Frontex: From Coordinating Controls to Combating Crime

Samuel Hartwig

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Article

ABSTRACT

The last few years have seen the European Border and Coast Guard Agency ("Frontex") grow ever more central to European efforts to control the external borders. The Agency moved from a merely coordinating and supporting role to a much more operational one. Frontex now engages in tasks running the gamut from surveying the borders and returning irregular migrants to combating criminal activity. To make this possible, the financial and personnel resources at the disposal of the Agency were increased substantially. This article first sheds some light on the historical background of the Agency. It then traces the successive mandate revisions and the growth in power they entailed. The article then examines how crime fighting was introduced into Frontex' mandate, before analysing the Agency's contribution to combating criminal activity and its implications.

AUTHOR

Samuel Hartwig

Doctoral Researcher
Max Planck Institute for the Study of Crime, Security and Law, Freiburg i.Br./Germany

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I. Introduction

During the past few months, headlines about the corona pandemic have dominated the news. As the virus spread around the globe, strict measures to contain it were enforced, curtailing many of the basic freedoms that people living in the EU have grown accustomed to. One of the most visible measures that was implemented in the early stages of the pandemic was the closure of European borders. Even though this effort was of dubious utility in the fight against the virus, since it had already gained a foothold in most European countries, the pandemic at least offered political leaders a welcome excuse to impose stricter border policies with regard to migrants at Europe's doorstep. While the media became fixated on comparing the latest infection statistics from around the world, the plight of migrants more or less vanished from public discourse.

Unfortunately, the border closures are only the latest act in a process that has been going on for quite some time. That process led, on the one hand, to the meteoric rise in the resources made available to Frontex, the European Border and Coast Guard Agency while, on the other hand, pushing its activities in a significantly more repressive direction. This article will elucidate, in particular, the expanded role Frontex plays these days with regard to combating criminal activity.

II. The Origins of Frontex: Securing Europe's Borders

Although initiated outside the European framework, the Schengen area is nowadays considered by many a signature achievement of European integration. The idea behind Schengen is that Member States abolish all internal border controls between them, so that people and goods can travel unhindered between the Member States. Right from the start of the project, it was clear that this would also create new challenges, as this freedom of unimpeded movement would also prove a boon to people engaged in all manner of illegal behaviour as well as to people trying to irregularly enter the area. In order to mitigate this risk, the focus of border controls moved to the external borders surrounding the Schengen area.[1] Since the late 1990s, different and largely informal formats were tried out to coordinate the management of the external borders, but all of these mechanisms were found lacking.

Nevertheless, the Member States were reluctant to cede powers in the sensitive area of border controls to a European institution; it was only the impending accession of several Eastern European countries in 2004 that generated sufficient political impetus for the creation of a European mechanism, since there were concerns over the ability of the prospective members of the EU to properly control their borders.[2] As a result, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (commonly referred to as "Frontex") was established through Council Regulation (EC) No 2007/2004[3] in October 2004; it began operations in May 2005.

At this time, the "securitization" of migration was already in full swing. That is, migration was no longer considered to be mainly an issue of immigration policy but rather perceived to belong to the realm of security policy. The roots of this development date back as far as the 1980s, but it became a salient feature of public debate about migration and border controls in the wake of the 9/11 attacks, as migration was associated with criminality and terrorism.[4] This change in perception was reinforced by the terrorist attacks in Madrid in 2004 and London in 2005; a political consensus started to emerge that one of the keys to guaranteeing security within the EU lay in stricter border controls.[5]

The next decisive push for a more "securitized" approach to border controls occurred during the so-called "migrant crisis" in 2015. The large influx of persons trying to enter Europe went hand in hand with calls to

strengthen the external borders in order to bar terrorists and criminals from entering Europe illegally. The political culmination of these developments can be seen in the EU security strategy of 2016.[6] The document considers migration to be one of the key challenges that Europe faces in the realm of security policy.[7] The upshot of all these developments is that migration and border controls are seen almost exclusively from a security perspective. This outlook has ramifications, of course, for the tasks assigned to Frontex and the way the Agency operates.

III. Financing Frontex: From Rags to Riches

Frontex started operations as a small agency with little staff and a limited budget. During its first year of operation, Frontex had only 70 staff members and a budget of about €6 million.[8] Both the amount of personnel and the budget increased steadily in the following years, with marked increases occurring during the height of the "migrant crisis." But even in the aftermath of the crisis, more staff and a bigger budget were made available to the Agency each year. In 2018, approximately 700 people worked at the Agency and the budget had already grown to €320 million.[9] Both numbers are set to rapidly increase yet again, as the plan is to make a standing force of 10,000 border guards available to the Agency by 2027.[10]

In addition, the Agency will also be provided with the means to procure its own equipment, so that it will no longer depend on materiel being provided by the Member States. In order to make all of this possible, it is planned to fund Frontex to the tune of €1.3 billion in the 2019–2020 period and, thereafter, make available a stunning €11.3 billion for the years 2021–2027.[11] Within just a few years, the means at the disposal of the Agency have thus expanded enormously, establishing it as the major player regarding border controls in the European Union.

IV. The Agency's Expanding Remit

Notwithstanding this stellar rise in resources, it is worth recalling that Frontex started out with a rather narrow mandate that focused on facilitating cooperation and providing support to the Member States with respect to controls at the external borders of the EU; this limited mandate proved to be no hindrance, however, to successive structural shifts delegating ever more powers and tasks to the Agency.[12]

The first changes to its mandate were made in 2007:[13] Frontex was empowered to deploy "Rapid Border Intervention Teams" to assist Member States that were at risk of being overwhelmed by migrants trying to enter their territory illegally.[14] This shift away from a merely coordinating role for the Agency was underlined by changes made to its mandate in 2011.[15] Frontex was charged with setting up "European Border Guard Teams," to which it was expected to contribute from a pool of seconded border guards put at its own disposal.[16]

In 2013, the Agency acquired a powerful new tool for border controls through the establishment of the European Border Surveillance System (Eurosur).[17] Eurosur was created to expedite information exchange between Frontex and the Member States; its aim is to "improve their situational awareness and reaction capability at the external borders"[18] through the collection of data on both the national and the European levels.[19] The geographical area that Eurosur surveys is vast, as it not only encompasses the EU proper but also the so-called "pre-frontier area" defined as "the geographical area beyond the external borders."[20] The Agency gathers data within this ample area, making use of methods ranging from mobile sensors to ship reporting systems and satellite imagery.[21] It then uses this data and information collected at the national level to create compilations of intelligence that it shares with the Member States.[22]

The 2015 "migrant crisis" marked the beginning of the next period of profound change. In 2016, a substantial reform saw the Agency assume a host of new operational powers.[23] An initial Commission proposal even went so far as to recommend that the Agency should stand ready to be deployed at the behest of the Commission on the territory of a Member State, even against the wishes of said State, thus granting the Commission a "right to intervene."[24] Though this particular idea was not adopted, Art. 8(1) of the revised regulation nonetheless sets out a greatly expanded array of tasks for the Agency, many of which involve the Agency adopting a much more operational stance than before. This new posture was underscored by officially renaming it the "European Border and Coast Guard Agency."

The next set of reforms was already enacted in 2019. The Commission tried – albeit unsuccessfully – to resurrect the idea of a "right to intervene."[25] Nonetheless, the Commission succeeded in increasing the powers of the Agency considerably. The catalogue of tasks accorded to Frontex is now so exhaustive, the legislator has to make make use of every letter in the alphabet to denote the different responsibilities of the Agency.[26] The most significant change concerns the creation of a "standing corps" with up to 10,000 members, allowing Frontex to act much more independently.[27] In addition, Eurosur was formally incorporated into the Frontex Regulation.[28]

This plethora of modifications has changed Frontex almost beyond recognition. The small agency tasked mainly with coordinating cooperation and supporting the Member States has become a strong actor in its own right, with an extensive mandate and substantial operational capacities. Having thus relinquished its backstage role, the Agency nowadays sits squarely at the centre of border control operations in Europe.

V. Frontex and the Fight Against Crime

Crime fighting was not originally envisioned to be among Frontex' tasks, as the transfer of executive powers in this area is a rather delicate issue for the Member States. The repeated strengthening of the Agency's mandate, however, not only affected areas closely related to its original task of coordinating border controls, such as return operations but also opened up whole new areas of activities to the Agency. Considering the touchiness of the subject, it is perhaps only fitting that tasks related to crime fighting were first assigned to the Agency through the backdoor by including them in the Eurosur Regulation. Though the Eurosur Regulation was legally separate from the Frontex Regulation, responsibility for administering the system was handed to the Agency, thus effectively putting it in control of Eurosur. One of the explicit aims of this new tool in the hands of Frontex was to aid in "detecting, preventing and combating illegal immigration and cross-border crime."[29]

After assigning tasks related to crime fighting to the Agency in this roundabout way, the 2016 reform introduced the task of crime fighting to the Frontex Regulation itself. The rechristened "European Border and Coast Guard Agency" was thus charged with "contributing to addressing serious crime with a cross-border dimension."[30] The most recent mandate revision of 2019 put it in even starker terms, stating that the Agency is to contribute to the "combating of cross-border crime."[31] In addition to this robust language, the definition of the term "cross-border crime" was expanded to include attempted crimes as well.[32] All of this shows that crime fighting has moved from being a task only indirectly associated with Frontex to being one of its core purposes. This is reflected in the self-description of its missions on its website. "Operation Themis," for example, is portrayed as having "an enhanced law enforcement focus," concentrating on activities running the gamut from the seizure of drugs and weapons to the collection of intelligence on people smugglers and criminal networks.[33]

Much of the Agency's contribution to combating criminal activity consists not in independent operations but in the mandated cooperation with other actors in this area.[34] The "securitization" of border control operations

has led to them being seen first and foremost as security measures; data gathered during these operations are therefore considered a valuable resource that should be mined for security purposes.[35] Frontex can bring a lot to the table, especially in the form of information gathered through Eurosur. A particularly notable example is the cooperation between Frontex and Europol. The first agreement between the two agencies dates back to 2008. Interestingly, while this "Strategic Cooperation Agreement" explicitly precluded the exchange of personal data, instead focusing on the exchange of "strategic and technical information," it already contained provisions that are normally reserved for agreements authorising the exchange of personal information.[36] This initial agreement was followed by a much more detailed "Agreement on Operational Cooperation" in 2015 elaborating on the specifics of enhanced cooperation between the two agencies. The exchange of information is no longer limited to "strategic and technical information." Instead, Frontex is to supply Europol with information gathered through Eurosur as well as to provide it with the personal data of people suspected of engaging in cross-border criminal activity.[37] Building on this, the executive directors of Frontex and Europol signed a "Statement of Principles for collaboration between Europol and Frontex" in 2018. The document stresses the importance of intensifying cooperation even further.[38] Reflecting the increasingly operational role that Frontex was already occupying at that time, the Agency is no longer just expected to chip in its intelligence but to provide the "boots on the ground" for the combined crime fighting efforts of the two partners.

But this was not the only important cooperation that Frontex engaged in. Since 2018, the Agency has also been involved in the "Crime Information Cell," a pilot project under the umbrella of "Operation Sophia," a Common Security and Defence (CSDP) mission in the Mediterranean. The project also includes Europol and is aimed at linking up crime fighting efforts by actors both from the CSDP and Justice and Home Affairs; it "will provide a platform to make full use of the agencies' unique capabilities to disrupt criminal networks."; once more, Frontex is to contribute by making intelligence available to its partners and through its strong operational presence.[39] "Operation Sophia" ran out in March 2020, but that did not end the involvement of the Agency in this type of joint activity, since Frontex is now participating in the "Crime Information Cell" of the follow-up mission "Irini."[40]

VI. Conclusion: New Roles Demand New Rules

The political winds in Europe changed considerably in the wake of the "migrant crisis," as European leaders took an increasingly tough stance on migration. It was against this political background that Frontex gained its new resources and powers. The expanded tasks and powers not only led Frontex to assume a more operational posture but also pushed its activities in a more repressive direction.[41] These days, the Agency has moved far beyond a merely coordinating and supportive role and now engages in activities ranging from return operations to combating crime. This repressive turn is in itself highly problematic, given the fact that the vast majority of the persons directly confronted by the Agency are not criminals but people in dire need of protection. Compounding this problem, many of Frontex' activities now take place in sensitive areas in terms of fundamental and human rights and should therefore be under intense official scrutiny. Nonetheless, the relentless growth in power has, regrettably, not yet been matched by a growth in means to hold the Agency accountable.[42] In order to remedy this state of affairs, it is of vital importance that transparency is increased and proper means of accountability are devised. Frontex has a lot to contribute to European efforts to combat criminality, but its powerful role should go hand in hand with robust oversight.

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