



FRONTEX: Projection at the European level of the vision of Spain on border control?

Number 10

Raül Hernández i Sagrera

Researcher at the Institut Universitari d'Estudis Europeus

The same year the Socialist Party came into power in 2004, the European Union approved the creation of its 19th independent agency: FRONTEX. Ever since it was launched, its main focus has especially been, upon Spain's request, the deployment of border control operations aiming at the decrease of immigration flows originating from the African Atlantic coast to the Canary Islands. FRONTEX has established itself as the most visible institutional mechanism of a package of measures implemented by the EU already in the last term of the Popular Party, in which a strategy at the European level to "fight against illegal immigration" was designed¹.

What has been Spain's contribution to the creation and evolution of FRONTEX? Which impact have the operations coordinated by the Agency in the Canaries had in Spain? These questions are going to be dealt with in the following pages, as well as the analysis of FRONTEX as an EU institutional mechanism based on the principle of burden-sharing or solidarity among states. Its efficiency is going to be tested by explaining a series of negative aspects it presents from the very beginning of its foundation.

FRONTEX: intergovernmental cooperation at the external borders of the Union

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union is the full name of FRONTEX, mechanism resulted from the emergent common immigration policy of the EU, which has been integrated, despite its strong intergovernmental fashion, in the community pillar since the Treaty of Amsterdam. This policy has kept evolving since its launching, so that it has been linked to the common border policy, based on the increasing value given to the logic of security at the external borders of the Union. So, " (...), through the development of a discursive nexus between an integrated approach on Borders (Integrated Border Management) (...) and a global approach on migration" (Carrera, 2007), the creation of FRONTEX has been based.

The Council Regulation 2007/2004, from the 26th October 2004, lay the foundations for the creation of the Agency, regulating its functions and structure. The document clearly states that "[t]he responsibility for the control and surveillance of the external borders lies with the member states"². The normative framework points out the fact that this instrument does not assume the sovereign competence of states regarding border control, but acts as a coordinating nexus among them. Among the functions to be carried out by FRONTEX appear, besides that of coordinating joint operations of member states in "circumstances requiring further technical assistance and operational assistance at the external borders", those of assisting member states in the training of border control guards, elaborating risk analysis, developing research in terms of control and surveillance at the external borders and, lastly, facilitating the necessary support to member states for the carrying out of joint return operations. Given its condition as an independent agency of the EU, FRONTEX has at its disposal its own financial system, as

well as its own staff. Spain's interest in the creation of the instrument led to the presentation of a candidate to the post of executive director of the Agency, Gil Arias Fernández³, who, nonetheless, was finally not elected for the post. Later, he was appointed as deputy director of the Agency, so that Spain is represented in the executive posts of FRONTEX.

The impulse of the Government of the PP towards a common immigration policy linked to border control

The foundations of the development of a common immigration policy linked to border control at the external borders of the Union and far from the purposes exposed at the conclusions of the European Council of Tampere⁴ are to be found under the Spanish Presidency of the Council of the Union in the first semester of 2002. Even though the PSOE has supported an immigration policy linked to border control, members of the party at the European level have regretted the turn of the common immigration policy: "Slightly three years after the Tampere Council, the same heads of State and Government, gathered this time in Seville, at the summit led by President Aznar, far from giving the necessary push to the common immigration policy, modified the agenda with short-range proposals aiming exclusively at 'fighting against illegal immigration' and established a programme that, in reality, boycotted the development of the immigration policy sketched at Tampere"⁵. The Conclusions of the Council of Seville⁶ served as the base for the creation of a series of *ad hoc* mechanisms among member states, whose functions were integrated later to FRONTEX. It is worth mentioning that the development of this cooperation field in the community framework lies within the Schengen *acquis*, with all the effects it implies⁷.

Zapatero Government: the impact of the FRONTEX action in Spain

The Zapatero Government kept on the same line supporting an immigration policy linked to border control. In this respect, it firmly supported the creation of FRONTEX, whose most outstanding and visible action in Spain has consisted in the deployment of three border surveillance and control operations between the Canary Islands and the countries on the shore of the Atlantic. In view of the perception of an incessant increase of immigrants caused by the so-called '*cayucos* crisis', Spain asked the EU for help by the means of FRONTEX, according to help provisions provided to member states in the case of emergency situations. The three joint operations that have been deployed so far in the West of the Atlantic have been given the name of HERA.

The FRONTEX action in the Canaries was subject to broad coverage in the media, focused on providing updated information almost on a day-to-day basis of the human drama of thousands of Subsaharans crossing the waters between the Western African coast and the Canaries. The deployment of the operations was also subject of parliamentary debate in *Las Cortes* (Spanish Parliament), where the opposition supported the Government in its requests to FRONTEX but reproached the Government for not taking further measures at the national level. Rajoy reproached Zapatero that "FRONTEX, for the time being, is at its very beginning and, (...) you cannot use it for anything else than a plaster. (...) I'm pleased (however), about the steps forward, though little they might appear to be"⁸. On the contrary, FRONTEX has hardly aroused debate at the European Parliament, since the means to address questions to the Council has only been used once, and indeed by MEP Manuel Medina Ortega, who has raised the question on four occasions. Hence, it could be that there is a common position of the Government and the opposition in terms of the action of FRONTEX in Spain, due to the

fact that only one socialist MEP has addressed a question to the Council and no member of the Popular Party has done so.

Concerning the FRONTEX operations in the Canaries, aside from the Government and the opposition, it is important to stress the presence of another actor that has managed to be heard in the media as well as in the European institutions: the Autonomous Government of the Community of the Canaries. Its President for the period 2003-2007, Adán Martín, member of Coalición Canaria, has addressed criticisms to both the Zapatero Government and the Union for the scarcity of resources provided to FRONTEX operations. Ilkka Laitinen, FRONTEX executive director, defended himself recalling that "(..) The implementation of the operation is in the hands of the Spanish authorities"⁹. In an appearance in Brussels, Martín expressed himself in the following terms: "In order not to lose political credibility, Europe should adopt strong measures to fight against illegal immigration"¹⁰.

Spain *vis-à-vis* the (imperfect) evolution of FRONTEX

In the course of its more than three years of existence, FRONTEX has lived an institutionalisation process still in progress, through which it has developed as a European agency. It was decided to set its headquarters in Warsaw¹¹, and the first amendment to the constituent Regulation was approved, leading to the creation of Rapid Intervention Borders Teams¹², which strengthen significantly the mandate of the Agency (Carrera and Geyer, 2007). Despite this progress, some negative aspects related to FRONTEX are going to be explained.

First, the intrinsic nature of FRONTEX as an instrument dependent on an intergovernmental cooperative dynamic prevents its action from being far-reaching. The member of the European Socialist Party Manuel Medina Ortega stated it clearly as he addressed a question to the representative of the German Presidency. "I'm aware of the constitutional constraints for the development of these cooperative mechanisms and also of the resistance of many states to assume further commitments, but we are always in danger of not confirming the words of the European Union with facts, concretely in the functioning of the mechanism of FRONTEX;"¹³. This criticism shows the lack of connexion between the expectations in FRONTEX, specially from countries like Spain, and the real action capabilities of the Agency.

Second, numerous criticisms have focused on stressing the lack of independence of FRONTEX, concerning finance, dependent mostly on the will of member states, as well as the secrecy and lack of transparency of its functions, which could be considered as a democratic deficit in its action control. On the other hand, the fact that the immigration and border agenda are highly politicised and that the Agency depends on the solidarity of member states undermines its independence (Carrera and Geyer, 2007). In this respect, Spain, as a member state in which FRONTEX carries out its action, has supported the latest initiatives presented by the German Presidency strengthening the independence of the Agency, since they reduce its range of intergovernmentalism.

Lastly, Spain has not reacted to other kind of criticisms from an International Public Law perspective, referring to questions related to constraints to the free movement of persons as a consequence of the exercise of surveillance and border control, i.e., in spaces outside the external borders of the Union, according to what has been agreed with the third country with whom the member state has signed a bilateral agreement. The application of this preventive control and surveillance violates not only the Geneva Convention on the Statute of Refugees, but also the United Nations Law of the Seas

Convention, which does not foresee that the authorities of a ship inspect another one at high seas (Rijpma and Cremona, 2007).

Conclusions

To conclude, it is worth pointing out that cooperation in the field of border management in the member states of the European Union shows difficulties caused by the logic of differentiation that rules the realities of immigration among member states. Franco Frattini, European Commissioner for Justice, Freedom and Security, called on cooperation on a press conference with Vicepresident de la Vega: "Why the big ones have not participated? (...) but here we are talking about our security, about our continent. I call upon member states to show as much solidarity with Spain they did the previous week in Lebanon"¹⁴. The impulse exercised by Spain, though motivated by reasons linked to its political agenda, has been crucial for the development and increase of functions of FRONTEX. Despite the negative aspects explained above, the Agency uses decreasing figures in the number of immigrants to show efficiency. Last 31st of January on Berlin, Laitinen stated that "To the Canary Islands arrived in 2007 70% less illegal immigrants than the previous year"¹⁵. Nevertheless, the departing points of immigrants are being displaced to the south, where FRONTEX operations do not act, which has motivated diplomatic tours of Minister Moratinos in the area. For the time being, FRONTEX keeps being an Agency of scarce independence whose activity depends on states like Spain, that bring their domestic interests at the European level, regardless of the political colour of the Party in the Government. As the positions of both the PSOE and the PP regarding a common immigration policy orientated to border control at the external borders meet, an eventual change of party in the executive would not mean significant changes in respect to the continuous support and impulse of Spain to any intent of development of its most visible exponent: FRONTEX.

Notes

¹ The Union refers to the phenomenon of irregular immigration in these terms. As Carrera explains "It is somehow surprising to see how the EU still continues to use the term 'illegal immigration' and verbs like 'fight against' and 'combat' when dealing with the phenomenon of irregular immigration. The negative implications inherent in the use of this terminology have often been qualified as granting status ascribing to the people involved a status which implies suspicion and criminality (Carrera, 2007)

² Council of the European Union, *Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union*, 2007/2004, 26th October 2004, L 349 (1).

³ Gil Arias Fernández was the Chief of the Asylum, Borders and Immigration Police Central Office. The candidate elected for the executive direction was the Finnish Ilkka Laitinen.

⁴ See *Tampere European Council, Presidency Conclusions*, 15th and 16th October 1999, available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00200-r1.en9.htm.

⁵ Valenciano, Elena and Terrón, Anna, "Ni compasión ni miedo", *El País*, 29th October 2006. Both authors are members of the Socialist Party. Currently Valenciano acts as an MEP of the PSE and Terrón acts as the Secretary for the European Union of the Generalitat de Catalunya.

⁶ See *Seville European Council, Presidency Conclusions*, 21st y 22nd June 2002, available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72638.pdf

⁷ The United Kingdom and Ireland have opted out the Schengen *acquis*, whereas non-member states such as Norway and Iceland have opted in it.

⁸ Speech by Mariano Rajoy in the plenary of the Congreso, *Diario de Sesiones de las Cortes Generales*, 20th December 2006, num. 224, p. 11350, available at: <http://www.congreso.es>

⁹ Interview to Ilkka Laitinen, *El País*, 6th September 2006.

¹⁰ Speech by Adán Martín at the Joint Parliamentary Commission, Brussels, 3rd October 2006, available at

http://www.europarl.europa.eu/eplive/expert/shotlist_page/20061002SHL11238/default_es.htm

¹¹ Council of the European Union, *Decision 2005/358, designating the seat of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*, 26th April 2005.

¹² European Parliament and European Council, *Regulation, establishing a mechanism for the creation of Rapid Border Intervention Teams*, 863/2007, 11th July 2007.

¹³ Questions of the Parliament to the Council of MEP of the PSE Manuel Medina Ortega, 5th September 2007, available at

<http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20070905&secondRef=ITEM-013&language=EN#3-232>

¹⁴ Carbajosa, Ana, "Frattini: "Pido a los países de la UE que sean tan solidarios con España como con Líbano", *El País*, 1st September 2006.

¹⁵ "FRONTEX cree que el éxito de España avala la estrecha colaboración con los terceros países", *Diario Público*, 30th January 2008.

Bibliographical references

- CARRERA, Sergio (2007) "The EU Border management Strategy FRONTEX and the Challenges of irregular Immigration in the Canary Islands", *CEPS Working Document*, num. 261, Brussels.
- CARRERA, Sergio and GEYER, Florian (2007) "Terrorism, Borders and Migration: the Commission's 2008 Policy Strategy in the Area of Freedom, Security and Justice", *CEPS Policy Brief*, num. 131, June 2007, Brussels.
- JORRY, Hélène (2007) "The construction of a European Institutional Model for the Management of Operational Cooperation at the EU External Borders: Does the FRONTEX Agency take a decisive step forward?", *Challenge Research Paper*, num. 6, Brussels.
- RIJPMA, Jorrit J. and CREMONA, Marise (2007), "The Extra-Territorialisation of EU Migration Policies and the Rule of Law", *EUI Working Papers*, num. 2007/01, European University Institute.