

BULLETIN

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European Union Reform of Border Management

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Events in North Africa have led to increased pressure on the southern borders of the European Union. This has highlighted problems with the EU's management of its external borders and affected the pace of work on reforms in the area of home affairs. The European Parliament on 13 September adopted a draft regulation amending the rules of the functioning of the Frontex Agency, finalizing negotiations in this regard. The Polish presidency faces a challenge in the coordination of the first phase of negotiations on the modification of Schengen law.

As a result of the crises in North Africa, in the first half of 2011 about 50,000 illegal immigrants entered the EU via Italy. This has led to overcrowding on the island of Lampedusa and to Italy's announcement of a state of humanitarian crisis. In response to a request by Italian authorities, the European Agency for the Management of Operational Cooperation at the External Borders (Frontex) launched on 20 February Operation "Hermes 2011" with the aim to assist Italy in monitoring the EU's southern border.

These events had an impact on the EU work agenda for internal affairs and justice. In response to a call by the European Council of March 2011, the European Parliament (EP) and EU Council intensified work on the revision of regulation of the Frontex Agency, which was set up in 2004. Migration problems also led to discussions about the future of the Schengen area.

Frontex Reform. Debate on the future of Frontex focuses mainly on the problem of its efficiency and ability to respond quickly to crises. The unsatisfactory level of the agency's operational coordination, primarily on the EU's southern maritime borders, as well as its dependence on EU member states in terms of personnel and equipment deployment represents the most serious weaknesses of Frontex. Amendments to the Frontex regulation, adopted by the EP, constitute a response to the expectations about the functioning of the agency.

The aim of the reform is to strengthen and extend the Frontex mandate. Among the most important elements of the political agreement between the EP and EU Council is a provision allowing the agency to purchase technical equipment—either wholly or in joint ownership with a member state—or to lease it. The pool of technical equipment remaining at the disposal of Frontex is to be determined on the basis of annual agreements between the agency and member states. Current regulations only provide for the creation by Frontex of centralized records of technical equipment for the control and surveillance of external borders belonging to member states. It can be put at the disposal of other member states, on a voluntary basis, temporarily and in accordance with the needs' analysis drafted by the agency. The mechanism of the annual agreements also provides for the secondment of member states' border guards by the agency. For operational groups participating in Frontex operations, the draft regulation provides a common name: European Border Guard Teams. The planned Frontex reform envisages conferring on the agency the power to process the personal data of people suspected of cross-border crime and illegal migration activities and to cooperate with, among others, the European Police Office (Europol). These provisions may increase the EU's efficiency in fighting this kind of illegal activity. Having taken into account the specifics of the Frontex actions, provisions regarding human rights also should be considered well-aimed. In accordance with these provisions, the agency is obliged to set up a Consultative Forum

to designate a Fundamental Rights Officer and to draw up and implement a strategy to monitor the respect for these rights in the activities of the agency. What also should be underlined is the new role of the EP in the agency's activity. The envisaged obligation of Frontex to inform the EP on an annual basis about the number of officers and the technical equipment to be deployed by member states will enable the EP to monitor the level of involvement of particular member states in order to improve the agency's efficiency.

Future of the Schengen Area. Problems in the EU's management of its external borders and the risks of an increase in the influx of illegal immigrants to the EU, a concern of some member states, has led to a debate about the modification of mechanisms regulating the Schengen zone. This was initiated by France's decision to impose provisional checks on its border with Italy after Italian authorities granted immigrants who were coming mainly from Tunisia with temporary residence permits and travel documents. Denmark also brought back controls to its borders. These actions revealed a lack of solidarity amongst EU member states despite Article 67 Paragraph 2 of the Treaty on the Functioning of the European Union, which underlines that common policy on asylum, immigration and external border control is based on solidarity as a fundamental principle.

The proposal issued by France and Italy was controversial. It envisaged a more flexible mechanism to allow the reintroduction of controls on internal EU borders than the now-binding clause of a serious threat to public policy or internal security. What also raised doubts was the adequacy to real migration and the threats and potential consequences such a change might have on the Schengen zone's integrity. As a result, what seems to be the most optimal solution, as suggested already in May by the EC and subsequently by the European Council, is reform based on an efficient system of monitoring and an evaluation of the execution of the Schengen legal order by member states. Within such a mechanism and along with member states, the Frontex experts also could be involved. Within the next few days the EC will release a set of proposals. They will probably include a mechanism allowing for the reintroduction of internal borders under extraordinary circumstances.

Conclusions. Migration pressure as a result of the events in Northern Africa does not constitute an extraordinary situation. A similar scale in terms of a migration problem is present on the Turkish–Greek border. It was the “Arabic spring,” however, that drew the greater attention of the member states to the necessity to enhance the integrated management of the EU's external borders. At the same time, as a result of the increased migration influx, the unilateral actions of particular member states questioned the integrity of the Schengen zone.

The reform of Frontex regulation to increase operational capacity and grant the agency greater autonomy may potentially improve the EU's external border management. It should be underlined, however, that implementation of some of the new solutions may turn out to be hampered due to the agency's budget restrictions. Keeping in mind the now-open negotiations on the multiannual financial framework for 2014–2020 and the dominant view among member states that there is an unwillingness to increase spending at the EU level, a significant increase in the agency's budget should not be expected.

Recommendations for the Polish Presidency. The Lisbon Treaty limits the competencies of the rotating presidency in the scope of foreign policy. However, particular activities in the scope of internal policies with external implications allows the presidency to bring them to the international forum. Due to the dynamically developing situation in the EU neighbourhood, the presidency should concentrate on policies regarding border controls, asylum and migration.

The Polish presidency will coordinate the introductory negotiation phase concerning the future Schengen legal order based on the EC's proposal, which is to be released within the next several days. Due to divergent opinions among the member states regarding *inter alia* the introduction of border checks, it may turn out to be difficult to work out a compromise within the EU Council. Bearing in mind that as of January 2012 the rotating presidency will be taken over by Denmark, whose recent activities such as the reintroduction of checks on its borders has raised controversy, it is recommended that a political agreement on these issues should be reached as soon as possible. Building an alliance with the EP that fully supports Schengen integrity might accelerate compromise within the legislative process. Poland also should continue the Hungarian presidency's efforts to work out consensus regarding the date of Bulgaria and Romania's accession to Schengen. Implementation of the Schengen legal order by new members could contribute to an improvement in security on the EU's external borders.