Frontex goes Africa: On Pre-emptive Border Control and Migration Management

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Where does the European polity end? This fundamental question has kept generations of European thinkers busy. Defining who is 'in' and who is 'out' is indeed a tricky issue. Next to a multitude of political, legal, and also cultural factors, context matters a lot when (re)drawing European boundaries. The significant migratory increase Europe experienced in 2015 propelled the protection of the EU's external borders to the top of the political agenda. Consequently, Frontex—the Union's agency in charge of external border control—experienced an important upgrade in terms of competences and capabilities. The logic underpinning this move was that more power and resources would help to improve the control and management of the EU's external borders in relation to migratory pressures, transboundary criminality, and other security threats.

At the exploration of the EU's Southern 'pre-frontier area'

But where exactly are these borders that Frontex is to protect? This question brings us back to the initial interrogation on the confines of Europe. Intuitively, we would say that Frontex operates at the EU's external borders which, essentially, are the sum of all EU Member States' land and sea borders with third countries. However, a closer look at the manifold activities of Frontex leads to a quite different conclusion. Next to its presence at the borders with third countries, the agency has progressively increased the number of extraterritorial activities far beyond the European boundaries. Based on a combination of formal and informal agreements, the agency has managed to project its control and intelligence activities to the EU's arc of neighbours and far beyond. Incrementally, the agency has conquered the so-called pre-frontier area of the EU that, according to the relevant EU rules, covers all non-EU land and sea territories.

Especially since the migratory pressure of 2015, the agency has discovered the significance of the African pre-frontier area. The rationale behind this reinforced engagement in Africa is one of pre-emptive border control and migration management: By means of enhanced surveillance and capacity building, (potential) problems are identified and addressed long before they hit the EU at its external borders. This contribution sketches out the progressive Southern extension of the theatre of operations of Frontex from the Mediterranean to the Sahel region, in particular through intelligence activities. As demonstrated by two case studies—the first concerning the cooperation of Frontex with the EU's military operation in the Mediterranean Sea, and the second regarding its increased presence in Sub-Saharan Africa—the African continent has become Frontex turf. This, in turn, raises a number of questions.

A steady surveillance rapprochement: law enforcement and military cooperation in the Mediterranean

The Mediterranean Sea has for many years been the theatre of numerous Frontex-led maritime operations, including Indalo, Poseidon, or Themis (formerly Triton) to name only some. In recent years, the agency's level of operational engagement in the Mediterranean has noticeably intensified while taking a more pre-emptive twist. Indicative of this development is the unprecedented close cooperation between Frontex and EU security and defence actors, in particular the Union's naval operation EUNAVFOR Med Sophia. The unusual alliance between an agency of the Area of Freedom, Security and Justice (AFSJ), on the

one hand, and a military operation deployed under the Common Security and Defence Policy of the Union (CSDP), on the other, can be explained by a major common interest: intelligence sharing.

Operation Sophia was set up in 2015 to fight human smuggling and trafficking along the Central Mediterranean route. Since then, the Operation's mandate has been amended several times. In 2016, the implementation of the UN arms embargo on the high seas off the Libyan coasts as well as the training of Libyan coast guards was added to the Operation's mandate. These new tasks significantly expanded the intelligence portfolio of Operation Sophia: Indeed, surveillance activities, evidence gathering, and the collection and storage of personal data amassed in the course of the operation have been on the rise since 2016. Even when the deployment of the Operation Sophia's naval assets was suspended in early 2019 due to profound disagreements of Member States on the role of the Operation, its intelligence mandate remained unaltered.

Importantly, the collected data can be shared with competent Union bodies, including Frontex. This means that the agency is entitled to receive data on migrants (and smugglers), including their fingerprints, acquired by Operation Sophia while carrying out its mandate. In return, Frontex inputs strategically important information about the methods used by criminal groups that the agency's mobile debriefing team collects and processes. In the framework of Operation Sophia, Frontex also got involved in the (severely criticised) training of Libyan coast guards on law enforcement at sea. What is more, the agency touched base with the civilian side of security and defence: Next to deploying a liaison officer to the civilian mission in Libya (EUBAM Libya), the agency started to offer courses to Libyan coast guard members together with that mission and Italian authorities.

In 2018, information sharing in the joint fight against human trafficking and smuggling off the Libyan shore reached a new level with the establishment of the Crime Information Cell (CIC). The rationale behind the Cell's creation was to facilitate the receipt, collection, and transmission at the EU level of information between involved military and policy actors. Praised as the first concrete example of a CSDP–AFSJ cooperation, the pilot project brought together members of Operation Sophia, officials from national law enforcement authorities, and representatives from several EU agencies (i.e. Frontex, Europol, Eurojust, and EASO). The Cell hosted by Operation Sophia thus provided for an intelligence interface combining different sources of information that could then be used both for police and military purposes. As borders have become more flexible, their management has become more flexible, too, combining civilian and military instruments.

The entente between Frontex and Operation Sophia illustrates an underlying conceptual and operational shift: Not only have the internal and external spheres of EU security become imbricated, but information gathering and intelligence sharing have come to be seen as a strategic priority of effective security governance and border management.

Weaving a dense intelligence net: the case of Sub-Saharan Africa

Intelligence gathering also drives the gradual extension of Frontex activities to the African continent. Already in 2010, the Africa-Frontex Intelligence Community (AFIC) was launched which, nowadays, counts 26 countries from all over the African continent. A pivotal element of the AFIC are the so-called Risk Analysis Cells that were set up in the aftermath of the migratory increase of 2015. Staffed with local analysts trained by Frontex, these cells are to collect and analyse strategic data on cross-border crime and support relevant authorities involved in border management. The gathering and assessment of information on illegal border crossings, document fraud, and trafficking in human beings forms explicitly part of the intelligence gathering exercise. This, in turn, underlines that the AFIC's raison d'être is to advance the pre-frontier intelligence picture by the comprehensive monitoring of migratory movements. The collected and processed data is shared with all relevant authorities at the national and regional level and with Frontex. And as for its European 'pendant' (the cooper-

ative framework of the Frontex Risk Analysis Network), the input of the African Risk Analysis Cells feeds into regular reports, the AFIC Joint Reports, that also contain policy recommendations.

So far, a handful of Risk Analysis Cells have been set up in Africa since 2018, both in countries of origin and transit along the main migratory routes. The location of the first Cell opened in Niamey (Niger) in 2018 is no coincidence: The Sahel region and in particular Niger is known for being a transit hub for migrants on their way North (mostly to Libya) to reach Europe on the Central Mediterranean route. Further Cells were established in Gambia, Ghana, and Senegal. Thereby, intelligence can also more easily be collected with respect to the Western Mediterranean route (running through West Africa and Morocco to Spain) along which migratory movements have risen steeply in the last years. With a view to enlarging the AFIC to an increased number of countries, Kenya, Guinea, Mali, and Nigeria are planned to host further Cells.

Once all Risk Analysis Cells will be operational, Frontex will have access to a wide and dense intelligence network, especially in West Africa and the Sahel and Lake Chad regions. This pre-frontier intelligence, in turn, will enhance the possibility for pre-emptive border control and extraterritorial migration management on the African continent. Think, for instance, of a person stranding in Libya. So far, it is often difficult to pin down the 'country of origin' of this person not least because of lacking documentation. However, if Risk Analysis Cells spread over West Africa and the Sahel region start to collect and share data of migrants, including their fingerprints, this will allow to trace at least partly their migratory path and potentially facilitate returns. For this strategy to work in the long run, though, checks in African countries would need to be more frequent, and the data would need to be sufficiently reliable. This, however, presupposes a considerable state building and development aid effort. Interestingly enough, the creation of the Risk Analysis Cells is financed by DG DEVCO, the European Commission's Directorate-General for International Cooperation and Development.

It is furthermore worth mentioning that the new Frontex mandate of 2019 allows for executive missions to be carried out in countries with no direct border with the EU. The agency is even mandated to establish antenna offices on non-EU territory. Future deployments of the agency to Africa to take action in countries of origin and transit are thus no longer pure fiction.

Implications of the new confines of the EU

The intensified presence of Frontex in Africa is likely to trigger conflicts on the division of labour between different EU structures. So far, Africa has constituted a major operational turf of conflict prevention, peacemaking, and peacebuilding carried out under the Common Security and Defence Policy. Over the last two decades, numerous civilian and military CSDP activities have been implemented in a dozen African countries. The enlargement of the portfolio of Frontex to capacity building and training of security sector actors in Africa sits uneasy with the previously prevailing conceptual and geographical delimitations between different EU security actors: CSDP actors took over the pre-frontier zone while law enforcement agencies took care of Europe's periphery and arc of neighbours. The EU judicature endorsed this distinction between internally-oriented security activities (AFSJ domain) and external security activities (CSDP turf) on several occasion (see here and here). Due to the Africa move of Frontex, overlap increases in particular with civilian missions that risk to be progressively marginalized by EU law enforcement agencies. As the line between internal and external security has ceased to exist in practice, it is high time that the EU properly streamlines its internal and external security arms—including in Africa. Given the growing affinity of national leaders and European decision-makers for law enforcement in security management, the recalibration of EU security measures in Africa will most likely not be to the detriment of Frontex.

This, in turn, raises a fundamental issue as, in principle, more power comes with more responsibility. Let us first have a look at the southwards expansion of pre-frontier intelligence activities. The democratic

credentials and human rights records of many African governments are at best mixed. Given this fragile public governance context, it is judicious to define an appropriate and transparent accountability and data protection scheme for extensive intelligence sharing with African law enforcement and border control authorities. Key in this regard is also to clarify (and codify) the interface between the African intelligence and the existing EU databases related to migration monitoring, namely Eurodac, SIS, and VIS. This leads to a second set of interrogations related to the liability of Frontex for potential human rights violations occurring extraterritorially, especially when undertaking executive missions. The African theatre of operations will constitute no exception in this regard—to the contrary. If, in the future, Frontex was to address migratory movements directly in countries of origin and transit, where legal protection standards are often weak, the risk of human rights violations without appropriate redress routes would increase by the mere intensification of situational exposure. So far, these crucial legal issues have not been addressed.

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