



## Analysis

### “Trust in Frontex”<sup>1</sup>: The 2013 work programme

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*This analysis examines the main points of the EU’s border management agency Frontex’s 2013 work programme and the first work programme of the Consultative Forum on Fundamental Rights (hereafter “the Consultative Forum”).*

*Despite what Frontex (hereafter also referred to as the Agency) deems “budgetary restrictions”, the agency’s €86 million budget remains one of the biggest of EU’s Justice and Home Affairs agencies, roughly equivalent to Europol’s. <sup>2</sup> Frontex’s priorities in 2013 will not differ much from 2012 with operational activity still the priority. Frontex Executive Director Ilkka Laitinen told the European Parliament’s LIBE Committee on 7 March that operational expenses would account for 77% of the budget.*

*The Agency’s capacities will continue to be geared towards sea borders operations, border surveillance and the prospect of further cooperation with third countries and Eurojust. Narratives on “non-genuine” asylum-seekers and the risks inherent to visa liberalisation also crop up in the new work programme. Despite the Agency’s new decision-making capacities and increased potential to launch operations in the EU and beyond, it is striking that the new Consultative Forum on Fundamental Rights is only mentioned once in the work programme.*

*In April last year, Statewatch reported on the serious concerns regarding the absence of any satisfactory human rights safeguards and independent reporting mechanisms in relation to Frontex’s work and operations. The Greens/European Free Alliance in the European Parliament, who abstained from the voting on the amended Regulation, feared that human rights would remain “an afterthought for the EU’s border agency.”<sup>3</sup> The 2013 work programmes of the Agency and the Consultative Forum may well confirm these fears.*

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<sup>1</sup> Frontex, [Programme of work 2013](#), March 2013

<sup>2</sup> EUROPOL, [Final budget and staff establishment 2012](#)

<sup>3</sup> Greens-EFA, [Half-hearted improvements on human rights protection fall short](#), 13 September 2011

## Continuing priorities: sea borders and border surveillance

Despite “budgetary restrictions” – the agency’s budget decreased from €92.8 million in 2010 to €86.4 million in 2011 and €84.96 million in 2012 – joint operations and pilot projects at sea borders take up the biggest share of the draft budget, with a total €20 million devoted to these activities. The rest of the budgetary lines are expected to remain largely stable, although the draft budget dedicated to joint operations and pilot projects at land borders is now €5.3 million, an increase of €0.3 million.

Border surveillance remains high on the Agency’s agenda, with the continued development of both EUROSUR (see below) and the All Eyes project, which began in 2012 and focuses on “*Aerial, Ground and Sea Surveillance – sensors and platforms and advanced system solutions.*” Both projects are intertwined in their means and aims, and envisage the use of satellites and unmanned aerial vehicles (i.e. drones), which have been re-baptised as “*Remotely Piloted Aircrafts*” in the work programme, more widely known as Possibly Remotely Piloted Aerial Systems (RPAS) by the EU.

The importance of maintaining the support given to Greece and the “vulnerability” of the EU’s external borders – particularly between Greece and Turkey - are heavily emphasised and the work programme mentions that “*the mandate for the Frontex Operational Office (FOO) pilot was extended until the end of 2013*”. The FOO was opened in Piraeus, Greece, in 2012 as “regionally-based support for Frontex coordinated activities”.<sup>4</sup> It was one of the aspects of the Agency’s work that Human Rights Watch looked into when it investigated the situation of intercepted migrants who were detained in Greece, accusing Frontex of being “EU’s dirty hands.”<sup>5</sup>

## Irregular crossing and return operations

The Serbian-Hungarian border is a new strategic area of deployment as intensified border checks in other areas, such as between Greece and Turkey, have led a shift in migration routes. Speaking at the LIBE Committee meeting on 7 March, Frontex Executive Director Laitinen said that “*the Bulgarian border management system fulfils its expectations.*”

Laitinen also informed the Committee that while the number of people refused entry to the EU remained stable, the number of irregular border crossings – i.e. intercepted irregular migrants – dropped by 49% between 2011 and 2012. In terms of nationalities intercepted at the EU’s external borders, Laitinen noted:

*“Afghanis persistently continued to be the most common nationality followed by Syria... An interesting point is [that] Albania is back in the picture. Algeria, persistently and Bangladesh. So what is the common denominator here with the exception of Albania [where cooperation on return is successful] is that it is very challenging to return people who have no right to stay from these countries.”*

The Executive Director gave no indication of how the Agency would manage to focus its work on certain nationalities while avoiding discriminatory profiling.

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<sup>4</sup> Frontex, [Greece will host Frontex first operational office](#)

<sup>5</sup> Human Rights Watch, [The EU’s Dirty Hands Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece](#), September 2011

Joint return operations will remain an important part of Frontex' s activities, with a budget of €10 million paying for one return operation every week in 2013.

### **The risk of visa liberalisation**

For the first time in a work programme a specific company is singled out for special attention. Frontex considers that the expansion of Turkish Airlines will lead to an increased risk of irregular migration due to Turkey's generous visa policies for nationals of countries upon which the EU still imposes strict entry conditions:

*"As a result, border-control authorities will increasingly be confronted with a wider variety of nationalities, and probably also a greater diversity of facilitation networks, further complicating the tasks of law enforcement authorities."*

Visa liberalisation agreements between the EU and non-EU countries carry the risk of *"abuse of new legal travel channels to enter and subsequent illegal stay in the EU"* thus furthering the risk of *"increased facilitation of secondary movements of illegal stayers in the EU."* This includes 'bogus' asylum-seekers, who *"take advantage of cheaper connections between small airports of EU Member States as well as an increase in online check-in systems that reduce the possibility of detecting fraudulent documents."*

According to Frontex, visa liberalisation agreements with the countries of the Western Balkans have led to an increase in the *"number of cases of asylum abuses"*, an analysis which has been dismissed by NGOs<sup>6</sup> and by the Meijers Committee. In January 2013 the Committee expressed concerns that:

*"EU pressure on third countries to prevent abuse of visa free travel could interfere with the human rights to leave one's country and to seek asylum, and there are worrying signs that such pressure results in discriminatory practices of border control by third countries. Balkan countries are reported to not only revoke travel documents, but also to criminalise the act of violating the immigration laws of a foreign country and to undertake specific measures in respect of minorities who are likely to request asylum in the EU, such as Roma."*<sup>7</sup>

On 21 February 2013, the Human Rights Commissioner of the Council of Europe, Nils Muižnieks, strongly criticised Macedonia for withdrawing the passports of Roma Macedonians to *"punish them for having sought asylum in the European Union."*<sup>8</sup>

### **The "risk" of asylum-seekers**

Frontex's warnings about potentially large flows of people seeking international protection is based on the belief that *"facilitators of illegal border-crossing often recommend that migrants apply for international protection if detected at the external borders, only to abscond from asylum centres only*

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<sup>6</sup> Chachipe, [Selective Freedom: visa liberalisation and restrictions on the right to travel in the Balkans](#), July 2012

<sup>7</sup> Meijers Committee, [Letter on the implications of the recent judgment of the ECHR \*Stamose v Bulgaria\* for visa liberation negotiations](#), 10 January 2013

<sup>8</sup> ["Roms : « L'UE sous-traite le sale boulot aux pays des Balkans !](#), Cédric Vallet in *Le Courrier des Balkans*, 22 February 2013

*a few days later.*” This paragraph is a reproduction from Frontex’s Annual Risk Analysis 2012 which also reported that:

*“Some Member States reported that once they had registered in an asylum centre, many migrants absconded only a few days later, continuing their journey to their intended final destination. This was particularly the case for Serbians and Afghans detected at the border between Hungary and Serbia.”*<sup>9</sup>

Frontex did not balance these concerns by mentioning recent judicial developments that have seen Hungary condemned twice for detaining asylum-seekers in breach of Article 5(1) of the European Convention of Human Rights. Nor does the work programme take into account the fact that asylum-seekers in Hungary may face inhuman reception or detention conditions: the two UNHCR reports published in 2012 argued that Hungary is not safe for asylum-seekers.<sup>10</sup>

## **EUROSUR**

The decrease in the budget for sea operations should be seen in the light of the significant increase in the agency’s contribution to the development of the pilot phase of EUROSUR (European External Border Surveillance System). EUROSUR aims to contribute to the establishment of a common European integrated border management system. Presented as “a system of systems”, it will bring together data collected by already-existing maritime surveillance systems across the EU to enhance awareness on the situation at the Schengen area’s maritime borders, and ultimately at all of the EU’s external borders.

Frontex will administrate the information exchange network and has, over the last five/few years, “[i]nitiate[d] and contribute[d] to specific developments aiming to support the Member States in reaching full situational awareness at their external borders and in increasing the reaction capability of their law enforcement authorities.”<sup>11</sup> A legal basis for EUROSUR has not yet been adopted but a pilot project has been running since the Commission first issued a proposal on the project in 2008.

Although negotiations on the EUROSUR Regulation are ongoing, Frontex’s financial contribution to the network multiplied by a factor of eight between 2009, when the first expenses specific to EUROSUR were mentioned in the work programme (€800,000) and 2013, where it is estimated that €6.54 million will be spent on the project.<sup>12</sup>

Laitinen stressed the importance of EUROSUR to Frontex when speaking to the LIBE Committee in early March, stating:

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<sup>9</sup> Frontex, [Risk Analysis 2012](#), April 2012

<sup>10</sup> Dublin II: European Court of Human Rights condemned Hungary twice for detaining asylum-seekers in breach of Article 5(1) of the European Convention of Human Rights ([Al-Tayyar Abdelhakim v. Hungary](#) (no. 13058/11) and [Hendrin Ali Said and Aras Ali Said](#) (no. 13457/11)) See also Hungary still not safe for Dublin II migrants: [Note on Dublin transfers to Hungary of people who have transited through Serbia](#) (UNHCR, link) The UNHCR reiterated its recommendation for Dublin II asylum-seekers not to be removed to Hungary [six months after a first report warning against arbitrary detention and unfair treatment of asylum-seekers in Hungary](#).

<sup>11</sup> Frontex, [Programme of Work 2011](#), January 2011

<sup>12</sup> This estimate is based on expenditure foreseen in the 2013 Work Programme for the development of the network, “projects related to EUROSUR” like the European Situational Picture and the Pre-Frontier Intelligence Picture, and the maintenance of Frontex’s Situational Centre.

*“[W]e can say that EUROSUR is the new wrapping of Frontex activities...We are due to provide the common surveillance tools, in other words our joint operations will serve this purpose in the EUROSUR environment...It is a very important, a very big thing for the agency.”*

He added that Frontex will “control the content and the reliability of the information” that is fed into the EUROSUR system. However, he did not elaborate on what techniques would be used to verify the information received and whether that would include information provided by third countries.

As explained in the work programme:

*“The EUROSUR network has been in use for the exchange of operational information since the end of 2011 and the number of connected MSs [member states], as well as the scope of the provided services, has steadily increased.”*

The EUROSUR is *de facto* in place even though it will be only formally launched once the Regulation is adopted. According to current plans this will take place on 1 October 2013. Last year’s *Borderline* report denounced that:

*“Whereas the decision to establish comparable EU systems such as EUROPOL and FRONTEX were at least discussed in the European and national parliaments, and by civil society, in the case of EUROSUR and to a lesser extent the smart borders initiative this method has been substituted for a technocratic process that has allowed for the development of the system and substantial public expenditure to occur well in advance of the legislation now on the table.”<sup>13</sup>*

### **Fundamental rights**

In March 2011 Frontex adopted a Fundamental Rights Strategy, the aim of which is “to mainstream fundamental rights into all activities of Frontex and thus promote the respect of fundamental rights in the European border-guarding culture.”<sup>14</sup>

The 2013 work programme is the first to be drawn up since the establishment of the Consultative Forum and since the European Ombudsman launched an inquiry into Frontex’s fundamental rights strategy.<sup>15</sup> However, activities related to fundamental rights seem to be limited (as in previous years) to the identification of people in need of international protection and victims of trafficking during joint operations. Fundamental rights will also be looked at in training activities, but a number of other issues remain unaddressed.

In their joint contribution to the Ombudsman in September 2012,<sup>16</sup> Statewatch and Migreurop highlighted the need to guarantee the respect of the human rights of all migrants intercepted and/or returned including their rights as data subjects (in relation to the collection of personal data), their

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<sup>13</sup> Ben Hayes and Mathias Vermeulen, [Borderline: The EU's New Border Surveillance Initiatives Assessing the Costs and Fundamental Rights Implications of the EUROSUR and the “smart borders” proposals](#), a study by the Heinrich Böll Foundation, June 2012

<sup>14</sup> Frontex, [Fundamental Rights Strategy](#), March 2011

<sup>15</sup> European Ombudsman, [Own-initiative inquiry concerning implementation by Frontex of its fundamental rights obligations](#), 6 March 2012

<sup>16</sup> Statewatch and Migreurop, [Reply to the Ombudsman’s request for submission – Frontex’s fundamental rights](#), 27 September 2012

right to access legal advice, and the right to be protected from arbitrary detention. It was also recommended that a pre-assessment of the fundamental rights impact of Frontex's operations and other activities be conducted.

Frontex subsequently published a Fundamental Rights Action Plan which included specific actions to be undertaken during joint operations, risk analyses, return operations, training and cooperation with third countries. However, none of these actions appear in this year's work programme despite Laitinen saying to the LIBE Committee that fundamental rights are "*a priority and it goes across [all] activities*" including "*improving the reporting system, improving the scrutiny of these alleged violations of fundamental rights*".

### **External relations with EUROJUST and third countries: contradictions and legal uncertainties**

The work programme insists on the need for further cooperation with third countries, at the same time as acknowledging that "*the situation in western African countries like Nigeria may also trigger flows of people in search of international protection to the external borders.*" Frontex and Nigeria concluded a Working Arrangement in January 2012.<sup>17</sup>

Moreover, it is also deemed necessary to provide "*[r]isk analysis specialized training to MS [Member States] and Third Countries collaborating with Frontex in networks.*" The work programme refers to a number of these networks: the Western Balkan Risk Analysis Network (WB-RAN), the Eastern Borders Risk Analysis Network (EB-RAN) and the Africa Frontex Intelligence Community (AFIC). While all third countries participating in the WB-RAN and the EB-RAN have signed a working arrangement with Frontex, uncertainty remains regarding the legal framework applying to cooperation and the exchange of information with Frontex's African partners.

A Frontex representative told *Statewatch* in late February/early March that in 2012 the AFIC included Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Liberia, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo. Of these countries, working arrangements (WA) have been signed only with Cape Verde and Nigeria.

Frontex added:

*"The work of AFIC has taken place in the format of workshops organised in Warsaw, Madrid and Lisbon. As information and knowledge sharing between AFIC partners and Frontex is informal and voluntary, the discussions among participants have been open and frank."*

The work programme also mentions the objective of "*developing a WA with Eurojust enabling also the future transmission of personal data.*" It is worth noting that Frontex's mandate was amended in 2011 in order to, *inter alia*, deepen cooperation with European agencies, in particular by authorising the exchange of personal data. Frontex's regulation requires that:

*"Onward transmission or other communication of personal data processed by the Agency to other European Union agencies or bodies shall be subject to specific working arrangements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor."* [Article 13]

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<sup>17</sup> [Working arrangement between Frontex and the Nigerian Immigration Office](#), 19 January 2012

However, it is not known whether the conclusions of a working arrangement with Eurojust to this end will be preceded by an independent impact assessment on the potential consequences of exchanges of personal data.

Laitinen confirmed to the LIBE Committee that Frontex was “*applying a gradual and cautious development*” with Libya, in line with the EU’s foreign policy and the involvement of both the European Commission and the European External Affairs Service (EEAS). The European Commission is engaged in border management cooperation through the EEAS in other regions, including in the West Sahel where Mauritania was lately granted €8 million to reinforce its border management capacities.<sup>18</sup> Although Frontex is not officially part of the West Sahel project, the Agency is operational in Mauritania’s territorial water through operations HERA based on bilateral cooperation between Spain and Mauritania. Laitinen emphasised that, given the current situation in the Sahel, it was “even more needed to be present there” and that Spain should be further supported in hosting operation HERA.

### **Academic aspirations?**

Following the promotion of Erasmus-like exchanges between border guard authorities and the development of training courses for border guards and curricula for mid-level and high-level education, Frontex is now getting further involved in the academic sphere.

While the 2012 work programme only hinted at the possibility for “*Joint Degree Programmes for bachelor and masters studies*”, the 2013 work programme introduces what the agency calls the “*European Master in Border Security and Cooperation (BSC)*,” a programme of study open only to border guards.”

The programme will be:

*“Delivered by a Consortium of border guard Academies and Universities (equal partnership) in collaboration with other supporting institutions from the border guard training and education field. The programme supports an integrated strategic approach to border management and shall foster a common border guard culture within the EU.”*

According to Frontex, in reply to a request submitted by Statewatch, Consortium Partners (Awarding Authorities and Delivering Partners) include: the Estonian Academy of Security Sciences; the Border Guard State College Latvia in cooperation with Rezekne Higher , the Education Institution of Latvia; Ireland’s Garda College, run by An Garda Siochana; the University of Malta; the Defence Academy of Netherlands in cooperation with Royal Marechaussee; the Romanian Police Academy, Border Guard Department; the Civil Guard Academy of Spain in cooperation with the Spanish Universidad Nacional de Educación a Distancia (UNED); and the Academy of National Police, Spain, in cooperation with University of Salamanca.

It may be that the programme will be funded through EU education or training funds. However, it is not clear whether this would be considered part of Frontex’s budget or whether it would increase the total amount of resources available to the Agency in the future.

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<sup>18</sup> [‘Mauritania opens new border post’](#), Bakari Guèye in *Magharebia*, 29 January 2013

## Work Programme of the Consultative Forum

The Consultative Forum on Fundamental Rights is mentioned just once in the work programme, in the list of the changes made to the Frontex Regulation 2004/2007.<sup>19</sup>

Laitinen elaborated a little on the work of the Forum in his presentation to the LIBE Committee. So far, work has focused on the code of conduct for joint operations and training for Frontex's staff and the forthcoming European Border Guards Teams (expert teams in certain areas of border management deployed during joint operations and rapid interventions).

Despite – or perhaps because of - going largely unmentioned in the activities presented by the Agency in the work programme, the Consultative Forum has produced its own.<sup>20</sup> The programme foresees numerous positive steps such as the deployment of Consultative Forum delegations during joint operations at the external borders to monitor practices and issue recommendations. The Consultative Forum will also be involved in many aspects of Frontex's training activities. This includes participation in a training session to provide recommendations and input to the Common Core Curricula for border guards. The Forum will also assist Frontex in the *“inclusion of fundamental rights dimensions into Frontex Risk Analysis Unit's products”* and the *“provision of information on the human rights situation in third countries.”*

However, many operational aspects will remain untouched by the Consultative Forum. For example, no delegations will be sent on joint return operations. Only the fundamental rights officers (FRO) - whose independence was questioned by many organisations including Statewatch and Migreurop - will be able to *“accompany”* an operation, a term that does not make clear whether the FRO will be able to board the aircraft used in returns operations.

The failure to include independent monitors on joint return operations is a lost opportunity that could have led to beneficial recommendations, especially in light of reports criticising Frontex for the mishandling of returned migrants, including children.<sup>21</sup>

Moreover, the work programme of the Consultative Forum never mentions activities in relation to Frontex's external relations, although these are so far one of the most heavily criticised aspects of the Agency's work. This is all the more surprising given the fundamental issues raised by the proposed launch of EUROSUR next October which foresees further cooperation with many third countries in which the human rights situation remains concerning.

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<sup>19</sup> Full-text of Regulation 2004/2007: [The Frontex Regulation – Consolidated text after 2011 amendment](#) by Steve Peers, Professor of Law, University of Essex

<sup>20</sup> Frontex Consultative Forum, [Work Programme 2013](#), January 2013

<sup>21</sup> Irish Refugee Council, [Annual Report 2010](#), 2011