

BULLETIN

No. 114 (447) • December 4, 2012 • © PISM

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Frontex: An Accountability Problem

Roderick Parkes

From December 2012, Frontex will house a fundamental rights officer, bowing to demands from the European Parliament to improve oversight and accountability of the Warsaw-based borders agency, and in line with popular concerns about the deaths of migrants in the Mediterranean. Yet this move will only aggravate the political tensions surrounding the agency's activities. Against the backdrop of the Syrian refugee crisis, as well as the border problems in Greece, a more consensual approach is required to control Frontex.

When MEPs used last year's review of the 2004 regulation establishing Frontex to create the post of a fundamental rights officer, it was another step in the European Parliament's long efforts to guarantee the humane treatment of migrants in joint border and expulsion operations. Parliament has long emphasised the importance of proper oversight and top-down accountability: the officer is to be part of a mechanism to monitor rights standards and, when her tenure begins in December, will work on rights compliance alongside members of a new consultative forum.

Three Different Visions of Frontex. The parliamentary debate, though naturally far from unified, seems to reflect a vision of Frontex as an embryonic European border guard. It is not just that Frontex is a "body of the European Union", as the Parliament reiterated in its amendment to Article 1(2). MEPs push for it to show sensitivity towards the EU's neighbours as well as to foster solidarity between Member States by naming and shaming laggards, believing the body will have a key role to play in establishing the EU's place in the world. Above all, they stress that the agency's operational activities are already more extensive than member governments care to admit—proof of its trajectory towards becoming a standalone guard.

The Commission pursues a rather different vision of Frontex. Far from replacing national agencies, Frontex "fuses" them. Schengen members share a common external frontier, and Frontex gels disparate national controls into a common system. The agency's key powers thus lie in plugging technical gaps at the national level, for instance by leasing equipment and potentially procuring heavy equipment with individual Member States, or by creating a common model for risk analysis and training. As for operational powers, the agency focuses principally on gaps and problems common to all Member States and best overcome in concert by, for example, forging links with the authorities of third countries that are reluctant to accept the return of illegal immigrants.

For their part, EU interior ministries would reject the idea that Frontex should create a common border system. Not only is the external frontier made up of distinct national borders under national control, domestic checks at internal borders can be reintroduced in an emergency. EU governments, and not the institutions, are the ones that delegated powers to Frontex, and they did so because they wanted it to adjudicate their interests: northerners, increasingly reliant upon southern Member States to prevent unwanted immigration from Africa, see Frontex as a tool to gain influence over border standards, whether by bringing to light weaknesses or through the spread of northern border practices. For southerners, Frontex guarantees access to northerners' resources.

Accountability and Transparency Problems: The idea of Frontex as a European border guard in waiting, exercising executive functions and playing a role in an emergent EU polity, helps explain the increase in EP oversight and accountability beyond its core budgetary function. Oversight must now focus on the degree of solidarity shown between Member States as well as on Frontex's cooperation with the outside world. Most importantly, a consultative forum, gathering representatives

of EU bodies such as the Fundamental Rights Agency and Asylum Office, Brussels-based NGOs such as Amnesty International, and international bodies such as UNHCR and the International Organisation for Migration, has been set up to look at Frontex's operational activities and will meet for the first time in October.

Yet, an agency that aims to "fuse" domestic authorities would probably require a different model of oversight, one attuned to the merger of responsibilities between the European and national levels as well as to the fact that Frontex's activities are not evenly spread throughout the EU. With costly equipment, such as helicopters, potentially co-owned by Frontex and an individual national authority, joint domestic-supranational control may be required even as regards the EP's core budgetary function. And again, an agency established to adjudicate competing government interests, as the interior ministries intend, will require a different model of oversight again. For them, one implicit rationale for creating such an agency is actually to exploit its technocratic autonomy and thus its lack of accountability so Frontex can be expected to act in a neutral way and identify the shared interest.

A "classic" model of top-down, supranational oversight and accountability thus seems ill-matched to the full range of Frontex's activities and possible trajectories, relying as it does upon the accentuation of certain Frontex characteristics (its independent operational powers) as well as upon still contentious assumptions about its future trajectory (a nascent border guard). This mismatch risks muddying the responsibility for breaches of standards that occur under Member State or third-country jurisdiction, and could prevent the agency from acting independently. Worse, it may see Frontex obliged to develop its activities to suit a particular model of accountability rather than the model of accountability adapting to the evolution of the agency.

Recommendations for Poland. The problem seems insoluble. How will it be possible to establish a fitting model of control for an agency that is being pulled in three very different directions, and which itself does not have a clear idea of its purpose and trajectory (representatives of the agency tend to stress the "fusing" option, but there is no clarity)? In this context, it is useful to recall that there are actually several means to control agencies—alongside the "post-hoc control" (accountability) and "ongoing control" (oversight of daily activities) aimed for by Parliament, there is the option of "a-priori control" (the adoption of a clear and binding delineation of the agency's tasks, which is then internalised by Frontex). This is singularly lacking in the present case.

Thanks to a latent mistrust between the negotiating parties, the 2011 review of the Frontex regulation resulted in a confused catalogue of tasks. Marginalised in the 2004 negotiations, the EP reasserted itself on the basis of its powers of co-decision. But its position was based on a deep antipathy towards interior ministries. They, in turn, viewed MEPs as ignorant and ideological. Rather than work towards consensus on their visions for the agency, therefore, the EP, Commission and Council simply inserted their priorities into the text. The fundamental rights officer and the other mechanisms for control now being put in place reflect these three very different visions and the mistrust that fostered them.

Poland, home to Frontex, and the proponent of the recent Future of Europe report mooted a European border guard, but also a state which is not caught up in the disagreements between the northerners and southerners, enjoys room to forge consensus. As the EU gears up for discussions to replace the Stockholm Programme, the multi-annual programme for home affairs, Warsaw can broker greater understanding between the Council, Commission and Parliament on Frontex's catalogue of tasks.

A proper system of *a-priori* control would further stress the role of personal responsibility amongst Frontex staff carrying out the delineated tasks. To this end, training on ethics and an expansion of the membership of Frontex's consultative forum to include representatives of border personnel would be helpful. At the same time, this consensus about the catalogue of tasks, and thus about Frontex's activities and future development, would allow Warsaw and its partners to make sure that a fitting system of ongoing and post-hoc control also develops, improving, say, peer-to-peer accountability amongst interior ministries or the transparency needed in naming and shaming efforts.