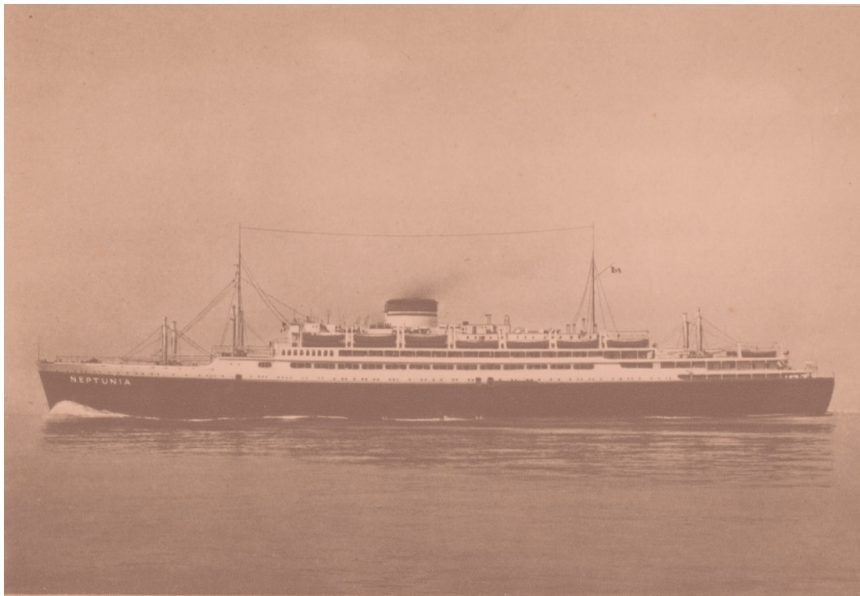


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## AN ANALYSIS OF INTEGRATED MANAGEMENT OF THE EXTERNAL BORDERS OF THE EUROPEAN UNION

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I. INTEGRATED MANAGEMENT AS A COMPONENT OF THE CONTROL OF EUROPEAN EXTERNAL BORDERS. II. INTEGRATED BORDER MANAGEMENT (IBM): MATERIAL CONTENT. III. IN SEARCH OF A FORMAL DEFINITION OF INTEGRATED BORDER MANAGEMENT (IBM). IV. TOWARDS AN IBM STRATEGY. V. FINAL IDEAS

**ABSTRACT:** One of the most prominent elements of external policy in the Area of Freedom, Security and Justice is that of “integrated border management”. Its material content is defined and legislated in the current regulations on the European Border and Coast Guard Agency, limiting its field of action to the control of migratory flows at the border. However, no formal analysis has been conducted of the concept of integrated border management. Even the most specialist literature has been limited to identifying and analysing the material content, barely considering the term “integrated” within the framework of shared competences between the EU and Member States.

Consequently, the aim of the present paper is to identify a formal definition of “integrated border management”, by analysing the development of the concept and its material component. I shall also highlight the short-term implications of this formal definition for the EU, especially with respect to the adoption of an EU “integrated management strategy” consistent with the national strategies of Member States.

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**KEY WORDS:** Area of Freedom, Security and Justice; European Border and Coast Guard Agency; External Borders; Integrated Management; Shared Competence.

## **UN ANÁLISIS DE LA GESTIÓN INTEGRADA DE LAS FRONTERAS EXTERNAS DE LA UNIÓN EUROPEA**

**RESUMEN:** Uno de los elementos más destacados de la política exterior en el Espacio de Libertad, Seguridad y Justicia es el de la «Gestión Integrada de Fronteras». Su contenido material está definido y regulado en la normativa vigente de la Agencia Europea de la Guardia de Fronteras y Costas, lo que limita su campo de acción al control de los flujos migratorios en la frontera. Sin embargo, no se ha realizado un análisis formal del concepto de gestión integrada de fronteras. Incluso la literatura más especializada se ha limitado a identificar y analizar el contenido material, apenas considerando el término «integrado» en el marco de las competencias compartidas entre la UE y los Estados miembros.

En consecuencia, el objetivo del presente estudio es identificar una definición formal de «Gestión Integrada de Fronteras», mediante el análisis del desarrollo del concepto y su componente material. También se destacará las implicaciones a corto plazo de esta definición formal para la UE, especialmente con respecto a la adopción de una «Estrategia de Gestión Integrada» de la UE coherente con las estrategias nacionales de los Estados miembros.

**PALABRAS CLAVE:** Espacio de Libertad, Seguridad y Justicia; Agencia Europea de la Guardia de Fronteras y Costas; Fronteras exteriores; gestión integrada; Competencia compartida.

## **UNE ANALYSE DE LA GESTION INTÉGRÉE DES FRONTIÈRES EXTÉRIEURES DE L'UNION EUROPÉENNE**

**RÉSUMÉ:** L'un des éléments les plus importants de la dimension extérieure de l'espace de liberté, de sécurité et de justice est la «gestion intégrée des frontières» (Integrated Border Management - IBM). Son contenu matériel a été identifié dans la réglementation actuelle relative à l'Agence européenne des garde-frontières et des garde-côtes, en cours d'élaboration normative et limitant son champ d'application au contrôle des flux migratoires frontaliers. D'un autre côté, il n'existe actuellement aucune approche formelle du concept de gestion intégrée des frontières. Même la doctrine la plus spécialisée a opté pour une identification et une analyse de son contenu matériel, sans entrer simplement dans la particule «intégrée» et dans le cadre des politiques partagées entre l'UE et les États membres.

Cependant, cette étude tente d'identifier une définition formelle de la gestion intégrée des frontières, pour laquelle l'évolution du concept et de sa composante matérielle sera utilisée. Il convient également de souligner les répercussions de cette définition formelle dans l'avenir le plus immédiat de l'UE, notamment en ce qui concerne l'adoption de sa propre stratégie de gestion intégrée et cohérente avec les stratégies nationales des États membres.

**MOTS-CLÉS:** Espace de liberté, de sécurité et de justice; Agence européenne des garde-frontières et des garde-côtes; Frontières extérieures; Gestion intégrée; politique partagée.

One of the elements that currently form part of external policy in the Area of Freedom, Security and Justice is the integrated management of external borders (henceforth referred to as Integrated Border Management - IBM).

This integrated management has been formulated and pursued in such a way that the agency essentially responsible for implementation is the European Border and Coast Guard (henceforth Frontex), limiting the field of action to border control and the prevention of irregular migration flows<sup>2</sup>.

However, more importantly, a formal concept of IBM does not yet exist<sup>3</sup>, only material descriptors that have been passed through legislation more or less successfully. Even the most specialist literature has failed to address this question, steering clear of the scope of the concept of “integrated” in particular or the possible medium- and long-term consequences in the context of a competence, let us not forget, that is shared between the EU and Member States.

Therefore, our aim here is to examine the development of the concept and its material component in order to reach a definition of IBM and its possible short-term consequences for the EU, in particular with respect to the adoption of an EU strategy consistent with the national policies of Member States.

## **I. INTEGRATED MANAGEMENT AS A COMPONENT OF THE CONTROL OF EUROPEAN EXTERNAL BORDERS**

The first reference to the concept of integrated management of external borders<sup>4</sup> (IBM) occurred at the Tampere European Council held in October

<sup>2</sup> This fact has been confirmed by the United Nations. See UN Doc. Rapp. A/HRC/23/46, *Report of the Special Rapporteur on the Human Rights of Migrants, Regional study: Management of the External Borders of the European Union and its impact on the Human Rights of Migrants*, of 24.04.2013, ap. 42-43.

<sup>3</sup> HOKOVSKY, R., “The Concept of Border Security in the Schengen Area”, *Central European Journal of International and Security Studies*, 2016, no. 2, pp. 72-93, on p. 72.

<sup>4</sup> See Doc. COM (2002) 233, *Towards integrated management of the external borders of the member states of the European Union*, of 07.05.2002. See also Doc. Council 10019/02, *Plan for the management of the external borders of the Member States of the European Union*, of 14.6.2002; *The Hague Programme: strengthening freedom, security and justice in the European Union*, OJ, C 53, of 03.03.2005; *Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean*, Annex I, Presidency Conclusions, European Council, Brussels, December 2005; *Reinforcing the Southern External Maritime Borders*, Council Conclusions, of 05-06.10.2006 (Doc. Council 13068/06, of 06.10.2006); Doc. COM (2008) 69, *Preparing the next steps in border management in the European Union*, of 13.02.2008; *Management of external borders of the member states of the EU*, Council Conclusions, of 05-06.06.2008 (Doc. Council 9956/08, of 06.06.2008). See also CARRERA, S., “The EU border management strategy: Frontex and the challenges of irregular immigration

1999, in relation to implementation of the provisions of the Treaty of Amsterdam. Thus, within the framework of the Area of Freedom, Security and Justice, the European Council indicated in its Conclusions that there was a need to implement coherent control of external borders in order to prevent illegal immigration and combat transnational organised crime<sup>5</sup>.

This position was subsequently endorsed by the Laeken European Council in December 2001, when it was indicated that there was a need for better management of external border control in order to combat terrorism, crime and human trafficking. To achieve this goal, the Council and the Commission were asked to define mechanisms for cooperation between border control agencies with a view to creating *a mechanism or common services to control external borders*<sup>6</sup>.

Nevertheless, the most relevant document and the one that launched IBM is unquestionably the Communication of the European Commission of May 2002, on the Integrated Management of the External Borders of Member States<sup>7</sup>, which provides a first definition of “external border management”—omitting any reference to “integration”—and its material component. The Commission defined “external border management” as follows:

The activities carried out by public authorities of the Member States to:

- carry out checks and surveillance at external borders provided for by Articles 5 and 6 of the Schengen Convention;
- gather, analyse and exchange any specific intelligence or general information enabling the border guard to analyse the risk that a person, object or asset constitutes for the internal security of the common area of freedom of movement, law and order or the national security of the

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in the Canary Islands”, CEPS, *WD*, no. 261, March 2007; HOBGING, P., “Integrated border management at the EU level”, *CEPS WD* no. 227 / August 2005; MONAR, J., “The EU’s Integrated Management of External Borders”, in DE BARBELEBEN, J. (ed.), *Soft and Hard Borders: Managing the Divided in an Enlarged Europe*, Aldershot, Ashgate, 2005; ID., “The External Shield of the Area of Freedom, Security and Justice: Progress and Deficits of the Integrated Management of External EU Borders”, in Zwaan, K., Goodppel, F. (eds.), *Freedom, Security and Justice in the EU*, Asser, The Hague, 2006, pp. 73-88; RIJPMMA, JJ., “EU Border Management after the Lisbon Treaty”, *Croatian Yearbook of European Law & Policy*, 2009, no. 5, pp. 121-149.

<sup>5</sup> According to Hobbing, the origin of IBM is located in programmes for Eastern European countries such as PHARE, TACIS and CARDS. See HOBGING, P., *loc. cit.*, p. 3.

<sup>6</sup> Presidency Conclusions, European Council, Laeken, December 2001, ap. 42.

<sup>7</sup> Doc. COM (2002) 233 final, *Towards integrated management of the external borders of the member states of the European Union*, of 07.05.2002.

- Member States, and for general compliance with Community legislation;
- analyse the development of the threats likely to affect the security of the external borders and to set the priorities for action by border guards accordingly;
  - anticipate the needs as regards staff and equipment to ensure security at external borders.

According to this definition, the scope of action is limited to the control of external borders in order to ensure internal security and the free movement of people. Three risks or threats were identified, which would subsequently be included in the European Security Strategies<sup>8</sup>. These were terrorism, transnational organised crime and irregular migration flows, highlighting the interconnected nature of these and the need for multilateral preventive action. Illegal immigration is inexorably linked to transnational organised crime. This transnational or cross-border crime poses a clear threat to international peace and security insofar as it endangers the safety of humans and obstructs the State's fundamental obligation to maintain the rule of law. Furthermore, organised crime feeds off illicit trafficking in drugs and humans<sup>9</sup> and incites corruption in States, destabilising their social, political and economic structure. In particular, the General Assembly considered that organised crime poses a severe threat to maritime safety, as an instigator of irregular migration flows, and necessitates multilateral cooperation, particularly in the Mediterranean region<sup>10</sup>.

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<sup>8</sup> See *A Global Strategy for the European Union's Foreign and Security Policy* (Doc. Council 10715/16, of 28.06.2016). See also Doc. COM (2015) 185 final, *The European Agenda on Security*, of 28.04.2015. In the international context, see UN Doc. A/59/565, *A More Secure World: Our Shared Responsibility. Report of the High-Level Panel on Threats, Challenges and Change*, of 02.12.2004; UN Doc. A/59/2005, *In Larger Freedom: Towards Development, Security and Human Rights for All*, of 21.03.2005.

<sup>9</sup> Thus, par. 1 of the Resolution of the Security Council 2331 (2016) of 20 December *S/RES/2331(2016)*, stated "Condemns in the strongest terms all instances of trafficking in persons in areas affected by armed conflicts, and stresses that trafficking in persons undermines the rule of law and contributes to other forms of transnational organized crime, which can exacerbate conflict and foster insecurity and instability and undermine development".

<sup>10</sup> See General Assembly Resolutions A/RES/74/77, *Strengthening of security and cooperation in the Mediterranean region*, of 23.12.2019; and A/RES/74/19, *Oceans and the law of the seas*, of 20.12.2019, ap. 157-159.

To combat these threats, the Commission advocated drawing together the various functions of external border control within a single agency, initially through cooperation between the relevant security forces —border guards— of the Member States, taking the United States Coast Guard as a model<sup>11</sup>. However, in a context where competences are shared<sup>12</sup>, achieving the envisaged objectives will ultimately rely on the sovereign will of the Member States. In any event, the goal would be to strengthen control of external borders (land, sea, airports and even air<sup>13</sup>), as a paradigm of Schengen, in the quest to ensure a high and uniform level of control and surveillance as an essential element for the free movement of persons.

At present, the explicit reference to integrated management of external borders uses identical wording to the provisions of art. III-265 of the failed Treaty establishing a Constitution for Europe and appears in art. 77.1 c) TFEU. In reference to external border control and surveillance as one of the objectives envisaged in the Lisbon Treaty (art. 3.2 TEU), this article indicates:

1. The Union shall develop a policy with a view to: c) the gradual introduction of an integrated management system for external borders.

However, execution of this policy does not appear to be as straightforward as, for example, asylum or immigration policies (shared competences). Thus, art. 77.2 d) TEU simply indicates that:

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning [...] any

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<sup>11</sup> DUEZ, D., “A Community of Borders, Borders of the Community: The EU’s Integrated Border Management Strategy”, in VALLET, E. (ed.), *Borders, Fences and Walls. State of Insecurity?*, Ashgate, Farnham, 2014, pp. 51-66; HOBING, P., *loc. cit.*, p. 4.

<sup>12</sup> See DEL VALLE GÁLVEZ, A., “Inmigración, Extranjería y Fronteras en la UE: cinco problemas conceptuales”, in *Las Fronteras Exteriores de la UE e Inmigración a España: Relaciones Internacionales y Derecho*, AEPDIRI-Escuela Diplomática, Ed. Tirant lo Blanch, Valencia, 2007, pp. 43-80. See also art. 7 Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ, L 295, of 14.11.2019 (Frontex Regulation). About new Frontex Regulation, see, ACOSTA SANCHEZ, M.A., “Reglamento 2019/1896/UE sobre la guardia europea de fronteras y costas: ¿Frontex 3.0?”, IEEEE, *Documento de Opinión* 111/2019, de 02.12.2019.

<sup>13</sup> On air borders, see art. 30 Frontex Regulation.

measures necessary for the gradual establishment of an integrated management system for external borders.<sup>14</sup>

This *Integrated System for Management of External Borders* would be based on four levels of action: a) border control, b) investigation and prosecution of cross-border crime, c) cooperation between agencies, and d) coordination between Member States and the EU<sup>15</sup>, all of which would be performed while also fully observing fundamental rights.

This general goal, with Frontex as the security force and cornerstone of IBM, encompasses five specific objectives<sup>16</sup>:

1. The crossing of borders, governed by means of the Schengen Borders Code<sup>17</sup>;

2. A common visa regime based on Regulation 2019/1155/EU<sup>18</sup>;

<sup>14</sup> See DEL VALLE GALVEZ, A., “Refugiados y crisis migratorias: fronteras y desterritorialización en las puertas de Europa”, in RIPOL CARULLA, S. (Dir.), *Inmigración, Derecho y Empresa*, Ed. Marcial Pons, Barcelona, 2019, pp. 85-112, on pp. 102-103. See also DEL VALLE GALVEZ, A., “Europa como espacio de libertad, seguridad y justicia. Las previsiones del Tratado Constitucional”, in BOU FRANCH, V., CERVERA, M. (Coord.), *El derecho de la Unión Europea: 20 años después de la adhesión de España*, Tirant lo Blanch, Valencia, 2007, pp. 143-178; ID., “Espacio de Libertad, Seguridad y Justicia y Tratado de Lisboa”, in PEREZ DE NANCLARES, J. (Coord.), *El Tratado de Lisboa: la salida de la crisis constitucional, Jornadas de la AEPDIRI, Madrid, 17 y 18 de diciembre de 2007*, Iustel, Madrid, 2008, pp. 417-435. See also RIJPM, J.J., *loc cit.*, p. 141.

<sup>15</sup> See Doc. Council 13926/3/06 REV 3, *Integrated Border Management: Strategy deliberations*, of 21.11.2006, p. 4; Doc. Council 15801/06, *Integrated Border Management*, of 4/5.12.2006, p. 27. See also MARENIN, O., “Challenges for Integrated Border Management in the European Union”, Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Occasional Paper*, 2010, no. 17, pp. 65-67.

<sup>16</sup> Doc. COM (2002) 233, *Towards Integrated Management of the External Borders of the Member States of the European Union*, of 07.05.2002, p. 12-13.

<sup>17</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), *OJ*, L 77, of 23.04.2016. See also Doc. Council 15010/06, *Commission Recommendation establishing a common “Practical Handbook for Border Guards (Schengen Handbook)” to be used by Member States’ competent authorities when carrying out the border control of persons*, of 09.11.2006. Also Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention, *OJ*, L 405, of 30.12.2006.

<sup>18</sup> Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa



3. Operational cooperation through Frontex, to which must be added the European Border Surveillance System (Eurosur), incorporated into Frontex by Regulation (EU) 2019/1896<sup>19</sup>;

4. Assistance in situations of need by Frontex's rapid intervention teams, embodied in the various operations that the European Border and Coast Guard Agency can currently carry out; and

5. Collection and exchange of information by means of the network of immigration liaison officers<sup>20</sup>.

It should be noted that this *Integrated System* has subsequently been reduced to IBM, which seems to have a more limited scope due to Member States' reluctance to unify external border management criteria and to the multitude of national agencies responsible for border control. Hence, IBM at present is limited to developing Frontex as a security force tasked with curbing irregular immigration at external borders<sup>21</sup>, despite the will of Member States to promote greater integration in external border management and even to reorganise national bodies and agencies with responsibilities in the matter, as we shall see below. In our opinion, as soon as such integration is achieved, formulas could be devised to unify the various border agencies within a single body while also widening their powers beyond control of migratory flows to include policing matters, transborder cooperation and even human rights protection, in compliance with the provisions envisaged in the TEU, as an integrated system for external border management.

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Code), OJ, L 188, of 12.07.2019.

<sup>19</sup> See arts. 18-23 Frontex Regulation. See ACOSTA SANCHEZ, M. A., "El Sistema Europeo de Vigilancia de Fronteras (EUROSUR): a vueltas con la participación del Reino Unido en Schengen. Sentencia del Tribunal de Justicia de la UE, de 8 de septiembre de 2015, España c. Parlamento y Consejo", *Revista General de Derecho Europeo*, 2016, no. 39.

<sup>20</sup> Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the creation of a European network of immigration liaison officers, OJ, L 198, of 25.07.2019.

<sup>21</sup> See MORENO-LAX, V., *Assessing Asylum in Europe. Extraterritorial Border Controls and Refugee Rights under EU Law*, Oxford Studies of European Law, Oxford, 2017, pp. 13-45.

## II. INTEGRATED BORDER MANAGEMENT (IBM): MATERIAL CONTENT

IBM has only ever been defined in material terms<sup>22</sup>. As regards its content, in 2002 the Council described a minimum of five related elements, in which an emphasis on security was already evident<sup>23</sup>. These were:

- a) A common corpus of legislation;
- b) A common operational coordination and cooperation mechanism;
- c) Common integrated risk analysis;
- d) Personnel trained in the European dimension and inter-operational equipment;
- e) Burden-sharing between Member States with a view to establishing a European corps of border guards.

Clarification of the material content finally came with the adoption of Regulation (EU) 2016/1624, creating the European Border and Coast Guard<sup>24</sup> and also, in art. 4, defining the components of IBM, which would require further legislative development. These elements have remained unchanged in the new Regulation (EU) 2019/1896 (Frontex Regulation), where art. 3 lists 12 components of integrated management:

- a) Border control, including measures to prevent irregular immigration and illegal trafficking and combat terrorism, and mechanisms to identify persons wishing to apply for international protection. This would essentially be based on the Schengen Borders Code;

<sup>22</sup> DE BRUYCKER, P., “The European Border and Coast Guard: a New Model built on an old logic”, *European Papers*, 2016, vol. 1, pp. 559-569, on p. 563; SANTOS VARA, J., “La transformación de Frontex en la Agencia Europea de Guardias de Fronteras y Costas: ¿Hacia una centralización en la gestión de las fronteras?”, *Revista de Derecho Comunitario Europeo*, 2018, no. 59, pp. 143-186, on pp. 149-152.

<sup>23</sup> See Doc. Council 10019/02, *Plan for the Management of the External Borders of the Member States of the European Union*, of 14.6.2002, pp. 29-30.

<sup>24</sup> Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, *OJ*, L 251, of 16.09.2016. See ACOSTA SANCHEZ, M.A., “La nueva Guardia Europea de Fronteras y Costas: una necesaria evolución de FRONTEX”, Instituto Español de Estudios Estratégicos, *Documento de Opinión* 108/2016, of 24.10.2016.

b) Search and rescue operations at sea, in accordance with Regulation (EU) 656/2014<sup>25</sup>;

c) Analysis of the risks for internal security and external borders posed by migratory flows, pursuant to art. 29 of the Frontex Regulation;

d) Cooperation between Member States in relation to Frontex through information exchange, joint training and joint operational actions;

e) Inter-agency cooperation among the national authorities in each Member State responsible for border control, including authorities responsible for return and, where appropriate, protection of fundamental rights. This component, included for the first time in 2019, reinforces the shared nature of this policy and promotes a high degree of harmonisation between national agencies responsible for border control and management;

f) Cooperation with other relevant agencies, explicitly including the European External Action Service, the European Asylum Support Office (EASO), the EU Fundamental Rights Agency, Eurojust, Europol, the Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency (art. 68 of the Frontex Regulation);

g) Cooperation with third countries, especially in neighbouring countries and countries of origin and/or transit for illegal immigration, through arts. 71-77 of the Frontex Regulation<sup>26</sup>;

h) Technical and operational measures in the Schengen area to tackle illegal immigration and cross-border crime;

i) Return of third-country nationals, in accordance with arts. 48-53 of the Frontex Regulation<sup>27</sup>;

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<sup>25</sup> Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, *OJ*, L 189, of 27.06.2014.

<sup>26</sup> See HERNANDEZ I SAGRERA, R., “Exporting EU Integrated Border Management beyond EU Borders: Modernization and Institutional Transformation in Exchange for more mobility?”, *Cambridge Review of International Affairs*, 2014, no. 27, pp. 167-183. See also Doc. COM (2016) 385 final, *on establishing a new Partnership Framework with third countries under the European Agenda on Migration*, of 09.06.016.

<sup>27</sup> See Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, *OJ*, L 348, of 24.12.2008.

j) Use of state-of-the-art technology, including large-scale information systems<sup>28</sup>;

k) A quality control mechanism at national and European level to ensure implementation of EU legislation in the area of border management and enhance consistency and harmonisation between national bodies<sup>29</sup>;

l) Solidarity mechanisms, in particular Union funding instruments, pursuant to art. 80 TFEU<sup>30</sup>.

Thus, as De Bruycker has observed, IBM does not refer solely to where to control borders, but also to the function and purpose of such control<sup>31</sup>. The components listed in art. 3 are further specified in the functions assigned to Frontex in art. 10, while the overall mission described in art. 1 of the Frontex Regulation indicates that the European Border and Coast Guard shall be responsible for the integrated management of external borders<sup>32</sup>. This further emphasises the security aspect of IBM that we have been highlighting,

<sup>28</sup> See Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, *OJ*, L 286, of 01.11.2011. See also Regulation (EU) 2017/2225 of the European Parliament and of the Council of 30 November 2017 amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System; and Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, *OJ*, L 327, of 09.12.2017.

<sup>29</sup> See art. 33 Frontex Regulation.

<sup>30</sup> See Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA; and Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC, *OJ*, L 150, of 20.05.2014.

<sup>31</sup> DE BRUYCKER, P., *loc. cit.*, p. 563.

<sup>32</sup> I do not share Rijpma's view that the integrating elements of IBM do not agree with the proper functions of Frontex as stated by Regulation (EU) No 1624/2016. See RIJPMMA, J.J. "The proposal for a European Border and Coast Guard: evolution or revolution in external border management?" Study for the LIBE Committee of the European Parliament, 2016, p. 14.

focusing it solely and exclusively on (irregular) immigration control. In turn, this distances IBM from tasks related to internal security, appearing to obviate the pressing need to synthesise European domestic and external security strategies in order to endow the EU with an integrated, global capacity.

However, one novelty in the new regulation was Parliament's introduction, during adoption of Regulation (EU) 2019/1896, of a second paragraph in art. 3, which reads as follows<sup>33</sup>:

Fundamental rights, education and training, as well as research and innovation shall be overarching components in the implementation of European integrated border management.

This appears to represent the first step towards a possible widening of the scope of integrated management, albeit this would be subject to legislative development requiring the essential participation of Member States.

### **III. IN SEARCH OF A FORMAL DEFINITION OF INTEGRATED BORDER MANAGEMENT (IBM)**

In our opinion, no clear definition yet exists of “Integrated Management of External Borders”; instead, such management has only been described in material terms that do not consider the element of integration pursued by the various agents involved<sup>34</sup>. As noted previously, in 2002 the Commission<sup>35</sup> indicated that external border management entailed a series of actions carried out by the public authorities of Member States with responsibility for border control. In 2008, the first reference to externalisation was included in relation to a combination of migratory flow control mechanisms, especially

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<sup>33</sup> See Doc. Council 8498/19, *Outcome of the European Parliament's first reading and Corrigendum procedure*, of 23.10.2019.

<sup>34</sup> See DE BRUYCKER, P., *loc. cit.*, p. 563; SANTOS VARA, J., *loc. cit.*, pp. 149-152. According to Rijpma, citing A. Hills (“The Rationalities of European Border Security”, *European Security*, 2006, no. 15, pp. 67-88, on p. 69), “external borders management” means “the processes and procedures associated with border checks, which take place at authorised crossing points, including airports, and border surveillance, which is carried out on the so-called green (land) borders between authorised crossing points and along the blue (sea) borders”. To this definition could be added sea and air borders. See RIJPMMA, J.J., *loc. cit.*, p. 121.

<sup>35</sup> Doc. COM (2002) 233, *Towards integrated management of the external borders of the member states of the European Union*, of 07.05.2002, p. 23.

as regards cooperation with third States<sup>36</sup>. The development and complexity of border control, essentially triggered by the migrant crisis, have prompted a reformulation of the concept. Thus, in 2015, the Commission noted that IBM goes beyond border control at external borders to include measures in third States —States of migrant origin and transit— and Member States in the Schengen Area, in particular as regards the return of irregular migrants. To this must be added other elements such as rigorous risk analysis by means of Eurosur, enhancing cooperation between EU agencies<sup>37</sup> and use of state-of-the-art technology<sup>38</sup>.

However, at no time has the word “integrated” been analysed<sup>39</sup> as an essential element in external border management. In fact, a solution is still pending to the complexities involved in the existence of multiple national units with responsibility for crisis management and the simultaneous need to ensure consistency and coordination not only between these but also at European level<sup>40</sup>.

<sup>36</sup> “The concept of an integrated border management involves combining control mechanisms and the use of tools based on the flows of persons towards and into the EU. It involves measures taken at the consulates of Member States in third countries, measures in cooperation with neighbouring third countries, measures at the border itself, and measures taken within the Schengen area”. See Doc. COM (2008) 69, *Preparing the next steps in border management in the European Union*, of 13.02.2008, p. 3.

<sup>37</sup> See FRANCO-GARCIA, M.A., “El alcance de la cooperación entre las agencias de la Unión Europea implicadas en seguridad”, *Revista General de Derecho Europeo*, 2018, no. 44, pp. 13-54; PI LLORENS, M., “El nuevo mapa de las agencias europeas del Espacio de Libertad, Seguridad y Justicia”, *Revista de Derecho Comunitario Europeo*, 2017, no. 56, pp. 77-117.

<sup>38</sup> Doc. COM (2015) 673 final, *A European Border and Coast Guard and Effective Management of Europe’s External Borders*, of 15.12.2015, p. 4.

<sup>39</sup> According to the Royal Spanish Academy (Spanish initials: RAE), the Spanish word for “integrate” (*integrar*) means completing a whole with the missing parts (1st meaning), or joining or merging two or more separate concepts, schools of thought, etc., into a single one that synthesises them (5th meaning). The EU’s recent desire to adopt integrated policies is also evidenced in its Integrated Maritime Policy (IMP). See GONZALEZ GARCIA, I., ACOSTA SANCHEZ, M.A., “La difícil aplicación de la Estrategia Marina europea y la protección del medio marino en la Bahía de Algeciras/Gibraltar”, *Revista Electrónica de Estudios Internacionales*, 2013, no. 25.

<sup>40</sup> Thus, in the context of maritime borders, the Commission stated “There are currently more than 300 civilian and military authorities in the Member States responsible for carrying out coastguard functions in a wide range of areas such as maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and

The literature<sup>41</sup> identifies up to three levels of integration in the area of border management, which we believe would be consecutive over time.

The first level, at which the origins of IBM itself are located, is reflected in the area of the Common Foreign and Security Policy (CFSP) / Common Security and Defense Policy (CSDP), most particularly in actions aimed security sector reform leading to the creation of civilian and military capacities for monitoring, mentoring, assessing and training, among other matters related to the police, the rule of law, border management and the fight against terrorism. These operations are carried out in third States and involve the participation of several European agencies such as Frontex, Europol, Eurojust and the EU Fundamental Rights Agency<sup>42</sup>.

The second level focuses on the EU and contains a marked security element, especially following 11-S. It entails the development of particular security agencies for the purposes of harmonising operation at European level, especially in the field of information exchange. In this case, Europol and Eurojust are the primary agencies involved, followed by Frontex<sup>43</sup>.

The third and final level entails the creation of an EU police force, initially called the *European Coast Guard Service*<sup>44</sup>. This service draws together a series

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environmental protection". See Doc. COM (2015) 673 final, *A European Border and Coast Guard and Effective Management of Europe's External Borders*, of 15.12.2015, p. 7.

<sup>41</sup> HOBGING, P., *loc. cit.*, p. 7; HOKOVSKY, R., *loc. cit.*, pp. 48-50; MARENIN, O., *loc. cit.*, pp. 17-19; MORENO-LAX, V., *Assessing Asylum in Europe...cit.*, pp. 17-23. These authors already evidence the problems of integration due to the multitude of national agencies with border responsibilities.

<sup>42</sup> For example, EUSEC RD CONGO and EU SSR Guinea Bissau, EUBAM Libya, EUBAM Moldova and Ukraine and EUBAM Rafah. See Doc. Council 13998/16, *Council Conclusions on EU – wide Strategic Framework to support Security Sector Reform (SSR)*, of 14.11.2016.

<sup>43</sup> The proposals envisaged at this level included strengthening and standardising European border control; assisting candidate countries; preventing illegal immigration and other forms of cross-border crime; providing standardised training courses; creating a European training institute for the prevention and control of illegal immigration; and issuing a Common Manual on checks at external borders, etc. See Doc. Council 14570/01, *European Management Concept on Border Control*, of 27.11.2001.

<sup>44</sup> See Doc. de l'Assemblée de l'UEO, no. 1920, *La surveillance de l'espace maritime et des zones côtières dans les pays européens*, of 06.12.2005; Doc. De l'Assemblée de l'UEO, no. 1929, *Les aspects civils de la PÉSD-Réponse au rapport annuel du Conseil*, of 16.05.2006. See Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements, OJ, L 255, of 30.09.2005, pp. 11-21; *Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean*, Annex I, Presidency

of technical means and missions, as well as the necessary changes in Member States' legislation and regulations. It is primarily aimed at the rescue of persons and assistance with goods, surveillance and policing of maritime fishing, but also includes other functions related to public order and security in the broad sense, such as the fight against drug trafficking, irregular immigration and terrorism<sup>45</sup>. Since 2004, the creation and subsequent reform of Frontex have initially involved two elements of interest. First, it has been necessary to adapt Frontex —by means of reform— in order to tackle the refugee crisis and protect fundamental rights, clearly evidencing the lack of a long-term vision. Second, its main function, integrated border management, continues to be a shared competence between Member States, which heightens the complexity entailed in border management at all levels.

Thus, two management models can be distinguished: one concerns the integration of all border control functions within a single unit (the EU via Frontex) while the other concerns effective cooperation and coordination between all units with border control responsibilities (Member States via their national agencies)<sup>46</sup>. The present parallel existence of these two models further complicates the situation, although the adoption of the new Frontex Regulation (EU) 2019/1896 has regulated two questions of the highest

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Conclusions, European Council, Brussels, December 2005.

<sup>45</sup> Even as far back as 2006, the creation of a permanent *Mediterranean Coastal Patrol Network* (MEDSEA) was foreseen, created and managed by Frontex and the Member States involved. This network would enable Member States to coordinate their coastal patrols, share their civilian and military resources and exchange strategic and tactical information in real time. Third countries would be allowed to participate in this network. See Doc. Council 11490/1/03 REV 1, *Etude de faisabilité relative au contrôle des frontières maritimes de l'UE – Rapport final*, of 19.09.2003; Doc. COM (2006) 275, *Green Paper - Towards a future Maritime Policy for the Union: a European vision for the oceans and seas*, of 07.06.2006; *Reinforcing the Southern External Maritime Borders*, Council Conclusions, of 05-06.10.2006 (Doc. Council 13068/06, of 06.10.2006); Doc. Council 12049/06 EXT 1, *Frontex feasibility Study on Mediterranean Coastal Patrols Network – MEDSEA*, of 20.11.2006; and Doc. COM (2006) 733, *Reinforcing the management of the European Union's Southern Maritime Borders*, of 30.11.2006. The first step was achieved in May 2007 with the creation of a *European Patrols Network* (ENP), which through multilateral cooperation between some Member States (Cyprus, Slovenia, Spain, France, Greece, Italy, Malta and Portugal) sought to combat illegal immigration at the EU's southern maritime borders through joint operations. See MEMO/07/203, of 24.05.2007.

<sup>46</sup> See *The Stockholm Programme — An open and secure Europe serving and protecting citizens*, OJ, C 115, of 04.05.2010, par. 5.1. Also DUEZ, D., *loc. cit.*, pp. 51-66.



interest, namely the fluid exchange of information and continuous training for border agents.

Arts. 11-17 of the Frontex Regulation establish that Frontex and the national authorities responsible for border management have a duty to act in good faith and exchange all necessary information in a timely and accurate manner. In order to facilitate this exchange, Member States should appoint a National Contact Point, as well as national liaison officers at the Frontex headquarters. In addition, the integration of *Eurosur* in Frontex (arts. 18-28 of the Frontex Regulation) extends the latter's scope of operation and action to encompass all aspects of integrated management of external borders. Thus, Eurosur is to be used for border control and integrated management, improving operational cooperation and information exchange with third countries.

Training has been regulated with the necessary participation of Member States. In coordination with national training institutions and, where applicable, the European Asylum Support Office (EASO), the EU Fundamental Rights Agency (FRA), the EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (EU-LISA) and the EU Agency for Law Enforcement Training (CEPOL), Frontex shall develop training tools specific to its functions and responsibilities, including those relating to the protection of children and other vulnerable persons<sup>47</sup>. Such training shall employ a common core curricula, based on the values enshrined in the Treaties, and shall be consistent with national training cultures.

This training shall be delivered in national centres or centres associated with Frontex in the Member States, and the possibility of creating a dedicated training centre is also envisaged. In addition, Frontex shall establish a good practices exchange programme for border guards from the Member States

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<sup>47</sup> According to art. 62 of the Frontex Regulation, all statutory staff to be deployed as members of the teams shall receive adequate training in relevant Union and international law, including on fundamental rights, access to international protection, guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate procedures, guidelines for addressing the special needs of children, including unaccompanied minors, victims of trafficking in human beings, persons in need of urgent medical assistance and other particularly vulnerable persons, and, where it is intended that they participate in sea operations, search and rescue. The Agency shall establish and further develop an internal quality control mechanism to ensure a high level of training, expertise and professionalism of statutory staff.

and may also organise training activities in cooperation with Member States and third countries on their territory.

This legal framework regarding information exchange and training is seen as an important step towards achieving consistent results in border management by Member States. Ultimately, however, everything will depend on the Member States and their effective commitment to the constitutive principles of European integration.

In sum, integrated border management could be defined as **an instrument that, in accordance with common and coordinated parameters, is aimed at integrating a series of activities relating to control and surveillance by the public authorities of Member States in order to ensure external border security in full compliance with Community and international legislation.** These parameters shall be agreed between Frontex and Member States, and shall form part of the border guard training plans. This is thus a proposal for progressive, integrated management which will initially require a consistent approach to management at national level before subsequently endowing Frontex with greater —perhaps even executive— powers. However, this does not resolve the present situation, dominated by the role of Member States and their complex internal structure for border management.

Arts. 4.2 TEU and 72 TFEU are very clear as regards the national sovereignty of States<sup>48</sup>, and any internal modification of the same shall require the approval of the bodies that represent national sovereignty. This summons up a picture of a distant and possibly uncertain future in an EU with 27/28 States in which some of them retain a traditional separation of responsibilities between border units<sup>49</sup>. Hence, the present situation suggests that the most viable option would be coordination between the various national units, with Frontex acting as a point of reference. The possibility of unification under a

<sup>48</sup> Art. 4.2 TEU states that “The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security”, while art. 72 TFEU states that the Area of Freedom, Security and Justice “...shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security”.

<sup>49</sup> In Spain, this would include the Civil Guard, the National Police Corps, the Customs Surveillance Service and the Armed Forces.

supranational body does not appear to be feasible, at least in the medium term, although the provisions of the Frontex Regulation would seem to facilitate a very embryonic step in that direction.

Furthermore, in the revised Frontex Regulation, arts. 13 and 19 of the previous 2016 regulation have remained unchanged in the present arts. 32 (vulnerability assessment) and 42 (Situation at external borders requiring urgent action), respectively. In both cases, in situations of extreme urgency it will be possible for the Council, following a proposal from the Commission, to adopt an implementing act requiring full cooperation from the Member State concerned. This represents an important step forwards as regards overcoming the system of shared competences in this field. Thus, the Member States' approval of the new Frontex Regulation evidences a clear political will to unify criteria, and this may well sow the seeds of a common policy in external border management that will prove vital to tackle the present crises.

#### **IV. TOWARDS AN IBM STRATEGY**

The migrant crisis —especially since 2015— and the limited impact of Frontex actions seem to have prompted the reactivation of IBM<sup>50</sup>. Thus, in March 2018<sup>51</sup>, a plan was launched to adopt an IBM Strategy, highlighting the principle unifying elements. These are intended to strengthen solidarity and joint integrated action between Member States and the EU, making use of all available means and capabilities. In our opinion, this latter could even involve recourse to military means<sup>52</sup>.

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<sup>50</sup> DEL VALLE GALVEZ, A., *loc. cit.*, pp. 102-103.

<sup>51</sup> See Annex 6 Doc. COM (2018) 250, *Progress report on the implementation of the European Agenda on Migration*, of 14.03.2018. See also Doc. COM (2017) 467 final, *on the operationalisation of the European Border and Coast Guard*, of 06.09.2017; Doc. Council 9000/18, *Draft Council Conclusions on European Integrated Border Management (EUIBM)*, of 28.05.2018, which envisages cooperation between the Commission and Member States, taking into account the eleven strategic elements included in art. 4 Regulation (EU) No 656/2104 (current art. 3 Frontex Regulation). Lastly, see European Parliament Resolution of 30 May 2018 *on the Annual Report on the functioning of the Schengen area* (A8-0160/18).

<sup>52</sup> See, ACOSTA SÁNCHEZ, M.A., “Sobre la seguridad marítima y el uso de fuerzas navales europeas frente al reto de la inmigración”, in SOBRINO HEREDIA, J.M., OANTA, G.A. (coords.), *La construcción jurídica de un espacio marítimo común europeo*, Bosch Editor, Barcelona, 2020, pp. 695-713.

This March 2018 plan indicates a number of fundamental principles: i) inter-agency cooperation at European and national level, in order to facilitate effectively integrated joint action; ii) cooperation between Frontex and national authorities, especially as regards pooling of resources and information exchange; iii) the development of Frontex capabilities to ensure situational awareness; iv) full observance at all times of fundamental rights, especially as regards vulnerable people and the principle of non-refoulement; and v) satisfactory training and professional capacity of the authorities responsible for border control and surveillance.

The strategy should also act in full coordination with national internal border measures in order to ensure greater integration. In sum, the strategy would provide advance knowledge of all the means available, present risks and how to apply these means in response to a crisis situation, in order to achieve a global, integrated and more effective response.

With this aim in view, the European Commission took advantage of the proposal for a new Frontex Regulation to incorporate this strategy as part of the new agency. Consequently, as we have seen, the new Regulation introduces legislation on training and information exchange in addition to integrating *Eurosur* in Frontex. Also, it envisages improving capabilities through the creation of a permanent corps formed of 10,000 units (arts. 54-60), urgent actions at external borders in response to critical situations (art. 42), control by the Court of Justice (art. 98) and improved cooperation with other agencies in Member States, the EU and third States (arts. 68-78).

Nonetheless, the most striking content with regard to an IBM strategy is that contained in arts. 8-9 of the Regulation. Art. 8 details the definition and implementation of a “multiannual strategic policy cycle for European integrated border management”. Based on a strategic risk analysis<sup>53</sup>, the European Commission shall adopt a communication on strategic policy following discussion with the Council and Parliament. With a duration of five years, this multiannual strategic policy shall establish how to address border management and return challenges in a coherent, integrated and systematic

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<sup>53</sup> Every two years, the Agency, in close consultation with the Member States, shall prepare a strategic risk analysis for European integrated border management (art. 29.2). This analysis will collect data derived from migration flows to and within the Union, in terms of migration trends, volumes and routes, and other trends or possible challenges at the external borders and in terms of return.

manner, identify policy priorities and provide strategic guidelines. The policy shall be implemented in parallel with the adoption of consistent strategies at national level.

Based on this strategic policy, the new Frontex Regulation establishes an integrated planning process for border and return management on three parallel and complementary levels. Thus, there is an *operational* planning process aimed at identifying critical, high impact border areas; *contingency* processes describing all measures and resources necessary for possible reinforcement of capacities, including logistics and support at national and Frontex level; and *capability development plans* describing medium- and long-term development of national capabilities<sup>54</sup>.

This strategic policy will establish long-term planning with clearly marked goals, available means and required improvements, in full cooperation with Member States. In this case, mutual trust between the EU and its Member States embodied in the fluid exchange of all relevant information is of the utmost importance, together with the clear commitment of Member States to develop their internal border infrastructures.

## **V. FINAL IDEAS**

A series of final ideas can be drawn from the present study.

The lack of a formal definition of IBM hinders identification of the model of integration proposed for European institutions. The present existence of two models—the creation of Frontex versus the present situation of multiple national border agencies—impedes a long-term vision of IBM. In our opinion, integration in the short and medium term will require protocols of action between national agencies, where Frontex acts as a regulatory, training and even advisory mechanism. In the long term, bearing in mind the sovereignty of Member States and an inescapably shared competence, greater integration could be achieved by means of gradual transfer of border responsibilities. This latter could also be reinforced and even accelerated by the provisions of the new Frontex Regulation with respect to the possibility of adopting

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<sup>54</sup> It is very interesting to note that these capability development plans adopt the same direction as capability development in the EU's Common Security and Defence Policy (CSDP). This tends to unify criteria and procedures for improvement at all levels, and in all internal and external dimensions of security.

implementing acts that oblige the Member States concerned to take specific measures at external borders, thus transcending the traditional separation of competences between responsibility for border management (Member States) and policy development and legislation on border control and surveillance (EU), as indicated in art. 7 of the new Frontex Regulation.

Furthermore, this must be translated into a multiannual strategic policy for Frontex, in order to determine, in cooperation with Member States, the existing risks, the means and capacities available and the unified action to take to combat cross-border crime, because it is criminal groups who are truly behind continuous irregular migration flows.

In addition, consolidation of IBM will also require legislative development of its material component, consistent with national laws and transcending an exclusively security approach. In this latter case, the inclusion of art. 3.2 in the new Frontex Regulation, where fundamental rights, education, training, research and innovation figure among the general components of IBM, suggests an enlarged scope for this latter. Hence, IBM is moving beyond the control of migration routes and towards the future constitution of an *Integrated System*, as reflected in the TFEU itself.

Lastly, within this integrated system, border control and management should be combined with other, clearly defined measures: a contribution to land border control, including in third States through economic and political support; increased cross-border cooperation wherever feasible in accordance with the existing security situation; scrupulous respect for human rights in the treatment of immigrants; and the contribution of all available policies, whether internal or external, in order to provide a global response to existing risks<sup>55</sup>.

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<sup>55</sup> A. del Valle even proposes the creation of a new *external borders policy*, encompassing a European border model with extraterritorial measures and units of externalisation of the management and control of migratory flows. See DEL VALLE GALVEZ, A., “La fragilidad de los Derechos Humanos en las fronteras exteriores europeas y la externalización/extraterritorialidad de los controles migratorios”, *Anuario de los Cursos de Derechos Humanos de Donostia-San Sebastián*, Vol. XVIII, Ed. Tirant lo Blanch, Valencia, 2019, pp. 25-57, on pp. 54-57.

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# PAIX ET SÉCURITÉ INTERNATIONALES

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