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'Frontex should have no role in asylum procedures'

The EU border agency's conduct has been scandalous — from illegal pushbacks to meeting arms manufacturers. MEP Birgit Sippel calls for accountability

The European Border and Coast Guard Agency Frontex has been wrestling with scandals for quite a while now: human rights violations, such as illegal pushbacks in the Mediterranean, and undeclared meetings with arms manufacturers. Were you somehow surprised by these revelations?

Regrettably I have to say that we weren't exactly surprised by the revelations. We've been trying for quite some time to obtain straight answers from Frontex. Reports that something is awry at Frontex have been around for a long time.

In the past we've often found that our inquiries – into reports of pushbacks or the use of violence against migrants – have been answered with: "We don't have any information on that. We don't know anything!" Looking back, we have to say that that's highly dubious, to say the least.

It seems, however, that when it comes to Frontex there is a fundamental problem with European structures. Although we, Member of the European Parliament, are directly elected and adopted Frontex's mandate with the European Council, we are not a direct supervisory body. That is the Frontex Management Board, which includes representatives of the European Commission and the member states. But we only receive Frontex's reports. It turns out that these reports were not comprehensive and not even entirely honest. It's a design flaw that we don't have any other options to supervise Frontex's operations.

What role, ideally, would the European Parliament play in supervising Frontex's then?

I'm not sure whether the Parliament could really play an active role in

the Management Board. But at the very least independent experts are needed besides the Commission and the member states – both of which I don't entirely absolve of responsibility. Some NGOs already advise the agency on fundamental rights questions in the consultation forum, but their recommendations are not binding. If in future, after months of delay, some of the designated 40 staff positions at Frontex's are finally filled, which deal specifically with monitoring human rights compliance, then the fundamental rights officer could play an enhanced role in the Management Board and report on what's going wrong there.

The Parliament itself has now established a working group that is supposed to examine, within a four-month window, current allegations and reports, and then to make recommendations. Given the agency's size, it would naturally make sense not to stop with this closing report, but to use the working group to ensure, more consistently and systematically than in the past, that the corresponding recommendations are also implemented. We thus need independent expertise and more transparency, and no longer leave the supervision of Frontex to the member states alone.

Particularly Fabrice Leggeri, Frontex's executive director, is under massive public pressure. You, for example, together with the S&D group, have repeatedly called for his resignation. But doesn't the focus on Leggeri risk allowing structural problems in European border protection and migration policy to be swept under the carpet?

I think that both need to be pursued at the same time.

The executive director has to ensure that all aspects of Frontex's mandate are implemented. But when it turns out, for example, that it took him months to appoint officials tasked with protecting fundamental rights, and that sometimes, against what should have been people's better judgement, pushbacks and dubious operations at the borders were not reported, ultimately he has to take responsibility. If the executive director of an agency that has been massively expanded, and who is quite well paid, is not in a position – or is unwilling – to state openly where there are abuses and to tackle them, he simply has to go.

Nonetheless, it's also true that activities at the borders are still spearheaded by individual member states. That means that Frontex provides support, but it does not itself exercise command. So yes, Frontex should have communicated what was going on earlier than it did and more openly, especially when we in the European Parliament were asking about them. Having said that, the focus should also be on the member states, which are responsible for organising these

pushbacks and other things.

Given that there are two Commission representatives on the supervisory board and otherwise representatives of the member states, which more or less just regulate themselves, it's fairly clear that it cannot really function properly. That's why we need more independent observers.

The EU's multiannual financial framework for 2021–2027 foresees a significant increase in Frontex funding – among other things, the agency will for the first time have its own "*standing* corps" of 10,000 border guards, some of whom will carry weapons. Can that be justified in light of these recent scandals?

That point certainly needs to be looked at. After all, we've significantly expanded Frontex. When we declare that we're a European market – and I don't just mean in economic terms – and a united continent with certain democratic values, that also entails that border controls also have to be handled jointly.

Some states inside the Schengen area only have a few, or even no borders at all, with states outside the EU. That means that now only some member states have an external border. I think that in principle it makes sense to establish an authority that provides these member states with back-up.

However, as things stand, and in light of the revelations and reports that have appeared about Frontex, I really believe that this extension of the mandate and personnel, as well as the fact that Frontex staff will be armed, can only work if, at the same time, more transparent structures are created and Frontex takes it own reporting responsibilities more seriously.

In the EU's New Pact on Migration and Asylum, Frontex assumes a more powerful role – above all, in the new so-called "screening" procedure for people at the border. Screening could result in decisions that have consequences for people's access to asylum. In light of the scandal, aren't further improvements needed here, if Frontex is to have a direct influence over asylum procedures?

The migration pact is inherently ambivalent. You mentioned screening. All third-country citizens who cross the EU's external borders irregularly, make an application for asylum or are rescued at sea have to be checked. This includes security clearance and health checks, as well as registration of biometric data. That's something we probably all want. But in that case we have to scrutinise Frontex's role even more closely and ensure that the European Asylum Support Office is also involved to protect the basic right to asylum. It's clear,

however, that Frontex has no role in asylum procedures – nor should it.

The legal basis for screening is in fact not the common European asylum system, but the border regime. That also explains why Frontex plays a role in screening: Frontex carries out border controls. However, it's precisely in relation to screening that we have the problem of the so-called "fiction of non-entry". This refers to instances in which the authorities act as if a refugee legally has not entered the EU, even though physically they are already in, let's say, Greece. That needs to be checked, especially because Frontex and the Asylum Support Office carry different weight. Who is really responsible for what? To what extent do member states and the asylum authorities counterpose one another, or are willing and in a position to really implement and defend the right to asylum? That will be a major challenge.

But to mention a completely different point that precedes screening. Screening begins when someone basically has one foot in Europe. Pushbacks – which we were just talking about – often occur even earlier. That's why I'm particularly critical of Frontex's role. In some cases it argues that if a rubber dinghy is in international waters or the territorial waters of a third state, then, strictly speaking, it isn't a pushback but a perfectly permissible order to change course. But this is just cynical hair-splitting.

And if Frontex claims "we saw the boat but it wasn't evident that someone wanted to apply for asylum, so we were within our rights to send them back", then I simply ask myself: Well how would I be able to tell whether someone needed protection in such a situation in the middle of the sea, as I approached people who were probably desperate and anxious? I'm pretty sure that none of them have signs they can hold up with "asylum" written on them. In my opinion these people should be rescued and given a chance to apply for international protection. And before we adopt this Migration Pact Frontex's role and responsibility should be clarified.

But isn't Frontex just a symptom of a failed European migration policy? Shouldn't that be tackled before Frontex is expanded?

Of course one of the main problems is that at least since 2015, but even before that with the Dublin regulation, there has been no real solidarity. The Dublin rule says that refugees should remain at their point of arrival, where their asylum procedure will take place. That has never really worked out. Now, there is a new convention on the table, which again asserts that responsibility largely lies with states on the external border. Whether it be screening, border procedures or

asylum procedures, they all have to be done by member states on the external borders.

If I'm not prepared to say that all member states accept refugees and actively participate in asylum procedures, then that's just not right. I don't want to justify it, but I do understand when states at the external border say that they've had enough. That is all the more frustrating because in Germany – but certainly in other countries, too – there are local councils, sometimes whole regions saying that they can take more refugees. On top of those who just come anyway, by various routes, we can also accept a certain number of people. They have the procedures in place, people to provide support. Everything's ready. And it just doesn't happen.

Let me just mention a figure. I remember that a few years ago Mr Seehofer, Germany's Interior Minister, said Germany can take a maximum of 200,000 refugees a year. I think that was in the context of the coalition negotiations. When I look today at how many refugees Germany is taking in, it's very far from 200,000. That shows that there's definitely room for manoeuvre if there's just political will.

This interview was conducted by Daniel Kopp.



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