
Legal Aspects of Cross-Border Cooperation between Ukraine and European Union

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Summary: The article investigates the cross-border cooperation between Ukraine and the EU. The research analyzes common legal instruments of cross-border cooperation between Ukraine and the EU and provides their legal authority. The article defines the important areas of cooperation, including conflict prevention, the protection of borders, combating terrorism, the fight against organized crime, security sector reform etc.

Keywords: Frontex, cross-border cooperation, operational cooperation, third countries, common legal instruments.

1. Introduction

At the end of 2015 and at the beginning of 2016 the security system of the Schengen area faced with a number of terrorist attacks and large-scale illegal migration flows that have become a serious threat to the external borders and security of every European country in particular. After numerous series of attacks on 13-14 November 2015 in Paris, about 140 people were killed, massive assaults to women in Germany, Switzerland and Finland at the beginning of 2016 and after a number of terrorist attacks on March 22, 2016 in Brussels, where 32 people were killed and 260 people were injured, member states of the Schengen area had to review the mechanisms for strengthening of the security and stability in Europe.

The particular attention was paid to the activities of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States (FRONTEX Agency) – (hereinafter – Frontex). Taking into consideration the development and strengthening of Frontex cooperation with third countries, including Ukraine, this research has become particularly relevant and significant. Therefore, it requires the deep and detailed analysis.

The main purpose of the research is to study the Ukrainian cooperation with Frontex, to analyze the legal principles of such collaboration and to determine the main directions of cooperation and coordination between both parties.

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Nowadays mostly the western scholars cover the main issues of Frontex's activities and powers. In particular, S. Carrera analyzes the activities of agency in the context of the integrated strategy for management of the European Union external borders; G. Jorry in his researches analyzes the functioning of Frontex as an efficient mechanism of the EU common policy on its external borders. The legal aspects of the agency are investigated by E. Papastradivis, M. Polak, P. Slominsky and A. Baldachini. Special attention in regard of the structure of Frontex is focused in the works of S. Leonard.

It should be noted that the Ukrainian science of the European law only in works of V. Muraviov, Z. Makaruha, L. Grytsaenko, O. Streltsova and O. Svyatun covers the legal principles and the functioning of Frontex, agency's collaboration with another institutions of the European Union and other establishments. However, the Frontex cooperation with third countries, including Ukraine, is outside of the national scientific researches.

2. Key provisions of the research

Within the European Union to strengthen the protection of the external borders of the EU member states, identify primarily on early stage and prevent new threats from terrorist attacks and illegal immigration, the agency of Frontex is operating as a mechanism of cooperation with the EU neighboring countries, introduced in 2006.

The main directions of such cooperation are to prevent conflicts, to protect borders, to counter the terrorism, to fight against organized crime, to reform the security sector etc. These trends have been confirmed in the published legal document "Review of the European Neighborhood Policy" adopted by the EU Commission and the EU High Representative for Foreign Affairs and Security Policy on November 18, 2015.¹

This document is aimed to ensure the security of neighboring states to prevent and in the future to avoid new challenges and threats facing the EU Member States. Moreover, the border security has been defined one of key priorities of the European Union and its institutions cooperation with third countries.

According to the document the particular attention is paid to the role of Frontex in the promotion, coordination and controlling of the European borders in

¹ Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee and the Committee and the Committee of the Regions. Review of the European Neighbourhood Policy {SWD (2015), Brussels, 18.11.2015. – [Electronic resource]. – Mode of Access: http://eeas.europa.eu/enp/documents/2015/151118_joint-communication_review-of-the-enp_en.pdf.

conformity with the Charter of Fundamental Rights of the EU and the concept of Integrated Border Management Agency and further cooperation with third countries.

The legal basis for the Frontex activity is the EU Council Regulation 2007/2004 of 26. 10. 2004² and Council Regulation EC №1168/2011 of 25. 10. 2011. The headquarters of the agency is located in Warsaw (Poland).³ The main governing body of Frontex is the Council Board. It is composed of one representative of Border Service of the EU member state that is ex officio the head of the Border Guard, and two representatives of the European Commission. The Agency's budget consists of the EU general budget and the EU member states' contributions. Thus, the budget of the Agency at the beginning of 2005 accounted 6.3 mln euro, in 2013 – 94 mil Euro, and in 2016, in regard of the migration crisis, the budget was increased to 220 mln Euro.

Nowadays the basic agreement regulating the cooperation between Ukraine and Frontex concerning the border management is the Association Agreement between Ukraine, on one hand, and the European Union and its Member States, on the other hand (hereinafter – AA)⁴, signed by Ukraine on 27 June 2014 in Brussels and ratified by the Verkhovna Rada of Ukraine and the European Parliament on 16 September 2014.

According to the AA the interaction and mutual cooperation concerning the border management is regulated by Chapter III “Justice, freedom, security” (article 16). This chapter provides the cooperation in border management area and involves training, exchange of best practices, including technological aspects, the exchange of information in compliance with the rules, the exchange of liaison officers and so on. To implement these directions the parties will make joint efforts for effective implementation of the principle of integrated border management; enhance the security of documents; development of an effective return policy and operational activities in the field of border management.

Apart from the Association Agreement the cooperation between Ukraine and Frontex is also regulated by the Working Arrangement on the establishing of

² Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the management of operational cooperation at the external borders of the member states of the European Union. – [Electronic resource]. – Mode of Access: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133216>

³ Council Regulation (EC) No 1168/2011 of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the management of operational cooperation at the external borders of the member states of the European Union. – [Electronic resource]. – Mode of Access: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ%3AL%3A2011%3A304%3ATOC>

⁴ Association Agreement between the European Union and its Member States, of the one Part, and Ukraine, of the other Part. – [Electronic resource]. – Mode of Access: [http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2013/0290/COM_COM\(2013\)0290\(PAR2\)_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2013/0290/COM_COM(2013)0290(PAR2)_EN.pdf)

operational cooperation between State Security Service of Ukraine (hereinafter – SSSU) and Frontex, signed on 11 June 2007 in Luxembourg at the meeting of Ministers of Justice and Home Affairs of both parties.⁵

Although the document is not considered as an international agreement, it sets out the fundamental basis for cooperation between the parties in the field of border security policy.

According to the Working Agreement the main objectives of cooperation between the parties are: the prevention of uncontrolled migration and other illegal activity at the borders by border control; strengthening of border security between the EU and Ukraine; the development of good relations and mutual confidence between the border agencies at the border between the EU member states and Ukraine.

The operational cooperation in regard of border issues in accordance with clause 4 of the document is supported by Frontex Executive Director and the Chairman of the State Border Service of Ukraine. If it necessary the expert working groups will be established to consider specific issues or develop appropriate joint recommendations.

The main areas of cooperation between the parties are the exchange of information, joint analysis of the risks, the participation in joint operations and trainings.

After Working Agreement a pilot project “Five Borders – 2007” was introduced where beginning from August to December 2007 four cross-border operations at the Slovak, Hungarian, Polish and Romanian territories of the common border were conducted and operated. And since 2008 the regular joint operations at Ukraine-EU border have been conducted, that subsequently have acquired the strategic character.

It should be noted that the strengthening of cooperation on border management, improving the coordination between State Border Guard Service and Frontex on the evaluation, analysis and risk management at the common border also are stipulated by the Action Plan between Ukraine and the EU in Justice, Freedom and Security area.⁶

In addition, the procedure of exchange of information by introducing a system of joint contact offices has been simplified.

⁵ Working Agreement on the establishment of Operational Cooperation between the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and the Administration of the State Border Guard Service of Ukraine, 11.06.2007. – [Electronic resource]. – Mode of Access: http://frontex.europa.eu/assets/Partners/Third_countries/WA_with_Ukraine.pdf

⁶ Action Plan Ukraine – EU Justice, Freedom and Security on June 18, 2007 – [Electronic resource]. – Mode of Access: http://zakon4.rada.gov.ua/laws/show/994_956

More progressive legal provisions governing the practical issues of border management between Ukraine and Frontex were established by the Association Agenda of March 16, 2015 – (hereinafter – Association Agenda) adopted by the Association Council between Ukraine and the European Union.⁷

According to clause 3.3 of the document the collaboration between parties is implemented through strengthening of border management and maintenance of a high level of border controlling and surveillance, expansion and modernization of fixed and mobile video surveillance tools; improving the efficiency of border protection through the introduction of joint border control and surveillance; ensuring the rapid exchange of information on contact points etc.

In addition, the Association Agenda provides the expansion of cooperation under the existing working agreements between State Border Service of Ukraine and Frontex, including the analysis and risk management.

For example, unlike the previous Association Agenda of 2009, that mainly regulated the issues of intensification and strengthening of cooperation between the parties, including analysis and risk management⁸, Association Agenda of 2015 is covering more areas of such cooperation.

It is caused by the conclusion of the Association Agreement on 27 June 2014 and the Association Agenda that are the tools for facilitating of the AA provisions' implementation.

In particular, the final provisions of the chapter on border management stipulate that the parties have, since 2016, to develop and implement the next generation of integrated border management strategy, providing and ensuring the proper use of infrastructure, technical equipment, IT systems, financial and human resources.

In addition to the abovementioned documents every three years between State Border Guard Service of Ukraine and Frontex joint documents well known as plans of cooperation have been adopted. They were adopted for three year period in 2010–2012, 2013–2015 years. The latter was signed on February 26, 2016 in Warsaw. The term of its validity will expire in 2018.

In particular, the document defines the areas of cooperation to improve joint operational border security to prevent terrorist organizations activity, illegal migration and trafficking, joint operations, the practical implementation of key principles and tools for integrated border management, including border checks in joint border crossings, improving the exchange of information, joint risk analysis, expanding the network of contact points and others.

⁷ EU-Ukraine Association Agenda for facilitation of the implementation of the Association Agreement endorsed by the EU-Ukraine Association Council on 16 March 2015. -[Electronic resource]. – Mode of Access: http://eeas.europa.eu/ukraine/docs/st06978_15_en.pdf

⁸ Association Agenda 2009. – [Electronic resource]. – Mode of Access: http://zakon2.rada.gov.ua/laws/show/994_990

Thus, according to the Plan of Cooperation State Border Service of Ukraine is participating in joint operations at land borders of Ukraine with the EU Member States; external maritime borders of the EU and checkpoints for air service. In addition, the State Border Service of Ukraine is participating in training projects to identify stolen vehicles; detecting counterfeiting documents; training dog handlers; providing English services for border guard officers.

Also the Common Core Curriculum and common web platform for border guards well-known as Virtual-Aula have gradually been introduced. Eventually, the parties agreed on the mechanism for information exchange in the field of risk analysis and the mechanism of exchange of data messages under urgent situations; a joint project of risk analysis “Eastern Borders” due to the border services of Ukraine, Belarus and Moldova has been introduced.

To enhance cooperation with Frontex the border guards of Ukraine have the opportunity to visit the headquarters of the European agency. In particular, in July 2014 within the EU funded project “Strengthening of Control and Potential of Bilateral Cooperation at the Common Border between Belarus and Ukraine (SURCAP)” the Ukrainian border guards visited Warsaw. In its turn, the experts of Frontex provided the practical advice and recommendations concerning the risk analysis and border control at the EU external borders, as well as in regard of the EUROSUR system.

26-27 February 2016 in Poland the Chairman of State Border Guard Service of Ukraine Vladimir Nazarenko had a meeting with the Executive Director of Frontex Fabrice Lejery. In particular, they discussed the strategic development and upcoming events for the future. They also discussed the adoption of a number of conceptual and policy documents, including the development strategy of State Border Service of Ukraine for the period until 2020, the concept of “Integrated Border Management” and State Program of construction and reconstruction of the of the Ukrainian borders.

During the visit, the Chairman of State Border Guard Service of Ukraine mentioned the performance within 2015 the Action Plan of Liberalization of the EU visa regime for Ukraine, the introduction of biometric control in 104 checkpoints through the first line of control; in 68 checkpoints through the second line; connection to Interpol databases of 39 checkpoints.

According to the requirements of the EU and Frontex the integrated risk and criminal analysis system has been implemented within the border agency. In order to implement the European standards of border management a number of pilot projects, particularly, at checkpoints of “Zhulyany” and “Gostomel” has also been implemented.

During the meeting it was also underlined that the enormous part of the illegal migrants is using Ukraine as a transit country. At the same time last year at

the Ukrainian borders only 0.1% (1,609 people) was detained of the total number of illegal immigrants who were found at the external borders of the EU. As a result of the meeting the parties signed a Plan of cooperation for 2016-2018 years.

In other words, such documents as Working Agreement concerning the establishment of operational cooperation between State Border Guard Service and Frontex, the Action Plan between Ukraine and the EU in Justice, Freedom and Security area, the Association Agenda of March 16 2015, Plans of Cooperation between State Border Guard Service of Ukraine and Frontex are the common legal instruments aimed at the development of operational cooperation between Ukraine and Frontex.

In order to implement the legal documents the Cabinet of Ministers of Ukraine adopted the Concept of Integrated Border Management on 28 October 2015 till 2020⁹. The legal act entered into force on 01 January 2016.

The document provides the improvement of the Ukrainian cooperation with Frontex, in particular, carrying out of the risk analysis, exchange of information, the participation in joint operations, performance of specialized trainings of Border Service personnel etc.

Therefore, Frontex is a platform for exchange of experience, obtaining of new knowledge, professional skills, and enhancing of border security at common borders of the Member States with third countries, and, in particular, with Ukraine.

3. Conclusions

For an adequate and immediate prevention to new threats caused by illegal immigration, smuggling, drug trafficking Ukraine cooperates with Frontex through a joint center for collecting, analysis of information, participation in joint operations, training of staff and coordination of actions at the external borders of the Member States of the European Union. Such joint actions are the important steps in order to improve border security of Ukraine for prevention of danger to the EU external borders.

Moreover, the Ukrainian participation in the projects of Frontex allows demonstrating the ability of our country to protect the common border with the EU, and to respond to contemporary challenges of border security. Furthermore, the strengthening of cooperation between Ukraine and Frontex will

⁹ The Concept of Integrated Border Management adopted by the Cabinet of Ministers of Ukraine on 28 October 2015. – [Electronic resource]. – Mode of Access: <http://zakon3.rada.gov.ua/laws/show/1149-2015-%D1%80>.

provide greater opportunities in areas related to risk assessment, retraining of officers according to the European model of training, the Ukrainian border security integration into the European system of integrated border management, the development of modern technologies and systems of monitoring, automated passport control, etc.