



Regulation on the maritime surveillance by Frontex: lives in danger at the external borders of Europe

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On the 16th of April, the European Parliament will vote on the proposal for a Regulation on the maritime surveillance by the European agency for the coordination of the cooperation at the external borders (Frontex). There is no reason to celebrate: Frontex' mandate is to intercept migrants, not to save lives.

Let us be clear. Although it contains certain enhancements, the regulation will not end shipwrecks and human rights violations. For “surveillance” and “protection” do not rest on the same bases: interceptions by Frontex aim at stopping migrants and potentially to send them back to their country of origin, but not to better their situation. This, in spite of international obligations of the EU Member States regarding protection of refugees and human rights.

The Parliament has introduced in the regulation a definition of *non-refoulement* – basic principle of Refugee Law according to which it is forbidden to send a person to a country where s/he risks facing death penalty, torture, persecutions or inhumane or degrading treatments or threats to her/his life of liberty. But to assess this risk, Frontex will only use governmental and European sources and will not publish its conclusions, which therefore will not be submitted to debate. The Agency will also have to take into account the existence of agreements and projects between the EU, its Members States and third countries in order to make such assessments. But the aim of the EU, for many years, is to “cooperate” with third countries to externalize migration control and prevent migrants from reaching Europe. This “cooperation” does not prevent human rights violations by these third countries. Libya, Morocco, Turkey or Ukraine for example are blindly seen as safe countries where migrants can be sent.

Furthermore, the regulation foresees the possibility to send persons intercepted at high sea or in the contiguous zone of a Member State’s territorial waters back to the country from which they departed, regardless of whether there is an agreement between the EU and this country. This with low guarantees and with no regard for the European Court for Human Rights jurisprudence which consecrates the right to an effective remedy¹. This also raises many questions regarding the capacity of States to operate in their neighbours’ territorial waters or territories while respecting standards at least as high as European ones as the regulation suggests. How will one guarantee that States will respect these standards in matter of protection and non-refoulement? Which jurisdiction will be competent to appreciate this ?

The development of relationships with third-countries is always seen as the solution to all problems of so-called clandestine immigration and Frontex is asked to play a key role in this respect. This is a way of letting the Agency implement an unprecedented and repressive policy which, while pretending to be only technical, escapes any scrutiny by the European Parliament.

¹ According to the European Court for Human Rights, the notion of “effective remedy” within the meaning of Article 13 taken in conjunction with Article 3 requires, firstly, “independent and rigorous scrutiny” of any complaint made by a person in such a situation, where “there exist substantial grounds for fearing a real risk of treatment contrary to Article 3” and, secondly, “the possibility of suspending the implementation of the measure impugned”.

In this context, saving lives is just a detail. The regulation foresees a binding procedure for the Agency to inform the competent rescue authorities: this is a minimum already foreseen by existing international maritime law. The regulation therefore does not add anything to existing rules.

The only way to stop the slaughter at our borders would be to radically change the current paradigm and at last to organise ways of hosting persons in search of migration or protection.

This text will not transform Frontex – the mission of which is to control EU's external borders – into a rescue agency. Worse: it bears the risk for push backs at seas and for further shipwrecks. How can one, in this context, continue to believe and invest in Frontex?