

National States, Common Borders: The Future of Border Management in Europe

The debate on the future of border management in Europe sought to reflect on the dilemmas and challenges facing Frontex, which is facing “a very difficult operating and political environment”, according to moderator Maarten den Heijer, an assistant professor of international law at the Amsterdam Center for International Law. He said that last year the EU faced an “existential crisis” driven by migration.


Frontex Executive Director Fabrice Leggeri started the discussion by looking back at the creation of Frontex 11 years ago. At that time, the EU was aware that having a theoretical legal framework for border management was not enough, so Frontex was created to support Member States in the operational field. The migration crisis last year was an example of an asymmetric, or malfunctioning, asylum system, Leggeri said. “We witnessed real migrants in need of protection, real refugees coming from Syria, but refusing to apply for asylum in the first place of entry into the EU, which for most was the Greek islands.”

Other examples of asymmetries include variations in Member States’ capacities, including border guards, as well as security concerns: some States are more concerned by terrorism, and others by organised crime, but if they don’t share intelligence, border guards won’t know who is considered a threat by another Schengen member. “These asymmetrical elements have concrete consequences in the everyday functioning of the borders and the everyday functioning of the agency,” Leggeri said. “We can see that the good will is there at the operational level, but the legislation cannot cover all these challenges.”

Den Heijer then asked whether the proposed changes in the legislation address some of these issues. Oliver Seiffarth, said they do, but it’s not clear whether they go far enough. However, he stressed the positive development of operational capacities, such as how the Poseidon system can see 80-90% of the boats leaving the Turkish coast - a capability that has surprised NATO officials; often Frontex is the first to have information, and to provide it to EU NAVFOR MED. “Frontex is, in my view, the most operational EU agency,” he said. However, when it comes to an intelligence-driven approach to risk analysis, “we’re not there yet.”

“We need to get emotions out of the migration topic again,” Seiffarth said. “We need to go back to facts, we need to go back to the operational level, and then the solutions are there.”

As an example, he said that to deal with irregular migration by sea from Libya, the solution was to look not to Turkey, but to examine Spanish and Portuguese co-operation with Morocco, Mauritania and Senegal on the migration route to the Canary Islands, which not many people know was the most deadly route at one time. Responding to a question about whether that co-operation only pushed the migration elsewhere, Seiffarth said that as a former NGO employee, he recognised the need to let migrants in. “But you need to have control of who you take in,” and there needs to be a mechanism for migrants who present themselves as “Syrian doctors” who turn out to be neither doctors, nor Syrian.





Marko Gašperlin, an assistant director in the Slovenian Ministry of Interior, pointed out that throughout the history of the EU, each crisis has also proved to be an opportunity for further development, and predicted that the EU will emerge from the current situation with a much stronger legal system. Frontex will get an additional mandate and more resources, and will be able to share responsibility with the Member States.

Leggeri said the December proposal from the Commission addresses three shortcomings: establishing a legal basis for developing integrated border management; greater capacity including the ability to acquire equipment, and the authority to impose mandatory measures based on a vulnerability assessment. Seiffarth said that “more rules are coming,” but “the current rules have to be followed. There is a Schengen *acquis*; we simply have to apply it.” He gave a practical example from his home city of Vienna, where people cross the border daily to work in areas such as healthcare, and can’t afford to spend up to an hour a day in border controls.

Jorrit Rijpma, an associate professor at Leiden University, said that while we tend to think of borders as line on a map, the future of borders is actually much more fluid. It includes measures in third countries (e.g. Turkey), and the digitisation of border management. Rijpma stressed that borders are not only the first line of defence, and a tool for filtering, but also the first line of offering protection. There’s an element of border management that takes into account fundamental rights, and Frontex has done a great deal there, he said.

Rijpma also said borders are not a solution to the migrant crisis. In this context, he pointed out the danger that expectations from the new Frontex legislation will be too high, “and then it becomes the ideal scapegoat for a failure on the part of the member states. We need to be careful that borders are not considered a solution for something that’s much bigger, much broader than for border guards to solve.” Seiffarth said borders are a necessary but not sufficient element of a solution: “The migrant crisis is not a border crisis - but solving the migration crisis is not possible without border control.”