



The Role of Frontex and Easo in the Field of Asylum Policies and the Guarantee of Respecting People's Rights and Integrity

Blerina Muskaj

Prof. As.Dr.,
Lecturer of University "Aleksandër Moisiu" Durrës

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Abstract

In the Treaty on the Functioning of the European Union (TFEU), in CHAPTER V titled "Area of freedom, security and justice" it has recognized the competence of the topic of immigration which has gone through an important process of agentization, as has happened with many policies of other EU countries. The role of the European Union in answering the questions and problems posed by migratory flows, affecting the countries that are part of it, has been for many months one of the elements of the major debate within the European institutions, between the states and, obviously, within them, with significant consequences on the political level. Despite the inevitable and many difficulties - the basic and inalienable rights of those who come to a certain country and those of those who have lived there for a long time and have a good reason to wait, the Stockholm Program of adopted by the European Council aims precisely to face the challenge of "guaranteeing respect for fundamental rights and freedoms and the integrity of people, while at the same time guaranteeing security in Europe". This should be supported, among others, by the development and implementation of policies to control and combat irregular and clandestine immigration, improving cooperation with third countries (of origin and transit of migrants), the objective of reaching a system of common asylum applying the principle of solidarity between member states in accordance with the article. 67, par. 2, which should lead to "the further analysis and development of mechanisms for the voluntary and coordinated sharing of responsibilities between Member States". European agencies represent an important part of the Union's institutional mechanism. FRONTEX and EASO were presented as tools to facilitate or strengthen cooperation operational between the authorities of the Member States. However, the activities they perform go beyond simple coordination, as they have acquired characteristics that can have negative consequences for others.

Keywords: FRONTEX ,EASO, European Council, Stockholm Program, Fundamental freedoms

1. Introduction

The European Union is creating a Common European Asylum System with the aim of ensuring that individual asylum cases are processed consistently in different member states. EASO implemented a bottom-up approach to provide practical support to Member States. Through its support function, EASO assisted Member States in meeting their European and international obligations on asylum. EASO enables the rapid deployment of operational assistance to member states, creates an independent fundamental rights officer to ensure that the rights of asylum seekers are always protected. It creates a wider asylum training program for national officials, with the aim of becoming the EU's accrediting body for international protection officials, enabling the production of more practical guidelines, recommendations, tools and analysis that support the work of national authorities on asylum and reception by strengthening the work of the Agency with third countries to support the building of capacities for asylum and reception in accordance with international standards. EASO establishes a complaints mechanism to provide redress to anyone who believes that their fundamental

rights have been violated.

The monitoring mechanism, which will come into force partly at the end of 2023 and partly after the other legislative proposals of the CEAS have been adopted, will allow the EUAA to monitor the operational and technical implementation of EU legal obligations. This will help Member States to identify potential errors in their asylum procedures in a constructive way and ultimately contribute to a more harmonized EU asylum system.

The internal organization of FRONTEX and the mechanism for guaranteeing and protecting human rights have unified European operations, allowing the European Border and Coast Guard Agency to act also through joint operations in very delicate geopolitical situations, taking into account the importance of fundamental rights, so much so that Frontex itself has adopted a series of apparently adequate security and monitoring mechanisms ensure the protection of these rights. However, to date, this system does not seem to exist sufficiently and the European Agency finds itself having to face several challenges in terms of transparency, both at international and national level.

2. Agjencia Evropiane e Rojës Kufitare dhe Bregdetare - Frontex

Frontex was founded in 2004. The agency had a comprehensive mandate of action, which included: coordination of operational cooperation between Member States; assistance to Member States in training border guards; risk analysis and research; provide technical and operational assistance to Member States, if necessary; support for joint repatriation operations (European Union 2004).¹ The EU aims for good border management, precisely through the strengthening of FRONTEX² and the establishment of new forms of long-term cooperation with the Member States (perhaps according to the Eurosur model).

Cooperation with the coast guard would allow the rescue of migrants in difficulty, but it is also necessary to identify risk trends to adequately prepare personnel and above all to create "strong and coherent" external borders: today, above all, there is a lack of homogeneous border management, for which the Commission is expected to intervene at a regulatory level in the coming years, proposing a general regulation for better border management; a more in-depth use of information systems and technologies. It should also contribute to the objective by integrating the three information systems that exist today: (Eurodac for asylum applications, visa information system and Schengen for "returned" subjects). All this, among other things, should allow the European Union to better help third countries to learn to manage their borders better

The current critical issue is "the lack of mutual trust between Member States, especially due to the fragmentation of the asylum system", despite the already existing common rules, although the second important objective remains the construction of a strong common asylum policy, to make it more efficient, always respecting the rights in question. Since its creation, its expertise has covered borders, irregular immigration and foreign policy. While the initial human and budgetary resources were modest, the evolution on this front has been relatively rapid and impressive: with a budget in breakeven of more than 250 million euros in 2016. Since its creation, the agency's budget has more than increased tenfold.

In 2007, with the approval of the RABIT regulation, the regulation establishing Frontex was adopted. The Regulation had added a new tool - until now suppressed and which would subsequently be further explored - namely the possibility of sending rapid border intervention teams (RABIT) to assist Member States who find themselves facing situations of massive flows of citizens of third countries attempting to cross illegally at the external borders. A second reform introduced in 2011 gave Frontex greater powers in coordinating joint operations and in the use of RABIT teams, renamed European Border Guard Teams (EBGT). The Commission has consistently supported an enhanced role for the Agency. He had promoted their involvement in the entry/exit system and the contribution of expertise in Schengen assessments, providing figures for the calculation of disbursements of immigration funds and had been closely involved in Eurosur. For the Commission the ultimate objective, which it has consistently supported over time, was the creation of a "European Border Guard Corps". The Commission has partially achieved its objective with Regulation 2016/1624 which establishes the new European Border Guard Agency (European Border and Coast Guard Agency – EBCGA) and replaces Frontex (whose name will be kept). The Regulation does not create a real body that replaces national border guards, but rather a Frontex-plus agency.³

Other theories argue instead that it attributes to the Agency clear strategic management prerogatives in border

¹ Neal, Andrew W. «Securitization and Risk at the EU Border: The Origins of FRONTEX.»

² Wierma ns, M. (2012), *The Securitization of Frontex: a Discours Analysis*, Saarbrücken: Lambert Academic Publishing.

³ Adinolfi, A. (2011), *The immigration policy of the European Union after the Treaty of Lisbon*, in *Rass. dir. publ. eur.*,

control activities (the Regulation attributes to the Agency the power to adopt binding decisions in case of non-compliance with the recommendations arising from the "vulnerability assessments" it could produce. Now, in two circumstances, the Agency can contribute to the decision to reintroduce internal border controls: the following shortcomings discovered in the "vulnerability assessment" or in the case of "specific and disproportionate challenges at the external borders which risk compromising the Schengen area" (Article 19). This legislative agreement crystallizes a de facto situation in which some Member States had already reintroduced internal border controls in 2015. Therefore, the Agency is closely integrated into the decision-making process in both circumstances and the measures identified to resolve such situations are implemented by Frontex itself.⁴ Provisions relating to the presence of the Agency's liaison officers in Member States and "vulnerability assessments" are among the most important aspects of monitoring and allow it to be carried out by those officers who must act exclusively on behalf of the Agency.

Frontex's ability to influence border policies, through so-called risk-based governance, greatly increases its political influence, raising important questions of democratic control and accountability.⁵

3. (EASO) European Asylum Support Office

The European Asylum Support Office (EASO) was created by Regulation 439/2010[1] of 19 May 2010 as an independent and specialized body; it became fully operational in mid-2011. During 2021, an agreement was reached between the European Parliament and the Council on the European Commission's proposal to strengthen the agency which led to the adoption of the new regulation 2021/2303[2] of 15 December 2021, replacing the previous one. Regarding the first pillar, support for practical cooperation is the main activity carried out by EASO and is expressed in: (1) providing information on the countries of origin of asylum seekers, essential for national decisions on asylum requests, allowing a common European development uniting different practices in different Member States; (2) resettlement, following voluntary agreements between Member States to ease pressure in the event of mass arrivals of asylum seekers; (3) training, which allows for better sharing of best practices between Member States. In terms of support for Member States under particular pressure, the mechanism is similar to that foreseen for Frontex RABIT⁶.

In this case these will be asylum support teams, made up of experts who will provide technical and operational assistance to the Member State under pressure, for example by sending expert translators in a language not covered by the national asylum system. Finally, as regards the third pillar, i.e. the contribution to the implementation of the CEAS, EASO is able to collect all the information on the national asylum system and store it, to manage a database of data, laws and jurisprudence, thanks where technical documents can be developed which contribute to the interpretation of the asylum acquis. This will allow him to have some influence over member states' asylum systems, given his lack of direct power over it. The Agency's role was updated in the recast of the Reception Directive in 2013 and more specifically in the Dublin III Regulation, which not only confirmed EASO's role in facilitating practical forms of solidarity for Member States in emergency situations, but also it also included within the decision-making process through which solidarity mechanisms are implemented.⁷

Under the Dublin system, EASO collects information on possible sudden increases in flows and provides assessments on the capacity of Member States to manage them. This contribution is particularly important due to its role in early warning, preparedness and crisis management, which is activated in the event of a risk of sudden influx or in the event that there are problems with the functioning of a Member State's asylum system, which could threaten the CEAS itself as part of the CEAS reform package. The Commission presented a proposal to strengthen the role of EASO (European Commission 2016). Indeed, it believes that the Agency is one of the main tools that can be used to correct the structural weaknesses of the CEAS, which have been further exacerbated by the large-scale and uncontrolled influx of migrants and asylum seekers into the EU.⁸

In recent years the new EASO should be able to strengthen and integrate the asylum and reception system of the Member States. The Regulation will strengthen its operational activities, assigning it new tasks aimed at ensuring a high degree of uniformity in the application of European asylum law within the Union, assessing compliance with the CEAS and other key tasks, such as ensuring and analyze information on countries of origin, to increase operational and

4 Wiermans, M. (2012), *The Securitization of Frontex: a Discours Analysis*, Saarbrücken: Lambert Academic Publishing.

5 Trevisanut, S. (2008), *Europe and illegal immigration by sea: FRONTEX and international law*, in *Dir. Un. Eur.* p. 247 ss.

6 Salamone, L. (2011), *The legal discipline of illegal immigration by sea, in domestic, European and international law*,

7 Feraci, O. (2013), *The new "Dublin III" regulation and the protection of the fundamental rights of asylum seekers*, in *Osservatorio sulle sources*, 2, available on www.associazionesullefonti.it

8 S. TREVISANUT, *Europe and illegal immigration by sea: FRONTEX and international law*, in *Il Diritto dell'Unione Europea*, 2008,

technical support for Member States and to enable greater convergence in the assessment of applications for international protection across the EU. In parallel with the new Dublin Regulation, the Agency should develop a network of Dublin units to monitor the transposition of the regulation. These units are already operating in practice, for example in hotspots, illustrating a trend in the process of policy innovation which sees them first introduced in the field and then formalised.⁹

The agency is further entrenched in asylum decision-making in its new role of assisting the European Commission when deciding on the list of safe countries of origin or acting as coordinator in the newly established European Countries of Origin Information Networks. In conclusion, the proposed reforms would represent significant changes to the legal mandate as well as the resources and operational capabilities made available to EASO. The proposed changes make it clear that the progress of the EUAA goes far beyond the simple provision of expertise and does not happen at the expense, but in parallel, of strengthening the Commission. Moreover, the operational activities of these agencies contribute to the Europeanization of national policies and actors closely related to national sovereignty.¹⁰

Democratic control over these activities has not been adequately considered in subsequent treaty reforms and has not been well developed in practice. The European Parliament, despite its limited prerogatives regarding agency action in the AFSJ, has been very active in exercising ever-increasing political influence, especially in the need to consider the implications on fundamental rights. The implementation of co-decision on the amendment of the Frontex and EASO regulations after the entry into force of the Treaty of Lisbon has led to an improvement in democratic control over both agencies. However, criticism continues of the operational activities carried out by Frontex in recent years.¹¹ The founding regulation of the EBCGA introduced and reorganized the obligation to report to the European Parliament on the agency's activities (ibid.). It has taken into account the importance of human rights in carrying out their operational activities and oversight by agencies which have undertaken interesting initiatives to ensure accountability on fundamental rights.

4. Disadvantages of Outsourcing Migrant Management to Third Countries

The EU-Turkey agreement can also be used to explain the disadvantages of externalization tools: regardless of the results achieved, the Union's growing dependence on externalization processes in its responses to the migration crises of recent decades has been the subject of intense debate. First, the outsourcing of migration control to third countries undermines both the rhetoric of a global approach to migration and its self-proclaimed role as a normative power that, contrary to the realist international system, promotes humanitarian values and protects migrants' rights... and refugees seeking refuge within its borders. For example, in the case of the 2016 agreement, by transferring refugee management to Turkey, the EU completely ignored the authoritarian transformation the country was going through, thus demonstrating that it was primarily interested in building a fortress along its external borders.¹²

Another debate focuses on the impact of foreign policies on migratory flows: it is precisely because of the Union's excessive reliance on the "remote command" approach that migratory crises are only blocked temporarily and never definitively resolved. In fact, following this approach, the EU-Turkey Agreement put an end to the arrival in your territories of a large flow of refugees fleeing from Syria, but, by failing to connect the "remote command" approach with measures aimed to improve the situation of the population still in Syria, where the road was only temporarily blocked.¹³ These disadvantages also help highlight an issue that the Union has long ignored: the outsourcing of migrant management makes it extremely dependent on cooperation with third countries, which may decide to exploit this European vulnerability to their advantage to achieve their own goals political and economic. This unfortunate situation occurred in 2020, when Turkish President Erdogan opened Turkey's borders with Syria or Greece to put pressure on Europe and obtain an increase in funding for refugees.¹⁴ In other words, regardless of their at least temporary effectiveness, the external instruments used by the EU pose great risks both for the image of the regulatory power and for its internal security. As long as the Union decides to accompany the "remote command" approach with preventive tools and to develop the internal dimension of its migration and asylum policy, it will always remain a victim of blackmail by the authoritarian leaders of countries beyond of its external borders.

⁹ Santos Vara 2018,

¹⁰ AZOULAI L., (edited by), *EU migration law: legal complexities and political rationales*, Oxford, 2015

¹¹ *Routledge Handbook of the Politics of Migration in Europe*, edited by Agnieszka Weinar ,

¹² Salamone, L. (2011), *The legal discipline of illegal immigration by sea, in domestic, European and international law.*,

¹³ Francesco Cherubini, *Asylum Law in the European Union* 2014.

¹⁴ De Vittor, F. (2014), *The right to cross the Mediterranean*

5. Conclusions

It can be underlined that the small number of FRONTEX operations carried out to fight illegal immigration by sea is due to the lack of clarity of the regulatory and operational framework within which the Agency should move in its action. to support member states. These deficiencies in terms of operational capabilities appear to have been partially filled with the recent adoption of Decision 2010/252/EU and prospectively with the expected adoption of the Proposal for a Regulation amending Regulation (EC) 2007/2004. Perhaps, this is due to the fact that it would be more appropriate to proceed with an amendment of the relevant rules in this area, such as the Dublin II Regulation and the Procedures Directive, specifying, in particular, the methods and forms by which the Warships of the Member States of involved in operations to combat illegal immigration must receive asylum applications. However, such a reform process would certainly require a long period of time within which a political agreement could be reached between the member states. Currently, the only element that goes towards greater awareness of the maritime units involved in FRONTEX operations on the implementation of the Union's legislation on asylum is provided by the need for the Agency to establish a close cooperation with the European Asylum Support Office newly created.¹⁵

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Francesco Cherubini, *Asylum Law in the European Union 2014*.

¹⁵ Article. 52 of the regulation establishing the European Asylum Support Office specifies that cooperation with FRONTEX will be established on the basis of an operational agreement defined between the two Union bodies.