

Frontex is dead... Long live Frontex?

Jorrit Rijpma | Odysseus OMNIA Conference



**Universiteit
Leiden**
The Netherlands

Outline

1. The European Border and Coast Guard
2. Innovations
 - Regulatory
 - Operational
 - Supervisory
3. What the EBCG Regulation does **not**
4. The broader border *acquis*
5. Implementation: Back to Schengen?



1. European Border and Coast Guard

- 2002 Commission Communication
- 2004 Frontex established
- 2006 Unisys Study
- 2007 Rapid Border Intervention Teams
- 2009 Art. 77(1)(d) TFEU: gradual establishment IBM
- 2011 European Border Guard Teams
- 2013 EUROSUR
- 2014 2020 Strategic Guidelines for Justice and Home Affairs
Unisys Study

Hence: ***not*** an emergency measure

1. European Border and Coast Guard

13 May 2015	European Agenda on Migration: <i>moving beyond</i> “Shared management of the External Borders”
15 Oct 2015	European Council Conclusions “Enhance the mandate of Frontex”
15 Dec 2015	Commission Proposal
4 March 2016	Commission Roadmap “Back to Schengen”
21 June 2016	Political agreement
6 July 2016	Vote in Parliament
14 Sept 2016	Final vote in Council
4 Oct 2016	Entry into force of Regulation (EU) No 2016/1624

2. Innovations

- 1) Reinforcement of regulatory and operational tasks of the Agency
- 2) Introduction of a supervisory role of the Agency

Definition of a European IBM in the Regulation

(previously: JHA Council Conclusions of 5 December 2006)

- Groups together existing fields of competence
- Widens the Agency's scope of action

2. Innovations

Integrated Border Management

- Border control, including **cross-border crime** and referral **international protection**
- **Search and rescue** *during* border surveillance operations
- Risk analysis
- Cooperation between MS, coordinated by the Agency
- Inter-agency cooperation
- Cooperation with third countries
- Technical and operational measures **within** the Schengen area
- Return
- State-of-the-art technology including large-scale information systems
- Quality control mechanism
- (Financial) solidarity

2. Innovations

- 1) Power to process personal data
- 2) Technical equipment and human resources at disposal
 - acquire or lease equipment
 - equipment pool
 - EBCG Teams (unless faced with an exceptional situation)
 - Rapid Reaction Pool (1,500, half when faced with an exceptional situation)
- 3) Third country cooperation
 - joint operations in third countries
 - liaison officers
- 4) Return

2. Innovations

- Article 3: **Technical and operational strategy** for European IBM. National strategies shall be **in line with** [the Agency's strategy and European IBM]
- Article 5: Implementation European IBM is a **shared responsibility**
- Article 9: Duty to cooperate in **good faith** and obligation to **exchange information**
- Article 10: Share all necessary information in a **timely and accurate** manner

2. Innovations

Article 12: Liaison Officers in Member States

Article 13: Vulnerability Assessment

- Once a year (at least)
- Recommendations ED + time limit
- Non-compliance: Decision MB + time limit
- Non-compliance: Notification Council and COM
- Possible action under **Article 19**

2. Innovations

Article 19: Situation at the external borders requiring urgent action

2 situations: MS does not comply with MB decision *or*
MS faces particular pressure and fails to ask help from the Agency

Council implementing act, on proposal COM, detailing measures to be taken by Agency

ED: **2 days** to draw up an operational plan

ED + MS: **3 days** to agree on operational plan

Rapid Reaction **5 days**

Additional EBCGTs **7 days**

Technical equipment **10 days**

In case of **non-compliance** with the Council Decision within 30 days: **Article 29 SBC**

2. Innovations

Article 29 SBC

- **Exceptional circumstances** where the overall functioning of the area without internal border control is put at risk as a result of **persistent serious deficiencies** relating to external border control (...) and insofar as those circumstances constitute a **serious threat to public policy or internal security** within the area without internal border control or within parts thereof, border control at internal borders may be reintroduced (...) for a period of **[maximum 4 x 6 months]**
- The Council may, as a **last resort** *recommend* that one or more Member States decide to reintroduce border control at all or at specific parts of their internal borders.
- The Council's recommendation shall be based on a proposal from the Commission. The Member States may request the Commission to submit such a proposal to the Council for a recommendation.

2. Main innovations

Questions:

- Agency's competences: Relation between IBM and tasks?
- Overarching IBM strategy: Adopted by Institutions, COSI? Role EP?
- Shared responsibility: Consequences for national administrations?
- Position of the Agency: Autonomy and Accountability?
Relation to other JHA agencies?

3. What the EBCGA Regulation does *not*

It does not...

- create a genuine integrated border and coast guard
- replace national border guards
- provide the Agency with “a right to intervene”
- endow law enforcement powers on the Agency
- solve the question of responsibility for fundamental rights violations
- provide for genuine solidarity

4. **Broader border *acquis***

EBCG Regulation sets the norm

- 1) Central role for the Agency in Hotspot approach and Migration Management Teams
- 2) Hence also within in the implementation of the EU-Turkey deal
- 3) Template for the proposed European Asylum Agency (EASO+), including the Vulnerability Assessment Mechanism

4. Broader border *acquis*

European integrated border management high on the agenda (security)

- 1) COM(2015) 670 final: Amendment Schengen Borders Code (reinforcement of checks against relevant databases at external borders)
- 2) PNR Directive 2016/681 and PNR Agreements with third countries
- 3) COM(2016) 731 final: European Travel Information and Authorisation System (ETIAS)
- 4) COM(2016) 194 final: Entry-Exit System

5. Implementation

JHA council April 2016: 5 priority areas

- 1) Putting in place the Rapid Reaction Pools
- 2) Vulnerability Assessment and common methodology
- 3) Enhancing support for return
- 4) Establishing the complaint mechanism
- 5) Model agreement for operational activity in third countries

5. Implementation

COM(2017) 42 final: on the operationalisation of the EBGC

- 1) Running operations continue to lack human resources and equipment. Rapid Reaction Pool has been established, but a lack of pledges on technical equipment
- 2) Common methodology adopted, as well as a work plan for 2017 and Vulnerability Assessment Network
- 3) Return pools remain underequipped, Commission has developed a secure platform in the run up to an integrated return management system.
- 4) Complaints mechanism established, a network with responsible national authorities in the making, additional staff will be recruited
- 5) Revision of current working arrangements under way, Commission has adopted a model agreement

5. Implementation

COM(2017) 42 final: on the operationalisation of the EBGC

- Early results (...) need to feed into fixing as a matter of priority the most urgent vulnerabilities being identified.
- Delivering on returning irregular migrants – also a means to deter and reduce further irregular migration – is another priority

5. Implementation

Council Implementing Decision of 11 November 2016

Given the **current fragile situation in Greece and the residue of pressure** remaining in the Member States most affected by the secondary movements of irregular migrants coming from Greece, it therefore appears **justified to allow a proportionate prolongation of the temporary internal border controls (...) in response to a serious threat to their public policy or internal security.**

Justification: **EBGC Regulation and EU-Turkey deal** still need time to be fully implemented and the corresponding results to be confirmed

Implementation: Back to Schengen?



Thank you for your attention!
j.j.rijpma@law.leidenuniv.nl



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