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Frontex: human rights responsibilities

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr James CLAPPISON, United Kingdom, European Democrat Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Migration, Refugees and Displaced Persons, Mr Mikael Cederbratt, on his well-balanced and comprehensive report, and supports the draft resolution and recommendation.
2. On several occasions, the committee has dealt with relations between the European Union and the Council of Europe, with particular reference to human rights issues. However, it has never considered the issue of the mandate and functioning of Frontex (the European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union, hereinafter “the Agency”). Frontex is a relatively new agency of the European Union and its operations raise several concerns relating to compliance with human rights standards. Without prejudice to the question of whether or not the European Union and Frontex should have responsibilities for a European Area of Freedom, Security and Justice, it is important to consider how Frontex in fact exercises its responsibilities from the point of view of human rights. Mr Cederbratt’s report is therefore of great utility for Frontex itself, the European Union, its member States and the member States of the Council of Europe concerned by the Agency’s activities. Issues raised in the report require further examination by all the actors concerned.
3. Given the human rights aspects of this report, the committee wishes to propose some amendments to further strengthen the draft resolution and the draft recommendation.

B. Proposed amendments

Amendment A (to the draft resolution)

In the draft resolution, paragraph 7, after the words “calls on Frontex”, insert the words “, the European Union”.

Amendment B (to the draft resolution)

In the draft resolution, paragraph 7.1, first sentence, after the words “including access to asylum and”, delete the word “other”.

1. Reference to Committee: [Doc. 12704](#), Reference 3809 of 7 October 2011. Reporting committee: Committee on Migration, Refugees and Displaced Persons. See [Doc. 13161](#). Opinion approved by the committee on 23 April 2013.



Amendment C (to the draft resolution)

In the draft resolution, at the beginning of paragraph 9.3, add the words “clearly defining the scope of Frontex’s accountability and;”

Amendment D (to the draft resolution)

In the draft resolution, move paragraph 9.4.3 into a new paragraph 9.5, after paragraph 9.4.2.

Amendment E (to the draft resolution)

In the draft resolution, paragraph 10.2, replace the words “complying with the *Hirsi* judgment”, by “complying with the requirements stemming from the *Hirsi Jamaa and Others v. Italy* judgment”.

Amendment F (to the draft recommendation)

In the draft recommendation, delete paragraphs 1 to 3.

Amendment G (to the draft recommendation)

In the draft recommendation, at the beginning of paragraph 4, replace the words “It is in this context” by “Referring to its Resolution (2013) on Frontex: human rights responsibilities”.

Amendment H (to the draft recommendation)

In the draft recommendation, paragraph 4.2, replace the words “ensure that” by “promote”, and before the words “are duly taken into account”, insert the words “and recommend that they”.

Amendment I (to the draft recommendation)

In the draft recommendation, paragraph 4.3, after the words “through enhanced co-operation with the CPT, GRETA”, delete the words “, the European Court of Human Rights”.

C. Explanatory memorandum by Mr Clappison, rapporteur for opinion

1. I can only congratulate Mr Cederbratt on his excellent report, which deals with a wide range of issues related to the functioning of Frontex and the implications of its activities for human rights. The report rightly points out several concerns in this respect and proposes measures to address the revealed shortcomings, although it also welcomes the recent developments in this area (including Frontex’s Fundamental Rights Strategy and Code of Conduct).

2. I should like, however, to propose a few amendments to the draft resolution and the draft recommendation.

1. In the draft resolution

Amendment A

The amendment aims at adding that the European Union, which constitutes an area of freedom, security and justice, is responsible for addressing a number of issues at both the operational and structural level of Frontex and its activities. According to Article 67.2 of the Treaty on the Functioning of the European Union, the European Union “shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, ...”. The European Union develops a policy with the view to “carrying out checks on persons and efficient monitoring of the crossing of external borders” and “the gradual introduction of an integrated management system for external borders” (points b) and c) of Article 77.1 of the Treaty) and the European Parliament and the Council of the European Union take measures in this respect (Article 77.2, points c) and d)). Frontex is a European Union agency, subsidised by the European Union, and therefore, although they refer to some very

technical aspects of Frontex's work, the recommendations included in paragraphs 7.1 to 7.5 of the draft resolution should not only be addressed to Frontex and European Union member States, but also to the European Union.

Amendment B

The amendment aims at using a more precise legal terminology. Thus I propose to delete the word "other" referring to "international protection"; otherwise, it could be read as if asylum was a part of "international protection", while it is an institution of domestic law, unlike the status of refugee, which is regulated by the 1951 Geneva Convention relating to the Status of Refugees.

Amendment C

The amendment aims at stressing the necessity for clarifying the scope of Frontex's responsibility and accountability. Although this problem is mentioned in paragraph 3 of the draft resolution and the explanatory memorandum (for instance, paragraphs 39 and 48), more emphasis on it should be put in the core text of the draft resolution.

Amendment D

Similarly, another major problem concerning Frontex's liability for human rights violations is related to the lack of a complaint mechanism. As explained by the rapporteur (paragraphs 68 and 77 of the explanatory memorandum), in this context, even the strengthened role of the Fundamental Rights Officer, who is a staff member of the Agency, would always raise serious doubts about his/her independence. More general avenues, other than a complaint mechanism consisting of reporting on human rights abuses to the Fundamental Rights Officer, should also be considered. Thus, in order to strengthen the draft resolution, I propose to move the wording of paragraph 9.4.3, which refers to the Fundamental Rights Officer, into a separate new paragraph (9.5).

Amendment E

This amendment aims at quoting the exact title of the judgment of the European Court of Human Rights in question and avoiding confusion as to the lack of the *erga omnes* character of its judgments, and as to their interpretative authority. The judgment in question has to be complied with by the defendant State (namely Italy in this case), but other States Parties to the Convention have to comply with the requirements stemming from this judgment, too, in order to avoid similar violations, due to the principle of the *res interpretata* of the judgments of the European Court of Human Rights.

2. In the draft recommendation

Amendment F

This amendment aims at making the draft recommendation more succinct and avoiding repeating facts concerning recent changes within Frontex, which have been already mentioned in the draft resolution (paragraph 4). Frontex is an agency of the European Union and, thus, it would be unnecessary and superfluous to leave paragraphs 1, 2 and 3 in the draft recommendation, which is addressed to the Committee of Ministers of the Council of Europe.

Amendment G

See explanatory note for Amendment F.

Amendment H

This amendment aims at introducing more precise language in the draft recommendation: the Committee of Ministers, which is an organ of the Council of Europe, is not empowered to "ensure" that Frontex, which is an agency of the European Union, will take into account the relevant Council of Europe human rights standards in its training curricula and operational procedures. However, it may promote these standards.

Amendment I

It would be inappropriate for Frontex to establish any form of “co-operation” with the European Court of Human Rights, which is a court of law. Such co-operation can, however, be pursued with other relevant bodies of the Council of Europe.