

¹⁸ Including the police aspects for the identification and prevention of threats for national security and public order.

III

THE JURIDICAL FRAMEWORK

6. The Framework of the Objective of the Setting up of a European Border Police

It's now necessary to proceed with the formulation, in general terms, of the organisation in which the problem of the setting up of a European Border Police must be properly placed.

In the normative provision of the Treaty on European Union (TEU) there is the strategic objective (art. 2, comma 4) to “maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”¹⁹.

The objective is inserted in the TEU, Title VI, “Provisions on Police and Judicial Cooperation in Criminal Matters”, where, in art. 29, it is stated: “without prejudice to the powers of the European Community, the Union’s objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation (...)”.

This objective must be pursued through a reinforced cooperation between police forces, customs authorities and other competent authorities of the Member States, both directly and through the European Police Office (Europol), in conformity with art. 30 and art. 32 of the TEU.

The same objective is also mentioned in the Treaty Establishing the European Community (TEC), under Title IV, concerning in particular “Visas, Asylum, Immigration and other Policies Related to Free Movement of Persons”, which, in art. 61, comma. 1. a, states:

¹⁹ This objective, in order to be pursued and realised, must aim, according to the Treaty, at developing “a common action in the sector of police and judicial cooperation” between States.

“in order to establish progressively an area of freedom, security and justice, the Council shall adopt: a) measures aimed at ensuring the free movement of persons (...) in conjunction with directly related flanking measures with respect to external border controls (...)”.

Furthermore, the TEC, art. 62, comma 1, establishes:

“The Council, acting in accordance with the procedure referred to in Article 67²⁰, shall, within a period of five years after the entry into force of the Treaty of Amsterdam adopt: 1) measures with a view to ensuring (...) the absence of any controls on persons, be they citizens of the Union or nationals of third Countries when crossing internal borders 2) measures on the crossing of the external borders of the Member States which shall establish: a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders; b) rules on visas (...)”.

This article is the juridical basis of the regulations regarding external borders and visas policies.

Art. 63, comma 3, of the aforementioned TEC, establishes the competencies of the Council for “measures on immigration policy within the following areas:

- conditions of entry and residence, and standards of procedures for the issue by Member States of long term visas and residence permits (...);
- illegal immigration and illegal residence, including repatriation of illegal residents (...)

The are also the dispositions of the Convention for the application of the Schengen Agreement (art. 7 and art. 47) for a closer cooperation in the sector of border control.

²⁰ “During a transitional period of five years following the entry into force of the Treaty of Amsterdam (May 1999- May 1 2004), the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament”.

7. Forms of Cooperation and Competent Institutions

On this basis, the consequence is that the pursuance of the objective of preserving and developing the Union as an area of freedom, security and justice, utilises two forms of cooperation:

- Community cooperation, (I pillar), regarding the free circulation of persons and the directly connected flanking measures, concerning matters of external border control.
- intergovernmental cooperation, (III pillar), centred on the cooperation, in criminal matters, between police forces and judicial authorities to prevent and suppress organised crime or other types of crime, terrorism, the trafficking of human beings and crimes against minors, the illicit drug and arms trafficking, corruption and fraud.

There is a theoretical distinction between the area of freedom, which is relevant in the Community field (I pillar), concerning the free circulation of persons (internal market) and the area of security and justice, which is relevant in the intergovernmental field, concerning the police and judiciary activities²¹.

Concerning the area of freedom, i.e. concerning the policies connected with the free circulation of persons, the competent institutions are:

- the Council (with decisional power);
- the Commission (with non-exclusive proposal power, shared with the single Member States);
- the European Parliament (with consultative power).

Therefore, initiatives aiming at the adoption of measures having as their object rules and procedures (also for what concerns the organisational and functional aspects) in matters of checks on persons crossing the external borders, are within the competency of the aforementioned institutions.

For the area of security and justice, the competent institutions are:

- the Council (with decisional power but also of coordination (TEU, art. 34, comma 1);

²¹ I.e. prevention, investigation and suppression of organised crime, terrorism, the trafficking of human beings, crimes against minors, of the illicit drug and arms trades, of the fight against corruption and fraud.

- the Commission (with power of proposal, shared with the single Member States).

The initiatives aiming at adopting measures concerning rules and procedures (also for the organisational and functional aspects) in this matters are within the ambit of the competencies of the single Member States, through the Council; to the Commission is recognised (as well as to each single Member State) a power of proposal in the matter²².

8. *The Schengen Cooperation*

As a completion of the outlined picture, the Schengen Agreement of 1985 and the following actions (Convention and application in 1990, with the protocols and the following accession agreement) must be mentioned.

During the work of the intergovernmental Conference for the predisposition of the Treaty of Amsterdam, the problem of the insertion in the context of the Union of the system of cooperation, that was already started on the basis of the Schengen agreements concerning the free movement of persons and the police and judicial cooperation, became evident.

The Protocol annexed to the Treaty of Amsterdam on the acquis of Schengen, that established its insertion in the ambit of the Union, has given life to a system of reinforced cooperation with the participation

²² Concerning the area of security and justice, other bodies empowered to intervene on the proposal of adoption of rules and procedures and in general, in the field of police and judiciary cooperation in criminal matters, are: (a) the European Parliament (with consultative power); (b) the Conference of the bodies specialised in Community questions of the single National Parliaments. The institution act envisages that the Conference can formulate contributions regarding the area of freedom, security and justice. The potentially privileged role recognised to Europol (TEU art. 29 and art. 30) must be pointed out. It should be remember that according to art. 30, comma 2 of the TEU the Council, within five years since the entering into force of the Treaty of Amsterdam (i.e. within 2004) shall promote the cooperation through Europol, implementing a series of measures (in the following sectors and objectives: investigative operations, operational actions of mixed units, investigations on specific cases, assistance for the investigations concerning cases of organised criminality, liason agreements between examining police and magistrature bodies. It must also be mentioned an *ad hoc body* (already confirmed by TEU art. 36), the Coordination Committee, composed by high officers, with coordination tasks, and with the task of formulating opinions to the Council and to contribute to its works.

of 13 Member States, working in the sectors of the III pillar (police and judicial cooperation in criminal matters) and in the sectors of the I pillar (title IV of the TEC concerning the free circulation of persons). Article 1 of said Protocol authorises the 13 Member States of the Schengen system to establish between them a closer cooperation in the aforesaid sectors²³.

9. Typology of Acts

The aforementioned distinction indicates the types of acts which can be adopted.

In matters of free movement of persons and connected measures (area of freedom), with particular regard to the rules and the procedures concerning the checks on persons crossing the external borders, Community acts can be adopted (art. 249, TEC) which are subject to the jurisdictional control of the Court of Justice, i.e., particularly:

- “rules”
- “directives”

Concerning the cooperation of judicial police in criminal matters (area of security and justice) the acts of art. 34, TEU can be adopted, i.e.:

- “common positions” in order to define the orientation of the Union with concerning a specific question);
- “framework decisions”, to favour, in a similar way to the Community directives, the rapprochement of national legislations, being binding for the Member States as to the results to be obtained (except for the competency of the

²³ Considering that the dispositions of the Schengen acquis (composed, besides the Convention of application and the subsequent adhesion agreements, by the dispositions, declarations or decisions adopted by the Executive Committee, and by the acts adopted by the bodies to whom the Committee has entrusted decisional powers) are divided between Title VI TEU and Title IV TEC, the Protocol itself has entrusted the Council, deliberating unanimously, the task to determine the juridical basis that legitimates the recalled dispositions. The Council, with a decision in May 1999 defined the acquis of Schengen, in order to determine the juridical basis for each of the aforementioned dispositions and decisions.

national authorities concerning the form and the instruments);

- “decisions”, in order to pursue any other purpose coherent with the aims of the police and judiciary cooperation in criminal matters, except for the rapprochement of the national legislations), which are also binding for the States;
- “conventions”, the Council recommends their adoption to the Member States, since the agreements adopted by at least a half of the Member States enter into force the said States).

Power over the validity or the interpretation of the framework decisions and the decisions, besides the interpretation of the conventions has been granted to the Court of Justice.

10. For a Unitary Notion of “Secure Borders”

The distinction between measures of border management and measures connected to security and their contiguity, and for important aspects, their overlapping poses and accentuates the problem of a unitary notion of “secure borders”.

It seems opportune and necessary that Community method and intergovernmental method of cooperation between the Member States should come together in a single, coherent and consequent vision and progression of measures and initiatives.

In this perspective, it seems opportune to pursue the objective of a common policy for border security, jointly based on technical-administrative services, prevention, issue and identification of visas and other documents for entry and stay, gathering and diffusion of relevant information data, control of migratory flows, implementation of repatriation procedures, etc., and of the operative services for the surveillance of the borders and of the management of the interventions in question.

Naturally, since the single Member States already possess competent structures to implement these services, it appears opportune to intervene in order to create synergic effects between the national actions, integrating the European dimension as a factor of support,

coordination, assistance and orientation of the actions and national competencies.

11. For an Integrated System (Multilevel and Multipurpose) of Border Security

The aforementioned necessity is translated, at the methodological level, into a “global” approach, as defined by the Commission itself, aimed at realising, from the point of view of the foreseeable solutions, a system of vigilance and control of the external borders (which is impressed on the rules and procedures concerning visas and immigration, and also on the organisational and functional aspects of the competent authorities, including the personnel training). The system shall be capable of providing the citizens of the Union with a high degree of security, in accordance with the requirements stated by the European Union Treaty. This system will have to possess the characteristics of an integrated system, organised on several intervention levels (multilevel) and articulated in order to perform different functions (multipurpose).

In order to guarantee both a greater organisational and functional elasticity and the greater coverage of the various plans and aspects (respecting the national differences), it's possible to depict a system organised on three intervention levels for the following functions:

Community Level. At this level, there's the need to uniform and harmonise the following rules and procedures: external borders control, issue of visas, re-admission and repatriation, illegal entry and residence. It appears necessary to evaluate and monitor the effective application of already existing common rules and procedures and, at the same time, to develop common means (for example, databanks) to be utilised in border surveillance, also through apposite common services (offices) collecting and distributing computerised data, training of qualified personnel to be utilised both at Community level and within the competent national administrations, with tasks of liaison and management and operational coordination.

Intergovernmental Level. At this level, there is the need for a liaison and coordination between competent authorities for a more efficient fight against criminality, clandestine immigration and illegal

trafficking; also for the organisational-management and operative support in the field of control and surveillance of the external borders (e.g. through the setting up of “rapid response units”).

National Level (single Member States). At this level there is the need, in connection with the other levels (and in particular with the Community level), for an effective implementation of the current rules and procedures, with an evaluation and monitoring activity, with the standardisation of training models and the professional updating of personnel and connected administrative activities. Concerning each single State, there is the need for the organisation and management of the particular activities, within a structured framework of cooperation, also on the basis of conventions and agreements between States and competent authorities, considering the geographical positions of the various Countries and of the peculiarities of the different types of borders.

IV

THE FURTHER CARRYING OUT OF THE STUDY

12. *The First Meeting of the Assessment Phase.*

The meeting took place between March 18 and 23, 2002²⁴. It was characterised by an alternation of plenary sessions and by the work of the three subgroups, that utilised a common matrix of classification, structured on the three aforesaid key-elements: “What”, “How”, “Who”, specified in the note “First orientations for the assessment phase”.

The three subgroups focused their attention on the matters relating to the Border Management, as the essential component of the integrated model of border security, indicated in the *Schengen Catalogue*.

A remarkable part of the work was reserved to the identification of the “What”; while the problem of the “Who” appeared to be the crucial matter, i.e. the problem of the bodies, the entities or the structures entrusted with the pursuance of the objectives.

²⁴ The participants received: the financial analysis concerning the area 9, by Prof. F. Amigoni of the University “Bocconi” (Milan), *Performance Indicators and Financial/Economical Profiles. An Analysis of the As Is Situation and Some Proposals for Future Work*; the first draft of the organisational analysis by Prof. S. Salvemini of the University “Bocconi”, *Presentazione sintetica del documento finale di analisi*; the juridical-institutional study prepared, in a provisional version, by the University “Roma Tre” (Rome) *Lo spazio di libertà, sicurezza e giustizia e il ruolo dei servizi di polizia alle frontiere: per un sistema integrato di sicurezza esterna alle frontiere*; a dossier with EU documents, selected from October 30, 2001: 1) *Communication from the Commission to the Council and the European Parliament. Biannual Update of the Scoreboard to Review Progress on the Creation of an Area of Freedom, Security and Justice” in the European Union (30/10/2001)*; 2) *Communication from the Commission to the Council and the European Parliament on a Common Policy on Illegal Immigration (15/11/2001)*; 3) *Presidency Conclusions. European Council Meeting in Laeken (14-15/12/2001)*; 4) *Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Being in the European Union (27/02/2002)*; 5) *EU Schengen Catalogue. External Borders Control, Removal and Readmission: Recommendations and Best Practices (8/02/2002)*.

The work carried out by the Study Group till March 23, 2002 allowed the acquisition of two important results:

- the formulation of a list of requirements/objectives of common value, whose satisfaction was considered fundamental for the start of a gradual process for the setting up of a European Border Police;
- a first sketch of the essential features of a common structure, that assures the continuity of the process, to carry out the basic activities (study, consultation, planning, monitoring, formation, operational or other remarkable activities) considered essential in the common interest.

The requirements/objectives list did not pretend to be exhaustive, but it offered numerous cues for the pursuance of the work, also for the width and heterogeneity of the problems pointed out. Naturally, all the aforesaid requirements/objectives converged around the *Border Management*.

The question of the possible solutions concerning “Who” for the start of the process for the attainment of the objectives identified by the Study Group remained open.

THE HYPOTHESISED MODEL

13. The Approach to the Problem

The open question was the central knot that had to be untied in the ambit of the feasibility study. It represented a true challenge that imposed the overcoming of the limits of the usually accepted conceptual schemes.

The list of requirements/objectives was a solid point of departure, a very important but nonetheless insufficient acquisition.

In order to solve the problem of the fittest organisational form it was necessary, from a methodological point of view, to explore the teachings the previous European experiences, in the light of the theoretical contributions of the academic component. This was the starting point towards the discovery of a new organisational model.

The analysis of the aforementioned experiences and contributions showed the existence of two fundamental types of organisational models: the first one it's "traditional", oriented towards the creation of organisational forms with a unitary character²⁵. In order to function properly it requires a stable and known context, but it has difficulties in providing fast and adequate answers to requirements that are often absolutely unpredictable²⁶.

The second type of model is a network model. It's less centred and formalised and can adapt itself much better to contexts characterised by instability and by the requirements to take decision in a short period

²⁵ These forms were the most diffused in the past, and require a centralised structure for certain activities. They have some advantages (unity of intents and action) but require a lot of resources and a long realisation time. There are also other difficulties: these structures are slow from a decisional point of view and could become rigid and therefore bureaucratised.

²⁶ The functioning common structures in the ambit of the third pillar can be classified as unitary organisational forms, and they present the typical difficulties of this centralised forms.

of time; this model has a pronounced structural and functional flexibility²⁷.

The network model has also some disadvantages, i.e. the tendency of the individual components to acquire an ever increasing degree of autonomy, with costs problems connected to the necessity to duplicate the internal services.

There was a dilemma: unity versus variety, with the consequence of attributing a priority character to the creation of a centralised structure, or, viceversa variety versus unity, adopting a strategy aimed at satisfying the greatest number of need, taking the risk of favouring uncontrollable centrifugal forces.

The solution to this difficult dilemma was found in the consideration that between the unitary and network organisational forms there could be a legitimate intermediate model.

It is a modified network structure with a centralised body with coordination functions. This intermediate form allows to have the advantages of the network forms, in terms of adaptation to the various contexts and decisional rapidity, and the advantages of the unitary forms, in terms of action coordination and of the obtainable economies.

It's a *tertium genus*, i.e. a particular model, identifiable with a polycentric and multipurpose system, characterised by structural lightness, by the possibility to develop itself in a gradual and progressive way and by operational flexibility.

14. *The Hypothesised Model: Contents.*

The hypothesised model is a "network" model²⁸, articulated in a series of "knots", each of them related to specific and sector requirements/objectives, organised as operational centres with a little nucleus of support and assisted by a certain number of consultants/experts. These consultants/experts, coming from the

²⁷ The network forms allow the conjugation of the advantages of presence and adaptation at a local level, with the possibility to benefit from synergies without the necessary costs for the *ex novo* construction and maintenance of centralised units.

²⁸ The model was presented for the first time on April 8 2002 in Las Palmas, during the meeting of the responsables of the Border Police of the 15 EU Countries.

Countries interested in the diverse objectives, should contribute meaningfully to their best attainment.

At the level of technical coordination it is assumable the setting up of a "Council of (National) Representatives", formed by the responsables of the border Police, with the task to trace the guidelines, in order to assure the best pursuit of the activity of the centres, in the frame of a harmonic development of the whole system. The Council of Representatives should reunite with at least quarterly periodicity and should be helped by a permanent secretariat, of reduced dimension. This would be the way to create a network system, comprehending a series of knots/centres, with a strong degree of autonomy and specialisation, but at the same time tightly interdependent, and coordinated by the aforesaid collegial body.

This would be the start of a gradual process of sedimentation of competencies and experiences, also at the operational level, that could lead to the setting up of a European Border Police as a central element of an integrated and coherent strategy.

15. The Countries Participating to the Project

The participation, on voluntary basis, to the hypothesised system will be open to all the EU Countries (they will be therefore indicated, from now on, with the expression "Countries participating to the project"). Naturally, for the other EU Countries it will be possible to adhere to the initiative at any time they will consider such a step to be opportune. The participation, as observers, to the activities carried out in the knots/centres will be also possible for the EU candidate Countries from the beginning. This is a highly desirable event.

16. The Centres

The setting up of each centre is determined by the presence of one or more common requirements. Each of them will have to be well defined, for it will represent the "mission", i.e. the competence of the centre.

Each knot/centre will be a place of planning, experimentation, verification and/or implementation at a common level²⁹ of the actions required for the attainment of one or more objectives.

²⁹ I.e. the carrying out of the innovations, after the positive results of the verification.

This involves the fact that every centre will have of a strong degree of autonomy and specialisation, besides its recognisability and legitimisation to entertain relationships of various type with diverse subjects. In order to achieve this goal, it is essential for the centre to possess some requisites (generic and specific requisites) of functionality.

The centres will be set up in the Countries participating to the project. Each of the centres will be entrusted to the care of a responsible³⁰, designated by the host State. The heart of the centre will be a “steering group”, formed, besides the responsible, by the advisers of the Countries participating to the project, interested in the pursuit of the objective entrusted to the centre. The steering group will be able to operate permanently, or through working sessions planned in accordance with a fixed calendar, with more or less close expirations, or through sessions summoned *ad hoc*.

Each centre will have of a nucleus of support with material and human resources, adequate to the objectives that must be attained. It will be possible to aggregate to this nucleus the experts of the Countries participating to the project.

The responsible for the centre will periodically present a report concerning the activity carried out and the achieved results, including a detailed account on the management of the resources.

Relatively to the diversity of the objectives and to the different modalities of implementation, it will be possible for every centre to be different from the others from the point of view of organisational structure, operational procedures, volume and type of resource.

17. The Functionality Requisites of the Centres

Concerning the possession of the generic and specific requisites of functionality –the essential condition for the recognisability and the legitimisation of the centres to entertain relationships of various type with diverse subjects – it’s opportune to specify the following aspects. The generic requisites are referred to the “fitness” of the single centre to develop activities of planning, experimentation and verification (and also implementation at the common level) of the measures aimed at improving the security of the external borders.

³⁰ The Study Group has proposed a “profile” of the responsible: high level senior Police officer; experience in the field of immigration; knowledge of the specific objectives given to the centre; accredited to the Council of Representatives.

Among these requisites there are: the appropriateness of the physical structures, the fitness of the systems of communication, the qualification of the employed personnel, especially from the point of view of the attitude to operate in the search of creative solutions in a context of international collaboration.

The specific requisites concerning the availability of appropriate equipment and of a suitable *know-how* of specialistic character, in order to allow the centre the carrying out of the following activities:

- defining the nature of the problems;
- elaborating solutions connoted by feasibility and verifiability;
- pointing out the solutions that could be considered to be in conformity with the criteria of efficiency, effectiveness and inexpensiveness;
- carrying out the relative experimentation;
- verifying the experimentation;
- taking care of the possible common application.

All the requisites will be pointed out by the responsible of the centre in his periodic report.

18. *Birth and Development of the Centres*

The birth of every centre will take place independently from the birth of other centres. From the beginning of its activity the centre will be provided with all the necessary means for the carrying out of its activity.

It is predictable that in the initial phase each centre will need a support nucleus of rather reduced dimensions, capable of providing the essential support to the steering group.

The steering group will have to apply itself intensively to the formulation of the guidelines and of a coherent program of activity³¹.

³¹ It will not be an easy task, regardless to the finality of the centre. In fact, the objective to pursue will be strongly characterised by novelty and originality. These aspects were underlined in the documents prepared by the three subgroups, in the parts concerning made the motivations and to the added value of the objectives. These characteristic will require, from the steering group, abundant imagination and creativity.

The formulation of the guidelines and of the activity program presupposes the fact that the steering group will establish autonomously its own operation rules, the necessary indicative criteria for its action, and the principles of the formulation of the performance parameters.

The above mentioned rules, criteria and principles shall be explicitly stated in written form by the steering group, also for the ratification on behalf of the body that will be designated. It will be possible to modify the rules, criteria and principles following the same procedure.

These presuppositions are indispensable in order to provide the centre with the necessary impulse for an organised series of operational steps and appropriate organisational measures, allowing the full deployment of all its potentialities³².

The development dynamics of each centre will depend from:

- a) the nature of the objective
- b) the advancement state of the activity

The dynamics will show, to a certain extent, an increasing course, both in terms of the activity volume and of the dimensions of the structure. After the completion of planning, experimentation, and verification, there could be a decreasing course.

In some cases there will be the total disappearance of a centre, or its absorption in other centres. This event will indicate that the objective was not only attained, but also that there is no need for further activities, or that the residual activities are of such a reduced dimensions that they can be entrusted, without drawbacks, to another centre.

³²The second Subgroup has given a series of suggestions: (a) in some cases (of operational character) permanent meeting points; (b) intranet sessions, video-conferences; (c) Periodical meetings of experts, (d) carrying out the missions ordered by the Council of Representatives; (e) periodical reports to prepare the Council of Representatives meetings; (f) regular contacts with other centres; (g) evaluation of the results.

19. *The Centres as Knots of a Network System*

All the centres, even if characterised by a strong degree of autonomy and specialisation, will be tightly interdependent, as components of a network system, of which every centre is a knot³³.

It's important to observe that within the network system there could be "specialised networks" or *clusters*³⁴, characterised by the particular frequency and intensity of their relationships.

The benefits deriving from this organisational choice are numerous. First of all there is the opportunity, offered to the centres, to entertain with other subjects relationships of collaboration³⁵. It will be possible for them to collect experiences and practices from other contexts (also external) becoming a privileged place of generation of new knowledge, that could be disseminated within the system. The available resources in the ambit of the system could be integrated in the most opportune way, with the result of creating precious synergies.

Among other benefits there are also the greater speed of circulation of information and the drastic reduction of the possibility of their distortion, thanks to the minor number of passages³⁶. Besides, there will be a harmonisation process of definitions and operational practices, with the result of the progressive creation of a common

³³ Each knot must carry out all the activities of its competence in order to find the solution to the problems. The network system must allow the possibility, for each centre, to use the knowledge gained by the other knots. To this end, three typologies of instruments are necessary:

- communication instruments allowing the exchange (e.g. periodical meetings, electronic communication systems, periodical exchange of personnel etc.);
- mapping instruments, i.e. instruments allowing to know in which point of the network there are certain specialised knowledge and capacities (i.e. periodical description the problems and the solutions frequently faced and adopted by each knot);
- visibility instruments, i.e. instruments pointing out for everybody the knots of the network where there are specific knowledge and capacities (i.e. annual conferences debating the results of the mapping activity).

³⁴ Clusters are defined as "aggregation of actors more intensively connected or characterised by a smaller distance".

³⁵ It is predictable that some centres will have to develop technical relationships with other external bodies, e.g. Europol.

³⁶ This reduction derives from the network organisational structure.

language, particularly fit to favour the knowledge transfer and a meaningful incentive to the learning process.

The knowledge attainable through a network organisational form shall provide the border Police of the Nations involved new spaces for the improvement of their performance in terms of efficiency and effectiveness. The dissemination of knowledge will allow the effectiveness increase through the updating concerning the political economical and social changes, the increasing of the efficiency will be attained through the widening of the ambits for the utilisation of the acquired knowledge.

Through the reciprocal knowledge between the components of the system, developing positive expectations of behaviour, there will also be increasing trust, involvement and engagement. The network structure will create a virtuous circle that allowing an increase of reciprocal trust and the possibility to exploit the knowledge on a large scale.

In order to strengthen the spirit of collaboration spirit, it will be useful to make the affiliation to the system recognisable. This affiliation could be meaningfully represented also by some symbolic elements, i.e.: badges on the uniforms, certifications of training courses, identifying logos, charts of the centres and/of the operational sectors. They will signal the particular value attributed to the common mission. The symbolic element will have a value within the system, as a sign of participation to a "quality process", and at its external, as a guarantee of a "quality service".

20. *The Evolution of the System*

A reticular structure does not evolve in a simple and linear manner. The nature of the network organisational form consents, however, to proceed gradually, starting with the constitution of little knots. The situation will have the tendency to become more complex for three reasons:

- the increase of the number of the centres³⁷;

³⁷ New centres will be created in order to satisfy the previously identified needs.

- the growth of the number of the Countries participating to the Project;
- the changing of the needs³⁸.

There are many possible directions of the changes. A centre could extinguish itself because the requirements for which it was created has disappeared, or has lost priority in comparison with other requirements, or because the objective has been achieved³⁹. A centre could disappear joining another centre, because the attainment of the original objective converged with the objective the latter; or it may happen that a growing centre could witness the creation, within itself of "specialised" units that in time could detach, originating other specific centres.

Besides the phenomena of extinction, multiplication, fusion and division of some centres, there could be phenomena of consolidation (in certain cases it could be one of the consequences of the aforementioned phenomena) that could lead to the constitution of "strong" centres⁴⁰.

To face adequately this complex evolutionary process⁴¹ it is necessary to introduce adequate instruments to check the growth of the system. In other words it is necessary to introduce the notion of "embryonic system of controlled growth"⁴². The beginning consists in little knots whose growth must be controlled.

In order assure this control it is necessary the above mentioned centralised body with coordination functions.

³⁸ The change of the needs can be caused by changes in the context (e.g. an historical event could modify the priority order of the objectives) or by the attainment of an objective.

³⁹ This could be the case of a centre set up for the elaboration of a practical guide.

⁴⁰ The "strong" centres could even become the divisions of a future European Border Police, if in the future there will be a unitary option.

⁴¹ The process is, from a certain point of view, is similar to the process characterising the free market.

⁴² The growth of this embryonic system is defined as "controlled" for two reasons. It's controlled because through this system of growth there is the intention to lead the transitory organisational "network" toward a common organisational form, that is still to be defined. It's controlled because it is necessary to avoid the proliferation of centres moving in a direction divergent from the final goal to create a European Border Police.

21. *The Council of Representatives*

The coordination of the system could be entrusted to an *ad hoc* body with functions of general character, guaranteeing in a continuous way the global functioning of the network and its balanced development.

This body can be identified in the above mentioned "Council of Representatives"⁴³, composed by the responsables of the border Police of the Countries participating to the project.

The Council will reunite on a periodic basis, or in relationship to requirements of extraordinary character.

The Council of Representatives will be supported by a permanent secretariat.

22. *The Theme of the Resources*

The necessary financial, instrumental and human resources for the operation of each centre, can be classified as follows:

- Resources required for the ordinary operation of the centre: in the initial phase, the resources for the creation and the operation of the nucleus of support, will be provided by the host Country; the resources for the advisers and experts by the respective Countries of origin; in the following phases, there could be able have a common allocation of the costs of operation, also with the contribution of the European Commission;
- Resources finalised to the realisation of specific activities, i.e.: the resources for the planning, the experimentation and the verifications of the pilot initiatives (in the first phase) will be provided by the Countries participating to the project; the resources for the experimentation and the verifications (in the following phases) and the resources for the implementation of the various measures, will be provided also with of the contribution of the European Commission.

It will be also necessary to conceive a common division of the burdens also for the expenses of general character for the operation of the system, e.g. the expenses for the Council of Representatives.

With the growth of the system, it will be necessary to create functions specialised in the definition and in the management of the policies of

⁴³ The denomination of this body is purely explanatory: it is possible to change its name in order to identify more precisely its competencies.

resource allocations at the network level and that could contribute to the formulation of the rules of rules of *burden sharing* between the Member States.

23. *The Characteristics of the Model*

The expounded model possesses the following distinctive characters: it's an open system, capable of receiving inputs and provide outputs from and to the external, and therefore, to interact with all the other components of the greater "integrated border security system"; it's subject to growth and differentiation, adjusting to the changes of the situation. The knots/centres, therefore, could increase their number, increase their competences or lose the partially, or disappear as a consequence of the aggregation with other knots.

The flexibility and elasticity of the system, and its harmonic development, will be assured by the fact that the various knots/centres will be always regulated in the their growth (or contraction) and differentiation from the Council of Representatives; It will be possible to conjugate harmoniously two apparently conflicting requirements: the autonomy of the single knots/centre and their effective coordination.

The geographical dispersion of the knots/centres on the European territory will be useful to the economy of the management; at the same time, it could encourage in meaningfully the explication of the project potentiality in the various Countries.

24. *The Start of the System.*

The completion⁴⁴ of the outlined system, will be the point of arrival of a gradual process⁴⁵ that will begin with the setting up of some centres, and that will have a progressive development.

Mid-term, the system is destined to form a solid base of departure for the setting up of a European Border Police.

⁴⁴ Considering the overall flexibility of the system and the fact that it is characterised by a dynamic equilibrium, the term "completion" has to be understood in its relative sense.

⁴⁵ The various components of the system (the centres) could grow unequally, considering the inevitable differentiation of their "advancement states" in the pursuing of their tasks. This will depend by many variables, often external to the system.

The strongly innovative character of the hypothesised model requires its experimentation, allowing the setting up of its operational mechanisms.

25. The Pilot Project

The immediate start of system could take place with a pilot project: the “International Airports Plan”. This plan presents a peculiarity: it concerns many strictly interconnected objectives. This fact suggests that they should be unitarily pursued. It must be underlined that the validity of this approach has to be limited in space and time, i.e., to the very first phase of the start of the system and to an extremely circumscribed context.

The international airports represents a privileged laboratory of advanced experimentation of the whole system because:

- All the EU Countries have an international airport; this is therefore a common factor;
- Each airport is a closed area” in which border controls are carried out by selected and specialised bodies;
- This facts allows to test and realise standard procedures, that can be exported also to other types borders.

The pilot project will consist in exploring the possibility to realise operational standard and common procedures, and their organic collection in a “practical guide” as a basis for a common training⁴⁶. One objective will be the realisation of a remote-access, real-time adjournable database, in which insert all the data and the collected information.

The adequacy of the standards, of the procedures, of the common training and of the database will be verified and updated continually, through the setting up of mixed operational squads.

Further pilot initiatives, in necessarily limited number, in order to avoid the overload of the system in the first phase, could be started, in presence of a strong interest of the EU Countries and the willingness, by some of them, to host the operational centres. In order to provide the International airports plan of a proper support it would be possible

⁴⁶ The international airports plan is a microcosm, including several objectives. The patrimony of knowledge and innovations acquired thanks to the plan will become a resource for all the other centres.

to set up other connected pilot projects concerning common training and risk assessment⁴⁷.

26. The Possible Development in the Short-medium Term

The main predictable developments in the short-medium period are:

- The start of the common application for the first acquisition of the "International Airports Plan";
- The creation of other knots;
- The setting up of the network and its activation;
- The formal setting up of the Council of Representatives.

27. The Performance Indicators

The matter of the performance indicators has different aspects. The problem must be considered differently if concerns the evaluation of the innovative activity of the centres (planning, implementation, experimentation and verifications, the latter concerning the pilot projects), or if concerns the implementation activity of those measures, proposed by the centres, considered to be in conformity with the criterion of efficiency and effectiveness with the goal of the amelioration of the activity of the border police.

In the first case, in fact, only indicators of qualitative type, with due cautions, can be applied. The utilisation of quantitative indicators could only, according to a vast specialised literature, provoke the shift of the attention of the centres from the search of the "best" and feasible solutions to the mere reporting of the activities and their justification, i.e. a shift of the attention from the goals to pursue to the instruments⁴⁸. Such indicators, as above said, they will have to be established autonomously by the steering group of each centre.

⁴⁷ The Common training and risk assessment projects should be focussed, in their initial phase on the needs of the International airports. In this way there could be three connected centres, each of them hosted by a different EU Country.

⁴⁸ This shift is a particular case of the well-known "Gresham law", (the bad coin chases away the good one). The bad coin, in this case, is represented by the quantitative measurements. The results would be the impossibility to control effectively the activity of the centres from the point of view of opportunity and feasibility.

Concerning the implementation of innovative measure plans elaborated by the centres (and recognised as applicable in the common area), it will be necessary to apply an evaluation concerning the effectiveness and the efficiency.

The evaluation have to be realised in the respect for the principles of *public accountability*⁴⁹.

Public accountability is a concept that underlines: the degree of satisfaction degree of the needs of the collectivity, or, more in particular, the satisfaction of the subject recipients of the public service; the modality of the carrying out of business management (the correct and economical utilisation of the resources, the respect for the formal norms etc.); the legitimisation mechanisms of consent and the guardianship of the general interest (credibility, transparency etc.)⁵⁰.

According to theoretical considerations of general character, the representation and the evaluation of the performance of the European border police should be carried out respecting the followings points:

- efficiency, i.e. the relationship between the offered performances (intermediary result or output) and utilised resources (input)⁵¹;
- effectiveness, i.e. coherence between quantity and quality of the services and quantity and quality of the satisfied needs (final result or outcome);
- inexpensiveness (long term), i.e. the ability of the European police to pursue a balanced relationship between resources and satisfied needs, guaranteeing the autonomous and

⁴⁹ The evaluation of the achieved results, for the enterprises, is facilitated by the presence of the market, that through the exchange mechanism and the relationships prices/costs and prices/proceeds, allows an objective judgement on the utility of the goods and/or services. In the public institutes, on the contrary, the evaluation of the results is particularly complex, since the goods and/or services is not regulated by the ambit of the contexts of the market, and since the main finality of these institutes the tutelage of the general interests of the common interest.

⁵⁰ *Public accountability* is divided in (a) *legal or fiscal accountability*, concerning the correct use of public resources depending from the formal rules and the equilibrium bindings; (b) *managerial accountability*, linked to the optimisation of the results of the programmes of public intervention.

⁵¹ It should be opportune to define a set of “key performance indicators” (KPI) capable of assessing the qualitative level of Border services.

lasting development of the organisational order of the resources;

- institutional output, concerning the evaluation at the business plan (judgement on the inexpensiveness), at the political-representative plan (political judgement).

This approach is in harmony with what has already been defined concerning Europol: the “healthy management” is the management that respects the economy principles and the cost/effectiveness relationship in the use of the budget allocations. It is necessary to identify clear quantified objectives and verify the progresses in their attainment.

VI

THE HYPOTHESISED MODEL IN THE COMMUNITY PERSPECTIVE

28. Phases and Realisation Instruments: General Picture

To arrange the hypothesised model from the point of view of the phases of realisation and of the possible juridical instruments of realisation, the following general observations can be formulated.

First of all it's necessary to underline, in accordance with the guidelines of action recently confirmed by the JHA Council (February 2002), that the approach to the theme of the security of the external borders of the Union must have an unitary and global character, in order to be effective.

This implicates, consequently, a competition of Community and inter-governmental competencies, concerning respectively the border control (on persons and things) and border surveillance, with the connected activities, in both cases, concerning administrative and Police functions (prevention and security).

The demand to translate this unitary and global approach in a integrated system of structural and inter-pillar coordination, based on a network articulation, constituted by centres capable of interacting among them and with the competent national authorities.

It will be possible to given an institutional answer, suitable and global, capable of satisfying the common demands in the various ambits of intervention.

Considering the complexity of the prefigured system and of its open and flexible articulation, also diversified for the interlacement of Community intergovernmental competencies, it appears reasonable to foresee, also in accordance with a presentation of juridical character, a gradual realisation of the system itself, starting from an adequate experimentation.

The experimentation could be circumscribed in specific ambits in connection with the pilot projects.

29. The Coordination role of the Council: Administrative Cooperation with Internal Relevance

In this frame, the role of the Council has a particular importance, as defined by the art. 34, first paragraph, TEU:

“In the areas referred to this Title, Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations”.

To this aspect must be added the specific power acknowledged to the Council itself, by art. 32:

“The Council shall lay down the conditions and limitation under which the competent authorities referred to in Articles 30 and 31 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State”.

On the basis of these dispositions it appears assumable, at least in an initial phase and of start experimentation, a form of operational cooperation (“collaboration between the competent services” of the national and/or local administrations) in individual and specific ambits (e.g. pilot projects), with a character of administrative cooperation with internal relevance, i.e. decided by the single States with provisions of the competent bodies. These provisions could be assumed with an agreement between the competent authorities, on the basis of a “recommendation” of the Council.

From this point of view, it appears opportune to connect the initial phase of experimentation to the Schengen system concerning the realisation of the integrated model of border security and the management of the borders, including the controls at the authorised crossing points, and the surveillance, in accordance with the indications of the Catalogue.

The Council, individuating since now some specific ambits (in connection with the pilot projects) for the beginning of the experimentation of the border management, and using its coordination powers (with the objective to realise the collaboration between the competent services at the level of the single administrations), in agreement with the Commission and having informed the European Parliament, could entrust a special “group of experts” and representatives of the interested administrations of the technical coordination of the initiatives⁵².

30. *Usable Juridical Instruments in an “Ordinary Way”*

As already specified, there are several instruments that can be utilised for the common action in the sectors of the Third Pillar, naturally added to the regulations and to the directives of Community competence (in the sectors of the title IV TEC).

These instruments are of ordinary character, since they were provided by the TEU for the realisation of the common action in order to guarantee to the citizens of the Union a elevated level of safety in an area of freedom, security and justice (title VI TEU). These instruments are diversified in character and yet united by the fact that their adoption is unanimously requested.

A first instrument is represented by the “common position” it is an address action, without binding value and yet capable to give a start in the single Member States to a virtuous synergy of reactions towards a determinate direction, in order to realise, on the ground of operational cooperation, technical-organisational premises, developing, in time, into more consolidate and defined institutional forms of cooperation.

An second and more incisive instrument is constituted by the frame-decision, an act with binding value and a function equivalent to a directive, that obliges the Member States to adjust the internal provisions aiming at their reapproaching. This type of act is particularly adequate to realise an objective of harmonisation on the plan of the disciplines of substantive law, rather than on the plan of the disciplines that regulate the organisation, the competences and authority procedures and the structures.

⁵² In the hypothesised model, this function is performed by an *ad hoc* body called “Council of Representatives”.

A third instrument is represented by the “decision”: an act with binding value, but without the purpose of the result of a harmonisation of the national provisions; it seems more adequate to pursue a rationalisation of organisational structures and procedures, that respecting the national differences, are finalised to face common demands.

The fourth instrument available is constituted by the “conventions”, whose adoption is recommended to the Member States and that become binding for the States that have ratified them in the case of a ratification by at least a half of the States of the Union. In comparison with the frame-decisions and with the decisions, this conventional instrument already prefigures a scenery of cooperation. This cooperation, even though requiring the unanimity for its definition, can find its realisation in a diversified way, on the basis of the ratification only by a part of the States (and limited only to these States), translating itself in a kind of reinforced cooperation realised indirectly.

31. Usable Juridical Instruments in "Exceptional Way": Reinforced Cooperation

This special form of cooperation was introduced with the treaty of Amsterdam but, as it is well known, is subject to strict conditions and limits (title VII TEU).

First of all this form of cooperation can operate in connection with the Community ambit (provided that doesn't concern exclusive Community competencies) and with in connection with the competencies of the III pillar, whereas it was specified that the relative procedure doesn't jeopardize the dispositions of the protocol relating to the integration of the acquis of Schengen in the ambit of the European Union. It can be observed that, in the ambit of the III pillar, the recourse to the reinforced cooperation is authorised by the Council, that deliberates with a qualified majority of 62 votes, representing at least ten Member States (without the necessity of a formal proposal of the Commission). A Member State can oppose itself to the authorisation for specified and important motives of internal politics reasons. In this case the decision is a competence of the Council, that pronounces itself unanimously (art. 40).

VII

THE CONCLUSION OF THE STUDY

32. The Second Meeting of the Assessment Phase

The meeting was held between April 22 and April 30, 2002⁵³.

The characteristics of the hypothesised model were illustrated in ample and detailed way, mentioning its presentation in Las Palmas on April 8, 2002. The most meaningful profiles of the model (from the point of view of the organisation theory, of its development potentiality, of the possible modalities of start and implementation, and of the connected implications pertaining to the consolidation of the common area of freedom, security and justice) were analysed.

Subsequently, it was also underlined the essential relationship between the various requirements/objectives indicated by the Study Group during the previous meeting, and the possible centres, as places entrusted of the necessary activities for the attainment of the objectives. It was also noticed, besides, that a single centre could take care of the satisfaction of several requirements, if they have meaningful points of contact.

It was also underlined the necessity to explore without delay the problems related to the “how”, i.e. the essential element, among the three previously indicated, that was still to be examined⁵⁴.

It was remembered that the “what” was already era already accurately individuated and represented, with the formulation of the list of

⁵³ The participants received: the synthetic presentation of *The Hypothesised Model*, the slides presented in Las Palmas at the meeting of the responsables of the Border Police of the 15 EU Countries. The text also included the description of the development of the model (*The Hypothesised Model, Outline and Characteristics*); the contributions prepared by prof S. Salvemini of the University of “Roma Tre” (Rome), *Documento finale di analisi* and *Documento finale di proposta*, an analysis of the economical profiles prepared by Prof. F. Amigoni of the University “Bocconi” (Milan) *La gestione economico-finanziaria della Polizia di Frontiera Europea*.

⁵⁴ In the note *First Orientation of the Assessment Phase* three essential elements were pointed out: WHAT, HOW, WHO.

requirements/objectives of common value, while concerning the “who” the solution was identified in the setting up of a polycentric network system.

Concerning the “how”, it was held into due account the fact that its examination could not be disjoined from the constant consideration of its tight interdependence with the other two elements.

The Group, considering the work carried out in the previous meeting, decided to focus its attention on the following aspects of the “how”:

- how the individual “whats” could be carried out and developed;
- how the individual “whos” (i.e. the single centres/knots) could organise and activate themselves in order to achieve the individual “whats”.

The Group also provided indications concerning the reasons why every “what”, was included in the requirements/objectives list. It was also indicated the “why” of the inclusion, on the basis of the existing situation and of the achievable added value.

For the completeness of the analysis every objective was placed in correspondence of three possible realisation terms: short, mid and long term.

All the aforementioned elements were mentioned in a series of tables all of them made a report on each of them related to each objective. The result is a list of 16 requirements/objectives.

The indications are to be conceived as cues for reflection and proposal: they do not pretend to be neither exhaustive nor mandatory.

Some slides have been predisposed to point out the possible structure of a hypothetical centre and its other characteristics.

Two of the reunions of this second meeting, were dedicated to the presentation of the juridical profiles related to the ideas that the Study Group was elaborating.

The assessment phase ended on April 30, respecting the terms indicated in the original proposal of the feasibility study.

This date should not be understood only as the point of arrival of a work, even if important, of data collection, classification and analysis but also as the completion of the project whose final objective was already stated in the first meeting of the Study Group on October 23, 2001.

In this objective the European Border Police was indicated as the point of arrival of a path, that was still to be discovered in its complexity. This path has gradually emerged during the study.

Several critical aspects, the central questions, the opportunities offered by the context, the difficulty of realisation were identified.

The Study Group was capable of discovering, with the strong engagement of all its members, a succession of steps, a flexible path compatible with the political system of the Countries and, above all, feasible.

The activity of the Study group has been constantly characterised by pragmatism. A choice was made: i.e., to avoid the temptations of utopia. The Study Group left aside the “how it should be” of the future European Border Police, and proceeded decidedly, realistically and with methodological rigour, from the “as it is” situation, towards the identifying of the first concretely practicable steps, keeping its focus on the final goal: the European Border Police.

The objective of the feasibility study seems to be achieved. But even if not, the accomplished work can be defined, within all its limits, as a contribution of knowledge, the fruit of a vast harvest of data, organically classified and analysed.

VIII

THE REQUIREMENTS/OBJECTIVES AND THE SETTING UP OF THE CENTRES

33. *The Requirements/Objectives*

- A. Setting up of an immigration liaison officer network at the international airports of the MS
- B. Setting up of an immigration liaison officer network:
 - in non MS
 - located at the ms headquarters
- C. Network of centres for forged documents
- D. Creation of an integrated secured intranet between different national border police units
- E. Creation of a uniform practical guide for border control guards
- F. Personnel exchange among border checking points
- G. Common risk assessment
- H. Common training
- I. Rationalize repatriation operations
- L. Rapid response unit
- M. Expert group for missions abroad
- N. Coordinated criminal investigation related to cross-border crime and linked to illegal immigration
- O. Creation of a permanent technical support cooperation facility and development of new technical equipment for border control/border surveillance.
- P. Quality management
- Q. Centres for border police and customs cooperation at external borders
- R. Common core curriculum

A. Specific Object (what)

**SETTING UP OF AN IMMIGRATION LIAISON OFFICER
NETWORK AT THE INTERNATIONAL AIRPORTS OF THE MS**

Why – Considering the existing situation and describing the added value

Existing situation:

At present some MS exchange border control officers posted at airports.

The tasks of these officers are:

Supporting in case of difficulties concerning repatriation, refusal of entry, detection of forged documents. Exchanging of information concerning modus operandi, migration flows and risk encountered in the country. Gathering information about the hosting country, participating in training in the country.

Added value:

International Airports are located at every MS. Regulations and problems are similar. They all are one of the “entrance gates” to the European area of freedom, security and justice. So they appear to be the most suitable place to start with the building up of a common European Border Police. Extending the number and the functions of the ILOs at the international airports gives the possibility to build up step by step an European Border Police at the operational basis.

This leads to:

- Burden sharing;
- Implementation of best practices on the highest level;
- The common responsibility in the control of the external borders at international EU-airports will be enhanced on the spot.;
- A higher level of operational cooperation will be achieved;
- Knowledge and experience among the different national services involved would be enhanced;
- Enhanced detection methods;
- Enhanced exchange of expertise in the field of forged and falsified documents.

How should this object be developed and enhanced

Border police officers from interested MS, specialist on airports, will be sent to international airports of other MS. They will be integrated in the shifts and the whole system of the respective air-border-crossing point. In a further phase they should have the power to carry out checks and controls. A possible exchange of high rank officers could be foreseen.

How the centre will achieve its goal (activities/organisation)

- Pointing out international airports of the MS for a pilot project
- Defining how to integrate the guest police officers in the staff of the host country and the duration of the deployment
- Organizing the staff recruiting
- Establishing and managing an automated intranet system giving support to the network
- Managing the gathered information, respecting the data protection regulations
- Defining professional profiles of the ILO in order to establish common and specific training programs

Timetable: short-short term

B. Specific Object (what)

SETTING UP OF AN IMMIGRATION LIAISON OFFICER NETWORK:

- **IN NON MS**
- **LOCATED AT THE MS HEADQUARTERS**

Why—Considering the existing situation and describing the added value

Existing Situation:

Most MS have ILOs in non - MS. Some of them have ILOs at the headquarters of other MS. At present some MS exchange border control officers posted at airports.

The tasks of these officers are among others:

Provision of support in case of difficulties concerning repatriation, refusal of entry, detection of forged documents. Exchange of information concerning modus operandi, migration flows and risks encountered in the country. Gathering information about the hosting country, participating in training in the country.

Added value:

- The creation of a Immigration Liaison Officer network is a harmonising exercise and allows an EU common approach. It will allow a reduction of duplicated efforts in gathering information.
- All the information gathered will be shared.
- This would lead us to a greater cost effectiveness while simultaneously increasing the comprehensive knowledge on the existing situation.

How should this object be developed and enhanced

- Immigration liaison officer network in non MS

All the ILOs of the MS located in the same foreign country should work together. This cooperation should go on in an implemented network. This network should provide information for all MS. Requests coming from the MS should be sent into this network and answered from it. The network should be based on: regular meetings, if possible a common office, shared with all others ILOs specialised in other matters (organised crime, drugs etc.) which are frequently linked with immigration.

The ILOs building this network could work as well on the spot as in headquarters.

- Immigration Liaison Officers located at the MS headquarters

The responsibilities of these ILOs in the MS do not necessarily have to change.

- Information tools

Finally the existing networks of the ILOs in the foreign Countries, in the headquarters of MS and the offices at the main MS airports should be linked by setting up an integrated and secured computerised system.

How the centre will achieve its goal (activities/organisation)

- The centre will be dimensioned according to the network extension of the ILO from the participating MS and be deployed in the different Countries covered.
- Proposed tasks:
- Establishing and managing an automated intranet system giving support to the network.
- Managing the gathered information, respecting the data protection regulations.
- Establishing an updated ILO deployment system in the EU participating Countries as well as in non MS, this according to the outcomes of the risk analysis centre.
- Contributing to the definition of assignments and functions of the ILO at the EU external borders.
- Defining professional profiles of the ILO in order to establish common and specific training programs.
- Establishing protocols for the request and transmission of the information.

Timetable: **short term**

Since it is clear that an in depth analysis of the migration phenomenon in all its dimensions is required in order to establish a common strategy, and since it is obvious that the gathered information in the framework of the ILO network will contribute to the realization to the above mentioned analysis, the set up of this network should be seen as urgent.

C. Specific Object (what)

NETWORK OF CENTRES FOR FORGED DOCUMENTS

Why—Considering the existing situation and describing the added value

Existing situation:

In all Countries at least one office (department, service, etc.) is charged with advisory and consultative tasks related to document forgery.

In most Countries, there is a central national database, which contains specimens of authentic documents as well as samples of forged documents.

Added value:

- Sharing of the most comprehensive data in relation to both genuine and forged documents;
- Avoid duplication of the efforts in the field of collection and dissemination of the information;
- Enhanced exchange of expertise in the field of forged documents will improve the overall quality of the border control at the outer borders through:
 - ▶ Improved communication between experts;
 - ▶ Better (and continuously updated) view on the modus operandi;
 - ▶ Enhanced detection methods by sharing expertise;
 - ▶ Tailor-made training.

How the centre will achieve its goal (activities/organisation)

- The centre's dimension must follow the development of the network, i.e. in function of the number of participating MS and the bodies and or units involved;
- Establishing and managing an automated secured intranet system permitting the transmission of the information on the documents (including high definition image quality transmission in order to vide the facilities to conduct computerized verification checks on travel documents). This system should also permit that all participating Countries have permanently identical and updated data;
- Establishing protocols for the transmissions of the information (e.g. alert documents, description of genuine documents,...);
- Management of the gathered information, respecting the data protection regulations. This management also includes the drafting of an ad hoc analysis in order to provide:

- ▶ guidance to the participating member states, in the field of training and in the fight against all forms of travel document abuse;
- ▶ issuing fraud alerts documents both in hard copy and electronically via the above mentioned intranet system;
- ▶ guidelines and indications on forgery detection equipment for border police of the participating Countries and, in particular, for dedicated units skilled in detection and examination of suspect travel documents;
- ▶ guidelines and indications in the field of the development of security features of travel documents and visas.

Timetable: **short term**

The relevant dimension of document abuse emphasises an urgent setting up of the centre.

D. Specific Object (what)

**CREATION OF AN INTEGRATED SECURISED INTRANET BETWEEN
DIFFERENT NATIONAL BORDER POLICE UNITS**

Why—Considering the existing situation and describing the added value

Existing situation:

For the time being an integrated secure intranet doesn't exist. Other information tools have been created at EU level (SIS), and others are currently being developed (FADO). However, all these tools have been foreseen to cover limited and specific issues, not providing a comprehensive and integral communication network in all the related matters.

Added value:

The integration of all existing and developing information tools into a wider multimedia communication network would guarantee the whole interconnected system, enabling the immediate transmission of data among all the centres eventually created, as well as with the pre-determined services of the participating Countries.

How should this object be developed and enhanced

A European Border Police intranet should integrate the computerised systems supporting the activities of all the centres eventually proposed (***necessary to determine the priority for implementation***), providing a permanent and comprehensive interconnection between all of them. The system should be set up and focused at first to fulfil the tasks or needs of the centres in charge of developing the ILO network as well as the border police and customs cooperation.

This integral intranet should link the different pre-determined border services at the external borders as well as in the national headquarters of the participating Countries. It could also be used for the "Early Warning System" of CIREFI

How the centre will achieve its goal (activities/organisation)

Studying and identifying the technical specific characteristics of the system.

- Starting up a research to identify the concrete system fulfilling all previously mentioned technical characteristics.

- Evaluating the costs for its constitution, management and maintenance.
- Redacting protocols for the distribution of the costs among the participating Countries.
- Supervising and controlling the proper installation of the whole system.
- Drawing protocols for the proper use of the system.
- The centre would be the final responsible for the appropriate use and management of the integral system, including the maintenance.
- Determining the professional profiles of the staff charged with the whole system (technicians, computer experts, financial and organizational analysts) .In this sense, it would have the task to eventually contract, according to envisaged protocols, maintenance services in the private sector.
- Establishing recruitment conditions and regulations.
- Giving 24 hours assistance and advice to the integrated computerized systems of the various centres.

Timetable: short term

E. Specific Object (What)

**CREATION OF A UNIFORM PRACTICAL GUIDE FOR
BORDER CONTROL GUARDS**

Why - Considering the existing situation and describing the added value

Existing situation:

The Schengen Common Manual, including all the annexes, is not an efficient tool for the border guards to take a quick decision at the first line.

Added value:

- To summarize and simplify the Schengen legislation.
- Possibility for taking quicker decisions.
- Standardize methods at European level.
- Base for a common training.

How should this object be developed and enhanced

- Create a computerized guide containing extracts of the Common Manual, its annexes, and other EU documents for an effective and fast control (including simplified check lists on entry requirements per nationality).
- Ask Countries to provide documents, suggestions, recommendations, etc. in order to improve the existing documentation.
- Unify the forms used in the different Countries.
- Find out the needs of the operational staff in international workshops.

Timetable: **short term**

Remarks

Proposal:

This work should be carried out by the centre charged with training.

F. Specific Object (What)

**PERSONNEL EXCHANGE AMONG BORDER
CHECKING POINTS**

Why-Considering the existing situation and describing the added value

Existing situation:

Occasionally few MS exchange staff between risky border check points.

Added value:

- Optimise the cooperation
- Direct contact at operational level for immediate solutions
- Optimise thorough checks by assistance in adequate language.
- Quick response to sudden inflow of immigrants at one or several BCPs.
- Mutual exchange of know how and information.
- Improve training and procedures.

How should this object be developed and enhanced

- On the basis of risk analysis, the exchange of BCPs. officers among M.S; MS and candidate states should be intensified.
- Member States should provide a pool of qualified officers for this purpose. This list must be permanently updated by one centre. The rules and procedures should be laid down thoroughly.
- According to the needs of the Countries one centre could manage the exchange of this personnel.

How the centre will achieve its goals (activities/organisation)

- In order to prepare or modify rules, agreements, procedures it is sufficient to meet periodically or work via internet sessions or video conferences.
- To organize personnel exchange it is necessary to create a permanent contact point in an operational centre.
- Every officer sent abroad must prepare a report in order to evaluate the mission.
- Asking for the interest of the Countries; organizing working groups; starting pilot projects.
- Carry out the missions ordered by the Council of Representatives.
- Prepare periodical reports for the meetings of the Council of Representatives.

- Regular contacts with the other centres, specially for operational purposes.

Timetable: short term

This centre should be initialized as a nucleus as soon as possible after the setting up of the Council of Representatives.

Remarks

Proposal:

- During the first phase a new centre should be created to plan and organize all the tasks mentioned above
- In a second phase these tasks should be shifted to another centre dealing with operations matters.
- Multilateral operations.

G. Specific Object (What)

COMMON RISK ASSESSMENT

Why - Considering the existing situation and describing the added value

Existing situation:

Europol/Cirefi/Eurostat currently produce statistics or risk assessments (generally annually/twice a year) for MS, and/or when targeted by forum like Police Chief Task Force or for specific operations (HIO, RIO, Pegasus), i.e. in the field of illegal immigration and trafficking in human being.

Generally the threats are not analysed in an operative way, available as regard as each MS needs or for specific operations.

Setting up of a common framework for collection of information, related to border police matters, should be favourable for a constant adaptation.

The collected information should be centrally stored and analysed in order to provide a constantly added value for the operational planning.

Risk assessment should be produce on a periodical basis and/or when needed for specific operations.

Added value:

The added value of common risk assessment is to have a complete overview of the border situation and to be able to react in a short time considering special events.

How should this object be developed and enhanced

Creation of a common framework for collection of information related to border police matters.

This framework could link experts from each Countries to find the right and operational information in a short time. This collection of information will be analysed in an operative way to provide warning to MS.

This centre must be legitimated and be able to collect information from any authorities and institution.

It will be in charge to react on special events or specific problems regarding only one country more MS.

To carry out its objective the centre can use the following tracks:

it will get information from Cirefi, Eurostat, Europol and from the MS.

This solution is suitable if the information are consistent and arrive early.

This kind of data collection is cost effective both for the MS and for the centre.

The centre can request data from MS. This solution is more expensive for the states due to the data searching and to the time necessary for the data collection.

As soon as it receives the information, the centre should analyse them immediately, in order to allot resources and to take preventive measures.

The results of the analysis should only be sent to the interested MS, not to all the states. (bear in mind that sending everything to everybody means sending anything to anybody).

How the centre will achieve its goals (activities/organisation)

The centre could be an interface between the existing institutions (Cirefi, Eurostat, etc.) and MS in a operational way and it will be able to analyse quickly a situation and give some advice to the authorities of MS concerned.

In the initial phase few experts on analysis seem to be sufficient to set up a small operational structure, but all Countries interested in this centre are invited to send their experts.

Timetable: **short term**

This is one of the first centre to be set up, because this centre has to point out the problems.

Remarks: (possible links)

In the first step EUROPOL offer to act as a platform and to use the existing INFO-EX (Europol Information exchange system).

It will be the referent/correspondent to the centre of:

- Quality management
- ILO's network
- Criminal investigation related to cross border crime linked to illegal immigration
- Rapid response units

H. Specific Object (What)

COMMON TRAINING

Why - Considering the existing situation and describing the added value

Existing situation:

There is no existing common training but, in most Countries, for all ranks, training includes studies of law, foreign languages and special knowledge of border matters.

Recently CEPOL was founded to coordinate the knowledge of the senior officers.

Added value:

A common training looks necessary on the hypothesis of setting up a European Border Police Task Force.

With common training every police officer will be eventually able to serve abroad in the Schengen area with the same standard basic education on border matters. The assistance of candidate Countries from the beginning could be helpful for them as well as for the whole Community.

How should this object be developed and enhanced

Staff charged with Border control and surveillance should receive a coherent and efficient training.

To achieve this common training standard it is essential to develop and establish the following:

- A European network of Trainer Groups
- Standard and common training modules
- Specialised training programmes
- Permanent evaluation
- A Police College for senior officers

These elements have to be co-ordinated in close links with national responsible partner-institutions (authorities/schools) in the MS.

The multi-national network of *Trainer Groups* should receive training at a central school, such a training enabling them to provide training for the national trainers at the national schools.

The national trainers will then be able to develop a *common European training in Border Police matters* regarding the different national legislations.

The standard and common training will consist of different *training modules*.

These training modules will be ready-made packages containing full training programmes in the different relevant border police matters, adapted to the specific needs for an initial training and/or as a knowledge updating. The training modules will be updated and modified electronically on a regular basis.

The content of the training modules will be reviewed by a *centralised co-ordination and evaluation board* according to the latest development of technical equipment, the newest *modus operandi*, trends and recommendations from the common risk assessments. The network of Trainer Groups could not only assist the “evaluation board” but also the national authorities in the process of the permanent evaluation of their staff.

Special training should be developed and conducted for the ILOs, the Document advisers and other personnel to be “exchanged” at international level.

The higher rank officers should receive a combination of training modules to be given them in national schools as well as centralised training .

How–The centre will achieve its goals (activities/organisation)

Regarding the great number of staff in all European Countries, it is impossible to have only one European border police school, therefore the national schools have to exist further on.

Nevertheless CEPOL can be helpful for the education, and training of senior police officers.

The centre has the task to coordinate the relations between all national border police schools and also with CEPOL

It will be also an inter-face between the different kind of European college (CEPOL, eventually the ILO’s college, universities etc...) and could assist each MS to define his own programme of education in border matters.

This centre should be able to help the national schools by giving special modules on common knowledge, and by evaluating the level of education in each MS.

The main tasks of this centre could be :

- to create several modules available for each MS
 - module for document advisers
 - module of knowledge of Schengen and EU provisions
 - module for English spoken (common language) for border police officers
 - module for certain technical equipment (EURO-DAC, SIS, etc...)
 - other modules

- to coordinate and evaluate the common training given in the national schools
- to assist CEPOL in the training of senior officers
 - _ to assist CEPOL (or an other special college) in the training of the trainers, or in the education of the trainers
- to perform a special training for the ILOs (in connection with ILOs centre)

Timetable: short term

The building up of this centre appears as a foundation structure to set up a coherent and efficient European border police, so it have to be taken in consideration rapidly and create in short time.

Remarks: (Possible links)

This centre couldn't work without excellent relations between each bodies in charge of education in all MS, CEPOL, ILOs centre and other European institutions in border affairs, and closely with the centre for the creation of a uniform practical guide.

I. Specific Object (What)

RATIONALISE REPATRIATION OPERATIONS

Why - Considering the existing situation and describing the added value

Existing situation:

- In most MS border police enforce repatriation. Some Countries have specialised nationwide competent units for either all escort missions or particular risky repatriations.
- Some Countries have agreements or memorandum of understanding / contracts with carriers to facilitate repatriation. Only in few cases there is a coordination among the MS.
- Recently some Countries carried out common repatriation operations.

Added value:

- Use common resources.
- Synergy efforts.
- Same training, qualifications and procedures.
- Economic advantages (share the cost of common operations)

How should this object be developed and enhanced

- The existing structures in each member state should be identified and the needs for common repatriation operations should be assessed. If necessary create a centre to collect the Countries requirements for repatriations in order to organize common operations.
- Make available to the other E.U. Countries the existing contracts with carriers at national level.
- Define the standards for security measures with regard to repatriation in planes and ships.
- Create an agreement among the MS on mutual support and assistance in the enforcement of repatriation and readmission measures during transit (airports, seaports, by car, by train).
- Buy or rent specially equipped airplanes for enforcing repatriation operations.
- Negotiations with a view to reach agreements between E.U and Countries of origin and transit for assistance on transit, at arrival during hand over procedures.
- Annual meetings, at operating level, on difficulties and new experiences on repatriation operations.
- Common training for specialized repatriation units.
- Organize common repatriations.

How the centre will achieve its goals (activities/organization)

Competences:

- Use of a data based booking or planning system to coordinate or organize common repatriation operations.

Timetable: **short-medium term**

- This centre should be initialised as a nucleus as soon as possible after the setting up of the Council of Representatives.
- The Council of Representatives should decide on the priorities to be dealt with.

Remarks

Proposal:

- Build up a new centre to manage all the tasks mentioned above.
Common repatriation operations involving at least two Countries.

L. Specific Object (what)

RAPID RESPONSE UNIT

Why – Considering the existing situation and describing the added value

Existing situation:

At present rapid response units do not exist at the EU level. Every MS is concerned with illegal immigration, and even though all of them have external borders, the pressure exerted by illegal immigration is not the same on each MS and external border.

Added value:

The setting up of rapid response units is a positive reaction to the European idea of burden sharing and solidarity in the fight against illegal immigration. The units will give an enhanced reaction capability to exceptional and/or unforeseen situations. The experience gathered from them, will be of constructive practical and operational value to the elaboration of a European border police concept.

How should this object be developed and enhanced

At the request of one MS and in order to react to specific problems and crises of illegal migration at the external EU borders, other MS can assign (on a voluntary basis) a number of officers to be deployed at any time and place. This can be done along the border crossing points or the green and blue borders of the requesting MS. The task of the unit would be to advise and support the national competent services on a complementary basis.

How the centre will achieve its goal (activities/organisation)

Protocols must be drafted, amongst others on the legal basis of their operative functions, mandate, commanding, organization, time of response, financial implications, and the duration of deployment of the units.

Timetable: **medium term**

M. Specific Object (what)

EXPERT GROUP FOR MISSIONS ABROAD

Why – Considering the existing situation and describing the added value

Existing situation:

At present, several MS are developing specialised pools (e.g. document advisors, Pre Access Advisors in airports of origin) that can be entrusted with missions abroad in order to react on particular (national) needs.

Added value:

- Burden sharing
- Permanent availability of experts for any matter, anywhere and for a flexible duration;
- Possibility to set up any type of mission according to various skills of experts in participating MS and following the real needs;
- Larger and enriching turn-over of involved experts, providing them with expertise and facilities for their own permanent training;
- Possibility of comprehensive missions involving different targets, which would not be possible with experts of only one MS; combined with enhanced synergy efforts;
- Progressive harmonisation of the experts methods;
- Enhanced co-operation and a further harmonisation of methods.

How should this object be developed and enhanced

A virtual pool of specialists in different matters such as border control, forged documents, surveillance matters etc. should be set up. They could be sent as EU special advisors to third Countries upon their request or proposal of the EU. Every MS should contribute experts to this pool. Protocols must be drafted about financial matters, recruitment, availability etc.

How the centre will achieve its goal (activities/organisation)

- Managing of the pool;
- Dealing with the requests for support /expertise;
- Make the survey (inventory) of the possibilities and availability of the participating Countries;
- Permanent assessment of the pool of experts and advisors whilst working in the various matters in the participating Countries;

- Develop a protocol of activation, normally the teams will be rendered operational after the decision of two or more participating Countries and or upon request of a third country;
- Management of the gathered information and expertise outcomes of the fulfilled missions respecting the data protection regulations. This management also includes an ad hoc analysis in order to provide guidance to the participating member states, in the field of training and in the fight against all forms of illegal immigration
- Definition of professional profiles of the experts (language skills, basic training, degree of specialization, further curriculum details).

Timetable: **medium term**

Remarks:

The same Headquarter created for the rapid response units could contribute in the decision making of activation/about the deployment (short stay) of these experts. The missions could also be active at the EU external borders.

N. Specific Object (what)

**COORDINATED CRIMINAL INVESTIGATION RELATED TO
CROSS-BORDER CRIME AND LINKED TO ILLEGAL
IMMIGRATION**

Why – Considering the existing situation and describing the added value

Existing situation:

Current situation in the EU shows extremely diversified penal legislation. That leads to very different working methods and consequently to difficulties in coordinating national services in the fight against crimes linked to illegal immigration.

Added value:

The achievement of a common agreement on the coordination of the operations targeted to counter the crimes related to illegal cross-border traffic. This should increase the general efficiency as well as the achievement of positive results by the units involved, overcoming the above mentioned difficulties.

How should this object be developed and enhanced

Since in the Comprehensive Plan to Combat the Illegal Immigration it is foreseen the need to strengthen the role and competences of EUROPOL, especially in the issue of the detection and dismantling of crime networks related to illegal immigration, a procedure should be found out to establish a permanent communication system between EUROPOL and the participating MS authorities responsible for the management of the external borders.

Such a system should have as a main goal guaranteeing all assistance to EUROPOL in the prevention, investigation and analysis of the specific crimes, as well as sharing and processing all the information acquired by EUROPOL in the related matter.

Besides, and within the same proposed centre, a pool of qualified experts should be set up, to be made available to participating Countries on request for missions at the external borders as advisors in cross-border operations.

How the centre will achieve its goal (activities/organisation)

Establishing protocols for permanent coordination and communication with EUROPOL.

Definition of the experts profile and selection modalities.

Regulation of activation procedures.

Processing of all information acquired from EUROPOL.

Guaranteeing the correct circulation of processed information to the pre-determined centres at the external borders of the participating Countries.

Timetable: medium term

①. Specific Object (What)

**CREATION OF A PERMANENT TECHNICAL SUPPORT
COOPERATION FACILITY AND DEVELOPMENT OF NEW
TECHNICAL EQUIPMENT FOR BORDER CONTROL/BORDER
SURVEILLANCE.**

Why - Considering the existing situation and describing the added value

Existing situation:

Most Countries use similar, but not equally effective equipment to observe the sea and land borders, to detect forged documents, to identify individuals, to control vehicles and automatically check documents. There is no compatibility and coordination of equipment development in most cases.

Added value:

- Interoperability: exchange of equipment (spare parts) and personnel; mutual support.
- Synergy efforts.
- Provide technical equipment in time for high impact operations.
- Same training, qualifications and procedures.
- Economic advantages.
- Define and establish standards for control and surveillance (Specially with a view on candidate Countries).
- Improvement of the communication network.
- Facilitate the evaluation.

How should this object be developed and enhanced

General aspects:

- Creation of an information centre to enlist and evaluate all the existing equipment, to promote and select new or available technologies. This information should be available via intranet.
- Definition of common standards for compatible equipment.
- Tenders at European level to buy different equipment.
- Researches concerning biometric equipment and automatic car plates reading systems should be encouraged and speeded up in order to be able to use such equipment for the automatic check of travellers and vehicles.
- Organize / initiate teams in charge of evaluating the proper use of the technical equipment on the spot.
- Common training for the operation of various types of equipment.

- Coordinate the supplying activity of available specific equipment for rapid response actions, at the request of another MS

Communication aspects:

- Creation of an integrated secure intranet system among different national border police units.
- Create a communication network among main international airports, i.e. intranet, photophone, FADO, etc.
- Creation of a communication network, at European level, among the authorities in charge of seaports and maritime traffic (i.e. computerized EISISC system, electronic data interchange EDI, VTMS, or similar systems).
- Development of portable SIS equipment including mobile communication phones (i.e. for checks in trains).

Timetable: *medium term*

- The building up of this centre should be as soon as possible after the setting up of the Council of Representatives.
- The Council of Representatives should decide on the priorities to be dealt with.
- The starting of these centres should be coordinated by the Council of Representatives.

Remarks

Proposal:

- Build up a new centre to manage all the tasks mentioned above.
- Implementing automatic check of passengers through biometric systems at the airports.
- Joint venture among Countries with sea borders to optimise the technical equipment for border surveillance on sea.

P. Specific Object (What)

QUALITY MANAGEMENT

Why - Considering the existing situation and describing the added value

Existing situation:

The Q.M. is a tool for each country to optimise their own results of border police

To manage properly the aim of the Border control and surveillance, the deciders need tools.

Some of them are performance indicators share in three main categories: efficiency, economy and effectiveness.

The indicators are ratios using numbers and statistics:

- Efficiency is the ratio between products and number of personnel
- Economy is the division between products and costs
- Effectiveness is the balance between output and needs.

Quality management means the process that all border police tasks have to be done under due consideration of efficiency, effectiveness, and cost-effectiveness

Countries use statistics to reach at least one performance indicator and try to organise their border police activities in a cost-effective way or in an effectiveness way.

Added value:

The analysis of the indicators allow to take the right decision. That means to optimise the work with the resources: “to have the qualified personnel in the right time at the right place with the right equipment”

Q.M. has become more important when speaking about the area of “freedom, security and justice” in the European Union, because border checks nowadays have to be more efficient regarding the detection and prevention of threats against the national security and public policy in the Schengen States.

How should this object be developed and enhanced

The Centre must define common standards useful for each State.

With these standards all the information (tools - statistics, trends, etc.) will be collected.

The analysis of these standards will permit to improve performance indicators necessary for the QM.

Then, the summary and the study of QM will determine norms, helpful for the harmonisation of a European Border Police.

How the centre will achieve its goal (activities/organisation)

Only a little structure will be necessary, formed by few experts with a pragmatic experience.

This Centre will be a permanent one, with a close connection to the Council of Representatives. Regarding the convergence point of most centres naturally created by the QM Centre, this structure could assist the Council of Representatives to take the right (management) decisions.

Timetable: **medium term**

As soon as possible after the foundation of the Council of Representatives

Remarks: (possible links)

Quality management is closely linked to the common risk assessments.

Q. Specific Object (what)

**CENTRES FOR BORDER POLICE AND CUSTOMS COOPERATION
AT EXTERNAL BORDERS**

Why – Considering the existing situation and describing the added value

Existing situation:

The centres for border police and customs cooperation at external borders have been foreseen and set up at certain EU internal borders. This is being done by several MS according to bilateral agreements. Their current tasks are the exchange of information, support of common operations, cross-border pursuit and observation, submitting and carrying out of readmission requests.

Added value:

The common responsibility in the control and surveillance of the external borders would be enhanced. Thus, a higher level of operational cooperation will be achieved. Knowledge and experience among the different national services involved would be enhanced.

How should this object be developed and enhanced

At significant land and sea external borders, especially sensitive for more than one MS, border police officers of the interested MS should cooperate in common centres.

As a first step, the officers of the MS should support the local border police officers. This staff should focus as well on traffic security, identification of persons wanted for arrest or extradition at a request of a competent judicial authority etc..

As a second step, the border police officers of the guest MS should have competences to control persons in a complementary way.

If possible or requested, the border police officers of the guest MS should also give support in surveillance matters, especially implementing joint patrols.

At the centres, contact points with the EU-neighboring Countries should also be set up.

Between these centres, an integrated intranet should be set up to interlink them EU-wide, with direct access to SIS and other future common data bases that could be implemented, available in real time for all MS officers working at any external border.

How the centre will achieve its goal (activities/organisation)

- Defining where such centres or a pilot centre can be created.
- Defining how they function.
- Defining how to integrate the guest police officers
- Studying cooperation methods with the customs services.

Timetable: medium-long term

℞. Specific Object (What)

COMMON CORE CURRICULUM

Why - Considering the existing situation and describing the added value

Existing situation:

The staff of border police is generally divided in three main ranks: officers, commanding officers and higher ranks.

In most Countries , the access to these ranks can be done by public competition (external) or for commanding officers and for higher ranks also by examination (internal).

Presently there are two ways to join border police services, either via the regular police or directly.

Added value:

Only some recommendations, standards and rules have to be given to the MS to proceed an efficient and coherent recruitment with an overall view of a common European border police.

How should this object be developed and enhanced

- The standard level of recruitment must be established on basis of international (European) recognition of qualification (exams).
- A minimum level of common knowledge in border matters and foreign languages are required.
- Good physical and psychological conditions are necessary.
- Fulfil moral and legal requirements (no previous convicts).

How the centre will achieve its goal (activities/organisation)

It appears that a setting up of a special centre for the „common core curriculum“ seems not very pertinent and suitable.

Timetable

Remarks (possible links)

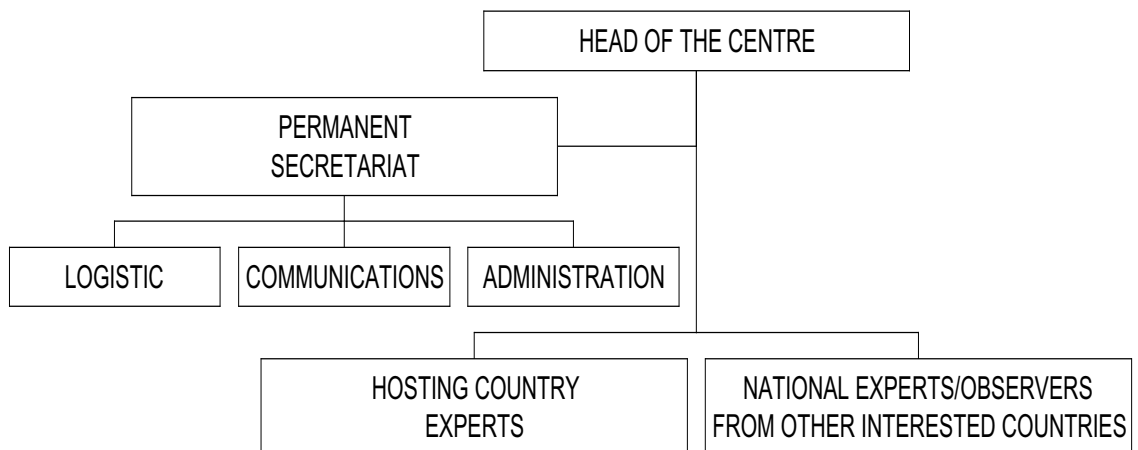
This task could be done by the centre in charge of training and education by delivering some orientations.

34. The Centres

Competencies of the centre:

- High degree of autonomy and specialisation;
- Interdependent with other centres;
- Coordinated by the Council of representatives;
- Independent communication with other organizations;
- Draw up proposals to improve these specific issues;
- Define rules and limits for the cooperation within the centre

Example of possible organisation chart



Head of the centre:

- High level senior police officer;
- Experienced in the relevant field;
- Knowledge in the specific objectives given to the centre;
- Accountable to the Council of Representatives.

Staff of the centre:

- Number and qualification depending on the nature of the objective assigned and the evolution of the situation.

Location:

- In general, centres should be located in already existing national specialised offices.

Working methods:

- In some cases (operations) permanent meeting points;
- Intranet sessions, video-conferences;
- Periodical meetings of experts;
- Carry out the missions ordered by Council of Representatives;
- Periodical reports to prepare Council of Representatives meetings;
- Contacts with other centres and various bodies;
- Evaluation of the results.