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The European Border and Coast Guard: Potentials and Risks

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The establishment of an EU border service is a step towards community control of border management in the Schengen zone. Whilst such an arrangement seems beneficial in terms of increasing the efficiency of border control, it is controversial because it interferes with the rights of the Member States.

The refugee crisis in Europe has highlighted the lack of sufficient controls at the EU's southern and external borders. Amid demands by Member States to tighten the Schengen zone's borders, the European Commission (EC) presented on 15 December proposals to create a permanent 1,500-person European Border and Coast Guard (EBCG) that could be activated in emergency situations within three days using its own equipment. Under the proposal, the EC would have the right to appoint a mission even without the consent of a Member State responsible for the relevant border, although doing so would require a qualified majority of a committee composed of Member State experts. This body would be managed by the EBCG Agency, in other words, a renamed and strengthened Frontex, which is now responsible for management of the bloc's external borders. The EC plans call for increasing the current staff of the revised agency to about 1,000 people and its budget to €322 million by 2020 (Frontex in 2015 has a staff of 402 and a €143 million budget), as well as to strengthen its competences for carrying out deportations and assessing migration risks.

A strengthened border agency could contribute to better control of the southern EU border, but increasing the role of the EC regarding the deployment of border guards interferes significantly with the rights of Member States to control their own borders. In the long term, if the refugee crisis worsens and the budget of the agency is successively increased, it could achieve a similar operational capacity as some frontline Member States. This may, in turn, lead to EU control of border controls in the Schengen area.

Urgent Need for Reform of Schengen. The EC's ambitious proposals stem from the fact that the excessive migration pressures have meant that some states such as Greece have not been able to effectively control their borders, constituting in this case the southern, external border of Schengen. According to Frontex data published in December, out of the more than 700,000 refugees and undocumented immigrants who arrived by sea to the Greek island from Turkey this year, only one in five was detained and registered after reaching shore. Meanwhile, Greece has for months refused EU assistance to better manage its border, only agreeing in December to deploy a Rapid Border Intervention Team (RABIT), an EU mission providing logistical support to frontline and transit countries.

Greece's stance and other such instances undermine the status quo under the Schengen agreement, which abolishes internal borders in return for effective control of the bloc's external borders by frontline states. Many EU countries, including Germany, Austria and Sweden, have decided to temporarily reintroduce internal borders, but in accordance with Schengen regulations. This has led to the idea to extend the duration of such internal controls for up to two years, or longer than anticipated under the agreement. In this situation, one solution would be to strengthen the external border by creating the EU border agency and strengthening the role of Frontex. Currently, the latter agency does not have the ability to operate without the approval of individual EU states and without their officers or equipment.

Interference. The controversial issue of the EC appointing a mission without a frontline Member State agreeing falls within the scope of the so-called comitology procedure, where even in the absence of the state's consent the EU is required to safeguard its borders for the benefit of the rest of the members. Border management is shared by the EU and individual

members, and attributing such a right to the EC significantly interferes with the prerogatives of the Member States. On top of that, EU institutions only have the capacity at this point to assist with protection of external border controls in Schengen.

Therefore, it is not surprising that some EU members are resisting the proposals. Article 77 of the Treaty on the Functioning of the European Union (TFEU), concerning the construction of an integrated border management system in the EU, which the EC cites in its proposal, is vague about models for such a system. Countries opposed to the EC's solution cite provisions in Articles 72 and 79 TFEU, which indicate the exclusive right of the Member States to safeguard their internal security and determine the levels of admission of third-country nationals. The political dispute regarding the interpretation of EU law extends further, because, in fact, one may argue the aim of such an EC mission would be to "relieve" a state under pressure by offering primarily logistic support for it whilst it faces an urgent threat to public order and security.

More Effective Border Controls. Other than the question of who will decide to launch the operations, the establishment of a permanent EU border agency could be beneficial because it would improve border control operations. Although evaluations of Frontex's activities are not publicly available and data on them and their outcomes are not fully explained in annual reports, the agency does report that joint maritime operations on the southern border have led to the detention of 217,776 people in 2014 (although the agency does not indicate what happened after they were detained). Building up the permanent operational capacities of Frontex would increase its capacities for border control and two key areas which the EC says its proposals would address.

First, the agency has difficulty with missions when there is a sudden influx of refugees or others. Personnel and equipment is negotiated each year with the Member States, and after establishing an operational plan it is difficult to increase the negotiated quotas. For instance, in 2014 the agency had at its disposal 2,900 border guards and 960 pieces of equipment. However, if the states decide to appoint additional missions, for example RABIT in 2015, it might take several months to ramp up. Although the operation was launched in September, Frontex by December had managed to put in place only about 60% of the necessary personnel (448 officers out of 775 planned). Moreover, since not only the number but also the profile (e.g., training) of the guards and equipment are subject to negotiation, the agency often lacks adequate equipment and officers.

Second, operations consisting of temporarily seconded border guards struggle with the problem of ensuring common standards in their activities. Officers are sent from different countries with different organisational systems, specific equipment and IT systems. Not only that, but the basic obstacle of language barriers is present in everyday communication.

Better Technical Support for Deportations. The EC proposes strengthening Frontex's ability to enforce deportations, which might help to facilitate a process currently hampered by numerous obstacles. Member States have difficulties making decisions on expulsions from the EU and in carrying out deportations. According to EC estimates, in 2014 fewer than 40% of undocumented immigrants who had been given a decision of expulsion had actually left the EU. Apart from the lack of a common EU list of safe countries where one can be sent back and effective readmission agreements with third countries on cooperation in this field, there are other, more practical problems such as identification of individuals, the lack of proper travel documents or recognition of EU substitute documents by third countries, and technical organisation of the deportations.

Frontex assists the Member States by organising joint return flights for deportees from multiple states, saving money and time, as the agency helps prepare the necessary travel documents. For example, in September-October 2015, Frontex has conducted 15 joint returns for a total of 658 people deported to Nigeria, Albania, Kosovo, Georgia, Armenia and Pakistan. In actual terms, this is not a high number, considering that frontline countries such as Greece and Italy deported 30,264 people in 2014 alone.

Improving the operational capacity of Frontex on deportations would be achieved not only by increasing the agency's budget but also by creating a Return Office within its framework, a special operational unit responsible for carrying out deportations, as well as by increasing the number of experts responsible for the identification and registration of new arrivals. Importantly, the EC announced the development of a new model of European travel documents with better technical safeguards, so that more countries of origin might accept them.

Prospects. The creation of a permanent EU border agency may improve the management of the external Schengen border. However, the decision to grant the EC the right to appoint missions and deepen integration of border management should be preceded by a thorough evaluation of Frontex and the existing Schengen external border control system. The results of this analysis should be made public and subject to open consultation. Ceding such an important state prerogative as border protection to the EU level requires public debate, especially in the face of rising populist sentiment in Europe. Moreover, the issue of democratic control over the activities of EU-denominated border guards should be laid out and debated in detail. EU institutions should submit proposals for mechanisms to ensure appropriate supervision of the new services by the European Parliament.

Considering the fact that the EC estimates a higher inflow of refugees to the EU in 2016 than this year and that instability in the Union's neighbourhood and lower standard of living in Africa will generate migration towards the bloc, the question of gradually deepening integration of border management will return regularly to the EU agenda. The Member States should quickly address the question, perhaps by asking whether better border control mechanisms should be developed at the national level through such means as additional funds for frontline states, or whether it is the right time for the EU to take over this responsibility.