

II Cooperation with third countries

In border control missions along the external borders of the Union, cooperation is increasingly sought with third countries. According to the Commission evaluation, such cooperation is 'a key component of the integrated border management model'. Without questioning this strategic focus, the Standing Committee is of the opinion that the physical transfer of border controls towards the territories of third countries may not be used as a means to circumvent international obligations or norms laid down in Community law regarding border controls and asylum applications lodged at the border or within the territories of EU Member States. In its green paper on the future of the Common European Asylum System, the Commission held that 'measures to combat illegal migration and the smuggling of human beings should be implemented in a manner which does not deprive the right to asylum of its practical meaning' and announced that 'the Commission's efforts are focusing on providing operational and financial assistance to help Member States to establish effective protection-sensitive entry management systems' (para 5.3.).

The Standing Committee regrets that this intention has not met with similar focus in the Commission evaluation report on FRONTEX. Although the report underscores that 'experiences gained from joint operations show that border guards are frequently confronted with situations involving persons seeking international protection or crisis situations at sea' (para 15.), the Commission addresses this issue merely by proposing the set up of specialized training courses for border personnel on relevant provisions of European and international law. In the view of the Standing Committee, such an approach does not suffice. International protection can only meaningfully be guaranteed if the issue of asylum is addressed on a strategic level, which involves the mandate of FRONTEX, the choice of third countries with which FRONTEX cooperates and requires the issue to be addressed in the setting up of operational plans and working agreements with third countries. Border guards should under all circumstances operate under clear guidelines when dealing with migrants who claim international protection.

III Democratic accountability of FRONTEX

Shortly before release of the Commission evaluation, the House of Lords made public its report on the functioning of FRONTEX.¹ In its report, the House of Lords makes a number of critical remarks regarding the functioning of FRONTEX. Amongst others, the House of Lords recommends that rules on disembarkation of migrants must be formulated which apply to all FRONTEX maritime operations; that Member States taking part in operations should follow clear guidelines clarifying powers and obligations in the different sea areas; that working arrangements with third countries should include meaningful guarantees for the treatment of repatriated migrants; and that FRONTEX should be more formally accountable to the European Parliament. The Standing Committee fully subscribes these recommendations.

In line with the House of Lords recommendations as to the democratic accountability of FRONTEX, the Standing Committee considers it opportune for the LIBE Committee to assert a close scrutiny over the work of the agency. Such scrutiny should, in the view of the Standing Committee, include an assessment of the manner in which operations of border control which take place outside EU territory and in collaboration with third countries are carried out. Since it appears that there are currently no clear guidelines for Member States' border guards and other officers taking part in these operations, there is ample need for adequate democratic supervision. In the past, your Committee has organized hearings on the 'Tragedies of Migrants at Sea', an issue which indeed bears continuous attention. The Standing Committee would invite your Committee to ensure FRONTEX is held accountable for the manner in which it fulfils its mandate, which includes adherence to Community law and international human rights. Moreover, it should be ensured that there is explicit reporting on the procedures and the way in which those rights are guaranteed in practice. Any future report of the Commission on the activities of FRONTEX should contain information on those procedures, the number of individuals that have been returned and to which third countries, how many of those persons had applied for asylum and which guarantees were provided by the countries to which the persons were returned.

¹ House of Lords Select Committee on European Union, 'FRONTEX: the EU external borders agency, Report with evidence', 5 March 2008 (Ninth Report).

IV Future evaluation

The Standing Committee is aware that the Management Board of FRONTEX will commission an independent external evaluation in 2008 on the implementation of the FRONTEX Regulation pursuant to Article 33 of that Regulation. Since the Regulation expressly aims at respecting fundamental rights and observance of the principles recognised by Article 6(2) of the Treaty on European Union and, with regard to the powers of border guards stationed in another Member State, refers to the safeguards of the Schengen Borders Code and other relevant provisions of Community law, the Standing Committee suggests that the LIBE Commission asks the Commission to ensure that the issues of asylum and international protection will be with the appropriate specificity addressed in the external evaluation of FRONTEX.

The Standing Committee is prepared to provide you with further information on this subject.

Yours sincerely,

On behalf of the Standing Committee,



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Chairman



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