



BULLETIN

No. 120 (573), 5 November 2013 © PISM

Editors: Marcin Zaborowski (Editor-in-Chief) • Katarzyna Staniewska (Managing Editor)
Jarosław Cwiek-Karpowicz • Artur Gradziuk • Piotr Kościński
Roderick Parkes • Marcin Terlikowski • Beata Wojna

It's Not Frontex, It's Us: Towards a More Honest EU Borders Debate

Roderick Parkes

Frontex was created in 2004 to improve trust and cooperation between governments in the field of border management. In reality, the EU's borders agency has exacerbated these problems, unwittingly provoking new political battles and blame-shifting. In the current emergency-driven debate, the EU's political players are finding it expedient to let this continue. However, when the EU sets out its new multi-annual programme for justice and home affairs in 2014, politicians will have to face up to their responsibilities. A three-step reform is required.

When the EU's External Action Service replaced the old system of rotating national presidencies in managing foreign affairs, a political vacuum was created at the EU level, resulting in a mix of inaction and dominance by the largest Member States. It shows that the creation of a new EU agency inevitably creates tensions. It raises popular expectations, opens new political battlefields between supranational institutions and, by replacing old inter-governmental modes of cooperation, gives governments an excuse to behave badly. Frontex has fallen prey to three such trends.

Three Negative Trends. First, the *battle to renounce control*. The Commission and European Parliament (EP) like to complain about how national governments “Europeanise failure, and nationalise success.” Yet, in the field of border management they are guilty of exactly the same kind of blame-shifting. The two supranational institutions do not have sufficient legitimacy to carry out a reform of the EU's immigration policy, one with proper legal channels for migrants to enter the bloc. They have shifted the blame for their failure to Frontex.

This was clear in the Home Affairs Commissioner's recent response to the Lampedusa crisis when she suggested that Frontex should “organise a Search and Rescue operation from Cyprus to Spain.” Frontex does not have the mandate or expertise for such a mission, and member governments do not have the resources or will. Yet, shifting expectations to Frontex proved a good means for the Commissioner to avoid explaining what a true humanitarian approach would really entail (a regular ferry from Tunis to Sicily, say, and a policy to disperse refugees in the EU).

As for the EP, it has been behind the recent increases in Frontex's budget and competencies. Yet, despite its vocal concerns that these powers could be used for repressive purposes, it has done little to increase its control of the agency. Instead of securing for itself a place in the day-to-day work of Frontex through a seat on its consultative forum, the Parliament prefers to rely on post-hoc control, calling Frontex to account after the fact. This will hardly bring back lives lost in the Mediterranean, but it does at least save MEPs from taking responsibility.

Second, the *battle to regain control*. Although the creation of passport-free travel in Europe means that EU Members must cooperate deeply on border management, governments remain unwilling to admit that they have pooled sovereignty. They present Frontex as nothing more than a supplement to national measures. The agency, which was founded so as to Europeanise national border systems, is therefore falling prey to a reverse trend—an attempt to nationalise it.

Some governments call for Frontex to implement a more active secondment programme for national officials and give a greater oversight role to its national Management Board. They would thus like Europol to serve as a model for Frontex's development. The EU's police agency houses national officials who try to create shortcuts for operational

cooperation between their governments. But, although Europol enjoys a sense of “national ownership” it is hardly an effective model for Europeanisation.

There is a further reason why many joint border interventions occur on the basis of horse-trading between governments, despite Frontex’s efforts to “de-nationalise” its activities by basing them on technocratic intelligence and neutral assessments of vulnerabilities: Frontex provides governments with a potential channel to increase control over each other. Southern Members use Frontex as a means to dip into northerners’ border resources. Northerners use Frontex as a tool to make southerners implement the rules.

Third, *the battle to escape control*. The creation of a central agency with (very limited) powers to enforce European border-management rules has had the reverse effect to that intended. Now that they are implementing EU standards only “because a central body tells them to,” governments will see what they can get away with. The old sense of mutual responsibility has gone, replaced by free-riding, unilateralism and brinksmanship.

Southerners, for instance, have resorted to unilateral “readmission” (expulsion) operations, thereby weakening a joint regime operated by Frontex. They have shifted the burden for border control to third countries (the EU’s recommendations to its neighbours on Integrated Border Management stretch to 150 pages, whilst its own IBM catalogue is just 3 long). And, since the Arab Spring, their leverage in the EU has been underpinned by an implicit threat. They will unleash a wave of non-European migrants on their wealthy northern neighbours unless they get their way.

Northerners are just as bad. They have used Frontex to turn the spotlight on southerners and thereby shift attention from their own deficiencies. Greece is now subject to special scrutiny, with the result that its (very real) border problems have been magnified. Romania and Bulgaria, a useful buffer against immigration from Syria, are kept out of the Schengen Area on the grounds of concerns about the integrity of their border officials. The result of northerners’ aggressive use of scrutiny and conditionality is a system of mutual support in which no one dares to ask for help.

Poor Prospects for Reform. In an apparent break from the current emergency-driven debate, the EU is about to begin a more strategic discussion about the future of Justice and Home Affairs policy. Officials have expressed their intention to create a bolder and more political document than the multiannual Stockholm Programme (2009–2014). And, indeed, the Commission is already exploring the feasibility of establishing a true “European System of Border Guards” (ESBG) over the coming years. Yet, this discussion about the EU’s borders regime is unlikely to go anywhere.

Instead of setting out bold ideas for the EU’s border system, the Commission has outsourced the feasibility report to a consultancy firm, carefully circumscribing the political analysis. In the absence of a clear-eyed analysis of the negative political trends in the EU’s border regime, the most likely outcome of all this will be “more of the same.” The borders agency will gain greater powers on paper, but this will only increase its vulnerability to broader political battles.

Poland and a Three-Step Reform of Frontex. At present, Poland is not subject to high-profile migration flows nor, therefore, to aggressive scrutiny from other governments. This is a comfortable position to be in. However, Warsaw should not let the *status quo* continue. Poland needs an EU with the capacity to handle large volumes of legal movement over its borders, and to cope with a liberal migration regime with its eastern neighbours. This is hardly possible if the EU’s borders agency is trapped in a dead-end debate about becoming a search-and-rescue tool for the Mediterranean or is the subject of narrow political battles between governments.

The creation of a proper EU-wide borders system would require, first, a consensual agreement between the Commission, the Council and the EP, about the purpose of Frontex. Governments must recognise the extent of Frontex’s capacities, the EP and Commission its limits. And all sides must situate Frontex within a broader overhaul of the EU migration regime attuned to future challenges. Consensus about the agency will give the three EU Institutions the basis for a proper system of *a priori* control over Frontex, and in turn provide the public with a workable system of accountability via them.

Second, there must be a boost in Frontex’s autonomy (rather than its competencies and budget, *per se*). This would entail giving the agency more say in the choice of the staff and resources involved in joint operations as well as their location, granting the Management Board a greater role not just to oversee Frontex’s work but to Europeanise their own national border regimes, and permitting the agency to act like other EU agencies, stepping in when Member States take decisions with cross-border implications (such as cutting the numbers of border guards or investing in certain capabilities).

Third, a fusion of national capabilities is required. This has always been the contribution of the EU in the regulation of tricky immigration issues—to blur identities and hierarchies and permit Member States thereby to adapt politically to cross-border challenges. This is what the EU did in the field of labour migration when it labelled intra-European migration “free movement” and turned Europeans into “EU citizens.” By “denationalising” decision-making via joint intelligence and pre-planning, as well as by creating a shared *esprit de corps* for border guards EU-wide, Frontex can do the same in the field of border management.