EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

2008/2157(INI)

15.10.2008

DRAFT REPORT

on the evaluation and future development of the FRONTEX Agency and of the European Border Surveillance System (EUROSUR)
(2008/2157(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Javier Moreno Sánchez

CONTENTS

Page

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION 3

EXPLANATORY STATEMENT 8

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the evaluation and future development of the FRONTEX Agency and of the European Border Surveillance System (EUROSUR)
(2008/2157(INI))

The European Parliament,

– having regard to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, reporting on the evaluation and future development of the FRONTEX Agency (COM(2008)0067),

– having regard to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions examining the creation of a European Border Surveillance System (EUROSUR) (COM(2008)0068),

– having regard to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions preparing the next steps in border management in the European Union (COM(2008)0069),

– having regard to Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union[*],

– having regard to the European Pact on Immigration and Asylum, adopted in Paris by the 27 Member States on 7 July 2008, due to be endorsed at the next European Council in October 2008,

– having regard to the conclusions of the European Council Presidency of 15 and 16 December 2005 on the 'Global approach to migration: Priority actions focussing on Africa and the Mediterranean', published in the Presidency conclusions following the European Council of 14 and 15 December 2006,

– having regard to Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams[†],

– having regard to its resolution of 26 September 2007 on policy priorities in the fight against illegal immigration of third-country nationals[‡],

– having regard to Rule 45 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development

[*] OJ L 349, 25.11.2004, p.1.
[†] OJ L 199, 31.7.2007, p.30.
[‡] OJ C 219E, 28.8.2008, p. 223.

and the Committee on Budgets (A6-0000/2008),

A. whereas the fight against illegal immigration, and more specifically the integrated management of all the EU's borders, must form part of a global and harmonised approach to migratory phenomena, including the organisation of legal migration, the integration of legal immigrants and cooperation with countries of origin and transit,

B. whereas these migratory phenomena will continue to exist as long as there are still development gaps between the different regions of the world, and whereas, with that in mind, the management of migratory flows should be organised in synergy with development and cooperation policies with third countries,

C. whereas the surveillance of the Union's external borders is a key element in the fight against illegal immigration, which must be accompanied by additional enforcement policies seeking to eradicate such immigration at source, and by measures to combat illegal work, particularly the adoption of the directive imposing sanctions against the employers of illegally staying non-EU member country nationals, and against people-trafficking networks, which are an element of organised crime,

D. whereas, while border controls are the responsibility of each Member State as regards its own section of border, the migratory pressure on the Eastern and Southern borders of the EU requires a spirit of joint responsibility and compulsory solidarity to develop among the Member States, so as to facilitate the sharing of the material and human resources which can be mobilised to combat this phenomenon,

E. welcoming the first quantifiable results from the FRONTEX agency since it launched operations in October 2005, and noting the need to define a medium and long-term strategy, which has become essential at this stage of its development,

F. whereas this strategy should be taken as an opportunity to test the viability of the principle of 'compulsory solidarity' between Member States (already referred to in the context of Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams[*] (RABIT), which co-ordinates the Union's rapid reaction capacities in case of emergency) in order to determine the appropriate way of ensuring that the material resources (listed in the Centralised Records of Available Technical Equipment (CRATE)) and human resources needed to enable the Agency to take effective action are made unconditionally available,

G. whereas any action taken by the Agency should at any event comply with the standards of international law, in particular those relating to human rights, the dignity of the human being and of refugees, particularly the right of asylum and the principle of non-refoulement,

H. whereas all the Agency's actions should take into account the need to take the necessary precautions, and use all necessary means, to respect the most vulnerable, women and children, and in particular unaccompanied minors and people with disabilities,

[*] OJ L 199, 31.7.2007, p. 30.

I. whereas the humanitarian dimension of the action of FRONTEX must be enhanced by ensuring maximum legal certainty, in the context both of rescue operations it has to carry out and of return operations to which it has to contribute,

J. whereas, in the light of their success, operations for the training of the specialist staff involved in the functioning of FRONTEX deserve to be continued, and should in particular be extended to staff from third countries who have to cooperate with the Agency on a daily basis,

1. Calls on the Member States to consider a global approach to the problem of migration, seeking with equal vigour to achieve progress not only in stepping up checks at the Union's borders, in combating illegal immigration and returning illegal immigrants to their home countries, and in combating illegal work and the trafficking of human beings, but also in organising legal immigration and measures to facilitate the integration of legal immigrants, in promoting a global partnership with third countries to promote a positive relationship between migration and development, and in establishing a consistent human rights policy at EU level;

2. Stresses the importance of realising that FRONTEX must absolutely be able to count on the availability of the resources placed at its disposal by the Member States, both for its individual operations and for its permanent missions;

3. Calls on the Member States, to that end, to formalise as soon as possible a system of 'compulsory and irrevocable solidarity' to enable FRONTEX, in preparing and completing its missions, to remove the uncertainty as to the extent of the resources it can count on in real time;

4. Calls for the establishment of permanent and operational joint surveillance patrols all year round in all high-risk areas, particularly at sea borders;

5. Calls on the Member States to commit themselves as soon as possible to giving concrete expression to this solidarity principle, particularly by increasing the various material resources it makes available to the Agency and by guaranteeing that they will be unconditionally available in practice;

6. Calls on FRONTEX to send a report to the Council and the European Parliament, detailing in particular the actual use and real availability of the materials listed in the CRATE database, highlighting any difficulties encountered;

7. Calls on the Member States, in the event of persistent insufficient availability of resources, to take a rapid decision on altering the scale of FRONTEX's budget to enable it to rent or purchase its own material to carry out its missions;

8. Recalls that the European Parliament, as an arm of the budgetary authority, has already increased FRONTEX's budget since the agency's inception and will ensure that the budget is correctly implemented and adapted to changes in the agency's functions;

9. Welcomes the major cooperation efforts achieved by almost all the third countries with which FRONTEX has been called upon to cooperate on a day-to-day basis, and which have led to very positive results, for example in the Canary Islands;

10. Calls, conversely, on those third countries whose cooperation has been insufficient – or non-existent – to make every effort to facilitate the work of the Agency, particularly by ensuring that their enforcement services cooperate more effectively;

11. Calls on the Member States to permit FRONTEX's mandate to be reviewed so as to eliminate legal vacuums which could hamper its action, setting out in particular the precise legal conditions for its sea rescue operations and for its contribution to return operations, and including the option for third countries to use its equipment, in particular by means of pilot projects from which they would benefit;

12. Considers that such a broadening of the tasks of FRONTEX, and its contribution as part of the daily battle against illegal immigration, could justify the structural development of its logistical and administrative capacities, while complying with the proportionality principle;

13. Considers in particular that, while the rhythm of work and the resources employed do not yet justify creating a large number of decentralised agencies, consideration might be given at this stage to setting up two distinct external offices – one coordinating activities at land borders, the other for sea operations;

14. Stresses the need to carry out training for staff deployed in Agency operations – particularly training in maritime law, asylum law and fundamental rights – including, once its mandate has been widened, for staff from the third countries involved; to that end, encourages FRONTEX to cooperate with other institutions such as the International Organization for Migration, the Agency for Fundamental Rights and the Office of the UN High Commissioner for Refugees;

15. Welcomes the discussion being carried on the Council aimed at setting up the EUROSUR system with a view to optimising the exploitation of all surveillance systems, essentially by extending their existing cover, which currently reaches only part of the areas where operations need to be carried out;

16. Urges, therefore, that work begin without delay on the upgrading of the national surveillance systems and their interconnection as a network, and that – in the interest of coherence – FRONTEX be given the task of assembling the available tools, and in particular of managing the secure web-based Information and Coordination Network for Member States' Migration Management Services (ICONET) and of resuming the work of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI); also insists on the need to further the Agency's cooperation on risk analysis with other European agencies as well as with other international bodies and third country border control authorities;

17. Calls on the Member States to ensure that the concrete needs of the border control services are specifically taken into account in research activities;

18. Stresses the importance of incorporating into the EU's global border management system the proposed new European border control systems: the Electronic System for Travel Authorisation (ESTA), the entry/exit registration system, fast-tracking, etc.;

19. Calls on FRONTEX to take the initiative of creating a common information-sharing

environment between the competent national authorities in order to optimise the collection, analysis and dissemination of this sensitive data; calls on the European Security Research and Innovation Forum (ESRIF) to make its contribution to achieving this objective, giving priority in its work to common applications for the improvement of and innovation in surveillance tools;

20. Calls on the Agency to inform the European Parliament on agreements signed with third countries and to publish evaluation reports on joint operations;

21. Instructs its President to forward this resolution to the Council and Commission, the governments and parliaments of the Member States, the Office of the UN High Commissioner for Refugees and the International Organisation for Migration.

EXPLANATORY STATEMENT

I. Introduction

' I want to smile because I feel as though I have the strength of a giant. I have jumped over Europe. I have stridden across the seas and leapt over the mountains.

...

Massambalo. He recalled the tale he had heard the day before. Yes, it was the same name, the name of the god of emigrants, who leaps across the Dark Continent to watch over the suffering peoples….'

Laurent Gaudé, *L'Eldorado* (pub. Acte du Sud)

Neither the African god whom Laurent Gaudé evokes in his splendid novel, nor any of the other gods of the emigrants, are able to watch over the ever-growing number of human beings who 'stride across the seas and leap over the mountains' to reach the European dream. The number of people lost at sea, and the images of the makeshift vessels constantly landing on the southern shores of the European Union, remind us of this every day.

These gods cannot protect all these desperate people from the mortal perils they undergo on the route to hope, nor from the claws of the mafias and networks of people-smugglers, nor from the unscrupulous employers who will exploit them when they arrive here.

It is up to us as humans, it is up to us as Europeans, to close off this route to hell, to put an end to illegal immigration. At the same time we must ensure that only immigrants using legal channels can reach the territory of the European Union, and that effort is then made to enable them to integrate into our societies.

It is also up to us Europeans to establish adequate cooperation with their countries of origin so that immigration can become a factor in the development of these countries, of our own host countries and especially of the immigrants themselves.

In this comprehensive European response to the challenge of immigration we have to carry out a thankless but indispensable task, the management of border controls, at all the European Union's external borders.

This is but one facet of the comprehensive policy the Union needs to develop, the chief elements of which are set out in the recent European Pact on Immigration and Asylum.

It is in this context that the subject of your rapporteur's own-initiative report needs to be seen. The report outlines a proposal on the evaluation and future development of the FRONTEX Agency and of the European Border Surveillance System (EUROSUR) in response to the Commission's communication on this topic.

Your rapporteur has sought to build on the various discussions which took place at the public

hearing on 30 June 2008, during the debates in the LIBE committee and in contacts with representatives of the Commission, Council and NGOs and, of course, with the heads of the Agency, in particular its director and deputy director. The amendments from the various political groups will enrich the debate and the report.

Finally, to obtain a complete overview of the integrated management of borders, this report should be taken together with Parliament's report on the Commission communication on preparing the next steps in border management in the European Union.

II. 2005/2007 EVALUATION

The FRONTEX Agency's priority activities lie in the **coordination of operational cooperation** between Member States **in the management of external borders**.

Its aim is to improve the integrated management of the Member States' external borders with a view to combating illegal immigration and networks of people-traffickers, while fully respecting the dignity and fundamental rights of immigrants, first and foremost their right to life. To that end, Parliament should call for an amendment to the Agency's mandate specifying the legal conditions for rescues at sea. The Agency should also continue to take precautions to ensure that the most vulnerable – women and children, and in particular [unaccompanied] minors and those with handicaps – are treated with dignity and with respect for their human rights.

The Agency has already carried out 28 joint operations in 2006 and 2007: nine at sea borders, 12 at land borders and seven at air borders, plus ten pilot projects to supplement these operations.

These operations generate a profitable exchange of best practice and information, and help step up routine cooperation between the national border control services: in the course of two years, more than 53 000 people have been apprehended or refused entry at borders, more than 2900 forged travel documents detected and 58 smugglers of illegal immigrants arrested.

The participation of the Member States has been patchy: on average, seven Member States took part in operations at sea borders, nine at land borders and 11 at air borders. Parliament should insist that all Member States meet their obligations and make available the material and human resources needed to enable the Agency to function effectively, on the principle of 'compulsory solidarity' as set out in the rules of the Rapid Border Intervention Teams (RABIT). In the event of a persistent shortage of available resources, the option should be considered of adjusting the Agency's budget to enable it to acquire or rent its own equipment.

Among other major initiatives the following may be noted: the creation of the European Patrols Network (May 2007) along the coastal areas of the Member States concerned, and the creation of the Centralised Records of Available Technical Equipment (CRATE) for border checks and surveillance.

At strategic level, experience shows that cooperation in operations to combat illegal immigration at Europe's southern sea border is an urgent priority. Consequently Parliament should call for consideration to be given to creating specialised regional offices of the Agency in the Member States which are subject to constant pressure from illegal immigration, and for the systematic deployment of missions in high-risk areas.

FRONTEX can also provide **support for Member States faced with situations calling for enhanced operational and technical assistance and the deployment of rapid intervention teams at borders**.

The RABIT system, which entered into force on 20 August 2007 and has been approved by Parliament at first reading, provides for just such a 'rapid reaction capability' to supply additional human resources to any Member State in difficulties. The rapid border intervention pool set aside for this purpose includes 500-600 border guards, and an exercise was carried out in Autumn 2007.

FRONTEX should consider, as a preventive measure, acquiring its own equipment – which would be used by the rapid intervention teams – to guarantee their availability at the shortest possible notice in the event of an emergency.

FRONTEX is also developing **assistance to Member States for the training of their national border guards**, including **setting common training standards**.

The 97 FRONTEX training events were held for a total of 1341 people, with the aim of harmonising border guards' training everywhere in Europe.

The approach adopted has proved very fruitful and therefore deserves to be extended while respecting (and being consistent with) the Schengen *acquis*. Training should concentrate on staff from the third countries cooperating with FRONTEX. Cooperation with international organisations such as the IMO or the UNHCR should also be developed.

It should also be stressed that the Agency carries out its own **risk analyses**, which play a crucial role across the whole range of its work: for example, during the second annual assessment (February 2007) it contributed to drafting the Organized Crime Threat Assessment (OCTA) report and, in collaboration with Europol, the report on high-risk routes used for illegal immigration in the Western Balkans.

To that end, in 2007 FRONTEX linked up to the ICONet network – which has been in place since 2006 to enable the departments concerned to exchange information on illegal migratory flows – with a view to exchanging information with the Member States on risk analyses, the preparation of joint operations and returns; it also participates in meetings of CIREFI (the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration).

In order to exploit synergies and achieve economies of scale, the various instruments and bodies available should be managed by FRONTEX.

The Agency is involved in **research in areas related to external border checks and surveillance**: this surveillance has already been put into practice in the form of six projects and seven workshops/seminars devoted to R&D, which have contributed to devising and selecting the entry/exit registration system (including BIOPASS) and the European border surveillance system; in particular, the Agency participates actively in the work of the new European Security Research and Innovation Forum (ESRIF), as part of which a separate working party on border security has been set up.

Work will be needed to ensure that the concrete requirements of the border control services are specifically taken into account in the various research activities.

Finally, downstream of the control and surveillance operations, the Agency is empowered to **supply Member States with the aid necessary to organise joint return operations**.

Though it has already contributed to the organisation of nine operations of this type, its role and the legal conditions under which it operates remain vague and should therefore be clearly defined.

III. LONG-TERM VISION

The FRONTEX Agency will be an essential, if not central, feature of the long-term development of the EU's border management strategy. Thanks to a gradual approach and the progressive stepping up of its capabilities, it can provide a real added value to benefit the overall Schengen system, particularly in the context of **measures involving cooperation with third countries**, by ensuring coherence between its activities and the global framework of foreign policy.

Collaboration and cooperation arrangements have already been established with the Russian, Ukrainian and Swiss authorities and are yielding excellent results, and several others are currently being negotiated.

Regarding **measures at borders**, FRONTEX is also giving consideration to the notion of a 'one-stop shop' combining customs and border control authorities, while still assessing best practice in terms of cooperation between the competent bodies or in connection with the most successful pilot projects.

The Agency's most important contribution may be found in its participation in devising the EUROSUR system (adopted by the Council on 14 and 15 December 2006), focusing on the Union's southern and eastern borders, the first priority of which must be to integrate all the maritime surveillance facilities in order to fulfil as well as possible the tasks assigned to it: to reduce the number of illegal immigrants arriving on EU territory; to step up internal security as a whole by helping combat and dismantle cross-border crime; and to step up search and rescue capabilities so as to save more lives (in all three cases, the success of EUROSUR requires the full involvement of the third countries concerned, particularly those of the southern shore of the Mediterranean, from which the greatest migratory pressure on the EU comes).

The main challenge is to improve coordination of the existing surveillance infrastructures and extend their cover, which currently reaches only part of the areas where operations need to be carried out, in order to obtain a full picture of the situation in real time and increase the reaction capacity for law and order and/or emergency services. Parliament should call for the harmonisation of national surveillance systems to be initiated without delay and interconnected in a network. On R&D, priority should be given to common applications for improvement of and innovation in surveillance tools.

Finally, it needs to be decided who should be given the task of creating a common environment for sharing information between the relevant national authorities, in order to optimise the collection, analysis and dissemination of this sensitive data.

Clearly, FRONTEX and EUROSUR will show up the essential need for **operational solidarity** between the Member States: only if this is actively implemented will it be possible for resources to be channelled towards the border areas where there is the greatest need.

The matter of establishing a **fully-fledged corps of border guards** cannot be decided until the first lessons have been learned from the operation of the Agency; for, while the questions being asked about improving the current system for allocating resources to the relevant sectors, and about optimising the profitability of existing mechanisms are quite legitimate,

they must not get in the way of the fact – without even going into the highly political nature of creating such a force – that the Member States of the Union already have 450 000 border guards…