

TECHNICAL SPECIFICATIONS

D/SE/10/06

“Treatment of third-country nationals at the EU’s external borders”

1. Technical specifications

1.1. Objective

The objective of the Technical Specifications is to provide the tenderer(s) with all the necessary information that will allow them to develop a technical offer and a price offer.

1.2. Title of the contract

The title of the contract is “***Treatment of third-country nationals at the EU’s external borders***”.

1.3. Contracting Authority

The contracting authority is the European Union Agency for Fundamental Rights (hereinafter referred to as the FRA or the Agency). The Agency was established by Council Regulation No 168/2007 on 15 February 2007. Its objective is to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights. In order to achieve this objective the Agency is required to perform a number of tasks, including data collection and research. The research commissioned through this Call for Tender is undertaken within the scope of the Agency’s Work Programme 2010¹ as well as of the upcoming Work Programme 2011.

¹ See Agency website: www.fra.europa.eu.

2. Background information

The treatment of third-country nationals at the external borders of the European Union touches upon a variety of fundamental rights. The nature of fundamental rights challenges can vary according to the type of border (air, land, or sea). Considerable differences exist also between the issues that emerge at designated border crossing points as well as in the context of border surveillance, i.e. the patrolling of borders between border crossing points.

2.1. The work of the UN system

In the context of border management, human rights issues have come up in different contexts. To promote the implementation of the smuggling and trafficking protocols to the United Nations Convention against Transnational Organised Crime, UNODC along with IOM and other organisations have developed tools and carried out projects to promote the protection of those who are subject to such crimes, and in particular the protection of victims of trafficking.² Identification of victims of trafficking at borders as well as the establishment of referral mechanisms for them are two important challenges that have emerged in this regard.

The respect of refugee law and, in particular, of the principle of *non-refoulement* has been a second fundamental rights issue that has been raised. Examining the situation in the Mediterranean, in its 2009 Note on International Protection, UNHCR reported that interceptions took place without proper scrutiny and highlighted the strict deterrence measures, including with “push backs” and refusals to disembark people rescued at sea observed in southern Europe.³ UNHCR has called upon States to ensure access to asylum procedures, particularly when faced with mixed migration flows including persons in need of international protection and persons who move for economic or other considerations. A UNHCR handbook was developed to provide States with practical guidance on how to operate in the context of such mixed migration flows.⁴

A third area that has come under scrutiny relates to detention conditions of persons held after their arrival. The UN Working Group on Arbitrary Detention has increasingly focused on detention of immigrants in an irregular situation making a number of recommendations in this regard.⁵

2.2. The work of the Council of Europe

The European Court of Human Rights has pronounced on the detention of irregular immigrants, raising both issues of arbitrariness of detention as well as detention conditions.⁶ The European Committee for the Prevention of Torture has also highlighted the conditions in facilities used to host irregular migrants.⁷ In addition, a recent report also makes a number of recommendations relating to the 2009 push-backs in the Central Mediterranean.⁸

² See for example the International framework for action to implement the Trafficking in Persons Protocol, UNODC, 2009.

³ See UNHCR, Note on International Protection, 2009, at paragraphs 22 and 34.

⁴ UNHCR, The 10-Point Plan in Action: A UNHCR Compilation, September 2009.

⁵ See Report of the Working Group on Arbitrary Detention to the 13th session of the Human Rights Council, 18 January 2010, A/HRC/13/30 at 54-65.

⁶ See, for example, *S.D. v. Greece*, application no. 53541/07, 11 June 2009.

⁷ See Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (2009) 20; Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (2007) 37; Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (2008) 17.

⁸ Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009, CPT/Inf (2010) 14.

2.3. The work of the European Union

According to the Schengen Borders Code, border guards have to fully respect human dignity and the principle of non-discrimination and carry out their duties without prejudice to the rights of persons in need of international protection and respecting the principle of non-refoulement.⁹

The Stockholm Programme calls for an integrated management of the external borders, which should not prevent access to protection systems by persons entitled to it and which highlights the need for special attention for people and groups who are in a vulnerable situation, and, in particular, unaccompanied minors.¹⁰ In February 2010, the Justice and Home Affairs Council adopted Conclusions on 29 measures for reinforcing the protection of the external borders and combating illegal immigration.¹¹ These Conclusions underlined that all measures and actions taken as a consequence of these conclusions shall fully respect human rights, the protection of persons in need of international protection, and the principle of *non-refoulement*.¹²

With the Schengen Evaluation process, the European Council has developed a mechanism to promote a correct implementation of the Schengen acquis. For this purpose the EU Schengen Catalogue has been developed which provides recommendations and good practices in the areas of external border control as well as return and readmission.¹³

The work of the European Union Agency for Fundamental Rights

The Agency is currently undertaking a legal study on issues covered by the Return Directive, which will describe national practices in the areas of detention of irregular migrants, and analyse the rights of irregular migrants in return proceedings. In addition, a study on the social situation of irregular migrants in the European Union is expected to be finalised early 2011.

⁹ Cf. Articles 3, 6 and recital 20 of Regulation (EC) No. 562/2006 of 15 March 2006.

¹⁰ The Stockholm Programme – An open and secure Europe serving and protecting the citizens, 10–11 December 2009.

¹¹ 2998th JHA Council meeting, 25–26 February 2010.

¹² *Ibid.*, preamble at e).

¹³ See Council of the European Union, EU Schengen Catalogue on External borders control, Return and readmission, 19 March 2009.

3. Contract Objectives and Expected Results

3.1. Overall objective

The overall objective of the project is to examine the treatment of third-country nationals at the external borders of the European Union in light of the existing fundamental rights framework. The project will not cover all fundamental rights issues that may emerge in the context of management of external borders, but focus on two specific situations.

The first component of the project focuses on the Southern maritime borders of the European Union. It will examine fundamental rights challenges that emerge during interception and rescue at sea and immediately after disembarkation of migrants. Estimates indicate that one out of four persons attempting to reach Europe by sea perishes during the trip.¹⁴ Several NGO reports have expressed concern about the treatment of third country nationals during rescue or interception operations.¹⁵ The pictures of unseaworthy boats overloaded with migrants are not only shocking for the public at large, but pose also concrete fundamental rights challenges, particularly for those in charge of the management of sea borders. The overall objective of this project component is to contribute to enhancing the protection of fundamental rights during rescue or interception operations at sea, by supporting, first of all, those in charge of border management to deal with the fundamental rights challenges they may encounter on a daily basis. This will include suggestions in the field of human rights training.

The second component of the project will analyse the treatment of third-country nationals at border crossing points. The Schengen Borders Code underlines that border checks should be carried out in full respect of human dignity and the principle of *non-refoulement* and undertaken in a non-discriminatory manner.¹⁶ The research envisaged under this project shall review if these commitments are respected during first and second line border checks as well as in facilities used for persons refused admission. Practices to identify and refer persons at risk, including victims of trafficking, persons seeking international protection and separated children will also be reviewed.

The objective of the second component of the project is to review existing procedures and practices in order to identify whether third-country nationals are treated in accordance with applicable fundamental rights standards. With this project the FRA intends to complement the Schengen Evaluation system, which does not have a fundamental rights focus and whose reports are not available in the public domain.¹⁷

¹⁴ Interview with Robert Strondl, Chair of the Frontex Management Board, [Standard online](#), 10 December 2009.

¹⁵ See for instance Pro Asyl, *The truth may be bitter, but it must be told The Situation of Refugees in the Aegean and the Practices of the Greek Coast Guard*, 2007; Human Rights Watch, *Pushed Back, Pushed Around – Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers* 2009; Human Rights Watch, *No Refuge - Migrants in Greece*, 2009;

¹⁶ Regulation (EC) No. 562/2006 at Articles 3 and 6.

¹⁷ The EU Schengen Catalogue as updated in 2009 makes little reference to fundamental rights in its part one on external borders. See Council of the European Union, *EU Schengen Catalogue on External borders control, Return and readmission*, 19 March 2009.

3.2. Scope of Work

Component on interception/ rescue at sea

The first component will focus on border surveillance at sea. The thematic focus of the research will be developed in consideration of the following rights:

- the right to life
- the prohibition of torture, inhuman and degrading treatment or punishment
- respect for the principle of non-*refoulement* (i.e. the prohibition of return to torture or persecution)
- access to food and water
- emergency health care
- access to legal remedies
- identification and referral mechanisms for groups at risk (separated children, victims of trafficking or asylum seekers).

The realisation of these rights in practice will be examined during and immediately after the interception or rescue operation by interviewing different actors (including officials and third-country nationals) concerning their experiences and practices. As regards the right to life and the prohibition of torture, inhuman and degrading treatment or punishment, particular emphasis should be given to the principle of proportionality in the use of force or restraint measures.

Component on border crossing points

This second component shall examine the quality of checks at selected border crossing points in the light of the existing fundamental rights framework. The thematic focus of this component of the research will be:

- full respect of human dignity during border checks
- non-discriminatory conduct
- non-admission practices used for persons refused entry as well as for asylum seekers
- practices in place to identify and refer persons at risk (victims of trafficking, persons seeking international protection and separated children).

3.3. Target groups

The research will collect the views and experience of authorities in charge of border management, informed persons and organisations working in these fields, as well as the third country nationals themselves. The statements of these various groups will be analysed, taking into account contextual information on the legal and policy framework collected through desk research.

3.4. Expected results

The research will last a maximum of 23 months and is divided into two phases.

PHASE I will start in 2010 and last for 13 months. It will focus on the first component of the project relating to rescue and interception at sea. It will include desk as well as primary research and the analysis of results as described below under activities 1 – 10. It will also include preparatory work for the implementation of phase II as described under activities 11 – 12.

Initiation of PHASE II lies with the Contracting Authority's decision and is expected to start immediately upon successful completion of PHASE I.

PHASE II will last for 10 months. As regards the first project component on interception/rescue at sea, PHASE II will cover fundamental rights training in this regard (Activity 13). Phase II will also cover the research and analysis of the findings of the second project component on border crossing points as described under activities 13 – 20.

Tenderers should be aware that PHASE II may only commence after the Agency has evaluated positively the deliverables of PHASE I and decided to kick off PHASE II.

4. Specific Activities

PHASE I:

The following table provides an overview of the activities to be undertaken as part of PHASE I . Most activities relate to the first component of the research on interception/rescue at sea. PHASE I includes, however, also preparatory work for the second component on border crossing points, which will feed into PHASE II.

Activity		Links to deliverables
Activities relating to component one of the project on interception/rescue at sea		
1	Desk research	1
2	Preparation of the field research	2
3	Qualitative research with third country nationals	3-4, 7, 9, 12
4	Qualitative research with authorities	3-4, 7, 9, 12
5	Qualitative research with fishermen & shipmasters	3-4, 7, 9, 12
6	Interviews with third-country authorities	3-4, 7, 9
7	Non-participant observation during border patrols, rescue or interception operations.	3-4, 7, 9, 12
8	Focus group or interviews with stakeholder groups	3-4, 7, 9, 12
9	Discussion of preliminary results with stakeholders	9, 12
10	Analysing and presenting data and information	7, 9,12
Activities relating to component two for the preparation of the project on border crossing points		
11	Desk research	5
12	Preparation of the field research	6

a) Component on rescue/ interception at sea

Geographical coverage: 7 (seven) maritime border sectors in Cyprus, Greece, Italy, Malta and Spain, including at least one border area per country covered. At least four Member States must be covered in this component. These four Member States must include Greece, Italy and Spain.

The methodologies used to collect data from various sources will require a final approval by the FRA. Data collection should be appropriately documented. Any interview tapes and/ or transcripts must be delivered to the Agency after the completion of the contract, and must comply with EU data protection provisions (see Section 7). Agency staff may be present during data collection.

Activity 1: Desk research

Objective: The desk research should illustrate national policies relating to the management of sea borders. It should provide an overview of the legal framework regulating border control and surveillance, the type and extent of cooperation with third countries as well as available statistics on apprehensions, interceptions, rescue operations and returns. The desk research shall enable the contextualisation of the results of the field research. It shall therefore be guided by the fundamental rights listed in section 3.2 of this Technical Specifications.

The following issues should be covered:

- Rules that govern management of maritime borders, including which authority is responsible for what action;
- Relevant agreements with third countries and modalities of collaboration in the area of border control;
- Existing statistics on rescue and interception operations, numbers of persons found dead at sea; numbers of arrivals, number of returns;
- Civil society organisations working with irregular migrants during rescue or immediately after disembarkation;
- General climate towards arrivals by sea in the seven selected locations, as portrayed by local media;
- Relevant incidents, court cases or other events relating to arrivals at sea which illustrate fundamental rights challenges relating to the management of sea borders.

Sources: Official and unofficial data, academic research, reports (and shadow reports) to Intergovernmental Organisations and Treaty Bodies, NGO reports and other similar sources. The reference period should be 2007 – 2010/11.

An assessment of data availability, reliability and quality should be included.

The review of local media should only serve to substantiate local attitudes towards the arrival of migrants and the way interceptions or rescue at sea operations are conducted. No thorough media analysis is required.

Activity 2: Preparation of the field research

Objective: to carry out the preparatory work necessary to enable the successful and timely implementation of the fieldwork, as outlined in Activities 3 – 9.

The fieldwork will be carried out in 7 border areas of the Southern maritime border of the European Union to be selected on the basis of the geographical coverage for component one described above. The final list of border areas will be identified by the FRA on the basis of access provided by Governments to corresponding facilities, as well as other factors and will take into account migratory trends throughout the project implementation.

The field research will include activities at either side of the EU's maritime borders, i.e. on European Union territory as well as in the third country from where irregular migrants start their sea journey.

The responsibility of negotiating support for this research and access to facilities for the field work with the Governments of the EU countries covered lies with the FRA. Moreover, the FRA will provide the contractor with a mapping of main actors dealing with third country nationals intercepted or rescued at sea in each of the five countries covered by the research.

Activity 3: Qualitative research with third country nationals

Objective: To explore in depth the views, experiences, and perspectives of third country nationals who have been subject to rescue or interception operations at sea (or otherwise arrived by sea in an irregular manner) with respect to the fundamental rights outlined in Section 3.2 (Scope of Work) of these Technical Specifications.

The research should cover the following issues:

- Contextual information on the journey, including type and condition of boat, time, composition of the group, resources available on the boat, treatment by the organisers of the transfer, etc;
- Experiences during interception or rescue operations, including treatment by officials, first aid, and responses to persons with specific needs;
- Experiences during transportation back to a third country or to a safe port in an EU Member State;
- Disembarkation procedures, including persons present, questions asked, information and instructions given;
- Experiences during the first interview with authorities, including provision of information, language used and presence of an interpreter, access to a legal counsellor;
- For migrants accommodated in facilities on EU territory, their experience during the first week after arrival;
- For migrants who claim ill-treatment, their access and use of complaint procedures.

The structure of and questions for interviews will be drafted by the contractor, and will be revised and approved by the FRA prior to implementation in the field.

The tenderer must ensure that interviews are carried out with migrants who have succeeded in their attempt to reach the European Union as well as with migrants whose attempt to cross the sea has failed. The second category of migrants will normally have to be identified in the locations from where boats depart.

This activity forms a central part of the research fieldwork, and every effort should be made to ensure that it can be successfully undertaken in the locations proposed.

Methodology: Semi-structured in-depth face to face interviews

The number of interviews should be outlined by the tenderer in their technical offer and should include at least 25 interviews for each of the seven selected border areas. The number of interviews should be sufficient to substantiate the issues covered by interviewees in this research project.

The sample designed by the tenderer should allow a good distribution by gender, age and ethnic background. The disaggregation by age should allow for comparisons between the situation of children, adults and older persons. Interviews should include migrants on both sides of the sea, i.e. at their points of departure or return after interception as well as at their point of arrival in the European Union. Ideally, 30% of interviews should be carried out in the areas of departure of migrants.

In their Technical Offer tenderers should, in particular, explain how they will identify and select the sample of migrants who will be interviewed in the fieldwork research on migrants, both in the EU

as well as in third countries. The methodology to select migrants will have to be approved by the FRA.

The tenderer should transcribe the interviews verbatim. Any interview tapes and/or transcripts must be delivered to the Agency after the completion of the contract and the anonymity of migrant interviewees must be ensured.

Activity 4: Qualitative research with authorities

Objective: To collect the views of authorities in charge of border management, rescue at sea, interception and initial reception of migrants on the fundamental rights challenges that arise in the context of managing maritime borders and on how best to address these.

The research should cover the following issues:

- State of implementation of cooperation agreements with third countries;
- Existing procedures relating to identification of groups at risk, use of force, collaboration with partners providing social, humanitarian or legal assistance and other issues which relate to the fundamental rights outlined in Section 3.2 (Scope of Work) of these Technical Specifications are relevant from a fundamental rights point of view;
- Practices and challenges in channelling migrants into different procedures (i.e. asylum, protection for minors, protection for victims of trafficking)
- Procedures in place for the return of migrants (where are they returned? Are they disembarked in the country of origin or handed to authorities/ NGOs etc?)
- Existing training on fundamental rights and whether it adequately equips the persons in charge to carry out their job in an appropriate manner;
- Fundamental rights challenges and good practices in relation to the above.

The structure of and questions for interviews will be drafted by the contractor, and will be revised and approved by the FRA prior to implementation in the field.

Interviews must be carried out with the different government agencies responsible for border management, rescue at sea, interception and initial reception of migrants. Authorities must be contacted at headquarter, regional and local level. The FRA will provide the contractor with an initial mapping of responsible authorities and organisations dealing with interception and rescue at sea in each of the countries involved and will be consulted and decide on the final selection of interviewees.

Methodology: Structured personal interviews, based, where appropriate, on questionnaires prepared in advance. The final agreed methodology for interviews will be decided by the FRA on the basis of the contractor's proposal and modifications, where necessary.

Activity 5: Qualitative research with fishermen & shipmasters

Objective: To explore in depth the views, experiences, and perspectives of persons who regularly visit the areas at sea where interception or rescue operations take place in relation to the themes outlined in Section 3.2 (Scope of Work) of these Technical Specifications.

The research should cover the following issues:

- Contextual information with respect to the knowledge and experiences of fishermen with regard to rescue or interception operations;
- Their attitudes on the issue of rescue at sea; whether these have changed over time and for what reason (or following what event);
- Personal experience of rescue at sea;

- Their opinions in consideration of challenges and good practices relating to rescue at sea and prevention of deaths at sea, as well as suggestions on how to improve things.

The structure of and questions for interviews will be drafted by the contractor, and will be revised and approved by the FRA prior to implementation in the field.

Methodology: Semi-structured interviewees and participatory observation in places where people who regularly go to sea are likely to gather and semi-structured in-depth face to face interviews.

Persons to be interviewed should include persons residing on both sides of the selected border areas. It may also include other persons regularly present in the border areas examined, such as ferry boats, sailors, etc.

Activity 6: Interviews with third-country authorities

Objective: To collect the views of the authorities in third countries on the phenomenon of irregular migration at sea under dangerous conditions and related fundamental rights challenges as well as their suggestions on how these could be addressed.

The research should cover the following issues:

- Contextual information on legislation, border management practices and cooperation with neighbouring EU countries preventing departures as well as in surveillance at sea;
- Their views on the consequences of existing collaboration with Europe in the field of border management for their country;
- Their perceptions concerning the most important fundamental rights challenges relating to the phenomenon of irregular migration at sea;
- Their suggestions on how these could be overcome.

The structure of and questions for interviews will be drafted by the contractor, and will be revised and approved by the FRA prior to implementation in the field.

Activity 7: Non-participant observation during border patrols, rescue or interception operations.

Objective: This activity complements activity 4. The purpose is to observe in practice how border patrols are carried out, and – in case rescue or interception operations take place during the observation – to get first hand experience of how these are handled. The observations should focus on the following issues:

- What is the every day life on a patrol vessel? Who is on the vessel?
- How are rescue or interception operations carried out?
- What fundamental rights issues do these raise?

It will be the responsibility of the FRA to obtain access to patrol vessels from the responsible authorities.

Activity 8: Focus groups or interviews with stakeholder groups

Objective: The aim of the focus groups is to collect the views of stakeholder groups, primarily within the European Union, on the core themes of the research as outlined in Section 3.2 (Scope of Work) of these Technical Specifications.

Focus groups or interviews should be carried out with the following main stakeholder groups:

- medical staff accompanying rescue operations or providing assistance upon disembarkation;
- staff in hospitals where migrants are brought in case there is a need;
- NGOs providing immediate care upon disembarkation;
- Legal practitioners providing advice and counselling after disembarkation;
- Documentary film-makers or other persons known to have researched the phenomenon;
- Interpreters used to communicate with the migrants after disembarkation.

The structure of and questions for interviews/focus groups will be drafted by the contractor, and will be revised and approved by the FRA prior to implementation in the field.

Activity 9: Discussion of preliminary results with stakeholders

Objective: The objective of this exercise is to consult with the relevant stakeholders on the preliminary findings emerging from the research.

National stakeholder consultation meetings should be organised in collaboration with the FRA as well as with the national authorities in charge of border control and surveillance in each of the five countries covered with the purpose of verifying the results of the research before proceeding with the comparative analysis.

In addition, a peer review meeting will be held at the FRA offices in Vienna to review the preliminary comparative analysis. This meeting will be organised by the FRA.

The structure of and questions for discussions will be drafted by the contractor, and will be revised and approved by the FRA prior to implementation in the field.

Travel and accommodation expenses of participants, **but not the contractor**, will be covered by the FRA.

Activity 10: Analysing and presenting data and information

Objective: This activity consists in analysing all the data collected through Activities 1 and 3 – 9 as well as additional data and information that may be provided to the contractor by the FRA.

b) Preparatory work for PHASE II

Geographical coverage: 10 (ten) border crossing points (hereinafter BCPs) at the external Schengen border (including at least 4 land and 4 air border crossing points) to be identified by the FRA during the inception meeting on the basis of those with the highest number of entries of third country nationals into the Schengen area.

Activity 11: Desk research

Objective: The desk research should review existing literature to collect basic information on each of the BCPs covered by the research.

If materials are available, the following information should be sought:

- Number of passengers, including ratio of Schengen and non-Schengen passport holders; number and type of refusals of admission as well as number and types of complaints, including relevant incidents reported since 2007;
- Procedures in place to deal with persons seeking international protection and victims of trafficking;
- Mapping of civil society organisations conducting humanitarian, social or legal counselling work at the BCP;
- Existing guidance provided to border guards on the fundamental rights outlined in Section 3.2 (Scope of Work) of these Technical Specifications;
- Information on whether border checks are done jointly with the authorities of the neighbouring third country (for land borders).

Sources: Official and unofficial data, academic research, reports (and shadow reports) to Intergovernmental Organisations and UN Treaty Bodies, local media, NGO reports and other similar sources. The reference period should be 2007 – 2010/11, but information dating back to 2005 should be presented, when it is useful to show trends.

An assessment of data availability, reliability and quality should be included.

Activity 12: Preparation of the fieldwork research

Objective: to carry out the preparatory work necessary to enable the successful and timely implementation of the fieldwork, as outlined in Activities 14 and 16 – 18.

The fieldwork will be carried out at 10 border crossing points at the external Schengen border, including at least 4 (four) air and at least 4 (four) land crossing points at roads. Before beginning the research, all selected border crossing points should be visited to determine exactly the modalities of the field work in the ten specific locations. Such visits should aim at collecting or verifying information listed under activity 11. It will serve to determine the practical details of the research in each BCP.

Such mapping should also include information on whether the BCP is run jointly with the third-country authorities or not and, for land borders, existing collaboration with third countries.

In its submission the tenderer should suggest which 10 border crossing points the research should cover indicating the rationale for their selection. The border crossing points should be selected among those with the largest number of entries by third-country nationals. Other criteria for selection can include the number of refusals of admission and the number of complaints. The final list of BCPs to cover will be done at the inception meeting, taking into account that ideally the 10 BCPs should be located in 10 different EU Member States.

The responsibility of negotiating support for this research and access to the border crossing points for the field work lies with the FRA.

PHASE II:

The following table provides an overview of the activities to be undertaken as part of PHASE II. The first activity relates to the first component of the research on interception/rescue at sea, whereas all other activities regard the second component on border crossing points.

	Activity	Links to deliverables
Activities relating to component one of the project on interception/ rescue at sea		
13	Review of national training on fundamental rights	12
Activities relating to component two of the project on border crossing points		
14	Non-participant observation at border crossing points	10-11, 13-14
15	Review of questionnaire for authorities	10-11, 13-14
16	Quantitative research with third-country nationals	10-11, 13-14
17	Qualitative research with third-country nationals	10-11, 13-14
18	Focus group or interviews with civil society actors	10-11, 13-14
19	Discussion of results with stakeholders	13-14
20	Analysing and presenting data and information	13-14

The methodologies used to collect data from various sources will require a final approval by the FRA. Data collection should be appropriately documented. Any interview tapes and/or transcripts must be delivered to the Agency after the completion of the contract, and must comply with EU data protection provisions (see Section 7). Agency staff may be present during data collection.

a) Component on interception/ rescue at sea

Activity 13: Review of national training on fundamental rights

Objective: The objective of the this activity is to review national training provided to those in charge of border surveillance and border control, including rescue operations, to assess whether the training provided adequately equips them to deal with the fundamental rights challenges they are likely to face during their work in an appropriate manner.

In each of the countries covered by the research, the review should be based on criteria developed in collaboration with the FRA and include both basic training as well as compulsory and optional in-service trainings. Besides the revision of training material, applied training methodologies shall be analysed.

To contextualise the review, examples from one or two other countries which have successfully integrated human rights in their training for border guards should be collected, focusing in particular on methodologies used and on successful practices.

The following aspects should be taken into account:

- The reflection of human rights provisions in existing training materials and applied training;
- Cooperation with external partners, such as international organisations and NGOs as regards human rights training;
- Practices which appear to have more successful learning outcomes should be documented in detail.

b) Component on border crossing points

Geographical coverage: 10 (ten) border crossing points (including at least 4 land and 4 air border crossing points) to be identified during the inception meeting among those with the highest number of entries of third country nationals into the Schengen area.

Activity 14: Non-participant observation at border crossing points

Objective: The purpose is to observe in practice how border checks are carried out in order to complement the information collected through Activities 15 – 18. The observations should focus on the fundamental rights outlined in Section 3.2 (Scope of Work) of these Technical Specifications.

The observations should include the work of border guards during regular first-line checks, practices applied to identify persons for more thorough second-line checks, conduct of second-line checks, procedures for refusals of admission as well as availability and conditions of designated facilities for persons refused admission as well as for persons seeking international protection.

It will be the responsibility of the FRA to obtain access to restricted zones of the BCPs from the responsible authorities.

Activity 15: Review of questionnaire for authorities

Objective: To provide the FRA with expert feedback on a questionnaire developed by the FRA for national authorities.

In the questionnaire that the Agency will distribute to relevant authorities, the contractor should incorporate information on official policies and practices relating to aspects of the conduct of border checks with respect to the Member States where the research is undertaken. The content and format of the questionnaire should be commented on by the contractor. The contractor may also be requested to provide suggestions regarding the modalities for distributing the questionnaire and to assist the FRA in soliciting responses.

Activity 16: Quantitative research with third-country nationals

Objective: To explore experiences of third country nationals who have been subject to checks in the ten selected BCPs on the fundamental rights outlined in Section 3.2 (Scope of Work) of these Technical Specifications.

The research should cover the following issues:

- Treatment with dignity, including appropriate behaviour, use of appropriate language as well as quality of the communication during regular (first-line) checks as well as when referred to more in depth second-line checks;

- Perceptions of discrimination based on one of the grounds listed in Article 6 Schengen Borders Code;
- Assessment of procedures for persons in need of protection.

The tenderer must ensure that interviews are carried out with third country nationals who have crossed the external border as well as those who were refused admission and remain in transit areas of the airport or in the third country (in case of land borders).

Methodology: Short structured interview on the basis of a questionnaire.

The number of interviews should be outlined by the tenderer in their technical offer and should be at least 100 at each border crossing point. The tenderer should allow a good mix of gender, age and ethnic backgrounds among the study participants. The disaggregation by age should allow for comparisons between the situation of children, adults and older persons. It is expected that each interview will last on average 20 – 25 minutes.

The data collection should be appropriately documented. Agency staff may participate in the data collection stage.

Activity 17: Qualitative research with third-country nationals

Objective: To explore experiences of third country nationals who have been subject to checks in the ten selected BCPs on the fundamental rights outlined in Section 3.2 (Scope of Work) of these Technical Specifications.

The qualitative in-depth interviews should cover the same issues as indicated above, but should go much further into detailed experiences.

The tenderer must ensure that interviews are carried out with third country nationals who have crossed the external border as well as those who were refused admission and remain in transit areas of the airport or in the third country (in case of land borders).

Methodology: Semi-structured in-depth face to face interviews.

The number of interviews should be outlined by the tenderer in their technical offer and should include at least 20 interviews for each of the ten selected BCPs. The number of interviews should be sufficient to substantiate the issues covered by this research project.

The third country nationals to interview should be selected among those who were refused entry as well as among those who were allowed entry but reported problems during the quantitative data collection listed in activity 16.

Activity 18: Focus group or interviews with civil society actors

Objective: The aim of the focus groups or interview is to collect the views of other actors present at the border crossing point, such as NGOs providing humanitarian assistance or social counselling to detained third country nationals at airports, on the core themes of the research, as outlined in Section 3.2 (Scope of Work) of these Technical Specifications.

Focus groups/interviews must be undertaken at all 10 BCPs.

Activity 19: Discussion of results with stakeholders

Objective: The objective of this exercise is to consult with the relevant stakeholders on the preliminary findings emerging from the research.

National stakeholder consultation meetings should be organised in collaboration with the FRA as well as with the national authorities in charge of border control and surveillance in each of the five countries covered with the purpose of verifying the results of the research before proceeding with the comparative analysis.

In addition, one peer review meeting will be held at the FRA offices in Vienna to review the preliminary comparative analysis. This meeting will be organised by the FRA and is different from the one described above under Activity 9.

Travel and accommodation expenses of participants, **but not the contractor**, for the peer review will be covered by the FRA.

Activity 20: Analysing and presenting data and information

Objective: This activity consists in analysing all the data collected through Activities 14 – 19 as well as additional data and information that may be provided to the contractor by the FRA.

5. Deliverables

All deliverables must be submitted in English and copy-edited prior to submission by a native speaker. They must be written in a clear and unambiguous way, providing information and analysis that can be readily understood by a non-academic reader. The style should be balanced and contain no unsubstantiated statements. For detailed advice please see the FRA Style Guide.

The documents must be delivered in PC-compatible MS-Word electronic files. They should contain visual elements (for example graphs, boxes or pictures) to enhance readability. The size of each deliverable is defined in terms of A4 pages applying Times New Roman font 11pt, single spaced.

The Contractor must provide the Agency with the deliverables, respecting the deadlines agreed at the inception meeting (see below Section 7.2 (Inception Meeting)). All deliverables must be revised by the contractor according to the Agency's recommendations, as necessary, and returned within the agreed deadline.

The following table provides an overview of the deliverables described in this Section.

	Deliverable	Comp.	Pages	Time lines
Activities relating in the main to component one of the project on interception / rescue at sea				
1	Five background information reports	1	15-20 pages each	Month 3
2	Progress report	1	Max. 15 pages	Month 3
3	Seven (7) case studies	1	Max. 40 pages each	Month 12
4	Five (5) sets of country fact sheets	1	Max. 5 pages/factsheet	Month 12
5	Ten (10) background information reports on border crossing points	2	3-5 pages each	Month 12
6	Progress report on border crossing points	2	Max. 10 pages	Month 12
7	Five (5) background reports on FR training	1	10 pages each	Month 13
8	Comparative report		100 pages	Month 13
Activities relating to component two of the project on border crossing points				
9	Ten (10) case studies	2	Max. 30 pages	Month 19
10	Ten (10) sets of country fact sheets	2	Max. 5 pages/factsheet	Month 19
11	Five (5) country reports on FR training	1	40 pages	Month 21
12	Considerations for FR training of border guards	1	15 pages	Month 21
13	Draft final report on border crossing points	2	100 pages	Month 21
14	Final report on border crossing points	2	100 pages	Month 23

Deliverables required for PHASE I of the project:

PHASE I will start with the signing of the contract and last for 13 months. It will consist of the preparation, implementation and finalisation of the research component on interception/rescue at sea. PHASE I will also include any preparatory work necessary to enable the successful and timely implementation of work to be carried out in PHASE II of the project.

SET 1: Deliverables to be submitted to FRA in Month 3 of the Project

All of the following deliverables relate to component one of the project (interception/rescue at sea)

Deliverable 1: Five (5) background information reports

These should consist of 5 national reports summarising and highlighting notable findings from the desk research. The reports should be self-standing and offer good background information on the policy and legal framework regarding management of maritime borders as well as how this is carried out in practice. It should highlight the main fundamental rights challenges in each country with respect to the research, as well as specifically in each border area selected for the research. These reports should serve as a basis for preparing the primary field work.

Size: Five national reports, approximately 15-20 pages each

Language: English

Linked to: Activity 1 and Activity 2

Deliverable 2: Progress report

The Progress report should give an up to date account of project activities and concrete plans for the field research. The report should outline methodological and ethical considerations on conducting research with migrants in the context of rescue/interception at sea. It should also indicate risks identified and strategies on how to overcome these.

Size: maximum 15 pages

Language: English

Linked to: Activity 2

SET 2: Deliverables to be submitted to FRA in Month 12 of the Project

The first two deliverables relate to component one (interception/rescue at sea) and the other two relate to component two of the project (border crossing points).

Deliverable 3: Seven (7) case studies

The seven case studies should provide an illustration of all the fundamental rights challenges which emerged during the research. They should be structured according to the different sources of the research (desk research, interviews with different groups, information from authorities, observations, from migrants, from other informed persons, from NGOs etc) as listed in Activities 3 – 8.

For each source, the contractor should display the information gathered according to the fundamental rights areas outlined in Section 3.2 (Scope of Work), following for each source the same sequence.

The report should be based on real life examples and provide illustrative quotes.

Size: Seven case studies consisting of max. 40 pages each

Language: English

Linked to: Activity 1, 3 – 8

Deliverable 4: Five (5) sets of country fact sheets

The fact sheets are meant as a basis for discussion with stakeholders at a national level. They should provide an illustration of the main fundamental rights challenges which emerged during the research. Separate factsheets of max. 5 pages should be prepared for each of the following rights and issues.

- right to life
- prohibition of torture, inhuman and degrading treatment or punishment
- respect for the principle of non-*refoulement*
- access to food and water
- emergency health care
- access to legal remedies
- identification and referral mechanisms for groups at risk (separated children, victims of trafficking or asylum seeker).

To the extent possible they should contain text boxes, pictures or other graphic elements to enhance readability. They should integrate background information which may be collected by the FRA independently, including among others from Rescue Coordination Centers, UNHCR and Frontex.

The fact sheets will be subject to a stakeholder discussion at national level. Proposals for such meetings should be delivered by the contractor to the FRA in month 9 of the project. The objective of these meetings is to offer national stakeholders the possibility to provide feedback on the preliminary results of the research carried out at a national level, before the comparative analysis is finalised. This exercise should also serve to define the details of the review of national fundamental rights for border guards.

Size: max. 5 pages per fact sheet

Language: English + language of the countries where fieldwork was conducted

Linked to: Activities 1, 3 – 8

Deliverable 5: Ten (10) background information reports on border crossing points

These should consist of ten reports which map the passengers flow (through statistics and data provided by the authorities), the way the border crossing point is structured, who operates there (authorities, NGOs, etc). The reports should provide information on border control practices in each site in order to provide a solid basis for the planning of the field research.

It should be based primarily on visits to the border crossing points, informal discussion with authorities there as well as notable findings from the desk research, where available.

Size: each report should be of 3-5 pages

Language: English

Linked to: Activities 11 - 12

Deliverable 6: Progress report on border crossing points

The Progress report should give an up to date account of project activities and concrete plans for the field research to be undertaken at the border crossing points. The report should also indicate risks identified and strategies on how to overcome these.

Size: maximum 10 pages

Language: English
Linked to: Activity 12

SET 3: Deliverables to be submitted to FRA in Month 13 of the Project

The following deliverables relate to component one of the project (interception/ rescue at sea)

Deliverable 7: Five (5) background reports on fundamental rights training

These background reports should contain an initial plan of the work to be undertaken in order to review domestic training on fundamental rights provided to border police/ guards and other staff involved in interception or rescue operations. It should build on the findings of the research as well as on an initial mapping of existing training to review.

Size: Each national report should consist of approximately 10 pages

Language: English

Linked to: Activities 4, 9

Deliverable 8: Comparative report

This report should be policy relevant and support the FRA in its efforts to provide evidence-based advice on how to best address the fundamental rights challenges relating to surveillance and control of maritime borders. It should be structured following the fundamental rights areas outlined in Section 3.2 (Scope of Work). The report must contain examples and illustrative quotes from the fieldwork research, as appropriate. The preliminary findings of this report will be subject to a peer review session.

Four weeks before submitting the final comparative report, a draft version shall be sent to the FRA who will review it and share comments with the contractor within 10 days. The contractor shall incorporate these comments in the final version that is submitted in month 13.

Language: English

Size: 100 pages

Linked to: Activities 1, 3 – 10

Deliverables required for PHASE II of the project:

PHASE II includes the review of fundamental rights training for border guards as well as the implementation of the project component relating to border crossing points.

PHASE II of the project will be carried out by the Contractor only after positive evaluation of the deliverables due under PHASE I.

SET 5: Deliverables to be submitted to FRA in Month 19 of the Project

These deliverables relate to component two of the project (border crossing points).

Deliverable 9: Ten (10) case studies

Separate case studies should be developed for each of the examined border crossing points. They should be structured according to the different sources of the research as listed in activities 14 – 19 (i.e. desk research, primary data collection from authorities, interviews with third country nationals, etc.). For each source, the contractor should display the information gathered according to the fundamental rights areas outlined in Section 3.2 (Scope of Work), following for

each source the same sequence. The report should be based on real life examples and provide illustrative quotes.

For each area, it should describe the issues raised during the interviews with the target group, document good practices found as part of the research as well as include any viable suggestion that the target group has identified on how to address gaps encountered.

Size: Each report should consist of max. 30 pages

Language: English

Linked to: Activities 14 - 18

Deliverable 10: Ten (10) sets of country fact sheets

The fact sheets are meant as a basis for discussion with stakeholders at a national level. They should provide an illustration of the main fundamental rights challenges which emerged during the research. Separate fact sheets of max. 5 pages should be prepared for each of the following rights.

- full respect of human dignity during border checks
- non-discriminatory conduct
- non-admission practices used for persons refused entry as well as for asylum seekers
- practices in place to identify and refer persons at risk (victims of trafficking, persons seeking international protection and separated children).

To the extent possible they should contain text boxes, pictures or other graphic elements to enhance readability. They should integrate background information which may be collected by the FRA independently, including among others through the questionnaire from authorities as well as from Frontex.

The fact sheets will be subject to national stakeholder discussions. Proposals for such meetings should be delivered to the FRA in month 19 of the project. The objective of these meetings is to offer national stakeholders the possibility of providing meaningful feedback on the preliminary results of the research carried out at a national level, before the comparative analysis is finalised.

Size: max. 5 pages per fact sheet

Language: English + language of the countries where fieldwork was conducted

Linked to: Activities 14 – 18

SET 6: Deliverables to be submitted to FRA in Month 21 of the Project

The first deliverable relates to component one of the project (interception/ rescue at sea) whereas the other deliverables relate to component two of the project (border crossing points).

Deliverable 11: Five (5) country reports on fundamental rights training

These reports present the results of the review of existing training material and applied training with a focus on human rights provisions for those in charge of maritime border control and surveillance including rescue at sea. Furthermore, the reports should reflect the training observation experiences in addition to the feedback of trainers and trained staff. The revision should not only concentrate on dedicated human rights training but should also reflect its relation and status within the existing training. It should contain a brief description of the type of training provided to the different relevant authorities, in respect of each of the fundamental rights challenges identified in the course of the research components. Existing good practices should be documented and provided in such a way that it would be easily transferable to other training environments.

The preliminary findings of these reviews will be subject to a stakeholder discussion at national level, which will be organised in close coordination with the FRA. Proposals for such peer review meetings should be delivered to the FRA in month 20 of the project. The objective of these

meetings is to offer national stakeholders the possibility of providing meaningful feedback on the preliminary results of the review carried out at a national level and to define possible follow-up actions by the Agency.

Language: English

Size: each report consist approximately 40 pages

Linked to: Activity 13

Deliverable 12: Recommendations for training of border guards

This brief report should present a set of criteria for human rights training of border guards. It should be based on the good practices identified in the countries covered by the research as well as on other information collected as part of the project.

Language: English

Size: 15 pages

Linked to: Activities 14 – 20

Deliverable 13: Draft final report on border crossing points

This report should be policy relevant and support the FRA in its efforts to provide evidence-based advice on how to best address the fundamental rights challenges which emerged during the field research in the selected border crossing points. It should be structured following the fundamental rights areas outlined in Section 3.2 (Scope of Work) and separate air and land borders. The report must contain examples and illustrative quotes from the fieldwork research, as appropriate. The preliminary findings of this draft final report will be subject to a peer review session.

Language: English

Size: 100 pages

Linked to: Activities 14 – 20

SET 7: Deliverable to be submitted to FRA in Month 23 of the Project

This deliverable relates to the second project component (border crossing points).

Deliverable 14: Final report on border crossing points

This report should be the elaboration of the draft final report described as Deliverable 14 above. It should include comments resulting from the peer review sessions and comments from the FRA. The readability of the final report should be enhanced through text boxes and graphic elements.

Size: 100 pages

Language: English

Linked to: Activity 20

6. Project management

6.1. Responsible body

The overall responsibility for executing the contract, including the implementation of all measures necessary to provide the Agency with deliverables of the highest quality on time lies with the contractor.

6.2. Management structure

The Technical Offer must indicate how the tenderer intends to organise the research team, which must include one Project Manager, two Senior Experts and other Experts, as detailed in Section 8: (Description of profiles). The Project Manager is responsible for coordination and administrative tasks, as well as for contacting and informing the Agency about all aspects relating to the execution of the contract. The Senior Research Expert is responsible for the coordination of the research and the scientific quality of all final deliverables. The Senior Human Rights Training Expert is responsible for the coordination of the research and the quality of the deliverables relating to human rights training.

The tenderer must supply Curricula Vitae for the members of the proposed research team outlining a list of their publications and other relevant qualifications, as required in Section 8 (Description of profiles). Any changes in the composition of the team shall be notified to the Agency in writing. The Agency is not required to agree to the proposed changes. The agreement of the Agency needs to be in writing following a review of the Curriculum Vitae of the proposed replacements, which must comply with the requirements of the present Technical Specifications.

7. Data protection

Tenderers must ensure that during the implementation of the project they will comply strictly with national and EU data protection legislation, especially Regulation (EC) No 45/2001 and Directive 1995/46/EC, as well as Regulation EC No 322/97 on the processing of data for statistical purposes.

8. Logistics

8.1. Communication and meetings

Communication between the contractor and the Agency shall be possible by phone during the Agency's working days and hours and through electronic and surface mail. Any written communication sent by the Agency shall be answered within five (5) working days.

8.2. Inception meeting

As soon as possible after contract signature the Agency will convene an **inception meeting** with the contractor to discuss various aspects of the research work, as addressed in the Technical Specifications in relation to the **first component** of the research on **interception/rescue at sea**. The aim of the meeting is to fine-tune specific points with respect to the research, in particular the exact geographical locations to cover, the methodology, the content of the deliverables and other issues that may arise.

As soon as possible after the beginning of PHASE II a second **inception meeting** will be organised by the contractor to discuss various aspects of the research work, as addressed in the Technical Specifications in relation to the **second component** of the research on **border crossing points**. The aim of the meeting is to fine-tune specific points with respect to the research, in particular the border crossing points to cover, the methodology, the content of the deliverables and other issues that may arise.

Within 5 working days after each of the two inception meetings the contractor will submit a brief Inception Report to the Agency.

8.3. Other meetings

During the course of the contract period at least **two** additional meetings are envisaged in Vienna between the Agency and the contractor. The meetings will serve to review progress. In addition, two peer review sessions will be held in Vienna which the contractor should attend. All these meetings will take place at the Agency's headquarters.

In addition, regular telephone conferences will be organised between the FRA and the contractor, including field researchers and other relevant staff. During the field work, telephone conferences will be carried out on a monthly basis.

The FRA will set up a steering group, including representatives of the countries covered for the entire duration of the project.

9. Description of profiles

Tenderers should pay attention to the need to ensure that the research team fulfils the requirements listed below in terms of qualifications and experience.

The project team should consist of the following profiles, plus additional members as necessary.

9.1. Project Manager

Qualifications and professional experience

- University degree
- Proven experience in research management, as manager or coordinator of at least three (3) major international research projects
- Proven experience in working with law enforcement agencies (police, asylum, immigration, borders) in some research and/or other professional capacity (minimum three years of experience is required)
- Proven experience in the area of border, immigration or asylum an asset.
- Excellent knowledge of English (Level C1 based on Europass CV model).

9.2. Senior Research Expert

Qualifications and professional experience

- University degree
- Proven experience in supervising international research projects (at least 2 projects are required)
- Proven experience in the area of social science-based research on migration, asylum or migrant smuggling or trafficking, including fieldwork
- At least five (5) publications in the field of migration and asylum; this can include articles in peer reviewed journals or authorship of reports for research projects.
- Excellent knowledge of English (Level C1 based on Europass CV model).

9.3. Senior human rights training expert

Qualifications and professional experience

- University degree
- At least 7 years of proven experience in the field of human rights training,;
- At least 5 years of proven experience in the field of human rights training and law enforcement;
- Proven experience in the fields of fundamental rights, asylum and maritime law;

- Drafting of or contribution to human rights training material and tools, supported by publications or other materials;
- Experience in the coordination of national human rights training experts;
- Excellent knowledge of English and knowledge in one or more project relevant languages (Spanish, Italian, Greek) (Level C1 based on Europass CV model).

9.4. Research Experts

In addition to the profiles listed above, a successful project team will be composed of an adequate number of research experts representing the following disciplines:

- Sociological qualitative fieldwork research and analysis
- Legal research and analysis
- Policy research and analysis

Qualifications and professional experience

- University degree in the relevant field
- Proven experience in research relating to immigration, borders, smuggling or trafficking in human beings, or the rights of migrants and/or asylum seekers supported by relevant publications or references to past projects.
- Excellent knowledge of English and preferably knowledge in one or more project relevant languages (Spanish, Italian, Greek, Maltese).

We expect the contractor to recruit mother tongue researchers for the fieldwork at least in 3rd countries.

10. Project Implementation Monitoring

The Agency will monitor the research in technical and administrative terms. The contractor should report immediately to the Agency in writing any problems they encounter during the implementation of the contract.

Weekly progress reports will be delivered as brief e-mails to the Agency's project manager, and should document overall research progress. This should be supported by additional e-mail and telephone contact, whenever necessary.

Agency staff may during the duration of the research visit the contractor's offices and/or the site, where research is carried out to assess the quality of the work.