



HOUSE OF LORDS

European Union Committee

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9th Report of Session 2007–08

**FRONTEX:  
the EU external  
borders agency**

Report with Evidence

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(Q) refers to a question in oral evidence

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## **FOREWORD—What this report is about**

The twenty-seven Member States are an area of increasing prosperity, and with external land borders of 8,000 km and sea borders of 80,000 km, migration to these countries is a considerable attraction for those seeking the chance of a better life, or simply trying to escape from their own countries for whatever reason. The abolition of nearly all the internal borders makes it all the more important that the external borders should be efficiently policed, and that there should be close cooperation between the border guards of the different States. The management of that cooperation is the task of Frontex.

Frontex is a relatively new agency, set up less than three years ago, and operational for barely two. As the importance of its work is increasingly recognised, its budget has doubled every year, and much is expected of it by the institutions and the Member States—perhaps too much. We have looked at its constitution and working methods, and at what it has achieved in the course of its brief existence; and we have made suggestions as to the direction its future work should take, and how its accountability might be improved.

Immigration affects the Member States differently. Some have no external borders other than their airports; others, and Malta in particular, are by their position particularly vulnerable to illegal immigration on a scale they can barely cope with. We have made suggestions as to how such immigration is best managed, what part other Member States can play in sharing the burden, how Frontex is best placed to assist, and how the humanitarian problems might be handled.

The United Kingdom would like to participate fully in Frontex, but the Court of Justice has ruled that it cannot. We have considered how this country might nevertheless play a part in the operations organised by Frontex, and make use of its great experience in the efficient policing of borders to assist the other Member States.





# FRONTEX: the EU external borders agency

## CHAPTER 1: INTRODUCTION

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### The subject of our inquiry

1. Twenty-two Member States of the European Union are now full Schengen members.<sup>1</sup> They operate as a passport union without internal borders. The external land, sea and air borders of any one of them form the external borders of all of them; each of them relies on the security of the border controls of all the others.
2. In the circumstances the need for cooperation at the external borders of these States hardly needs emphasising. The first requirement is the need for a common source of information, and this was the subject of our report last year on SIS II.<sup>2</sup> But just as important is to have a mechanism for direct cooperation between border posts and those manning them on land, sea and air. The first Schengen Information System has been in force since 1995, and one might have expected a mechanism for direct cooperation to have been in place many years ago. In fact it is less than three years since the Regulation was adopted setting up a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union—Frontex, for short. It is this Agency which is the subject of our inquiry.<sup>3</sup>
3. Many of our witnesses have stressed that Frontex is a new arrival on the European scene. General Ilkka Laitinen, the Executive Director, told us: “We have only been in existence for two years ... which is a relatively short time for a European Agency” (Q 219). Javier Moreno Sanchez MEP described Frontex as “a baby which was born just two years ago and which needs the support of its parents”.<sup>4</sup> But the baby is growing fast, and so is its budget. The importance of robust border control is, if anything, increasing. So is the potential for Frontex to assist in this. We accordingly thought this a suitable time to examine the current work of Frontex and to suggest how it might develop in the future.
4. Between 1999 and 2003 we examined different aspects of Schengen and the EU borders in four separate inquiries<sup>5</sup> and, as we have mentioned, we

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<sup>1</sup> The Schengen Implementing Convention took effect in 1995 for ten of the Member States. Germany, France and the Benelux countries were the five original Schengen States, joined by Spain, Portugal, Italy, Austria and Greece. In 2001 the Convention took effect for Denmark, Sweden and Finland (and also for Norway and Iceland, the other two members of the Nordic passport union). Since 21 December 2007 it has additionally been in force for all the ten Member States which acceded in 2004 except Cyprus, a total of 24 States. The airport controls for the nine new States will be lifted only on 30 March 2008.

<sup>2</sup> *Schengen Information II (SIS II)*, 9th report, Session 2006–07, HL Paper 49.

<sup>3</sup> We explain in Chapter 2 the difference between the external borders of the Schengen States and the external borders of the Member States, and the effect of the accession of Romania and Bulgaria.

<sup>4</sup> Q 87. See also Jonathan Faull Q 47.

<sup>5</sup> *Schengen and the United Kingdom's Border Controls*, 7th Report, Session 1998–99, HL Paper 37. *Enlargement and EU External Frontier Controls*, 17th Report, Session 1999–2000, HL Paper 110. *A Common Policy on*

reported on SIS II last year. These reports form a useful background to our current inquiry, and show how matters have developed over the past decade. Where appropriate we have referred back to them.

### Conduct of the inquiry

5. The inquiry was conducted by Sub-Committee F, whose members are listed in Appendix 1. We issued a call for written evidence in July 2007; this is reproduced in Appendix 2. In reply we received evidence from the 16 persons and bodies listed in Appendix 3. Between October and December 2007 we heard oral evidence from 30 witnesses. The Home Office arranged visits for us to the border controls at Heathrow and the juxtaposed border controls at Coquelles and Calais. We took evidence in Brussels from witnesses from the Commission and from Members of the European Parliament. At the end of October 2007 we spent three days in Poland. We took evidence from the Executive Director and officials of Frontex, which has its headquarters in Warsaw, and from a Minister at the Ministry of the Interior and Administration. We also took evidence from the Commander in Chief of the Polish Border Guard, and spent a day at Dorohusk on the Polish border with Ukraine. To all those who helped in the arrangement of these visits, and to all our witnesses, we are most grateful.
6. We were fortunate to be assisted during the course of our inquiry by Dr Valsamis Mitsilegas, Reader in Law, School of Law, Queen Mary College, University of London, and by Major-General Adrian Freer, formerly Coordinator of the Kosovo Protection Corps, who advised us on operational matters. We are most grateful to them for their help and advice.

### Structure of this report

7. In the next chapter we examine the purpose of the borders of the EU and how they operate in practice. The following chapter looks at the setting up of Frontex, including the special position of the United Kingdom. Chapters 4 and 5 analyse the work of Frontex and joint operations, while Chapter 6 looks at the recent Regulation on Rapid Border Intervention Teams. Chapter 7 deals with a number of miscellaneous issues. We then make suggestions as to how Frontex should develop in the future. Finally we summarise our conclusions and recommendations.
8. **We recommend this report to the House for debate.**

## CHAPTER 2: BORDERS

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### The significance of national borders

9. “National borders are hugely symbolic. They define the territory over which a state exercises sovereignty; they are an integral part of its identity; and they traditionally represent the point at which a person seeking to enter the country must demonstrate their admissibility.” These are the opening words of our report on the Proposals for a European Border Guard.<sup>6</sup> To this we would add that national borders also define differences of jurisdiction, of legal systems and, usually, of language. These are important for the purposes of our inquiry, but the most important of all is that the borders between Member States and third countries also usually represent a sharp contrast in economic prosperity.
10. Mr Liam Byrne MP, the Minister of State at the Home Office with responsibility for immigration, explained this graphically: “The World Bank in *Global Economic Prospects*, which was published last year, forecast that something like a billion people will join the labour market in the developing world between now and 2025. The International Labour Organisation estimates that there is a five-fold difference in household income between low income and high income countries. My warning is that over the next 20 years the pressure on Europe’s borders will not diminish. It will grow and it will grow sharply. We are already seeing that pressure across the Mediterranean” (Q 475).
11. We accept this view. **The migratory pressure on Europe’s borders will grow because there are a growing number of failed states where a combination of economic incompetence, uncertainty of property rights, corruption, internal conflicts, political anarchy and repressive regimes has created intolerable conditions for the local population. Conditions may also be intolerable in states where poverty is endemic, or in those which, though once prosperous, are now ravaged by war. It is therefore inevitable and predictable that people will attempt to escape to countries which they see as offering a chance of a better life.**
12. The needs of Member States for economic migrants from outside the EU will vary, but most have benefited from migration both from within and from outside the Union.<sup>7</sup> United Kingdom Prospects, a quarterly report from the Centre for Economics and Business Research, published on 27 December 2007, estimates that the growth of the United Kingdom GDP will be maintained at 1.8% in 2008 only because of an increase in the number of predominantly unskilled economic migrants entering the country, mainly from the Eastern European Member States.
13. Many of those seeking to escape from countries at or near the bottom of the United Nations Human Development Index are likely to be the more talented. Yet these are the people those countries particularly need to retain

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<sup>6</sup> 29th Report, Session 2002–03, HL Paper 133.

<sup>7</sup> For the specific benefits to the United Kingdom, see our report *Economic Migration to the EU*, 14th Report, Session 2005–06, HL Paper 58. The House of Lords Select Committee on Economic Affairs is currently inquiring into the Economic Impact of Immigration. Evidence given to that inquiry can be found at [www.publications.parliament.uk/pa/ld/ldeconaf.htm](http://www.publications.parliament.uk/pa/ld/ldeconaf.htm).

if they are not to stay anchored near the bottom of the Index, unable to rise because they increasingly lack the talent they need.

14. It is only natural for those in developing countries who wish to improve the economic prospects for themselves and their families, and who can see that crossing the border into the EU is likely to help them to do just that, to attempt to do so. Any detailed analysis of the root causes of migration, the merits of EU migration policies, the capacity to absorb the numbers involved, and what should be done to regulate migration flows, are all outside the scope of this inquiry. We have proceeded on the premise that the current EU and national rules to regulate immigration are there to be obeyed, and that borders and border guards are there for this purpose. We are however mindful that the developing cooperation of national border guards at the external EU borders takes place in the context of the rules of public international law designed to ensure the safety and dignity of human beings.
15. The larger the Schengen area, and the greater the freedom of movement within it, the greater the burden which falls on those borders which become the external borders of the EU, and the greater the responsibility of those who guard them. The duty to guard what were previously only national borders becomes a duty owed to all the Schengen States. The changes which took place at the end of 2007 are particularly significant for the States with the Eastern land borders. Twenty years ago it was the Western borders of those States which were designed to keep citizens of the former Soviet bloc from escaping to the economic nirvana of the EU;<sup>8</sup> today it is the Eastern borders of the same States which have the duty of regulating the flow of immigration into the EU from other States which formerly were part of the Soviet bloc. This is the reason why the Polish border guard has had to be built from scratch.<sup>9</sup>
16. The external borders of the Member States are defined by Article 1(4) of the Regulation setting up Frontex as “the land and sea borders of the Member States and their airports and seaports, to which the provisions of Community law on the crossing of external borders by persons apply”. We consider these in turn.

### **The land borders**

17. The land borders to which an important part of the work of Frontex relates—those of the Member States—are not the same as those of the Schengen States. They do not include the border between Russia and Norway, which is a Schengen Associated State but not a Member State; but they do include the external borders of Romania and Bulgaria, which are Member States but not yet Schengen States.<sup>10</sup>
18. Until May 2004 Finland, Germany, Austria and Italy guarded the main Eastern land border of the EU, which was 4,095 km long (2,545 miles).

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<sup>8</sup> At that time, the European Economic Community.

<sup>9</sup> Mr Wieslaw Tarka, Under-Secretary of State, Polish Ministry for the Interior and Administration, Q 355.

<sup>10</sup> We do not consider the border between Sweden and Norway, since it is a Schengen Associated State, nor the land borders with Switzerland, which from 1 November 2008 will become a Schengen Associated State.

**TABLE 1****The Eastern external land border of the EU before 1 May 2004**

<b>Border between</b>		<b>Length in km</b>
Finland	Russia	1,340
Germany	Poland	454
Germany	Czech Republic	810
Austria	Czech Republic	466
Austria	Slovakia	107
Austria	Hungary	356
Austria	Slovenia	330
Italy	Slovenia	232
<b>Total</b>		<b>4,095</b>

19. After the accession of ten new Member States on 1 May 2004 the place of Germany, Austria and Italy in guarding the Eastern external land border was taken by Estonia, Latvia, Lithuania, Poland, Slovakia, Hungary and Slovenia. When Frontex started its work, before the accession of Romania and Bulgaria on 1 January 2007, the external land border was 6,220 km long (3,866 miles).

**TABLE 2****The Eastern external land border of the EU from 1 May 2004**

<b>Border between</b>		<b>Length in km</b>
Finland	Russia	1,340
Estonia	Russia	455
Latvia	Russia	276
Latvia	Belarus	161
Lithuania	Belarus	651
Lithuania	Russia (Kaliningrad)	272
Poland	Russia (Kaliningrad)	232
Poland	Belarus	418
Poland	Ukraine	535
Slovakia	Ukraine	98
Hungary	Ukraine	136
Hungary	Romania	448
Hungary	Serbia	174
Hungary	Croatia	344
Slovenia	Croatia	680
<b>Total</b>		<b>6,220</b>

20. Neither of these two tables includes Greece. Although of course a Member State, it was not then geographically part of the main body of EU States, although its borders with Albania, the Former Yugoslav Republic of Macedonia (FYROM), Bulgaria and Turkey were external land borders of a Member State and hence part of the responsibility of Frontex. However the accession of Romania and Bulgaria has changed matters radically. Greece has now joined the main continental bloc, so that the Eastern external land border now runs from the Arctic to the Black Sea and the Aegean, and is 6,378 km long (3,964 miles). As a result the West Balkan States have become an enclave whose collective land frontiers form a lengthy and sensitive part of the external borders of the EU, adding a further 1,580 km (982 miles) to a land border now totalling 7,958 km (4,946 miles).

**TABLE 3****The external land border of the EU from 1 January 2007**

<b>Border between</b>		<b>Length in km</b>
Finland	Russia	1,340
Estonia	Russia	455
Latvia	Russia	276
Latvia	Belarus	161
Lithuania	Belarus	651
Lithuania	Russia (Kaliningrad)	272
Poland	Russia (Kaliningrad)	232
Poland	Belarus	418
Poland	Ukraine	535
Slovakia	Ukraine	98
Hungary	Ukraine	136
Romania	Ukraine (East and West of Moldova)	649
Romania	Moldova	681
Bulgaria	Turkey	259
Greece	Turkey	215
Greece	Albania	282
Greece	Former Yugoslav Republic of Macedonia	246
Bulgaria	Former Yugoslav Republic of Macedonia	165
Bulgaria	Serbia	341
Romania	Serbia	546
<b>Total</b>		<b>7,958</b>

21. Frontex cannot lose sight of other land borders; the problems they raise are often wholly disproportionate to their length. A month after it began operations Frontex found itself in the front line when, in November 2005, hundreds of mainly sub-Saharan nationals breached the borders of the Spanish enclaves of Ceuta and Melilla in Morocco.
22. The Schengen Evaluation Working Party consists of experts from the Member States whose remit is to evaluate against key performance indicators, on behalf of all the states, the manner in which checks and surveillance are carried out at external borders, their practice when issuing visas, police and judicial co-operation at internal borders, and the use of the Schengen Information System. This evaluation mechanism serves to check that Member States implement the Schengen *acquis* properly. But its other—and recently its more important—purpose has been to evaluate whether the Member States which acceded in 2004 fulfilled the conditions laid down for applying the Schengen *acquis*.<sup>11</sup> Before the Schengen area was extended to the nine states which joined it on 21 December 2007,<sup>12</sup> an elaborate evaluation took place of the quality of the border protection. Teams of experts examined the border posts and the areas between them and reported back to the Council with recommendations for improvements. Most of these recommendations have been acted on, and the borders are more secure than they were.<sup>13</sup>
23. Anyone remembering the problem of policing the short common border between Northern Ireland and the Irish Republic during the Troubles, or the Sino-Hong Kong border, will readily understand the difficulty of guarding a border some 8,000 km long against large numbers of determined and sometimes desperate immigrants. However good the border posts may be which guard the main crossing points, in between them are long stretches of border, often sparsely populated, sometimes through country which is difficult to police. Even if they are fenced, this is of little use unless they are also guarded, which in the nature of things they cannot always be. A border is only as secure as its least well guarded area, and it is this area which will attract illegal immigrants.<sup>14</sup>
24. With frontiers of this length, and very large numbers of border guards, there may also be a problem of corruption. Border guards are not usually well paid compared to other workers, and those on the East of the frontier considerably less well than those on the West. We think it likely that even the best guarded border posts may not prove too much of an obstacle to immigrants who are well funded.
25. The enlargement of the Schengen area was an opportunity for the British press to comment on the security of the new borders. Much of the comment

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<sup>11</sup> Plan for the management of the external borders of the Member States of the European Union agreed by the JHA Council on 13 June 2002 (Document 10019/02).

<sup>12</sup> Cyprus was the only one of the ten which did not join.

<sup>13</sup> The reports of the Schengen Evaluation Working Party are classified, but on 7 September 2007, less than 4 months before the enlargement, the Working Party reported concerns about the continuing entry of Croatian residents into the territory of Hungary and Slovenia with an identity card only, something which had been identified during a land-border mission as far back as May 2006. The working party continues its evaluation of border security of the Schengen States.

<sup>14</sup> We have referred in our reports on *Schengen and the United Kingdom's Border Controls* (7th Report, Session 1998–99, HL Paper 37) and *Illegal Migrants: proposals for a common EU returns policy* (32nd Report, Session 2005–06, HL Paper 166) to the pejorative use of the term “illegal immigrant” in this context, with its imputation of criminality. While this is the term used by most of our witnesses, a number prefer the term “irregular migrants”. However “illegal immigrant” is the most commonly used English expression, and “illegal” is the word used in Article 63(3)(b) of the EC Treaty and in Regulation 863/2007. We have therefore used this term, but emphasise that it will include persons whose intention is to settle legally in the EU.



we saw was adverse. By way of example, an article in the Sunday Telegraph of 16 December 2007, subtitled “*Eastern defences are undermanned and overwhelmed*”, tells of a visit to Beregsurany on the border between Hungary and Ukraine, where officials said they caught fewer than a third of those attempting to cross the border illegally.

### **The Polish-Ukrainian border**

26. In the course of our visit to Poland, on 24 October 2007 we visited Dorohusk to see in operation a border post on the eastern external border of the EU. The border with Ukraine is at that point formed by the River Bug, and Dorohusk is one of the main road entry points from Ukraine. The border post was rebuilt in 2004 and is one of the most modern and best equipped on the Polish border. It is well equipped to monitor traffic on the arterial road, but like all land border posts it covers a large surrounding area which it is not so well placed to supervise.
27. Earnings in Poland are low by EU standards, but are still some four times higher than in Ukraine, and higher still compared to some of the other countries of the former Soviet Union to the East of Ukraine. The pressure from migrants seeking to enter the EU from and through Ukraine is therefore very great. Much of the migration is organised, and we were told of groups from Moldova, Georgia, Chechnya, Pakistan, Vietnam and as far afield as China (QQ 332, 340, 347). Other main concerns of the border guards are entry of criminal gangs from the East, and the smuggling of cigarettes, alcohol, drugs, and works of art.
28. Much of the traffic in the opposite direction consists of articulated trucks exporting goods from, principally, Germany to Ukraine and beyond. On the day of our visit there was a queue of lorries well over a mile long waiting to pass into Ukraine. In that direction the chief concern is the smuggling of stolen luxury cars.
29. In addition to the oral evidence which we took (QQ 314–350), we inspected the border crossing itself, we saw the equipment for detecting illegal immigrants in use, and we saw the practical liaison between the Polish and Ukrainian border guards.

### **Juxtaposed border controls at Coquelles and Calais**

30. The nearest the United Kingdom comes to a land border with a Schengen state is the terminus of Eurotunnel in France, at Coquelles. The Home Office arranged for us to visit on 8 January 2008 the juxtaposed controls there and at the ferry port of Calais. The controls at Coquelles have existed since 1994, and the agreement now allows staff from the Border and Immigration Agency (BIA) and HM Revenue and Customs (HMRC) to apply United Kingdom immigration law within this very limited area of France, and so to control passengers and vehicles travelling to the UK before they leave France. The agreement covering Calais does not allow participation by HMRC. Replies to a number of detailed questions from the Committee are printed with the written evidence on page 161.
31. In 2006 BIA, as a result of its juxtaposed controls in France, stopped 16,898 people from crossing the Channel illegally in trucks and refused 6,801 people entry.<sup>15</sup> Examination of both passengers and freight vehicles is by targeted

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<sup>15</sup> These figures are taken from Security in a Global Hub, paragraph 3.2, but have been updated by the Home Office. The great majority relate to Coquelles and Calais, but they also include some from other juxtaposed controls: Dunkerque, Boulogne, Paris, Fréthun and Lille. There are also juxtaposed controls in Brussels.

















































































































